

## 2021 Kansas Statutes

**21-6819. Sentencing in multiple conviction cases; discretion of judge to impose concurrent or consecutive sentences; requirements applicable; departure sentencing based on aggravating factors.** (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of K.S.A. 2021 Supp. 21-6606, and amendments thereto, regarding multiple sentences shall apply to the sentencing of offenders pursuant to the sentencing guidelines. The mandatory consecutive sentence requirements contained in subsections (c), (d) and (e) of K.S.A. 2021 Supp. 21-6606, and amendments thereto, shall not apply if such application would result in a manifest injustice.

(b) The sentencing judge shall otherwise have discretion to impose concurrent or consecutive sentences in multiple conviction cases. The sentencing judge may consider the need to impose an overall sentence that is proportionate to the harm and culpability and shall state on the record if the sentence is to be served concurrently or consecutively. In cases where consecutive sentences may be imposed by the sentencing judge, the following shall apply:

(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term which may not exceed the sum of the consecutive imprisonment terms, and a supervision term. The sentencing judge shall have the discretion to impose a consecutive term of imprisonment for a crime other than the primary crime of any term of months not to exceed the nonbase sentence as determined under subsection (b)(5). The postrelease supervision term will be based on the longest supervision term imposed for any of the crimes.

(2) The sentencing judge shall establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease supervision term will be based on the off-grid crime. If more than one crime of conviction is classified in the same crime category, the sentencing judge shall designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge shall use the crime with the longest sentence term as the primary crime.

(3) The base sentence is set using the total criminal history score assigned.

(4) The total prison sentence imposed in a case involving multiple convictions arising from multiple counts within an information, complaint or indictment cannot exceed twice the base sentence. This limit shall apply only to the total sentence, and it shall not be necessary to reduce the duration of any of the nonbase sentences imposed to be served consecutively to the base sentence. The postrelease supervision term will reflect only the longest such term assigned to any of the crimes for which consecutive sentences are imposed.

Supervision periods shall not be aggregated.

(5) Nonbase sentences shall not have criminal history scores applied, as calculated in the criminal history I column of the grid, but base sentences shall have the full criminal history score assigned. In the event a conviction designated as the primary crime in a multiple conviction case is reversed on appeal, the appellate court shall remand the multiple conviction case for resentencing. Upon resentencing, if the case remains a multiple

conviction case the court shall follow all of the provisions of this section concerning the sentencing of multiple conviction cases.

(6) If the sentence for the primary crime is a prison term, the entire imprisonment term of the consecutive sentences will be served in prison.

(7) If the sentence for the consecutive sentences is a prison term, the postrelease supervision term is a term of postrelease supervision as established for the primary crime.

(8) If the sentence for the primary crime is a nonprison sentence, a nonprison term will be imposed for each crime conviction, but the nonprison terms shall not be aggregated or served consecutively even though the underlying prison sentences have been ordered to be served consecutively. Upon revocation of the nonprison sentence, the offender shall serve the prison sentences consecutively as provided in this section.

(c) The following shall apply for a departure from the presumptive sentence based on aggravating factors within the context of consecutive sentences:

(1) The court may depart from the presumptive limits for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any of the individual crimes being sentenced consecutively.

(2) When a departure sentence is imposed for any of the individual crimes sentenced consecutively, the imprisonment term of that departure sentence shall not exceed twice the maximum presumptive imprisonment term that may be imposed for that crime.

(3) The total imprisonment term of the consecutive sentences, including the imprisonment term for the departure crime, shall not exceed twice the maximum presumptive imprisonment term of the departure sentence following aggravation.

**History:** L. 2010, ch. 136, § 300; L. 2012, ch. 150, § 36; July 1.