

Substitute for HOUSE BILL No. 2442

By Committee on Corrections and Juvenile Justice

2-26

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to the uniform act regulating traffic; criminal penalties for fleeing and
3 eluding; sentencing; amending K.S.A. 2013 Supp. 8-1568 and 21-6804
4 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2013 Supp. 8-1568 is hereby amended to read as
8 follows: 8-1568. (a) (1) Any driver of a motor vehicle who willfully fails
9 or refuses to bring such driver's vehicle to a stop for a pursuing police
10 vehicle or police bicycle, when given visual or audible signal to bring the
11 vehicle to a stop, shall be guilty as provided by subsection (c)(1), ~~(2) or~~
12 ~~(3)~~.

13 (2) Any driver of a motor vehicle who willfully otherwise flees or
14 attempts to elude a pursuing police vehicle or police bicycle, when given
15 visual or audible signal to bring the vehicle to a stop, shall be guilty as
16 provided by subsection (c)(1), ~~(2) or (3)~~.

17 (3) It shall be an affirmative defense to any prosecution under
18 ~~paragraph (1) of this subsection (a)(1)~~ that the driver's conduct in violation
19 of such paragraph was caused by such driver's reasonable belief that the
20 vehicle or bicycle pursuing such driver's vehicle is not a police vehicle or
21 police bicycle.

22 (b) Any driver of a motor vehicle who willfully fails or refuses to
23 bring such driver's vehicle to a stop, or who otherwise flees or attempts to
24 elude a pursuing police vehicle or police bicycle, when given visual or
25 audible signal to bring the vehicle to a stop, and who: (1) Commits any of
26 the following during a police pursuit: (A) Fails to stop for a police road
27 block; (B) drives around tire deflating devices placed by a police officer;
28 (C) engages in reckless driving as defined by K.S.A. 8-1566, and
29 amendments thereto; (D) is involved in any motor vehicle accident or
30 intentionally causes damage to property; or (E) commits five or more
31 moving violations; or

32 (2) is attempting to elude capture for the commission of any felony,
33 shall be guilty as provided in subsection ~~(e)(4)~~ (c)(2).

34 (c) (1) Violation of subsection (a), upon a:

35 (A) First conviction is a class B nonperson misdemeanor;

36 (2) ~~Violation of subsection (a), upon a (B) second conviction is a~~

- 1 class A nonperson misdemeanor; *or*
2 ~~(3) Violation of subsection (a), upon a (C)~~ third or subsequent
3 conviction is a severity level 9, person felony.
4 ~~(4)(2)~~ Violation of subsection (b) is a severity level 9, person felony.
5 (d) The signal given by the police officer may be by hand, voice,
6 emergency light or siren:
7 (1) If the officer giving such signal is within or upon an official police
8 vehicle or police bicycle at the time the signal is given, the vehicle or
9 bicycle shall be appropriately marked showing it to be an official police
10 vehicle or police bicycle; or
11 (2) if the officer giving such signal is not utilizing an official police
12 vehicle or police bicycle at the time the signal is given, the officer shall be
13 in uniform, prominently displaying such officer's badge of office at the
14 time the signal is given.
15 (e) For the purpose of this section:
16 (1) "Conviction" means a final conviction without regard *to* whether
17 sentence was suspended or probation granted after such conviction.
18 Forfeiture of bail, bond or collateral deposited to secure a defendant's
19 appearance in court, which forfeiture has not been vacated, shall be
20 equivalent to a conviction. *For the purpose of determining whether a*
21 *conviction is a first, second, third or subsequent conviction in sentencing*
22 *under this section it is irrelevant whether an offense occurred before or*
23 *after conviction for a previous offense.*
24 (2) "Appropriately marked" official police vehicle or police bicycle
25 shall include, but not be limited to, any police vehicle or bicycle equipped
26 with functional emergency lights or siren or both and which the emergency
27 lights or siren or both have been activated for the purpose of signaling a
28 driver to stop a motor vehicle.
29 (f) The division of vehicles of the department of revenue shall
30 promote public awareness of the provisions of this section when persons
31 apply for or renew such person's driver's license.
32 Sec. 2. K.S.A. 2013 Supp. 21-6804 is hereby amended to read as
33 follows: 21-6804.(a) The provisions of this section shall be applicable to
34 the sentencing guidelines grid for nondrug crimes. The following
35 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 33 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	6 5

LEGEND
 Presumptive Probation
 No Felony
 No Felony
 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 subsection (d) of K.S.A. 2013 Supp. 21-
42 5412, and amendments thereto, aggravated assault against a law
43 enforcement officer, which places the defendant's sentence in grid block 6-

1 H or 6-I shall be presumed imprisonment. The court may impose an
2 optional nonprison 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 2013 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, subsection (b)(3) of
8 K.S.A. 2013 Supp. 21-5414, subsections (b)(3) and (b)(4) of K.S.A. 2013
9 Supp. 21-5823, K.S.A. 2013 Supp. 21-6412 and K.S.A. 2013 Supp. 21-
10 6416, and amendments thereto, shall be as provided by the specific
11 mandatory sentencing requirements of that section and shall not be subject
12 to the provisions of this section or K.S.A. 2013 Supp. 21-6807, and
13 amendments thereto.

14 (2) If because of the offender's criminal history classification the
15 offender is subject to presumptive imprisonment or if the judge departs
16 from a presumptive probation sentence and the offender is subject to
17 imprisonment, the provisions of this section and K.S.A. 2013 Supp. 21-
18 6807, and amendments thereto, shall apply and the offender shall not be
19 subject to the mandatory sentence as provided in K.S.A. 2013 Supp. 21-
20 5823, and amendments thereto.

21 (3) Notwithstanding the provisions of any other section, the term of
22 imprisonment imposed for the violation of the felony provision of K.S.A.
23 2013 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, subsection (b)(3) of
24 K.S.A. 2013 Supp. 21-5414, subsections (b)(3) and (b)(4) of K.S.A. 2013
25 Supp. 21-5823, K.S.A. 2013 Supp. 21-6412 and K.S.A. 2013 Supp. 21-
26 6416, and amendments thereto, shall not be served in a state facility in the
27 custody of the secretary of corrections, except that the term of
28 imprisonment for felony violations of K.S.A. 2013 Supp. 8-1025 or K.S.A.
29 8-2,144 or K.S.A. 8-1567, and amendments thereto, may be served in a
30 state correctional facility designated by the secretary of corrections if the
31 secretary determines that substance abuse treatment resources and facility
32 capacity is available. The secretary's determination regarding the
33 availability of treatment resources and facility capacity shall not be subject
34 to review. Prior to imposing any sentence pursuant to this subsection, the
35 court may consider assigning the defendant to a house arrest program
36 pursuant to K.S.A. 2013 Supp. 21-6609, and amendments thereto.

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

43 (2) Except as otherwise provided in this subsection, as used in this

1 subsection, "persistent sex offender" means a person who:

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

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

9 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
10 prior to its repeal, or K.S.A. 2013 Supp. 21-5503, and amendments
11 thereto; and

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

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

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

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

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

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

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

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

43 (l) Except as provided in subsection (o), the sentence for a violation

1 of subsection (a)(1) of K.S.A. 2013 Supp. 21-5807, and amendments
2 thereto, or any attempt or conspiracy, as defined in K.S.A. 2013 Supp. 21-
3 5301 and 21-5302, and amendments thereto, to commit such offense, when
4 such person being sentenced has a prior conviction for a violation of
5 subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior
6 to its repeal, subsection (a)(1) or (a)(2) of K.S.A. 2013 Supp. 21-5807, or
7 subsection (b) of K.S.A. 2013 Supp. 21-5807, and amendments thereto, or
8 any attempt or conspiracy to commit such offense, shall be presumptive
9 imprisonment.

10 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (a)
11 (2) of K.S.A. 2013 Supp. 21-5913, and amendments thereto, shall be
12 presumptive imprisonment. If an offense under such sections is classified
13 in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional
14 nonprison sentence as provided in subsection (q).

15 (n) The sentence for a violation of criminal deprivation of property, as
16 defined in K.S.A. 2013 Supp. 21-5803, and amendments thereto, when
17 such property is a motor vehicle, and when such person being sentenced
18 has any combination of two or more prior convictions of subsection (b) of
19 K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property,
20 as defined in K.S.A. 2013 Supp. 21-5803, and amendments thereto, when
21 such 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 K.S.A. 2013 Supp. 21-5801, and amendments thereto, or burglary as
26 defined in subsection (a) of K.S.A. 2013 Supp. 21-5807, and amendments
27 thereto, when such person being sentenced has no prior convictions for a
28 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
29 property as defined in K.S.A. 2013 Supp. 21-5801, and amendments
30 thereto, or burglary as defined in subsection (a) of K.S.A. 2013 Supp. 21-
31 5807, and amendments thereto; or the sentence for a felony violation of
32 theft of property as defined in K.S.A. 2013 Supp. 21-5801, and
33 amendments thereto, when such person being sentenced has one or two
34 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-
35 3716, prior to their repeal, or theft of property as defined in K.S.A. 2013
36 Supp. 21-5801, and amendments thereto, or burglary or aggravated
37 burglary as defined in K.S.A. 2013 Supp. 21-5807, and amendments
38 thereto; or the sentence for a felony violation of burglary as defined in
39 subsection (a) of K.S.A. 2013 Supp. 21-5807, and amendments thereto,
40 when such person being sentenced has one prior felony conviction for a
41 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or
42 theft of property as defined in K.S.A. 2013 Supp. 21-5801, and
43 amendments thereto, or burglary or aggravated burglary as defined in

1 K.S.A. 2013 Supp. 21-5807, and amendments thereto, shall be the
2 sentence as provided by this section, except that the court may order an
3 optional nonprison sentence for a defendant to participate in a drug
4 treatment program, including, but not limited to, an approved after-care
5 plan, if the court makes the following findings on the record:

6 (1) Substance abuse was an underlying factor in the commission of
7 the crime;

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

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

13 A defendant sentenced to an optional nonprison sentence under this
14 subsection shall be supervised by community correctional services. The
15 provisions of subsection (f)(1) of K.S.A. 2013 Supp. 21-6824, and
16 amendments thereto, shall apply to a defendant sentenced under this
17 subsection. The sentence under this subsection shall not be considered a
18 departure and shall not be subject to appeal.

19 (p) The sentence for a felony violation of theft of property as defined
20 in K.S.A. 2013 Supp. 21-5801, and amendments thereto, when such
21 person being sentenced has any combination of three or more prior felony
22 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to
23 their repeal, or theft of property as defined in K.S.A. 2013 Supp. 21-5801,
24 and amendments thereto, or burglary or aggravated burglary as defined in
25 K.S.A. 2013 Supp. 21-5807, and amendments thereto; or the sentence for a
26 violation of burglary as defined in subsection (a) of K.S.A. 2013 Supp. 21-
27 5807, and amendments thereto, when such person being sentenced has any
28 combination of two or more prior convictions for violations of K.S.A. 21-
29 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
30 defined in K.S.A. 2013 Supp. 21-5801, and amendments thereto, or
31 burglary or aggravated burglary as defined in K.S.A. 2013 Supp. 21-5807,
32 and amendments thereto, shall be presumed imprisonment and the
33 defendant shall be sentenced to prison as provided by this section, except
34 that the court may recommend that an offender be placed in the custody of
35 the secretary of corrections, in a facility designated by the secretary to
36 participate in an intensive substance abuse treatment program, upon
37 making the following findings on the record:

38 (1) Substance abuse was an underlying factor in the commission of
39 the crime;

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

43 (3) participation in an intensive substance abuse treatment program

1 with the possibility of an early release from imprisonment will serve
2 community safety interests by promoting offender reformation.

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

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

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

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

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

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

26 (r) The sentence for a violation of subsection (c)(2) of K.S.A. 2013
27 Supp. 21-5413, and amendments thereto, shall be presumptive
28 imprisonment and shall be served consecutively to any other term or terms
29 of imprisonment imposed. Such sentence shall not be considered a
30 departure and shall not be subject to appeal.

31 (s) The sentence for a violation of K.S.A. 2013 Supp. 21-5512, and
32 amendments thereto, shall be presumptive imprisonment. Such sentence
33 shall not be considered a departure and shall not be subject to appeal.

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

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

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

1 (A) Any commercially produced material designed with the purpose of
2 providing ballistic and trauma protection, including, but not limited to,
3 bulletproof vests and kevlar vests; and (B) any homemade or fabricated
4 substance or item designed with the purpose of providing ballistic and
5 trauma protection.

6 (u) The sentence for a violation of K.S.A. 2013 Supp. 21-6107, and
7 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
8 2013 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
9 such offense, when such person being sentenced has a prior conviction for
10 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2013 Supp. 21-
11 6107, and amendments thereto, or any attempt or conspiracy to commit
12 such offense, shall be presumptive imprisonment. Such sentence shall not
13 be considered a departure and shall not be subject to appeal.

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

19 Sec. 3. K.S.A. 2013 Supp. 8-1568 and 21-6804 are hereby repealed.

20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.