

HOUSE BILL No. 2146

By Committee on Corrections and Juvenile Justice

1-27





1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; drug crimes; expanding the number of presumptive
3 probation and border grid blocks; authorizing more offenders to be
4 sentenced to participate in the certified drug abuse treatment program;
5 amending K.S.A. 2020 Supp. 21-6805 and 21-6824 and repealing the
6 existing sections.

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

9 Section 1. K.S.A. 2020 Supp. 21-6805 is hereby amended to read as
10 follows: 21-6805. (a) The provisions of this section shall be applicable to
11 the sentencing guidelines grid for drug crimes. The following sentencing
12 guidelines grid for drug crimes shall be applicable to felony crimes under
13 K.S.A. 2020 Supp. 21-5701 through 21-5717, and amendments thereto,
14 except as otherwise provided by law:

SENTENCING RANGE - DRUG 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	1 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 164	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 66 61	68 64 60	62 59 55	61 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	31 29 27	29 27 25	28 26 24	26 24 22
V	42 40 37	36 34 32	32 30 28	28 26 24	22 20 18	22 18 16	20 16 14	14 13 12	11 10 9

LEGEND
 Prescriptive Punishment
 Probation
 Suspended Imprisonment
 Assumptive Imprisonment

SENTENCING RANGE - DRUG 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	204 194 185	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	137 122	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	54 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	30 28 26	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

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 (b) Sentences expressed in the sentencing guidelines grid for drug
2 crimes in subsection (a) represent months of imprisonment.

3 (c) (1) The sentencing court has discretion to sentence at any place
4 within the sentencing range. In the usual case it is recommended that the
5 sentencing judge select the center of the range and reserve the upper and
6 lower limits for aggravating and mitigating factors insufficient to warrant a
7 departure. The sentencing court shall not distinguish between the
8 controlled substances cocaine base (9041L000) and cocaine hydrochloride
9 (9041L005) when sentencing within the sentencing range of the grid
10 block.

11 (2) In presumptive imprisonment cases, the sentencing court shall
12 pronounce the complete sentence which shall include the:

13 (A) Prison sentence;

14 (B) maximum potential reduction to such sentence as a result of good
15 time; and

16 (C) period of postrelease supervision at the sentencing hearing.
17 Failure to pronounce the period of postrelease supervision shall not negate
18 the existence of such period of postrelease supervision.

19 (3) In presumptive nonprison cases, the sentencing court shall
20 pronounce the prison sentence as well as the duration of the nonprison
21 sanction at the sentencing hearing.

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such
24 offender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be
26 nonimprisonment. If an offense is classified in a grid block above the
27 dispositional line, the presumptive disposition shall be imprisonment. If an
28 offense is classified in grid blocks 4-E, 4-F, ~~4-G, 4-H, 4-I, 5-C or 5-D~~ or
29 3-G, the court may impose an optional nonprison sentence as provided in
30 ~~subsection (q)~~ of K.S.A. 2020 Supp. 21-6804(q), and amendments thereto.

31 (e) The sentence for a second or subsequent conviction for unlawful
32 manufacturing of a controlled substance, K.S.A. 65-4159, prior to its
33 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, K.S.A. 2020
34 Supp. 21-5703, and amendments thereto, or a substantially similar offense
35 from another jurisdiction, if the controlled substance in any prior
36 conviction was methamphetamine, as defined by ~~subsection (d)(3) or (f)(1)~~
37 of K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog
38 thereof, shall be a presumptive term of imprisonment of two times the
39 maximum duration of the presumptive term of imprisonment. The court
40 may impose an optional reduction in such sentence of not to exceed 50%
41 of the mandatory increase provided by this subsection upon making a
42 finding on the record that one or more of the mitigating factors as specified
43 in K.S.A. 2020 Supp. 21-6815, and amendments thereto, justify such a

1 reduction in sentence. Any decision made by the court regarding the
2 reduction in such sentence shall not be considered a departure and shall
3 not be subject to appeal.

4 (f) (1) The sentence for a third or subsequent felony conviction of
5 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-
6 36a06, prior to its transfer, or K.S.A. 2020 Supp. 21-5706, and
7 amendments thereto, shall be a presumptive term of imprisonment and the
8 defendant shall be sentenced to prison as provided by this section. The
9 defendant's term of imprisonment shall be served in the custody of the
10 secretary of corrections in a facility designated by the secretary. Subject to
11 appropriations therefore, the defendant shall participate in an intensive
12 substance abuse treatment program, of at least four months duration,
13 selected by the secretary of corrections. If the secretary determines that
14 substance abuse treatment resources are otherwise available, such term of
15 imprisonment may be served in a facility designated by the secretary of
16 corrections in the custody of the secretary of corrections to participate in
17 an intensive substance abuse treatment program. The secretary's
18 determination regarding the availability of treatment resources shall not be
19 subject to review. Upon the successful completion of such intensive
20 treatment program, the offender shall be returned to the court and the court
21 may modify the sentence by directing that a less severe penalty be
22 imposed in lieu of that originally adjudged. If the offender's term of
23 imprisonment expires, the offender shall be placed under the applicable
24 period of postrelease supervision.

25 (2) Such defendant's term of imprisonment shall not be subject to
26 modification under paragraph (1) if:

27 (A) The defendant has previously completed a certified drug abuse
28 treatment program, as provided in K.S.A. 75-52,144, and amendments
29 thereto;

30 (B) has been discharged or refused to participate in a certified drug
31 abuse treatment program, as provided in K.S.A. 75-52,144, and
32 amendments thereto;

33 (C) has completed an intensive substance abuse treatment program
34 under paragraph (1); or

35 (D) has been discharged or refused to participate in an intensive
36 substance abuse treatment program under paragraph (1).

37 The sentence under this subsection shall not be considered a departure
38 and shall not be subject to appeal.

39 (g) (1) Except as provided further, if the trier of fact makes a finding
40 that an offender carried a firearm to commit a drug felony, or in
41 furtherance of a drug felony, possessed a firearm, in addition to the
42 sentence imposed pursuant to K.S.A. 2020 Supp. 21-6801 through 21-
43 6824, and amendments thereto, the offender shall be sentenced to:

1 (A) Except as provided in subsection (g)(1)(B), an additional 6
2 months' imprisonment; and

3 (B) if the trier of fact makes a finding that the firearm was
4 discharged, an additional 18 months' imprisonment.

5 (2) The sentence imposed pursuant to subsection (g)(1) shall be
6 presumptive imprisonment. Such sentence shall not be considered a
7 departure and shall not be subject to appeal.

8 (3) The provisions of this subsection shall not apply to violations of
9 K.S.A. 2020 Supp. 21-5706 or 21-5713, and amendments thereto.

10 Sec. 2. K.S.A. 2020 Supp. 21-6824 is hereby amended to read as
11 follows: 21-6824. (a) There is hereby established a nonprison sanction of
12 certified drug abuse treatment programs for certain offenders who are
13 sentenced on or after November 1, 2003. Placement of offenders in
14 certified drug abuse treatment programs by the court shall be limited to
15 placement of adult offenders, convicted of a felony violation of K.S.A.
16 2020 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense
17 is classified in grid blocks:

18 (1) ~~5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I~~ of the sentencing
19 guidelines grid for drug crimes and such offender has no felony conviction
20 of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their
21 repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their
22 transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705 or 21-5716, and
23 amendments thereto, or any substantially similar offense from another
24 jurisdiction; or

25 (2) ~~5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I, 3-G, 3-H or 3-I~~ of the
26 sentencing guidelines grid for drug crimes, such offender has no felony
27 conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164,
28 prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16,
29 prior to their transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705 or 21-5716,
30 and amendments thereto, or any substantially similar offense from another
31 jurisdiction, if the person felonies in the offender's criminal history were
32 severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines
33 grid for nondrug crimes, and the court finds and sets forth with
34 particularity the reasons for finding that the safety of the members of the
35 public will not be jeopardized by such placement in a drug abuse treatment
36 program.

37 (b) As a part of the presentence investigation pursuant to K.S.A. 2020
38 Supp. 21-6813, and amendments thereto, offenders who meet the
39 requirements of subsection (a), unless otherwise specifically ordered by
40 the court, shall be subject to:

41 (1) A drug abuse assessment which shall include a clinical interview
42 with a mental health professional and a recommendation concerning drug
43 abuse treatment for the offender; and

1 (2) a criminal risk-need assessment. The criminal risk-need
2 assessment shall assign a high or low risk status to the offender.

3 (c) If the offender is assigned a high risk status as determined by the
4 drug abuse assessment performed pursuant to subsection (b)(1) and a
5 moderate or high risk status as determined by the criminal risk-need
6 assessment performed pursuant to subsection (b)(2), the sentencing court
7 shall commit the offender to treatment in a drug abuse treatment program
8 until the court determines the offender is suitable for discharge by the
9 court. The term of treatment shall not exceed 18 months. The court may
10 extend the term of probation, pursuant to K.S.A. 2020 Supp. 21-6608(c)
11 (3), and amendments thereto. The term of treatment may not exceed the
12 term of probation.

13 (d) (1) Offenders who are committed to a drug abuse treatment
14 program pursuant to subsection (c) shall be supervised by community
15 correctional services.

16 (2) Offenders who are not committed to a drug abuse treatment
17 program pursuant to subsection (c) shall be supervised by community
18 correctional services or court services based on the result of the criminal
19 risk assessment.

20 (e) Placement of offenders under subsection (a)(2) shall be subject to
21 the departure sentencing statutes of the revised Kansas sentencing
22 guidelines act.

23 (f) (1) Offenders in drug abuse treatment programs shall be
24 discharged from such program if the offender:

25 (A) Is convicted of a new felony; or

26 (B) has a pattern of intentional conduct that demonstrates the
27 offender's refusal to comply with or participate in the treatment program,
28 as established by judicial finding.

29 (2) Offenders who are discharged from such program shall be subject
30 to the revocation provisions of K.S.A. 2020 Supp. 21-6604(n), and
31 amendments thereto.

32 (g) As used in this section, "mental health professional" includes
33 licensed social workers, persons licensed to practice medicine and surgery,
34 licensed psychologists, licensed professional counselors or registered
35 alcohol and other drug abuse counselors licensed or certified as addiction
36 counselors who have been certified by the secretary of corrections to treat
37 offenders pursuant to K.S.A. 75-52,144, and amendments thereto.

38 (h) (1) Offenders who meet the requirements of subsection (a) shall
39 not be subject to the provisions of this section and shall be sentenced as
40 otherwise provided by law, if such offenders:

41 (A) Are residents of another state and are returning to such state
42 pursuant to the interstate corrections compact or the interstate compact for
43 adult offender supervision; or

1 (B) are not lawfully present in the United States and being detained
2 for deportation; or

3 (C) do not meet the risk assessment levels provided in subsection (c).

4 (2) Such sentence shall not be considered a departure and shall not be
5 subject to appeal.

6 (i) The court may order an offender who otherwise does not meet the
7 requirements of subsection (c) to undergo one additional drug abuse
8 assessment while such offender is on probation. Such offender may be
9 ordered to undergo drug abuse treatment pursuant to subsection (a) if such
10 offender is determined to meet the requirements of subsection (c). The cost
11 of such assessment shall be paid by such offender.

12 Sec. 3. K.S.A. 2020 Supp. 21-6805 and 21-6824 are hereby repealed.

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