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Board**

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Corrections

F-1 Sentencing

The Kansas Sentencing Guidelines Act (KSGA) became effective July 1, 1993. Two grids, which contain the sentencing range for drug crimes and nondrug crimes, were developed for use as a tool in sentencing. The sentencing guidelines grids provide practitioners in the criminal justice system with an overview of presumptive felony sentences. The determination of a felony sentence is based on two factors: the current crime of conviction and the offender's prior criminal history. The sentence contained in the grid box at the juncture of the severity level of the crime of conviction and the offender's criminal history category is the presumed sentence. See KSA 21-6804(c).

Off-Grid Crimes

The crimes of capital murder (KSA 21-5401), murder in the first degree (KSA 21-5402), terrorism (KSA 21-5421), illegal use of weapons of mass destruction (KSA 21-5422), and treason (KSA 21-5901) are designated as off-grid person crimes.

Kansas law provides for the imposition of the death penalty, under certain circumstances, for a conviction of capital murder. See KSA 21-5401 and KSA 21-6617. Where the death penalty is not imposed, a conviction of capital murder carries a life sentence without possibility of parole. See KSA 21-6620(a).

The remaining off-grid person crimes require life sentences with varying parole eligibility periods. Persons convicted of premeditated first-degree murder are eligible for parole after serving 25 years of the life sentence, unless the trier of fact finds there were aggravating circumstances justifying the imposition of the "Hard 50" sentence (requiring 50 years to be served before parole eligibility).

Persons convicted of felony murder, terrorism, illegal use of weapons of mass destruction, or treason are parole eligible after serving 20 years of the life sentence. See KSA 22-3717(b)(2).

Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking (KSA 21-5426(b)), rape (KSA 21-5503), aggravated indecent liberties (KSA 21-5506(b)), aggravated criminal sodomy (KSA 21-5504(b)), commercial sexual exploitation of a child (KSA 21-6422) and sexual exploitation of a child (KSA 21-5510). Offenders sentenced for these off-grid crimes are parole eligible after 25 years in confinement for the first offense,

parole eligible after 40 years in confinement for the second offense, or sentenced to life without parole if they have been convicted of two or more of these offenses in the past.

Drug Grid and Nondrug Grid

The drug grid is used for sentencing on drug crimes described in KSA Chapter 21, Article 57. The nondrug grid is used for sentencing on other felony crimes. In both grids, the criminal history categories make up the horizontal axis, and the crime severity levels make up the vertical axis. Each grid contains nine criminal history categories.

The drug grid contains five severity levels; the nondrug grid contains ten severity levels. A thick, black dispositional line cuts across both grids. Above the dispositional line are unshaded grid boxes, which are designated as presumptive prison sentences. Below the dispositional line are shaded grid boxes, which are designated as presumptive probation sentences.

The grids also contain boxes that have a dark-shaded color through them, which are referred to as “border boxes.” A border box has a presumptive prison sentence, but the sentencing court may choose to impose an optional nonprison sentence, which will not constitute a departure. The nondrug grid contains three border boxes, in levels 5-H, 5-I, and 6-G. The drug grid contains seven dark shaded border boxes, in levels 4-E, 4-F, 4-G, 4-H, 4-I, 5-C, and 5-D. See KSA 21-6804 and KSA 21-6805.

Grid Boxes

Within each grid box are three numbers, representing months of imprisonment. The three numbers provide the sentencing court with a range for sentencing. The sentencing court has discretion to sentence within the range. The middle number in the grid box is the standard number and is intended to be the appropriate sentence for typical cases. The upper and lower numbers should be used for cases involving aggravating or mitigating factors insufficient to warrant a departure, as explained

in the next paragraph. See KSA 21-6804 and 21-6805.

The sentencing court may depart upward to increase the length of a sentence up to double the duration within the grid box. The court also may depart downward to lower the duration of a presumptive sentence. See KSA 21-6815, 21-6816, and 21-6817. The court also may impose a dispositional departure, from prison to probation or from probation to prison. See KSA 21-6818.

In *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001), the predecessor to KSA 21-6815 was found to be “unconstitutional on its face” for the imposition of upward durational departure sentences by a judge and not a jury. In the 2002 Legislative Session, the departure provisions were amended to correct the upward durational departure problem arising from *Gould*, and this change became effective on June 6, 2002. The jury now determines all of the aggravating factors that might enhance the maximum sentence, based upon the reasonable doubt standard. The trial court determines if the presentation of evidence regarding the aggravating factors will be presented during the trial of the matter or in a bifurcated jury proceeding following the trial. See KSA 21-6817.

Sentencing Considerations

The sentencing court should consider all available alternatives in determining the appropriate sentence for each offender. The sentencing guidelines seek to establish equity among like offenders in similar case scenarios. Rehabilitative measures are still an integral part of the corrections process, and criminal justice professionals continue efforts to reestablish offenders within communities. The guidelines do not prohibit sentencing courts from departing from the prescribed sentence in atypical cases. The sentencing court is free to choose an appropriate sentence, or combination of sentences, for each case. See KSA 21-6604.

Postrelease Supervision

Once offenders have served the prison portion of a sentence, most must serve a term of postrelease

supervision, plus the amount of good time earned while incarcerated. For crimes committed on or after July 1, 2012, offenders sentenced for drug severity levels 1-3 or nondrug severity levels 1-4 must serve 36 months of postrelease supervision, those sentenced for drug severity level 4 or nondrug severity levels 5-6 must serve 24 months, and those sentenced for drug severity level 5 or nondrug severity levels 7-10 must serve 12 months. These periods may be reduced based on an offender's compliance and performance while on postrelease supervision. See KSA 22-3717(d) (1).

While on postrelease supervision, an offender must comply with the conditions of post release supervision, which include reporting requirements; compliance with laws; restrictions on possession and use of weapons, drugs, and alcohol; employment and education requirements; restrictions on contact with victims or persons involved in illegal activity; and other conditions. A "technical violation" of the conditions of post release supervision (such as failure to report) will result in imprisonment for six months, reduced by up to three months based upon the offender's conduct during the imprisonment. A violation based upon conviction of a new felony will result in imprisonment for the remaining balance of the postrelease supervision term, even if the new conviction does not itself result in a new prison term. A violation based upon conviction of a new misdemeanor will result in a period of confinement as determined by the Prisoner Review Board, up to the remaining balance of the postrelease supervision period. See KSA 75-5217.

Recent Notable Sentencing Guidelines Legislation

In 2006, the Kansas sentencing guidelines law dealing with upward departures was amended to add a new aggravating factor when the crime involved two or more participants and the defendant played a major role in the crime as an organizer, leader, recruiter, manager, or supervisor.

The law was amended further to add a new mitigating factor for defendants who have provided substantial assistance in the investigation or

prosecution of another person who is alleged to have committed an offense. In considering this mitigating factor, the court may consider the following:

- The significance and usefulness of the defendant's assistance;
- The truthfulness, completeness, and reliability of any information;
- The nature and extent of the defendant's assistance;
- Any injury suffered, any danger of risk of injury to the defendant, or the defendant's family; and
- The timeliness of the assistance.

In 2008, the Kansas sentencing guidelines were amended to provide the following:

- No downward dispositional departure can be imposed for any crime of extreme sexual violence. A downward durational departure can be allowed for any crime of extreme sexual violence to no less than 50 percent of the center of the grid range of the sentence for such crime; and
- A sentencing judge cannot consider social factors as mitigating factors in determining whether substantial and compelling reasons exist for a downward departure.

In 2010, the Kansas Criminal Code, including the sentencing guidelines, was recodified. The recodification took effect July 1, 2011. The citations in this article are to the recodified code.

In 2012, the Legislature passed Senate Sub. for Sub. for HB 2318, which changed the drug grid from a four-level grid to a five-level grid, adding a new level 2 with penalties falling between the existing first and second levels of the grid. The new grid also expanded the presumptive imprisonment boxes and the border boxes.

In June 2013, the U.S. Supreme Court's decision in *Alleyne v. U.S.*, 570 U.S. ___, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013), called the constitutionality of Kansas' "Hard 50" sentencing statute (KSA 21-6620) into doubt. Since 1994, in cases where a

defendant was convicted of premeditated first degree murder, the statute had allowed the sentencing court to impose a life sentence without eligibility for parole for 50 years when the judge found one or more aggravating factors were present. The *Alleyne* decision indicated that such determinations must be made by the trier of fact (usually a jury) using a reasonable doubt standard, rather than by the sentencing judge.

In response to the *Alleyne* decision, Kansas Attorney General Derek Schmidt requested Governor Sam Brownback call the Kansas Legislature into Special Session “for the purpose of repairing” the Hard 50 sentence. The Governor subsequently called the Legislature into Special Session starting September 3, 2013, to respond to *Alleyne*.

Before the 2013 Special Session, the Special Committee on Judiciary met to review *Alleyne*, receive testimony, and report preliminary findings to the House and Senate Judiciary Committees at the commencement of the Special Session. The Special Committee recommended language for a bill that would institute a jury procedure for the Hard 50 determination.

At the Special Session, the Legislature considered and passed HB 2002, which was an amended version of the language proposed by the Special Committee. HB 2002 went into effect upon its publication in the Kansas Register (September 6, 2013).

The source for the attached sentencing range grid for drug offenses and nondrug offenses is the *Kansas Sentencing Commission Guidelines, Desk Reference Manual, 2013*.

SENTENCING RANGE- DRUG OFFENSES

Categories → Severity Level ↓	A	B	C	D	E	F	G	H	I
	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10
Presumptive Probation									
Border Box									
Presumptive Imprisonment									

•Fines not to exceed \$500,000 (SL1-SL2), \$300,000 (SL3-SL4), \$100,000 (SL5)

•Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.

Levels	Distribute or Possess w/ intent to Distribute					Cultivate	Dosage Units	Postrelease	Probation	Good Time
	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	2nd or Meth					
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	36	36	36	15%
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	36	36	36	15%
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	36	36	36	15%
IV	< 3.5 g	< 1 g	< 25 g			<10	24	24	≤ 18	20%
V	Possession		Possession-2nd offense				12	12	*≤12	20%

* ≤ 18 months for 2003 SB123 offenders

SENTENCING RANGE – NONDRUG OFFENSES

Category → Severity Level ↓	A 3+ Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felonies	D 1 Person Felonies	E 3+ Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felonies	H 2+ Misdemeanor	I 1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 263 240	246 284 221	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	88 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	186 130 122	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	6 5 5

Probation Terms are:
 36 months recommended for felones classified in Severity Levels 1-5
 24 months recommended for felones classified in Severity Levels 6-7
 18 months (up to) for felones classified in Severity Level 8
 12 months (up to) for felones classified in Severity Levels 9-10

Postrelease Supervision Terms are:
 36 months for felones classified in Severity Levels 1-4
 24 months for felones classified in Severity Levels 5-6
 12 months for felones classified in Severity Levels 7-10

Postrelease for felones committed before 4/20/95 are:
 24 months for felones classified in Severity Levels 1-6
 12 months for felones classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

KSG Desk Reference Manual 2013
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