

HOUSE BILL No. 2350

By Committee on Corrections and Juvenile Justice

2-10

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; nondrug crimes; expanding the number of presumptive
3 probation and border grid blocks; amending K.S.A. 2020 Supp. 21-
4 6804 and repealing the existing section.
5
6 *Be it enacted by the Legislature of the State of Kansas:*
7 Section 1. K.S.A. 2020 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	611 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 189 184	186 176 166	165 155 147
II	493 467	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	217 233	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 63	64 60 57	56 52 47	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 35 32	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	18 17 16
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	18 17 16	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	18 17 16	16 15 14	15 14 13	12 11 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	12 11 10	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	7 6 6	7 6 5	7 6 5	5 5 5

LEGEND
Presumptive Probation
Presumptive Fine
Presumptive Imprisonment

SENTENCING RANGE - NONDRUG OFFENSES

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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
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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 46 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	44 41 38	41 39 36	38 36 33	34 32 30
VI	46 43 40	41 38 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	18 17 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	16 15 15	15 14 13	12 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	16 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	8 7 7	7 6 6	7 6 5	7 6 5	6 6 5

LEGEND
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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 *4-H, 4-I, 5-G, 5-H, 5-I or 6-G, 6-B, 6-C,*
38 *6-D, 6-E, 6-F, 7-B, 8-B, 9-B or 10-B*, the court may impose an optional
39 nonprison sentence as provided in subsection (q).

40 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,
41 aggravated battery against a law enforcement officer committed prior to
42 July 1, 2006, or a violation of K.S.A. 2020 Supp. 21-5412(d), and
43 amendments thereto, aggravated assault against a law enforcement officer,
44 which places the defendant's sentence in grid block 6-H or 6-I shall be
45 presumed imprisonment. The court may impose an optional nonprison
46 sentence as provided in subsection (q).

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

4 (i) (1) The sentence for the violation of the felony provision of K.S.A.
5 8-2,144 and 8-1567, *and amendments thereto*, and K.S.A. 2020 Supp. 21-
6 5414(b)(3), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and
7 amendments thereto, shall be as provided by the specific mandatory
8 sentencing requirements of that section and shall not be subject to the
9 provisions of this section or K.S.A. 2020 Supp. 21-6807, and amendments
10 thereto.

11 (2) If because of the offender's criminal history classification the
12 offender is subject to presumptive imprisonment or if the judge departs
13 from a presumptive probation sentence and the offender is subject to
14 imprisonment, the provisions of this section and K.S.A. 2020 Supp. 21-
15 6807, and amendments thereto, shall apply and the offender shall not be
16 subject to the mandatory sentence as provided in K.S.A. 2020 Supp. 21-
17 5823, and amendments thereto.

18 (3) Notwithstanding the provisions of any other section, the term of
19 imprisonment imposed for the violation of the felony provision of K.S.A.
20 8-2,144, and 8-1567, *and amendments thereto*, and K.S.A. 2020 Supp. 21-
21 5414(b)(3), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and
22 amendments thereto, shall not be served in a state facility in the custody of
23 the secretary of corrections, except that the term of imprisonment for
24 felony violations of K.S.A. 8-2,144 or 8-1567, and amendments thereto,
25 may be served in a state correctional facility designated by the secretary of
26 corrections if the secretary determines that substance abuse treatment
27 resources and facility capacity is available. The secretary's determination
28 regarding the availability of treatment resources and facility capacity shall
29 not be subject to review. Prior to imposing any sentence pursuant to this
30 subsection, the court may consider assigning the defendant to a house
31 arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments
32 thereto.

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

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

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

43 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at

1 least one conviction for a sexually violent crime, as defined in K.S.A. 22-
2 3717, and amendments thereto, in this state or comparable felony under
3 the laws of another state, the federal government or a foreign government;
4 or

5 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
6 prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments
7 thereto; and

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

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

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

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

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

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

29 (C) its members have a common name or common identifying sign or
30 symbol; and

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

39 (l) Except as provided in subsection (o), the sentence for a violation
40 of K.S.A. 2020 Supp. 21-5807(a)(1), and amendments thereto, or any
41 attempt or conspiracy, as defined in K.S.A. 2020 Supp. 21-5301 and 21-
42 5302, and amendments thereto, to commit such offense, when such person
43 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)

1 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2020 Supp.
2 21-5807(a)(1) or (a)(2) or 21-5807(b), and amendments thereto, or any
3 attempt or conspiracy to commit such offense, shall be presumptive
4 imprisonment.

5 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2020
6 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive
7 imprisonment. If an offense under such sections is classified in grid blocks
8 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
9 sentence as provided in subsection (q).

10 (n) The sentence for a violation of criminal deprivation of property, as
11 defined in K.S.A. 2020 Supp. 21-5803, and amendments thereto, when
12 such property is a motor vehicle, and when such person being sentenced
13 has any combination of two or more prior convictions of K.S.A. 21-
14 3705(b), prior to its repeal, or of criminal deprivation of property, as
15 defined in K.S.A. 2020 Supp. 21-5803, and amendments thereto, when
16 such property is a motor vehicle, shall be presumptive imprisonment. Such
17 sentence shall not be considered a departure and shall not be subject to
18 appeal.

19 (o) The sentence for a felony violation of theft of property as defined
20 in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary as
21 defined in K.S.A. 2020 Supp. 21-5807(a), and amendments thereto, when
22 such person being sentenced has no prior convictions for a violation of
23 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as
24 defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or
25 burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and amendments
26 thereto; or the sentence for a felony violation of theft of property as
27 defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, when
28 such person being sentenced has one or two prior felony convictions for a
29 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or
30 theft of property as defined in K.S.A. 2020 Supp. 21-5801, and
31 amendments thereto, or burglary or aggravated burglary as defined in
32 K.S.A. 2020 Supp. 21-5807, and amendments thereto; or the sentence for a
33 felony violation of burglary as defined in K.S.A. 2020 Supp. 21-5807(a),
34 and amendments thereto, when such person being sentenced has one prior
35 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
36 prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp.
37 21-5801, and amendments thereto, or burglary or aggravated burglary as
38 defined in K.S.A. 2020 Supp. 21-5807, and amendments thereto, shall be
39 the sentence as provided by this section, except that the court may order an
40 optional nonprison sentence for a defendant to participate in a drug
41 treatment program, including, but not limited to, an approved after-care
42 plan, if the court makes the following findings on the record:

43 (1) Substance abuse was an underlying factor in the commission of

1 the crime;

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

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

7 A defendant sentenced to an optional nonprison sentence under this
8 subsection shall be supervised by community correctional services. The
9 provisions of K.S.A. 2020 Supp. 21-6824(f)(1), and amendments thereto,
10 shall apply to a defendant sentenced under this subsection. The sentence
11 under this subsection shall not be considered a departure and shall not be
12 subject to appeal.

13 (p) The sentence for a felony violation of theft of property as defined
14 in K.S.A. 2020 Supp. 21-5801, and amendments thereto, when such
15 person being sentenced has any combination of three or more prior felony
16 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to
17 their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801,
18 and amendments thereto, or burglary or aggravated burglary as defined in
19 K.S.A. 2020 Supp. 21-5807, and amendments thereto; or the sentence for a
20 violation of burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and
21 amendments thereto, when such person being sentenced has any
22 combination of two or more prior convictions for violations of K.S.A. 21-
23 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
24 defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or
25 burglary or aggravated burglary as defined in K.S.A. 2020 Supp. 21-5807,
26 and amendments thereto, shall be presumed imprisonment and the
27 defendant shall be sentenced to prison as provided by this section, except
28 that the court may recommend that an offender be placed in the custody of
29 the secretary of corrections, in a facility designated by the secretary to
30 participate in an intensive substance abuse treatment program, upon
31 making the following findings on the record:

32 (1) Substance abuse was an underlying factor in the commission of
33 the crime;

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

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

40 The intensive substance abuse treatment program shall be determined
41 by the secretary of corrections, but shall be for a period of at least four
42 months. Upon the successful completion of such intensive treatment
43 program, the offender shall be returned to the court and the court may

1 modify the sentence by directing that a less severe penalty be imposed in
2 lieu of that originally adjudged within statutory limits. If the offender's
3 term of imprisonment expires, the offender shall be placed under the
4 applicable period of postrelease supervision. The sentence under this
5 subsection shall not be considered a departure and shall not be subject to
6 appeal.

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

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

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

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

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

20 (r) The sentence for a violation of K.S.A. 2020 Supp. 21-5413(c)(2),
21 and amendments thereto, shall be presumptive imprisonment and shall be
22 served consecutively to any other term or terms of imprisonment imposed.
23 Such sentence shall not be considered a departure and shall not be subject
24 to appeal.

25 (s) The sentence for a violation of K.S.A. 2020 Supp. 21-5512, and
26 amendments thereto, shall be presumptive imprisonment. Such sentence
27 shall not be considered a departure and shall not be subject to appeal.

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

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

37 (3) As used in this subsection, "ballistic resistant material" means:

38 (A) Any commercially produced material designed with the purpose
39 of providing ballistic and trauma protection, including, but not limited to,
40 bulletproof vests and kevlar vests; and

41 (B) any homemade or fabricated substance or item designed with the
42 purpose of providing ballistic and trauma protection.

43 (u) The sentence for a violation of K.S.A. 2020 Supp. 21-6107, and

1 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
2 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
3 such offense, when such person being sentenced has a prior conviction for
4 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2020 Supp. 21-
5 6107, and amendments thereto, or any attempt or conspiracy to commit
6 such offense, shall be presumptive imprisonment. Such sentence shall not
7 be considered a departure and shall not be subject to appeal.

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

13 (w) The sentence for aggravated criminal damage to property as
14 defined in K.S.A. 2020 Supp. 21-5813(b), and amendments thereto, when
15 such person being sentenced has a prior conviction for any nonperson
16 felony shall be presumptive imprisonment. Such sentence shall not be
17 considered a departure and shall not be subject to appeal.

18 (x) The sentence for a violation of K.S.A. 2020 Supp. 21-5807(a)(1),
19 and amendments thereto, shall be presumptive imprisonment if the offense
20 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
21 sentence shall not be considered a departure and shall not be subject to
22 appeal.

23 (y) (1) Except as provided in subsection (y)(3), if the trier of fact
24 makes a finding beyond a reasonable doubt that an offender committed a
25 nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A.
26 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a
27 nondrug felony offense, against a law enforcement officer, as defined in
28 K.S.A. 2020 Supp. 21-5111(p)(1) and (3), and amendments thereto, while
29 such officer was engaged in the performance of such officer's duty, or in
30 whole or in any part because of such officer's status as a law enforcement
31 officer, the sentence for such offense shall be:

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

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

41 (ii) The provisions of subsection (y)(1)(B)(i) requiring the court to
42 impose a mandatory minimum term of imprisonment of 25 years shall not
43 apply if the court finds the offender, because of the offender's criminal

1 history classification, is subject to presumptive imprisonment and the
2 sentencing range exceeds 300 months. In such case, the offender is
3 required to serve a mandatory minimum term equal to the sentence
4 established pursuant to the sentencing range.

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

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

10 Sec. 2. K.S.A. 2020 Supp. 21-6804 is hereby repealed.

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