

SENATE BILL No. 482

By Committee on Judiciary

1-28

9 AN ACT concerning crimes and punishment; relating to substance abuse
10 treatment for certain offenders; amending K.S.A. 21-4705 and 21-4714
11 and K.S.A. 2007 Supp. 75-5210 and 75-5220 and repealing the existing
12 sections.
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 21-4705 is hereby amended to read as follows: 21-
16 4705. (a) For the purpose of sentencing, the following sentencing guide-
17 lines grid for drug crimes shall be applied in felony cases under the uni-
18 form controlled substances act for crimes committed on or after July 1,
19 1993:
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SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level I	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	29 28 23	23 22 20	19 18 17	17 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Grade Box
Presumptive Imprisonment

1 (b) The provisions of subsection (a) will apply for the purpose of
2 sentencing violations of the uniform controlled substances act except as
3 otherwise provided by law. Sentences expressed in the sentencing guide-
4 lines grid for drug crimes in subsection (a) represent months of
5 imprisonment.

6 (c) (1) The sentencing court has discretion to sentence at any place
7 within the sentencing range. The sentencing judge shall select the center
8 of the range in the usual case and reserve the upper and lower limits for
9 aggravating and mitigating factors insufficient to warrant a departure. The
10 sentencing court shall not distinguish between the controlled substances
11 cocaine base (9041L000) and cocaine hydrochloride (9041L005) when
12 sentencing within the sentencing range of the grid block.

13 (2) In presumptive imprisonment cases, the sentencing court shall
14 pronounce the complete sentence which shall include the prison sen-
15 tence, the maximum potential reduction to such sentence as a result of
16 good time and the period of postrelease supervision at the sentencing
17 hearing. Failure to pronounce the period of postrelease supervision shall
18 not negate the existence of such period of postrelease supervision.

19 (3) In presumptive nonprison cases, the sentencing court shall pro-
20 nounce the prison sentence as well as the duration of the nonprison sanc-
21 tion at the sentencing hearing.

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such of-
24 fender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be nonimprison-
26 ment. If an offense is classified in a grid block above the dispositional
27 line, the presumptive disposition shall be imprisonment. If an offense is
28 classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose
29 an optional nonprison sentence upon making the following findings on
30 the record:

31 (1) An appropriate treatment program exists which is likely to be
32 more effective than the presumptive prison term in reducing the risk of
33 offender recidivism; and

34 (2) the recommended treatment program is available and the of-
35 fender can be admitted to such program within a reasonable period of
36 time; or

37 (3) the nonprison sanction will serve community safety interests by
38 promoting offender reformation.

39 Any decision made by the court regarding the imposition of an optional
40 nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-
41 G, 3-H or 3-I shall not be considered a departure and shall not be subject
42 to appeal.

43 (e) The sentence for a second or subsequent conviction of K.S.A. 65-

1 4159 and amendments thereto, manufacture of any controlled substance
2 or controlled substance analog shall be a presumptive term of imprison-
3 ment of two times the maximum duration of the presumptive term of
4 imprisonment. The court may impose an optional reduction in such sen-
5 tence of not to exceed 50% of the mandatory increase provided by this
6 subsection upon making a finding on the record that one or more of the
7 mitigating factors as specified in K.S.A. 21-4716 and amendments thereto
8 justify such a reduction in sentence. Any decision made by the court
9 regarding the reduction in such sentence shall not be considered a de-
10 parture and shall not be subject to appeal.

11 (f) (1) *The sentence for a third felony conviction of K.S.A. 65-4160*
12 *or 65-4162, and amendments thereto, shall be a presumptive term of im-*
13 *prisonment to be served in a state substance abuse treatment facility es-*
14 *tablished by the department of corrections and the defendant shall be*
15 *sentenced to prison as provided by this subsection, if the defendant has*
16 *previously completed a certified drug abuse treatment program, as pro-*
17 *vided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto, or has*
18 *been discharged or refused to participate in a certified drug abuse treat-*
19 *ment program, as provided in K.S.A. 2007 Supp. 75-52,144, and amend-*
20 *ments thereto. The defendant shall be placed in such substance abuse*
21 *treatment facility in the custody of the secretary of corrections to partic-*
22 *ipate in an intensified substance abuse treatment program. The intensified*
23 *substance abuse treatment program shall be determined by the secretary*
24 *of corrections, but shall be for a period of at least 120 days.*

25 (2) The sentence for a ~~third~~ fourth or subsequent felony conviction
26 of K.S.A. 65-4160 or 65-4162, and amendments thereto, shall be a pre-
27 sumptive term of imprisonment and the defendant shall be sentenced to
28 prison as provided by this section, if the defendant has previously com-
29 pleted a certified drug abuse treatment program, as provided in K.S.A.
30 2007 Supp. 75-52,144, and amendments thereto, or has been discharged
31 or refused to participate in a certified drug abuse treatment program, as
32 provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto. Such
33 sentence shall not be considered a departure and shall not be subject to
34 appeal.

35 Sec. 2. K.S.A. 21-4714 is hereby amended to read as follows: 21-
36 4714. (a) The court shall order the preparation of the presentence inves-
37 tigation report by the court services officer as soon as possible after con-
38 viction of the defendant.

39 (b) Each presentence report prepared for an offender to be sen-
40 tenced for one or more felonies committed on or after July 1, 1993, shall
41 be limited to the following information:

42 (1) A summary of the factual circumstances of the crime or crimes
43 of conviction.

- 1 (2) If the defendant desires to do so, a summary of the defendant's
2 version of the crime.
- 3 (3) When there is an identifiable victim, a victim report. The person
4 preparing the victim report shall submit the report to the victim and
5 request that the information be returned to be submitted as a part of the
6 presentence investigation. To the extent possible, the report shall include
7 a complete listing of restitution for damages suffered by the victim.
- 8 (4) An appropriate classification of each crime of conviction on the
9 crime severity scale.
- 10 (5) A listing of prior adult convictions or juvenile adjudications for
11 felony or misdemeanor crimes or violations of county resolutions or city
12 ordinances comparable to any misdemeanor defined by state law. Such
13 listing shall include an assessment of the appropriate classification of the
14 criminal history on the criminal history scale and the source of informa-
15 tion regarding each listed prior conviction and any available source of
16 journal entries or other documents through which the listed convictions
17 may be verified. If any such journal entries or other documents are ob-
18 tained by the court services officer, they shall be attached to the pre-
19 sentence investigation report. Any prior criminal history worksheets of
20 the defendant shall also be attached.
- 21 (6) A proposed grid block classification for each crime, or crimes of
22 conviction and the presumptive sentence for each crime, or crimes of
23 conviction.
- 24 (7) If the proposed grid block classification is a grid block which pre-
25 sumes imprisonment, the presumptive prison term range and the pre-
26 sumptive duration of postprison supervision as it relates to the crime
27 severity scale.
- 28 (8) If the proposed grid block classification does not presume prison,
29 the presumptive prison term range and the presumptive duration of the
30 nonprison sanction as it relates to the crime severity scale and the court
31 services officer's professional assessment as to recommendations for con-
32 ditions to be mandated as part of the nonprison sanction.
- 33 (9) For defendants who are being sentenced for a *first* conviction of
34 a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,
35 and meet the requirements of K.S.A. 21-4729, and amendments thereto,
36 the drug abuse assessment as provided in K.S.A. 21-4729, and amend-
37 ments thereto.
- 38 (10) *For defendants who are being sentenced for a third conviction*
39 *of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments*
40 *thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and*
41 *amendments thereto.*
- 42 (c) The presentence report will become part of the court record and
43 shall be accessible to the public, except that the official version, defend-

1 ant's version and the victim's statement, any psychological reports, risk
2 and needs assessments and drug and alcohol reports and assessments shall
3 be accessible only to the parties, the sentencing judge, the department
4 of corrections, and if requested, the Kansas sentencing commission. If
5 the offender is committed to the custody of the secretary of corrections,
6 the report shall be sent to the secretary and, in accordance with K.S.A.
7 75-5220 and amendments thereto to the warden of the state correctional
8 institution to which the defendant is conveyed.

9 (d) The criminal history worksheet will not substitute as a present-
10 ence report.

11 (e) The presentence report will not include optional report compo-
12 nents, which would be subject to the discretion of the sentencing court
13 in each district except for psychological reports and drug and alcohol
14 reports.

15 (f) The court can take judicial notice in a subsequent felony proceed-
16 ing of an earlier presentence report criminal history worksheet prepared
17 for a prior sentencing of the defendant for a felony committed on or after
18 July 1, 1993.

19 (g) All presentence reports in any case in which the defendant has
20 been convicted of a felony shall be on a form approved by the Kansas
21 sentencing commission.

22 Sec. 3. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as
23 follows: 75-5210. (a) Persons committed to the institutional care of the
24 secretary of corrections shall be dealt with humanely, with efforts directed
25 to their rehabilitation and return to the community as safely and promptly
26 as practicable. For these purposes, the secretary shall establish programs
27 of classification and diagnosis, education, casework, mental health, coun-
28 seling and psychotherapy, chemical dependency counseling and treat-
29 ment, sexual offender counseling, prerelease programs which emphasize
30 re-entry skills, adjustment counseling and job placement, vocational train-
31 ing and guidance, work, library, physical education and other rehabilita-
32 tion and recreation services; the secretary may establish facilities for re-
33 ligious worship; and the secretary shall institute procedures for the study
34 and classification of inmates. The secretary shall maintain a comprehen-
35 sive record of the behavior of each inmate reflecting accomplishments
36 and progress toward rehabilitation as well as charges of infractions of rules
37 and regulations, punishments imposed and medical inspections made.

38 (b) Programs of work, education or training shall include a system of
39 promotional rewards entitling inmates to progressive transfer from high
40 security status to a lesser security status. The secretary shall have authority
41 at any time to transfer an inmate from one level of status to another level
42 of status. Inmates may apply to the secretary for such status privileges.
43 The secretary shall adopt a custody classification manual establishing stan-

1 dards relating to the transfer of an inmate from one status to another,
2 and in developing such standards the secretary shall take into consider-
3 ation progress made by the inmate toward attaining the educational, vo-
4 cational and behavioral goals set by the secretary for the individual in-
5 mate. In order to facilitate the reintegration into the community of some
6 inmates who are scheduled for release within the next 90 days, there shall
7 be a presumption of minimum security status for those offenders who
8 have been returned to prison for violating conditions of their postrelease
9 supervision not involving a new criminal conviction and whose last facility
10 security custody status was not either special management or maximum.
11 ~~This presumption shall be applied to the initial security custody status~~
12 ~~assigned to the offender upon readmission into a correctional facility.~~ *In-*
13 *mates sentenced to a state substance abuse treatment facility established*
14 *by the department of corrections shall have a presumption of minimum*
15 *security status. These presumptions of minimum security status shall be*
16 *applied to the initial security custody upon readmission into a correctional*
17 *facility or admission into a state substance abuse treatment facility, unless*
18 *the security custody status is increased pursuant to policies adopted by*
19 *the secretary. The security custody status designated by the department*
20 *shall not be subject to judicial review.*

21 (c) The secretary, with the cooperation of the department of health
22 and environment, shall adopt rules and regulations establishing and pre-
23 scribing standards for health, medical and dental services for each insti-
24 tution, including preventive, diagnostic and therapeutic measures on both
25 an outpatient and a hospital basis, for all types of patients. An inmate may
26 be taken, when necessary, to a medical facility outside the institution.

27 (d) Under rules and regulations adopted by the secretary, directors
28 of institutions may authorize visits, correspondence and communication,
29 under reasonable conditions, between inmates and appropriate friends,
30 relatives and others.

31 (e) The secretary shall adopt rules and regulations under which in-
32 mates, as part of a program anticipating their release from minimum
33 security status, may be granted temporary furloughs from a correctional
34 institution or contract facility to visit their families or to be interviewed
35 by prospective employers.

36 (f) The secretary shall adopt rules and regulations for the mainte-
37 nance of good order and discipline in the correctional institutions, in-
38 cluding procedures for dealing with violations. Disciplinary rules and reg-
39 ulations may provide a system of punishment including segregation,
40 forfeitures of good time earned, fines, extra work, loss of privileges, re-
41 strictions and payment of restitution.

42 The secretary and any persons designated by rules and regulations of
43 the secretary may administer oaths for the purpose of conducting inves-

1 tigungen and disciplinary proceedings pursuant to rules and regulations
2 adopted by the secretary under this subsection and under K.S.A. 75-5251
3 and amendments thereto. For this purpose, the secretary shall adopt rules
4 and regulations designating those persons who may administer oaths in
5 such investigations and proceedings and the form and manner of admin-
6 istration of the oaths.

7 (g) A copy of the rules and regulations adopted pursuant to subsec-
8 tion (f) shall be provided to each inmate. Other rules and regulations of
9 the secretary which are required to be published pursuant to K.S.A. 77-
10 415 through 77-437, and amendments thereto, shall be made available to
11 inmates by placing a copy in the inmate library at the institution or by
12 some other means providing reasonable accessibility to inmates.

13 (h) Any inmate participating in work and educational release pro-
14 grams under the provisions of K.S.A. 75-5267 and amendments thereto
15 shall continue to be in the legal custody of the secretary of corrections,
16 notwithstanding the inmate's absence from a correctional institution by
17 reason of employment, education or for any other purpose related to such
18 work and educational release programs, and any employer or educator of
19 that person shall be considered the representative or agent for the
20 secretary.

21 (i) The secretary shall establish administrative and fiscal procedures
22 to permit the use of regional or community institutions, local govern-
23 mental or private facilities or halfway houses for the placement of inmates
24 released for the purposes of this act and for the work and educational
25 release programs under K.S.A. 75-5267 and amendments thereto.

26 (j) The secretary may establish correctional work facilities and select
27 inmates to be assigned to such facilities.

28 (k) The secretary may acquire, in the name of the state, by lease,
29 purchase or contract additional facilities as may be needed for the housing
30 of persons in the secretary's custody.

31 (l) The secretary is hereby authorized to use any of the inmates as-
32 signed to the secretary's custody in the construction and repair of build-
33 ings or property on state owned or leased grounds.

34 (m) For the purposes of establishing and carrying out the programs
35 provided for by subsection (a) and by K.S.A. 75-5267 and amendments
36 thereto, the secretary may contract with qualified individuals, partner-
37 ships, corporations or organizations; with agencies of the state; or with
38 the United States or any political subdivision of the state, or any agency
39 thereof.

40 Sec. 4. K.S.A. 2007 Supp. 75-5220 is hereby amended to read as
41 follows: 75-5220. (a) Except as provided in subsection (d), within three
42 business days of receipt of the notice provided for in K.S.A. 75-5218 and
43 amendments thereto, the secretary of corrections shall notify the sheriff

1 having such offender in custody to convey such offender immediately to
2 the department of corrections reception and diagnostic unit or if space is
3 not available at such facility, then to some other state correctional insti-
4 tution until space at the facility is available, except that, in the case of
5 first offenders who are conveyed to a state correctional institution other
6 than the reception and diagnostic unit, such offenders shall be segregated
7 from the inmates of such correctional institution who are not being held
8 in custody at such institution pending transfer to the reception and di-
9 agnostic unit when space is available therein. The expenses of any such
10 conveyance shall be charged against and paid out of the general fund of
11 the county whose sheriff conveys the offender to the institution as pro-
12 vided in this subsection.

13 (b) Any female offender sentenced according to the provisions of
14 K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff
15 having such offender in custody directly to a correctional institution des-
16 ignated by the secretary of corrections, subject to the provisions of K.S.A.
17 75-52,134 and amendments thereto. The expenses of such conveyance to
18 the designated institution shall be charged against and paid out of the
19 general fund of the county whose sheriff conveys such female offender
20 to such institution.

21 (c) Each offender conveyed to a state correctional institution pursu-
22 ant to this section shall be accompanied by the record of the offender's
23 trial and conviction as prepared by the clerk of the district court in ac-
24 cordance with K.S.A. 75-5218 and amendments thereto.

25 (d) If the offender in the custody of the secretary is a juvenile, as
26 described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such
27 juvenile shall not be transferred to the state reception and diagnostic
28 center until such time as such juvenile is to be transferred from a juvenile
29 correctional facility to a department of corrections institution or facility.

30 (e) *Any offender sentenced to a state substance abuse treatment fa-*
31 *cility established by the department of corrections shall not be transferred*
32 *to the state reception and diagnostic center but directly to such state*
33 *substance abuse treatment facility.*

34 Sec. 5. K.S.A. 21-4705 and 21-4714 and K.S.A. 2007 Supp. 75-5210
35 and 75-5220 are hereby repealed.

36 Sec. 6. This act shall take effect and be in force on and after July 1,
37 2010, and its publication in the statute book.