

HOUSE BILL No. 2217

By Committee on Judiciary

1-30

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing for nondrug crimes; creating a presumption of
3 imprisonment for crimes committed against a person based on such
4 person's actual or perceived race, color, religion, ethnicity, national
5 origin or sexual orientation; amending K.S.A. 2022 Supp. 21-6804 and
6 repealing the existing section.

7

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

9 Section 1. K.S.A. 2022 Supp. 21-6804 is hereby amended to read as
10 follows: 21-6804. (a) The provisions of this section shall be applicable to
11 the sentencing guidelines grid for nondrug crimes. The following
12 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
Range No.
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. 2022 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 2022 Supp. 21-5414~~(b)(3)(c)(1)(C)~~, 21-5823(b)(3) and (b)(4), 21-6412 and
8 21-6416, and amendments thereto, shall be as provided by the specific
9 mandatory sentencing requirements of that section and shall not be subject
10 to the provisions of this section or K.S.A. 2022 Supp. 21-6807, and
11 amendments thereto.

12 (2) If because of the offender's criminal history classification the
13 offender is subject to presumptive imprisonment or if the judge departs
14 from a presumptive probation sentence and the offender is subject to
15 imprisonment, the provisions of this section and K.S.A. 2022 Supp. 21-
16 6807, and amendments thereto, shall apply and the offender shall not be
17 subject to the mandatory sentence as provided in K.S.A. 2022 Supp. 21-
18 5823, and amendments thereto.

19 (3) Notwithstanding the provisions of any other section, the term of
20 imprisonment imposed for the violation of the felony provision of K.S.A.
21 2022 Supp. 21-5414~~(b)(3)(c)(1)(C)~~, 21-5823(b)(3) and (b)(4), 21-6412 and
22 21-6416, and amendments thereto, shall not be served in a state facility in
23 the custody of the secretary of corrections. Prior to imposing any sentence
24 pursuant to this subsection, the court may consider assigning the defendant
25 to a house arrest program pursuant to K.S.A. 2022 Supp. 21-6609, and
26 amendments thereto.

27 (j) (1) The sentence for any persistent sex offender whose current
28 convicted crime carries a presumptive term of imprisonment shall be
29 double the maximum duration of the presumptive imprisonment term. The
30 sentence for any persistent sex offender whose current conviction carries a
31 presumptive nonprison term shall be presumed imprisonment and shall be
32 double the maximum duration of the presumptive imprisonment term.

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

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

37 (ii) at the time of the conviction under ~~subsection (j)(2)(A)(i) clause~~
38 (i) has at least one conviction for a sexually violent crime, as defined in
39 K.S.A. 22-3717, and amendments thereto, in this state or comparable
40 felony under the laws of another state, the federal government or a foreign
41 government; or

42 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
43 prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and amendments

1 thereto; and

2 (ii) at the time of the conviction under ~~subsection (j)(2)(B)(i)~~ *clause*
3 (i) has at least one conviction for rape in this state or comparable felony
4 under the laws of another state, the federal government or a foreign
5 government.

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

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

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

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

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

24 (C) its members have a common name or common identifying sign or
25 symbol; and

26 (D) its members, individually or collectively, engage in or have
27 engaged in the commission, attempted commission, conspiracy to commit
28 or solicitation of two or more person felonies or felony violations of article
29 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
30 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their
31 transfer, any felony violation of any provision of the uniform controlled
32 substances act prior to July 1, 2009, or any substantially similar offense
33 from another jurisdiction.

34 (l) Except as provided in subsection (o), the sentence for a violation
35 of K.S.A. 2022 Supp. 21-5807(a)(1), and amendments thereto, or any
36 attempt or conspiracy, as defined in K.S.A. 2022 Supp. 21-5301 and 21-
37 5302, and amendments thereto, to commit such offense, when such person
38 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)
39 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2022 Supp.
40 21-5807(a)(1) or (a)(2) or 21-5807(b), and amendments thereto, or any
41 attempt or conspiracy to commit such offense, shall be presumptive
42 imprisonment.

43 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2022

1 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive
2 imprisonment. If an offense under such sections is classified in grid blocks
3 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
4 sentence as provided in subsection (q).

5 (n) The sentence for a violation of criminal deprivation of property, as
6 defined in K.S.A. 2022 Supp. 21-5803, and amendments thereto, when
7 such property is a motor vehicle, and when such person being sentenced
8 has any combination of two or more prior convictions of K.S.A. 21-
9 3705(b), prior to its repeal, or of criminal deprivation of property, as
10 defined in K.S.A. 2022 Supp. 21-5803, and amendments thereto, when
11 such property is a motor vehicle, shall be presumptive imprisonment. Such
12 sentence shall not be considered a departure and shall not be subject to
13 appeal.

14 (o) (I) The sentence for a felony violation of theft of property as
15 defined in K.S.A. 2022 Supp. 21-5801, and amendments thereto, or
16 burglary as defined in K.S.A. 2022 Supp. 21-5807(a), and amendments
17 thereto, when such person being sentenced has no prior convictions for a
18 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
19 property as defined in K.S.A. 2022 Supp. 21-5801, and amendments
20 thereto, or burglary as defined in K.S.A. 2022 Supp. 21-5807(a), and
21 amendments thereto; or the sentence for a felony violation of theft of
22 property as defined in K.S.A. 2022 Supp. 21-5801, and amendments
23 thereto, when such person being sentenced has one or two prior felony
24 convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior
25 to their repeal, or theft of property as defined in K.S.A. 2022 Supp. 21-
26 5801, and amendments thereto, or burglary or aggravated burglary as
27 defined in K.S.A. 2022 Supp. 21-5807, and amendments thereto; or the
28 sentence for a felony violation of burglary as defined in K.S.A. 2022 Supp.
29 21-5807(a), and amendments thereto, when such person being sentenced
30 has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715
31 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A.
32 2022 Supp. 21-5801, and amendments thereto, or burglary or aggravated
33 burglary as defined in K.S.A. 2022 Supp. 21-5807, and amendments
34 thereto, shall be the sentence as provided by this section, except that the
35 court may order an optional nonprison sentence for a defendant to
36 participate in a drug treatment program, including, but not limited to, an
37 approved aftercare plan, if the court makes the following findings on the
38 record:

39 (H)(A) Substance abuse was an underlying factor in the commission
40 of the crime;

41 (I)(B) substance abuse treatment in the community is likely to be
42 more effective than a prison term in reducing the risk of offender
43 recidivism; and

1 (3)(C) participation in an intensive substance abuse treatment
2 program will serve community safety interests.

3 (2) A defendant sentenced to an optional nonprison sentence under
4 this subsection shall be supervised by community correctional services.
5 The provisions of K.S.A. 2022 Supp. 21-6824(f)(1), and amendments
6 thereto, shall apply to a defendant sentenced under this subsection. The
7 sentence under this subsection shall not be considered a departure and
8 shall not be subject to appeal.

9 (p) (1) The sentence for a felony violation of theft of property as
10 defined in K.S.A. 2022 Supp. 21-5801, and amendments thereto, when
11 such person being sentenced has any combination of three or more prior
12 felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716,
13 prior to their repeal, or theft of property as defined in K.S.A. 2022 Supp.
14 21-5801, and amendments thereto, or burglary or aggravated burglary as
15 defined in K.S.A. 2022 Supp. 21-5807, and amendments thereto; or the
16 sentence for a violation of burglary as defined in K.S.A. 2022 Supp. 21-
17 5807(a), and amendments thereto, when such person being sentenced has
18 any combination of two or more prior convictions for violations of K.S.A.
19 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
20 defined in K.S.A. 2022 Supp. 21-5801, and amendments thereto, or
21 burglary or aggravated burglary as defined in K.S.A. 2022 Supp. 21-5807,
22 and amendments thereto, shall be presumed imprisonment and the
23 defendant shall be sentenced to prison as provided by this section, except
24 that the court may recommend that an offender be placed in the custody of
25 the secretary of corrections, in a facility designated by the secretary to
26 participate in an intensive substance abuse treatment program, upon
27 making the following findings on the record:

28 (+) (A) Substance abuse was an underlying factor in the commission
29 of the crime;

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

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

36 (2) The intensive substance abuse treatment program shall be
37 determined by the secretary of corrections, but shall be for a period of at
38 least four months. Upon the successful completion of such intensive
39 treatment program, the offender shall be returned to the court and the court
40 may modify the sentence by directing that a less severe penalty be
41 imposed in lieu of that originally adjudged within statutory limits. If the
42 offender's term of imprisonment expires, the offender shall be placed
43 under the applicable period of postrelease supervision. The sentence under

1 this subsection shall not be considered a departure and shall not be subject
2 to appeal.

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

6 ~~(+)~~(A) An appropriate treatment program exists which is likely to be
7 more effective than the presumptive prison term in reducing the risk of
8 offender recidivism; and

9 ~~(2)~~(B) the recommended treatment program is available and the
10 offender can be admitted to such program within a reasonable period of
11 time; or

12 ~~(3)~~(C) the nonprison sanction will serve community safety interests
13 by promoting offender reformation.

14 (2) Any decision made by the court regarding the imposition of an
15 optional nonprison sentence shall not be considered a departure and shall
16 not be subject to appeal.

17 (r) The sentence for a violation of K.S.A. 2022 Supp. 21-5413(c)(2),
18 and amendments thereto, shall be presumptive imprisonment and shall be
19 served consecutively to any other term or terms of imprisonment imposed.
20 Such sentence shall not be considered a departure and shall not be subject
21 to appeal.

22 (s) The sentence for a violation of K.S.A. 2022 Supp. 21-5512, and
23 amendments thereto, shall be presumptive imprisonment. Such sentence
24 shall not be considered a departure and shall not be subject to appeal.

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

30 (2) The sentence imposed pursuant to ~~subsection (t)(1)~~ *paragraph (1)*
31 shall be presumptive imprisonment and shall be served consecutively to
32 any other term or terms of imprisonment imposed. Such sentence shall not
33 be considered a departure and shall not be subject to appeal.

34 (3) As used in this subsection, "ballistic resistant material" means
35 *any*:

36 ~~(A) any~~ Commercially produced material designed with the purpose
37 of providing ballistic and trauma protection, including, but not limited to,
38 bulletproof vests and kevlar vests; and

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

41 (u) The sentence for a violation of K.S.A. 2022 Supp. 21-6107, and
42 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
43 2022 Supp. 21-5301 and 21-5302, and amendments thereto, to commit

1 such offense, when such person being sentenced has a prior conviction for
2 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2022 Supp. 21-
3 6107, and amendments thereto, or any attempt or conspiracy to commit
4 such offense, shall be presumptive imprisonment. Such sentence shall not
5 be considered a departure and shall not be subject to appeal.

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

11 (w) The sentence for aggravated criminal damage to property as
12 defined in K.S.A. 2022 Supp. 21-5813(b), and amendments thereto, when
13 such person being sentenced has a prior conviction for any nonperson
14 felony shall be presumptive imprisonment. Such sentence shall not be
15 considered a departure and shall not be subject to appeal.

16 (x) The sentence for a violation of K.S.A. 2022 Supp. 21-5807(a)(1),
17 and amendments thereto, shall be presumptive imprisonment if the offense
18 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
19 sentence shall not be considered a departure and shall not be subject to
20 appeal.

21 (y) (1) Except as provided in ~~subsection (y)(3) paragraph (3)~~, if the
22 trier of fact makes a finding beyond a reasonable doubt that an offender
23 committed a nondrug felony offense, or any attempt or conspiracy, as
24 defined in K.S.A. 2022 Supp. 21-5301 and 21-5302, and amendments
25 thereto, to commit a nondrug felony offense, against a law enforcement
26 officer, as defined in K.S.A. 2022 Supp. 21-5111(p)(1) and (3), and
27 amendments thereto, while such officer was engaged in the performance of
28 such officer's duty, or in whole or in any part because of such officer's
29 status as a law enforcement officer, the sentence for such offense shall be:

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

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

39 (ii) The provisions of ~~subsection (y)(1)(B)(i) clause (i)~~ requiring the
40 court to impose a mandatory minimum term of imprisonment of 25 years
41 shall not apply if the court finds the offender, because of the offender's
42 criminal history classification, is subject to presumptive imprisonment and
43 the sentencing range exceeds 300 months. In such case, the offender is

1 required to serve a mandatory minimum term equal to the sentence
2 established pursuant to the sentencing range.

3 (2) The sentence imposed pursuant to ~~subsection (y)(1)~~ *paragraph*
4 *(1)* shall not be considered a departure and shall not be subject to appeal.

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

9 *(z) If the trier of fact makes a finding beyond a reasonable doubt that*
10 *an offender committed a person felony against a person because of such*
11 *person's actual or perceived race, color, religion, ethnicity, national origin*
12 *or sexual orientation, the sentence for such offense shall be presumptive*
13 *imprisonment. Such sentence shall not be considered a departure and*
14 *shall not be subject to appeal. The court may impose an optional*
15 *nonprison sentence as provided in subsection (q).*

16 Sec. 2. K.S.A. 2022 Supp. 21-6804 is hereby repealed.

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