

SENATE SUBSTITUTE FOR HOUSE BILL No. 2008

By Committee on Judiciary

3-21

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to identity theft and identity fraud; amending section 285 of chapter
3 136 of the 2010 Session Laws of Kansas and repealing the existing
4 section; also repealing K.S.A. 2009 Supp. 21-4704, as amended by
5 section 6 of chapter 147 of the 2010 Session Laws of Kansas and
6 K.S.A. 2010 Supp. 21-4704.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. Section 285 of chapter 136 of the 2010 Session Laws of
10 Kansas is hereby amended to read as follows: Sec. 285. (a) The provisions
11 of this section shall be applicable to the sentencing guidelines grid for
12 nondrug crimes. The following sentencing guidelines grid shall be
13 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 53
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 43	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 23	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	25 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	18 17 15	16 15 14	14 13 12	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND

Presumptive Probation
Black Box
Black Box
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 ~~section 48, and amendments~~
40 ~~thereto, K.S.A. 21-3415, prior to its repeal~~, aggravated battery against a
41 law enforcement officer committed prior to July 1, 2006, or a violation of
42 *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of*
43 *Kansas*, and amendments thereto, aggravated assault against a law

1 enforcement officer, which places the defendant's sentence in grid block 6-
2 H or 6-I shall be presumed imprisonment. The court may impose an
3 optional nonprison sentence as provided in subsection (q).

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

7 (i) (l) The sentence for the violation of the felony provision of
8 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*
9 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*
10 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of chapter*
11 *136 of the 2010 Session Laws of Kansas* and section 227 *of chapter 136 of*
12 *the 2010 Session Laws of Kansas*, and amendments thereto, shall be as
13 provided by the specific mandatory sentencing requirements of that section
14 and shall not be subject to the provisions of this section or section 288 *of*
15 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

16 (2) If because of the offender's criminal history classification the
17 offender is subject to presumptive imprisonment or if the judge departs
18 from a presumptive probation sentence and the offender is subject to
19 imprisonment, the provisions of this section and section 288 *of chapter*
20 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall
21 apply and the offender shall not be subject to the mandatory sentence as
22 provided in section 109 *of chapter 136 of the 2010 Session Laws of*
23 *Kansas*, and amendments thereto.

24 (3) Notwithstanding the provisions of any other section, the term of
25 imprisonment imposed for the violation of the felony provision of K.S.A.
26 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010 Session*
27 *Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of chapter*
28 *136 of the 2010 Session Laws of Kansas*, section 223 and section 227 *of*
29 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
30 shall not be served in a state facility in the custody of the secretary of
31 corrections, except that the term of imprisonment for felony violations of
32 K.S.A. 8-1567, and amendments thereto, may be served in a state
33 correctional facility designated by the secretary of corrections if the
34 secretary determines that substance abuse treatment resources and facility
35 capacity is available. The secretary's determination regarding the
36 availability of treatment resources and facility capacity shall not be subject
37 to review.

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

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

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

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

10 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
11 prior to its repeal, or section 67 *of chapter 136 of the 2010 Session Laws of*
12 *Kansas*, and amendments thereto; and

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

17 (3) Except as provided in ~~paragraph~~ *subsection (j)(2)(B)*, the
18 provisions of this subsection shall not apply to any person whose current
19 convicted crime is a severity level 1 or 2 felony.

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

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

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

30 (B) the commission of felony violations of K.S.A. ~~2009~~ *2010 Supp.*
31 *21-36a01 through 21-36a17*, and amendments thereto; 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
37 K.S.A. ~~2009~~ *2010 Supp. 21-36a01 through 21-36a17*, and amendments
38 thereto, or any substantially similar offense from another jurisdiction.

39 (l) Except as provided in subsection (o), the sentence for a violation
40 of subsection (a)(1) of section 93 *of chapter 136 of the 2010 Session Laws*
41 *of Kansas*, and amendments thereto, *or any attempt or conspiracy, as*
42 *defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of*
43 *Kansas, and amendments thereto, to commit such offense, when such*

1 person being sentenced has a prior conviction for a violation of subsection
2 (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal,
3 subsection (a)(1) or (a)(2) of section 93 *of chapter 136 of the 2010 Session*
4 *Laws of Kansas*, or subsection (b) of section 93 *of chapter 136 of the 2010*
5 *Session Laws of Kansas*, and amendments thereto, *or any attempt or*
6 *conspiracy to commit such offense*, shall be ~~presumed~~ *presumptive*
7 imprisonment.

8 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)
9 (2) of section 138 *of chapter 136 of the 2010 Session Laws of Kansas*, and
10 amendments thereto, shall be presumptive imprisonment. If an offense
11 under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I,
12 the court may impose an optional nonprison sentence as provided in
13 subsection (q).

14 (n) The sentence for a violation of criminal deprivation of property, as
15 defined in section 89 *of chapter 136 of the 2010 Session Laws of Kansas*,
16 and amendments thereto, when such property is a motor vehicle, and when
17 such person being sentenced has any combination of two or more prior
18 convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of
19 criminal deprivation of property, as defined in section 89 *of chapter 136 of*
20 *the 2010 Session Laws of Kansas*, and amendments thereto, when such
21 property is a motor vehicle, shall be presumptive imprisonment. Such
22 sentence shall not be considered a departure and shall not be subject to
23 appeal.

24 (o) The sentence for a felony violation of theft of property as defined
25 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
26 amendments thereto, or burglary as defined in subsection (a) of section 93
27 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
28 thereto, when such person being sentenced has no prior convictions for a
29 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
30 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
31 *of Kansas*, and amendments thereto, or burglary as defined in subsection
32 (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
33 amendments thereto; or the sentence for a felony violation of theft of
34 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
35 *of Kansas*, and amendments thereto, when such person being sentenced
36 has one or two prior felony convictions for a violation of K.S.A. 21-3701,
37 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in
38 section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
39 amendments thereto, or burglary *or aggravated burglary* as defined in
40 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
41 amendments thereto; or the sentence for a felony violation of burglary as
42 defined in subsection (a) of section 93 *of chapter 136 of the 2010 Session*
43 *Laws of Kansas*, and amendments thereto, when such person being

1 sentenced has one prior felony conviction for a violation of K.S.A. 21-
2 3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as
3 defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*,
4 and amendments thereto, or burglary *or aggravated burglary* as defined in
5 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
6 amendments thereto, shall be the sentence as provided by this section,
7 except that the court may order an optional nonprison sentence for a
8 defendant to participate in a drug treatment program, including, but not
9 limited to, an approved after-care plan, if the court makes the following
10 findings on the record:

11 (1) Substance abuse was an underlying factor in the commission of
12 the crime;

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

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

18 A defendant sentenced to an optional nonprison sentence under this
19 subsection shall be supervised by community correctional services. The
20 provisions of subsection (f)(1) of section 305 *of chapter 136 of the 2010*
21 *Session Laws of Kansas*, and amendments thereto, shall apply to a
22 defendant sentenced under this subsection. The sentence under this
23 subsection shall not be considered a departure and shall not be subject to
24 appeal.

25 (p) The sentence for a felony violation of theft of property as defined
26 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
27 amendments thereto, when such person being sentenced has any
28 combination of three or more prior felony convictions for violations of
29 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
30 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
31 *of Kansas*, and amendments thereto, or burglary *or aggravated burglary* as
32 defined in section 93 *of chapter 136 of the 2010 Session Laws of Kansas*,
33 *and amendments thereto*; or the sentence for a violation of burglary as
34 defined in subsection (a) of section 93 *of chapter 136 of the 2010 Session*
35 *Laws of Kansas*, and amendments thereto, when such person being
36 sentenced has any combination of two or more prior convictions for
37 violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal,
38 or theft of property as defined in section 87 *of chapter 136 of the 2010*
39 *Session Laws of Kansas*, and amendments thereto, or burglary *or*
40 *aggravated burglary* as defined in section 93 *of chapter 136 of the 2010*
41 *Session Laws of Kansas*, and amendments thereto, shall be presumed
42 imprisonment and the defendant shall be sentenced to prison as provided
43 by this section, except that the court may recommend that an offender be

1 placed in the custody of the secretary of corrections, in a facility
2 designated by the secretary to participate in an intensive substance abuse
3 treatment program, upon making the following findings on the record:

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

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

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

12 The intensive substance abuse treatment program shall be determined
13 by the secretary of corrections, but shall be for a period of at least four
14 months. Upon the successful completion of such intensive treatment
15 program, the offender shall be returned to the court and the court may
16 modify the sentence by directing that a less severe penalty be imposed in
17 lieu of that originally adjudged within statutory limits. If the offender's
18 term of imprisonment expires, the offender shall be placed under the
19 applicable period of postrelease supervision. The sentence under this
20 subsection shall not be considered a departure and shall not be subject to
21 appeal.

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

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

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

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

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

35 (r) The sentence for a violation of subsection (c)(2) of section 48 of
36 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
37 shall be presumptive imprisonment and shall be served consecutively to
38 any other term or terms of imprisonment imposed. Such sentence shall not
39 be considered a departure and shall not be subject to appeal.

40 (s) *The sentence for a violation of section 76 of chapter 136 of the*
41 *2010 Session Laws of Kansas, and amendments thereto, shall be*
42 *presumptive imprisonment. Such sentence shall not be considered a*
43 *departure and shall not be subject to appeal.*

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

6 *(2) The sentence imposed pursuant to subsection (t)(1) shall be*
7 *presumptive imprisonment and shall be served consecutively to any other*
8 *term or terms of imprisonment imposed. Such sentence shall not be*
9 *considered a departure and shall not be subject to appeal.*

10 *(3) As used in this subsection, "ballistic resistant material" means:*
11 *(A) Any commercially produced material designed with the purpose of*
12 *providing ballistic and trauma protection, including, but not limited to,*
13 *bulletproof vests and kevlar vests; and (B) any homemade or fabricated*
14 *substance or item designed with the purpose of providing ballistic and*
15 *trauma protection.*

16 *(u) The sentence for a violation of section 177 of chapter 136 of the*
17 *2010 Session Laws of Kansas, and amendments thereto, or any attempt or*
18 *conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010*
19 *Session Laws of Kansas, and amendments thereto, to commit such offense,*
20 *when such person being sentenced has a prior conviction for a violation of*
21 *K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the*
22 *2010 Session Laws of Kansas, and amendments thereto, or any attempt or*
23 *conspiracy to commit such offense, shall be presumptive imprisonment.*
24 *Such sentence shall not be considered a departure and shall not be subject*
25 *to appeal.*

26 Sec. 2. K.S.A. 2009 Supp. 21-4704, as amended by section 6 of
27 chapter 147 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp.
28 21-4704 and section 285 of chapter 136 of the 2010 Session Laws of
29 Kansas are hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its
31 publication in the statute book.
32