

HOUSE BILL No. 2231

By Committee on Judiciary

1-25

9 AN ACT concerning crimes and punishment; relating to burglary and
10 aggravated burglary; amending K.S.A. 21-3715 and 21-3716 and K.S.A.
11 2006 Supp. 21-4704 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-3715 is hereby amended to read as follows: 21-
15 3715. Burglary is knowingly and without authority entering into or re-
16 maining within any:

17 (a) Building, manufactured home, mobile home, tent or other struc-
18 ture which is a dwelling, with intent to commit a felony, theft or sexual
19 battery therein;

20 (b) building, manufactured home, mobile home, tent or other struc-
21 ture which is not a dwelling, with intent to commit a felony, theft or sexual
22 battery therein; or

23 (c) motor vehicle, aircraft, watercraft, railroad car or other means of
24 conveyance of persons or property, with intent to commit a felony, theft
25 or sexual battery therein.

26 Burglary as described in subsection (a) is a severity level ~~7~~ 3, person
27 felony. Burglary as described in subsection (b) is a severity level ~~7~~ 4,
28 nonperson felony. Burglary as described in subsection (c) is a severity
29 level ~~9~~ 5, nonperson felony.

30 Sec. 2. K.S.A. 21-3716 is hereby amended to read as follows: 21-
31 3716. Aggravated burglary is knowingly and without authority entering
32 into or remaining within any building, manufactured home, mobile home,
33 tent or other structure, or any motor vehicle, aircraft, watercraft, railroad
34 car or other means of conveyance of persons or property in which there
35 is a human being, with intent to commit a felony, theft or sexual battery
36 therein.

37 Aggravated burglary is a severity level ~~5~~ 2, person felony.

38 Sec. 3. K.S.A. 2006 Supp. 21-4704 is hereby amended to read as
39 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
40 guidelines grid for nondrug crimes shall be applied in felony cases for
41 crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 33 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 23	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
Barred Box
Presumptive Imprisonment

- 1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.
- 9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.
- 29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:
- 37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and
- 40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or
- 43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any de-
13 cision made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
26 thereto, shall be as provided by the specific mandatory sentencing
27 requirements of that section and shall not be subject to the provisions of
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the
29 offender's criminal history classification the offender is subject to pre-
30 sumptive imprisonment or if the judge departs from a presumptive pro-
31 bation sentence and the offender is subject to imprisonment, the provi-
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
33 apply and the offender shall not be subject to the mandatory sentence as
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
35 the provisions of any other section, the term of imprisonment imposed
36 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)
37 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
38 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
39 be served in a state facility in the custody of the secretary of corrections.

40 (j) (1) The sentence for any persistent sex offender whose current
41 convicted crime carries a presumptive term of imprisonment shall be
42 double the maximum duration of the presumptive imprisonment term.
43 The sentence for any persistent sex offender whose current conviction

1 carries a presumptive nonprison term shall be presumed imprisonment
2 and shall be double the maximum duration of the presumptive impris-
3 onment term.

4 (2) Except as otherwise provided in this subsection, as used in this
5 subsection, “persistent sex offender” means a person who: (A) (i) Has
6 been convicted in this state of a sexually violent crime, as defined in K.S.A.
7 22-3717 and amendments thereto; and (ii) at the time of the conviction
8 under paragraph (A) (i) has at least one conviction for a sexually violent
9 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
10 or comparable felony under the laws of another state, the federal gov-
11 ernment or a foreign government; or (B) (i) has been convicted of rape,
12 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
13 conviction under paragraph (B) (i) has at least one conviction for rape in
14 this state or comparable felony under the laws of another state, the federal
15 government or a foreign government.

16 (3) Except as provided in paragraph (2)(B), the provisions of this sub-
17 section shall not apply to any person whose current convicted crime is a
18 severity level 1 or 2 felony.

19 (k) If it is shown at sentencing that the offender committed any felony
20 violation for the benefit of, at the direction of, or in association with any
21 criminal street gang, with the specific intent to promote, further or assist
22 in any criminal conduct by gang members, the offender’s sentence shall
23 be presumed imprisonment. Any decision made by the court regarding
24 the imposition of the optional nonprison sentence shall not be considered
25 a departure and shall not be subject to appeal. As used in this subsection,
26 “criminal street gang” means any organization, association or group of
27 three or more persons, whether formal or informal, having as one of its
28 primary activities the commission of one or more person felonies or felony
29 violations of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
30 and amendments thereto, which has a common name or common iden-
31 tifying sign or symbol, whose members, individually or collectively engage
32 in or have engaged in the commission, attempted commission, conspiracy
33 to commit or solicitation of two or more person felonies or felony viola-
34 tions of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
35 and amendments thereto, or any substantially similar offense from an-
36 other jurisdiction.

37 ~~(l) The sentence for a violation of subsection (a) of K.S.A. 21-3715~~
38 ~~and amendments thereto when such person being sentenced has a prior~~
39 ~~conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-~~
40 ~~3716 and amendments thereto shall be presumed imprisonment.~~

41 ~~(m)~~ The sentence for a violation of K.S.A 22-4903 or subsection (d)
42 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
43 prisonment. If an offense under such sections is classified in grid blocks

1 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
2 sentence upon making the following findings on the record:

3 (1) An appropriate treatment program exists which is likely to be
4 more effective than the presumptive prison term in reducing the risk of
5 offender recidivism, such program is available and the offender can be
6 admitted to such program within a reasonable period of time; or

7 (2) the nonprison sanction will serve community safety interests by
8 promoting offender reformation.

9 Any decision made by the court regarding the imposition of an optional
10 nonprison sentence pursuant to this section shall not be considered a
11 departure and shall not be subject to appeal.

12 Sec. 4. K.S.A. 21-3715 and 21-3716 and K.S.A. 2006 Supp. 21-4704
13 are hereby repealed.

14 Sec. 5. This act shall take effect and be in force from and after its
15 publication in the statute book.