

SENATE BILL No. 216

By Committee on Judiciary

2-8

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to crimes against the public safety; adding possessing or using a
3 firearm during the commission of certain drug crimes to the crime of
4 criminal use of weapons; creating a special sentencing rule of
5 presumptive imprisonment for violations thereof; amending K.S.A.
6 2022 Supp. 21-6301 and 21-6804 and repealing the existing sections.

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

9 Section 1. K.S.A. 2022 Supp. 21-6301 is hereby amended to read as
10 follows: 21-6301. (a) Criminal use of weapons is knowingly:

11 (1) Selling, manufacturing, purchasing or possessing any bludgeon,
12 sand club or metal knuckles;

13 (2) possessing with intent to use the same unlawfully against another,
14 a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged
15 razor, throwing star, stiletto or any other dangerous or deadly weapon or
16 instrument of like character;

17 (3) setting a spring gun;

18 (4) possessing any device or attachment of any kind designed, used or
19 intended for use in suppressing the report of any firearm;

20 (5) selling, manufacturing, purchasing or possessing a shotgun with a
21 barrel less than 18 inches in length, or any firearm designed to discharge or
22 capable of discharging automatically more than once by a single function
23 of the trigger, whether the person knows or has reason to know the length
24 of the barrel or that the firearm is designed or capable of discharging
25 automatically;

26 (6) possessing, manufacturing, causing to be manufactured, selling,
27 offering for sale, lending, purchasing or giving away any cartridge which
28 can be fired by a handgun and which has a plastic-coated bullet that has a
29 core of less than 60% lead by weight, whether the person knows or has
30 reason to know that the plastic-coated bullet has a core of less than 60%
31 lead by weight;

32 (7) selling, giving or otherwise transferring any firearm with a barrel
33 less than 12 inches long to any person under 18 years of age whether the
34 person knows or has reason to know the length of the barrel;

35 (8) selling, giving or otherwise transferring any firearms to any
36 person who is both addicted to and an unlawful user of a controlled

1 substance;

2 (9) selling, giving or otherwise transferring any firearm to any person
3 who is or has been a mentally ill person subject to involuntary
4 commitment for care and treatment, as defined in K.S.A. 59-2946, and
5 amendments thereto, or a person with an alcohol or substance abuse
6 problem subject to involuntary commitment for care and treatment as
7 defined in K.S.A. 59-29b46, and amendments thereto;

8 (10) possessing any firearm by a person who is both addicted to and
9 an unlawful user of a controlled substance;

10 (11) possessing any firearm by any person, other than a law
11 enforcement officer, in or on any school property or grounds upon which is
12 located a building or structure used by a unified school district or an
13 accredited nonpublic school for student instruction or attendance or
14 extracurricular activities of pupils enrolled in kindergarten or any of the
15 grades one through 12 or at any regularly scheduled school sponsored
16 activity or event whether the person knows or has reason to know that such
17 person was in or on any such property or grounds;

18 (12) refusing to surrender or immediately remove from school
19 property or grounds or at any regularly scheduled school sponsored
20 activity or event any firearm in the possession of any person, other than a
21 law enforcement officer, when so requested or directed by any duly
22 authorized school employee or any law enforcement officer;

23 (13) possessing any firearm by a person who is or has been a
24 mentally ill person subject to involuntary commitment for care and
25 treatment, as defined in K.S.A. 59-2946, and amendments thereto, or
26 persons with an alcohol or substance abuse problem subject to involuntary
27 commitment for care and treatment as defined in K.S.A. 59-29b46, and
28 amendments thereto;

29 (14) possessing a firearm with a barrel less than 12 inches long by
30 any person less than 18 years of age;

31 (15) possessing any firearm while a fugitive from justice;

32 (16) possessing any firearm by a person who is an alien illegally or
33 unlawfully in the United States;

34 (17) possessing any firearm by a person while such person is subject
35 to a court order that:

36 (A) Was issued after a hearing, of which such person received actual
37 notice, and at which such person had an opportunity to participate;

38 (B) restrains such person from harassing, stalking or threatening an
39 intimate partner of such person or a child of such person or such intimate
40 partner, or engaging in other conduct that would place an intimate partner
41 in reasonable fear of bodily injury to the partner or the child; and

42 (C) (i) includes a finding that such person represents a credible threat
43 to the physical safety of such intimate partner or child; or

1 (ii) by its terms explicitly prohibits the use, attempted use or
2 threatened use of physical force against such intimate partner or child that
3 would reasonably be expected to cause bodily injury; ~~or~~

4 (18) possessing any firearm by a person who, within the preceding
5 five years, has been convicted of a misdemeanor for a domestic violence
6 offense, or a misdemeanor under a law of another jurisdiction which is
7 substantially the same as such misdemeanor offense; *or*

8 (19) *possessing or using any firearm during the commission or in*
9 *furtherance of a felony violation of:*

10 (A) *Unlawful manufacturing of controlled substances as defined in*
11 *K.S.A. 2022 Supp. 21-5703, and amendments thereto; or*

12 (B) *unlawful cultivation or distribution of controlled substances as*
13 *defined in K.S.A. 2022 Supp. 21-5705, and amendments thereto.*

14 (b) Criminal use of weapons as defined in:

15 (1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a
16 class A nonperson misdemeanor;

17 (2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson
18 felony;

19 (3) subsection (a)(10) or (a)(11) is a class B nonperson select
20 misdemeanor;

21 (4) subsection (a)(13), (a)(15), (a)(16), (a)(17) or (a)(18) is a severity
22 level 8, nonperson felony; ~~and~~

23 (5) subsection (a)(14) is a:

24 (A) Class A nonperson misdemeanor except as provided in subsection
25 (b)(5)(B); *and*

26 (B) severity level 8, nonperson felony upon a second or subsequent
27 conviction; *and*

28 (6) *subsection (a)(19) is a:*

29 (A) *Severity level 7, nonperson felony except as provided in*
30 *subsection (b)(6)(B); and*

31 (B) *severity level 6, person felony when the firearm is discharged*
32 *during commission of the offense.*

33 (c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

34 (1) Law enforcement officers, or any person summoned by any such
35 officers to assist in making arrests or preserving the peace while actually
36 engaged in assisting such officer;

37 (2) wardens, superintendents, directors, security personnel and
38 keepers of prisons, penitentiaries, jails and other institutions for the
39 detention of persons accused or convicted of crime, while acting within the
40 scope of their authority;

41 (3) members of the armed services or reserve forces of the United
42 States or the Kansas national guard while in the performance of their
43 official duty; or

1 (4) the manufacture of, transportation to, or sale of weapons to a
2 person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess
3 such weapons.

4 (d) Subsections (a)(4) and (a)(5) shall not apply to any person who
5 sells, purchases, possesses or carries a firearm, device or attachment which
6 has been rendered unserviceable by steel weld in the chamber and
7 marriage weld of the barrel to the receiver and which has been registered
8 in the national firearms registration and transfer record in compliance with
9 26 U.S.C. § 5841 et seq. in the name of such person and, if such person
10 transfers such firearm, device or attachment to another person, has been so
11 registered in the transferee's name by the transferor.

12 (e) Subsection (a)(6) shall not apply to a governmental laboratory or
13 solid plastic bullets.

14 (f) Subsection (a)(4) shall not apply to a law enforcement officer who
15 is:

16 (1) Assigned by the head of such officer's law enforcement agency to
17 a tactical unit which receives specialized, regular training;

18 (2) designated by the head of such officer's law enforcement agency
19 to possess devices described in subsection (a)(4); and

20 (3) in possession of commercially manufactured devices which are:

21 (A) Owned by the law enforcement agency;

22 (B) in such officer's possession only during specific operations; and

23 (C) approved by the bureau of alcohol, tobacco, firearms and
24 explosives of the United States department of justice.

25 (g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person
26 employed by a laboratory which is certified by the United States
27 department of justice, national institute of justice, while actually engaged
28 in the duties of their employment and on the premises of such certified
29 laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the
30 manufacture of, transportation to or sale of weapons to such certified
31 laboratory.

32 (h) Subsections (a)(4) and (a)(5) shall not apply to or affect any
33 person or entity in compliance with the national firearms act, 26 U.S.C. §
34 5801 et seq.

35 (i) (1) Subsection (a)(4) shall not apply to or affect any person in
36 possession of a device or attachment designed, used or intended for use in
37 suppressing the report of any firearm, if such device or attachment satisfies
38 the description of a Kansas-made firearm accessory as set forth in K.S.A.
39 2022 Supp. 50-1204, and amendments thereto.

40 (2) The provisions of this subsection shall apply to any violation of
41 subsection (a)(4) that occurred on or after April 25, 2013.

42 (j) Subsection (a)(11) shall not apply to:

43 (1) Possession of any firearm in connection with a firearms safety

1 course of instruction or firearms education course approved and authorized
2 by the school;

3 (2) possession of any firearm specifically authorized in writing by the
4 superintendent of any unified school district or the chief administrator of
5 any accredited nonpublic school;

6 (3) possession of a firearm secured in a motor vehicle by a parent,
7 guardian, custodian or someone authorized to act in such person's behalf
8 who is delivering or collecting a student;

9 (4) possession of a firearm secured in a motor vehicle by a registered
10 voter who is on the school grounds, which contain a polling place for the
11 purpose of voting during polling hours on an election day; or

12 (5) possession of a concealed handgun by an individual who is not
13 prohibited from possessing a firearm under either federal or state law, and
14 who is either: (A) 21 years of age or older; or (B) possesses a valid
15 provisional license issued pursuant to K.S.A. 75-7c03, and amendments
16 thereto, or a valid license to carry a concealed handgun issued by another
17 jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and
18 amendments thereto.

19 (k) Subsections (a)(9) and (a)(13) shall not apply to a person who has
20 received a certificate of restoration pursuant to K.S.A. 75-7c26, and
21 amendments thereto.

22 (l) Subsection (a)(14) shall not apply if such person, less than 18
23 years of age, was:

24 (1) In attendance at a hunter's safety course or a firearms safety
25 course;

26 (2) engaging in practice in the use of such firearm or target shooting
27 at an established range authorized by the governing body of the
28 jurisdiction in which such range is located, or at another private range with
29 permission of such person's parent or legal guardian;

30 (3) engaging in an organized competition involving the use of such
31 firearm, or participating in or practicing for a performance by an
32 organization exempt from federal income tax pursuant to section 501(c)(3)
33 of the internal revenue code of 1986 which uses firearms as a part of such
34 performance;

35 (4) hunting or trapping pursuant to a valid license issued to such
36 person pursuant to article 9 of chapter 32 of the Kansas Statutes
37 Annotated, and amendments thereto;

38 (5) traveling with any such firearm in such person's possession being
39 unloaded to or from any activity described in subsections (l)(1) through (l)
40 (4), only if such firearm is secured, unloaded and outside the immediate
41 access of such person;

42 (6) on real property under the control of such person's parent, legal
43 guardian or grandparent and who has the permission of such parent, legal

1 guardian or grandparent to possess such firearm; or

2 (7) at such person's residence and who, with the permission of such
3 person's parent or legal guardian, possesses such firearm for the purpose of
4 exercising the rights contained in K.S.A. 2022 Supp. 21-5222, 21-5223 or
5 21-5225, and amendments thereto.

6 (m) As used in this section:

7 (1) "Domestic violence" means the use or attempted use of physical
8 force, or the threatened use of a deadly weapon, committed against a
9 person with whom the offender is involved or has been involved in a
10 dating relationship or is a family or household member.

11 (2) "Fugitive from justice" means any person having knowledge that
12 a warrant for the commission of a felony has been issued for the
13 apprehension of such person under K.S.A. 22-2713, and amendments
14 thereto.

15 (3) "Intimate partner" means, with respect to a person, the spouse of
16 the person, a former spouse of the person, an individual who is a parent of
17 a child of the person or an individual who cohabitates or has cohabitated
18 with the person.

19 (4) "Throwing star" means any instrument, without handles,
20 consisting of a metal plate having three or more radiating points with one
21 or more sharp edges and designed in the shape of a polygon, trefoil, cross,
22 star, diamond or other geometric shape, manufactured for use as a weapon
23 for throwing.

24 Sec. 2. K.S.A. 2022 Supp. 21-6804 is hereby amended to read as
25 follows: 21-6804. (a) The provisions of this section shall be applicable to
26 the sentencing guidelines grid for nondrug crimes. The following
27 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 Person Felonies	1 Person Felony	3 + Non Felonies	2 Non Felonies	1 Non 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	25 23 21	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 4

LEGEND	
	Presumptive Probation
	Non-Prob
	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) has at
38 least one conviction for a sexually violent crime, as defined in K.S.A. 22-
39 3717, and amendments thereto, in this state or comparable felony under
40 the laws of another state, the federal government or a foreign government;
41 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) has at
3 least one conviction for rape in this state or comparable felony under the
4 laws of another state, the federal government or a foreign government.

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

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

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

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

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

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

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

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

42 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2022
43 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive

1 imprisonment. If an offense under such sections is classified in grid blocks
2 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
3 sentence as provided in subsection (q).

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

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

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

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

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

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

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

26 (1) Substance abuse was an underlying factor in the commission of
27 the crime;

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

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

34 The intensive substance abuse treatment program shall be determined
35 by the secretary of corrections, but shall be for a period of at least four
36 months. Upon the successful completion of such intensive treatment
37 program, the offender shall be returned to the court and the court may
38 modify the sentence by directing that a less severe penalty be imposed in
39 lieu of that originally adjudged within statutory limits. If the offender's
40 term of imprisonment expires, the offender shall be placed under the
41 applicable period of postrelease supervision. The sentence under this
42 subsection shall not be considered a departure and shall not be subject to
43 appeal.

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

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

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

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

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

14 (r) The sentence for a violation of K.S.A. 2022 Supp. 21-5413(c)(2),
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 (s) The sentence for a violation of K.S.A. 2022 Supp. 21-5512, and
20 amendments thereto, shall be presumptive imprisonment. Such sentence
21 shall not be considered a departure and shall not be subject to appeal.

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

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

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

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

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

37 (u) The sentence for a violation of K.S.A. 2022 Supp. 21-6107, and
38 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
39 2022 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
40 such offense, when such person being sentenced has a prior conviction for
41 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2022 Supp. 21-
42 6107, and amendments thereto, or any attempt or conspiracy to commit
43 such offense, shall be presumptive imprisonment. Such sentence shall not

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

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

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

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

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

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

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

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

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

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

5 (z) *The sentence for a violation of K.S.A. 2022 Supp. 21-6301(a)(19),*
6 *and amendments thereto, shall be presumptive imprisonment and shall be*
7 *served consecutively to any other term or terms of imprisonment imposed.*
8 *Such sentence shall not be considered a departure and shall not be subject*
9 *to appeal.*

10 Sec. 3. K.S.A. 2022 Supp. 21-6301 and 21-6804 are hereby repealed.

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