

HOUSE BILL No. 2760

By Committee on Federal and State Affairs

3-1

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; criminal possession of a firearm by a convicted felon;
3 amending K.S.A. 2017 Supp. 21-6804 and repealing the existing
4 section.
5
6 *Be it enacted by the Legislature of the State of Kansas:*
7 Section 1. K.S.A. 2017 Supp. 21-6804 is hereby amended to read as
8 follows: 21-6804. (a) The provisions of this section shall be applicable to
9 the sentencing guidelines grid for nondrug crimes. The following
10 sentencing guidelines grid shall be applicable to nondrug felony crimes:

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 32 31 |
| VI | 46 43 40 | 41 39 37 | 38 36 34 | 36 34 32 | 32 30 28 | 29 27 25 | 26 24 22 | 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 | 7 6 5 |

| LEGEND |
|--------------------------|
| Presumptive Probation |
| Probation |
| Presumptive Imprisonment |

1 (b) Sentences expressed in the sentencing guidelines grid for nondrug
2 crimes represent months of imprisonment.

3 (c) The sentencing guidelines grid is a two-dimensional crime
4 severity and criminal history classification tool. The grid's vertical axis is
5 the crime severity scale which classifies current crimes of conviction. The
6 grid's horizontal axis is the criminal history scale which classifies criminal
7 histories.

8 (d) The sentencing guidelines grid for nondrug crimes as provided in
9 this section defines presumptive punishments for felony convictions,
10 subject to the sentencing court's discretion to enter a departure sentence.
11 The appropriate punishment for a felony conviction should depend on the
12 severity of the crime of conviction when compared to all other crimes and
13 the offender's criminal history.

14 (e) (1) The sentencing court has discretion to sentence at any place
15 within the sentencing range. In the usual case it is recommended that the
16 sentencing judge select the center of the range and reserve the upper and
17 lower limits for aggravating and mitigating factors insufficient to warrant a
18 departure.

19 (2) In presumptive imprisonment cases, the sentencing court shall
20 pronounce the complete sentence which shall include the:

21 (A) Prison sentence;

22 (B) maximum potential reduction to such sentence as a result of good
23 time; and

24 (C) period of postrelease supervision at the sentencing hearing.
25 Failure to pronounce the period of postrelease supervision shall not negate
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall
28 pronounce the:

29 (A) Prison sentence; and

30 (B) duration of the nonprison sanction at the sentencing hearing.

31 (f) Each grid block states the presumptive sentencing range for an
32 offender whose crime of conviction and criminal history place such
33 offender in that grid block. If an offense is classified in a grid block below
34 the dispositional line, the presumptive disposition shall be
35 nonimprisonment. If an offense is classified in a grid block above the
36 dispositional line, the presumptive disposition shall be imprisonment. If an
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,
40 aggravated battery against a law enforcement officer committed prior to
41 July 1, 2006, or a violation of K.S.A. 2017 Supp. 21-5412(d), and
42 amendments thereto, aggravated assault against a law enforcement officer,
43 which places the defendant's sentence in grid block 6-H or 6-I shall be

1 presumed imprisonment. The court may impose an optional nonprison
2 sentence as provided in subsection (q).

3 (h) When a firearm is used to commit any person felony, the
4 offender's sentence shall be presumed imprisonment. The court may
5 impose an optional nonprison sentence as provided in subsection (q).

6 (i) (1) The sentence for the violation of the felony provision of K.S.A.
7 2017 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2017 Supp.
8 21-5414(b)(3), K.S.A. 2017 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2017
9 Supp. 21-6412 and K.S.A. 2017 Supp. 21-6416, and amendments thereto,
10 shall be as provided by the specific mandatory sentencing requirements of
11 that section and shall not be subject to the provisions of this section or
12 K.S.A. 2017 Supp. 21-6807, and amendments thereto.

13 (2) If because of the offender's criminal history classification the
14 offender is subject to presumptive imprisonment or if the judge departs
15 from a presumptive probation sentence and the offender is subject to
16 imprisonment, the provisions of this section and K.S.A. 2017 Supp. 21-
17 6807, and amendments thereto, shall apply and the offender shall not be
18 subject to the mandatory sentence as provided in K.S.A. 2017 Supp. 21-
19 5823, and amendments thereto.

20 (3) Notwithstanding the provisions of any other section, the term of
21 imprisonment imposed for the violation of the felony provision of K.S.A.
22 2017 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2017 Supp.
23 21-5414(b)(3), K.S.A. 2017 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2017
24 Supp. 21-6412 and K.S.A. 2017 Supp. 21-6416, and amendments thereto,
25 shall not be served in a state facility in the custody of the secretary of
26 corrections, except that the term of imprisonment for felony violations of
27 K.S.A. 2017 Supp. 8-1025 or K.S.A. 8-2,144 or K.S.A. 8-1567, and
28 amendments thereto, may be served in a state correctional facility
29 designated by the secretary of corrections if the secretary determines that
30 substance abuse treatment resources and facility capacity is available. The
31 secretary's determination regarding the availability of treatment resources
32 and facility capacity shall not be subject to review. Prior to imposing any
33 sentence pursuant to this subsection, the court may consider assigning the
34 defendant to a house arrest program pursuant to K.S.A. 2017 Supp. 21-
35 6609, and amendments thereto.

36 (j) (1) The sentence for any persistent sex offender whose current
37 convicted crime carries a presumptive term of imprisonment shall be
38 double the maximum duration of the presumptive imprisonment term. The
39 sentence for any persistent sex offender whose current conviction carries a
40 presumptive nonprison term shall be presumed imprisonment and shall be
41 double the maximum duration of the presumptive imprisonment term.

42 (2) Except as otherwise provided in this subsection, as used in this
43 subsection, "persistent sex offender" means a person who:

1 (A) (i) Has been convicted in this state of a sexually violent crime, as
2 defined in K.S.A. 22-3717, and amendments thereto; and

3 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at
4 least one conviction for a sexually violent crime, as defined in K.S.A. 22-
5 3717, and amendments thereto, in this state or comparable felony under
6 the laws of another state, the federal government or a foreign government;
7 or

8 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
9 prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and amendments
10 thereto; and

11 (ii) at the time of the conviction under subsection (j)(2)(B)(i) has at
12 least one conviction for rape in this state or comparable felony under the
13 laws of another state, the federal government or a foreign government.

14 (3) Except as provided in subsection (j)(2)(B), the provisions of this
15 subsection shall not apply to any person whose current convicted crime is
16 a severity level 1 or 2 felony.

17 (k) (1) If it is shown at sentencing that the offender committed any
18 felony violation for the benefit of, at the direction of, or in association with
19 any criminal street gang, with the specific intent to promote, further or
20 assist in any criminal conduct by gang members, the offender's sentence
21 shall be presumed imprisonment. The court may impose an optional
22 nonprison sentence as provided in subsection (q).

23 (2) As used in this subsection, "criminal street gang" means any
24 organization, association or group of three or more persons, whether
25 formal or informal, having as one of its primary activities:

26 (A) The commission of one or more person felonies; or

27 (B) the commission of felony violations of article 57 of chapter 21 of
28 the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010
29 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony
30 violation of any provision of the uniform controlled substances act prior to
31 July 1, 2009; and

32 (C) its members have a common name or common identifying sign or
33 symbol; and

34 (D) its members, individually or collectively, engage in or have
35 engaged in the commission, attempted commission, conspiracy to commit
36 or solicitation of two or more person felonies or felony violations of article
37 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
38 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their
39 transfer, any felony violation of any provision of the uniform controlled
40 substances act prior to July 1, 2009, or any substantially similar offense
41 from another jurisdiction.

42 (l) Except as provided in subsection (o), the sentence for a violation
43 of K.S.A. 2017 Supp. 21-5807(a)(1), and amendments thereto, or any

1 attempt or conspiracy, as defined in K.S.A. 2017 Supp. 21-5301 and 21-
2 5302, and amendments thereto, to commit such offense, when such person
3 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)
4 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2017 Supp.
5 21-5807(a)(1) or (a)(2), or K.S.A. 2017 Supp. 21-5807(b), and
6 amendments thereto, or any attempt or conspiracy to commit such offense,
7 shall be presumptive imprisonment.

8 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2017
9 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive
10 imprisonment. If an offense under such sections is classified in grid blocks
11 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
12 sentence as provided in subsection (q).

13 (n) The sentence for a violation of criminal deprivation of property, as
14 defined in K.S.A. 2017 Supp. 21-5803, and amendments thereto, when
15 such property is a motor vehicle, and when such person being sentenced
16 has any combination of two or more prior convictions of K.S.A. 21-
17 3705(b), prior to its repeal, or of criminal deprivation of property, as
18 defined in K.S.A. 2017 Supp. 21-5803, and amendments thereto, when
19 such property is a motor vehicle, shall be presumptive imprisonment. Such
20 sentence shall not be considered a departure and shall not be subject to
21 appeal.

22 (o) The sentence for a felony violation of theft of property as defined
23 in K.S.A. 2017 Supp. 21-5801, and amendments thereto, or burglary as
24 defined in K.S.A. 2017 Supp. 21-5807(a), and amendments thereto, when
25 such person being sentenced has no prior convictions for a violation of
26 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as
27 defined in K.S.A. 2017 Supp. 21-5801, and amendments thereto, or
28 burglary as defined in K.S.A. 2017 Supp. 21-5807(a), and amendments
29 thereto; or the sentence for a felony violation of theft of property as
30 defined in K.S.A. 2017 Supp. 21-5801, and amendments thereto, when
31 such person being sentenced has one or two prior felony convictions for a
32 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or
33 theft of property as defined in K.S.A. 2017 Supp. 21-5801, and
34 amendments thereto, or burglary or aggravated burglary as defined in
35 K.S.A. 2017 Supp. 21-5807, and amendments thereto; or the sentence for a
36 felony violation of burglary as defined in K.S.A. 2017 Supp. 21-5807(a),
37 and amendments thereto, when such person being sentenced has one prior
38 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
39 prior to their repeal, or theft of property as defined in K.S.A. 2017 Supp.
40 21-5801, and amendments thereto, or burglary or aggravated burglary as
41 defined in K.S.A. 2017 Supp. 21-5807, and amendments thereto, shall be
42 the sentence as provided by this section, except that the court may order an
43 optional nonprison sentence for a defendant to participate in a drug

1 treatment program, including, but not limited to, an approved after-care
2 plan, if the court makes the following findings on the record:

3 (1) Substance abuse was an underlying factor in the commission of
4 the crime;

5 (2) substance abuse treatment in the community is likely to be more
6 effective than a prison term in reducing the risk of offender recidivism;
7 and

8 (3) participation in an intensive substance abuse treatment program
9 will serve community safety interests.

10 A defendant sentenced to an optional nonprison sentence under this
11 subsection shall be supervised by community correctional services. The
12 provisions of K.S.A. 2017 Supp. 21-6824(f)(1), and amendments thereto,
13 shall apply to a defendant sentenced under this subsection. The sentence
14 under this subsection shall not be considered a departure and shall not be
15 subject to appeal.

16 (p) The sentence for a felony violation of theft of property as defined
17 in K.S.A. 2017 Supp. 21-5801, and amendments thereto, when such
18 person being sentenced has any combination of three or more prior felony
19 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to
20 their repeal, or theft of property as defined in K.S.A. 2017 Supp. 21-5801,
21 and amendments thereto, or burglary or aggravated burglary as defined in
22 K.S.A. 2017 Supp. 21-5807, and amendments thereto; or the sentence for a
23 violation of burglary as defined in K.S.A. 2017 Supp. 21-5807(a), and
24 amendments thereto, when such person being sentenced has any
25 combination of two or more prior convictions for violations of K.S.A. 21-
26 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
27 defined in K.S.A. 2017 Supp. 21-5801, and amendments thereto, or
28 burglary or aggravated burglary as defined in K.S.A. 2017 Supp. 21-5807,
29 and amendments thereto, shall be presumed imprisonment and the
30 defendant shall be sentenced to prison as provided by this section, except
31 that the court may recommend that an offender be placed in the custody of
32 the secretary of corrections, in a facility designated by the secretary to
33 participate in an intensive substance abuse treatment program, upon
34 making the following findings on the record:

35 (1) Substance abuse was an underlying factor in the commission of
36 the crime;

37 (2) substance abuse treatment with a possibility of an early release
38 from imprisonment is likely to be more effective than a prison term in
39 reducing the risk of offender recidivism; and

40 (3) participation in an intensive substance abuse treatment program
41 with the possibility of an early release from imprisonment will serve
42 community safety interests by promoting offender reformation.

43 The intensive substance abuse treatment program shall be determined

1 by the secretary of corrections, but shall be for a period of at least four
2 months. Upon the successful completion of such intensive treatment
3 program, the offender shall be returned to the court and the court may
4 modify the sentence by directing that a less severe penalty be imposed in
5 lieu of that originally adjudged within statutory limits. If the offender's
6 term of imprisonment expires, the offender shall be placed under the
7 applicable period of postrelease supervision. The sentence under this
8 subsection shall not be considered a departure and shall not be subject to
9 appeal.

10 (q) As used in this section, an "optional nonprison sentence" is a
11 sentence which the court may impose, in lieu of the presumptive sentence,
12 upon making the following findings on the record:

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

16 (2) the recommended treatment program is available and the offender
17 can be admitted to such program within a reasonable period of time; or

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

20 Any decision made by the court regarding the imposition of an optional
21 nonprison sentence shall not be considered a departure and shall not be
22 subject to appeal.

23 (r) The sentence for a violation of K.S.A. 2017 Supp. 21-5413(c)(2),
24 and amendments thereto, shall be presumptive imprisonment and shall be
25 served consecutively to any other term or terms of imprisonment imposed.
26 Such sentence shall not be considered a departure and shall not be subject
27 to appeal.

28 (s) The sentence for a violation of K.S.A. 2017 Supp. 21-5512, and
29 amendments thereto, shall be presumptive imprisonment. Such sentence
30 shall not be considered a departure and shall not be subject to appeal.

31 (t) (1) If the trier of fact makes a finding beyond a reasonable doubt
32 that an offender wore or used ballistic resistant material in the commission
33 of, or attempt to commit, or flight from any felony, in addition to the
34 sentence imposed pursuant to the Kansas sentencing guidelines act, the
35 offender shall be sentenced to an additional 30 months' imprisonment.

36 (2) The sentence imposed pursuant to subsection (t)(1) shall be
37 presumptive imprisonment and shall be served consecutively to any other
38 term or terms of imprisonment imposed. Such sentence shall not be
39 considered a departure and shall not be subject to appeal.

40 (3) As used in this subsection, "ballistic resistant material" means:
41 (A) Any commercially produced material designed with the purpose of
42 providing ballistic and trauma protection, including, but not limited to,
43 bulletproof vests and kevlar vests; and (B) any homemade or fabricated

1 substance or item designed with the purpose of providing ballistic and
2 trauma protection.

3 (u) The sentence for a violation of K.S.A. 2017 Supp. 21-6107, and
4 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
5 2017 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
6 such offense, when such person being sentenced has a prior conviction for
7 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2017 Supp. 21-
8 6107, and amendments thereto, or any attempt or conspiracy to commit
9 such offense, shall be presumptive imprisonment. Such sentence shall not
10 be considered a departure and shall not be subject to appeal.

11 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,
12 and amendments thereto, shall be presumptive imprisonment and shall be
13 served consecutively to any other term or terms of imprisonment imposed.
14 Such sentence shall not be considered a departure and shall not be subject
15 to appeal.

16 (w) The sentence for aggravated criminal damage to property as
17 defined in K.S.A. 2017 Supp. 21-5813(b), and amendments thereto, when
18 such person being sentenced has a prior conviction for any nonperson
19 felony shall be presumptive imprisonment. Such sentence shall not be
20 considered a departure and shall not be subject to appeal.

21 (x) The sentence for a violation of K.S.A. 2017 Supp. 21-5807(a)(1),
22 and amendments thereto, shall be presumptive imprisonment if the offense
23 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
24 sentence shall not be considered a departure and shall not be subject to
25 appeal.

26 (y) (1) Except as provided in subsection (y)(3), if the trier of fact
27 makes a finding beyond a reasonable doubt that an offender committed a
28 nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A.
29 2017 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a
30 nondrug felony offense, against a law enforcement officer, as defined in
31 K.S.A. 2017 Supp. 21-5111(p)(1) and (3), and amendments thereto, while
32 such officer was engaged in the performance of such officer's duty, or in
33 whole or in any part because of such officer's status as a law enforcement
34 officer, the sentence for such offense shall be:

35 (A) If such offense is classified in severity level 2 through 10, one
36 severity level above the appropriate level for such offense; and

37 (B) (i) if such offense is classified in severity level 1, except as
38 otherwise provided in subsection (y)(1)(B)(ii), imprisonment for life, and
39 such offender shall not be eligible for probation or suspension,
40 modification or reduction of sentence. In addition, such offender shall not
41 be eligible for parole prior to serving 25 years' imprisonment, and such 25
42 years' imprisonment shall not be reduced by the application of good time
43 credits. No other sentence shall be permitted.

1 (ii) The provisions of subsection (y)(1)(B)(i) requiring the court to
2 impose a mandatory minimum term of imprisonment of 25 years shall not
3 apply if the court finds the offender, because of the offender's criminal
4 history classification, is subject to presumptive imprisonment and the
5 sentencing range exceeds 300 months. In such case, the offender is
6 required to serve a mandatory minimum term equal to the sentence
7 established pursuant to the sentencing range.

8 (2) The sentence imposed pursuant to subsection (y)(1) shall not be
9 considered a departure and shall not be subject to appeal.

10 (3) The provisions of this subsection shall not apply to an offense
11 described in subsection (y)(1) if the factual aspect concerning a law
12 enforcement officer is a statutory element of such offense.

13 *(z) The sentence for a violation of criminal possession of a weapon as*
14 *defined in K.S.A. 2017 Supp. 21-6304, and amendments thereto, shall be*
15 *presumptive imprisonment if the trier of fact makes a finding beyond a*
16 *reasonable doubt that the weapon the offender possessed was a firearm.*
17 *Such sentence shall not be considered a departure and shall not be subject*
18 *to appeal.*

19 Sec. 2. K.S.A. 2017 Supp. 21-6804 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its
21 publication in the statute book.