

**As Amended by House Committee**

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*Session of 2021*

**HOUSE BILL No. 2146**

By Committee on Corrections and Juvenile Justice

1-27

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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; **modifying the sentence terms for**  
4 **certain drug offenses**; authorizing more offenders to be sentenced to  
5 participate in the certified drug abuse treatment program; amending  
6 K.S.A. 2020 Supp. 21-6805 and 21-6824 and repealing the existing  
7 sections.  
8

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

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

1

**SENTENCING RANGE - DRUG OFFENSES**

Category →	A	B	C	D	E	F	G	H	I
Severely ↓	3 + Person Felony	2 Person Felony	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felony	2 Nonperson Felony	1 Nonperson Felony	1 Misdemeanor Felony	1 Misdemeanor No Record
I	204 194 185	196 186 176	179 170 161	170 161	170 162 154 150	167 159 150	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 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46 41	47 44 41	42 40 37 32	36 34 32	32 30 28 24 20	30 28 24 20	28 26 24 20	26 24 20 18 16 14	24 20 18 16 14 12 11
V	42 40 37	36 34 32	34 32 30 28 24 20	30 28 24 20 18 16 14 12 11	28 26 24 20 18 16 14 12 11	26 24 20 18 16 14 12 11	24 20 18 16 14 12 11	22 20 18 16 14 12 11	20 18 16 14 12 11

LEGEND
<del>Presumptive Probation</del>
<del>Presumptive Imprisonment</del>

**SENTENCING RANGE - DRUG OFFENSES**

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 Person Felony	2 Person Felony	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felony	2 Nonperson Felony	1 Nonperson Felony	Misdemeanor 2+	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	116 111 108	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 66 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	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

**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 Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	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	43 40 37	39 34 32	32 30 28	31 29 27	23 22 20	19 18 17	16 15 14
V	36 34 32	31 28 26	25 24 23	22 20 18	18 17 16	16 15 14	14 13 12	13 12 11	13 12 11

LEGEND
Presumptive Probation
Reprobation
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-C, 4-D**, 4-E, 4-F, ~~4-G, 4-H, 4-I, 5-C~~  
29 ~~or 5-D or 3-G, 5-B or 5-C~~, the court may impose an optional nonprison  
30 sentence as provided in ~~subsection (q) of~~ K.S.A. 2020 Supp. 21-6804(q),  
31 and amendments thereto.

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

1 in K.S.A. 2020 Supp. 21-6815, and amendments thereto, justify such a  
2 reduction in sentence. Any decision made by the court regarding the  
3 reduction in such sentence shall not be considered a departure and shall  
4 not be subject to appeal.

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

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

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

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

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

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

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

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

1 6824, and amendments thereto, the offender shall be sentenced to:

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

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

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

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

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

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

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

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

42 (1) A drug abuse assessment which shall include a clinical interview  
43 with a mental health professional and a recommendation concerning drug

1 abuse treatment for the offender; and

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

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

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

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

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

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

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

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

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

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

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

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



1 adult offender supervision; or

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

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

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

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

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

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