

**SENATE BILL No. 238**

By Committee on Judiciary

2-10

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to crimes involving controlled substances; adding the placing of  
3 controlled substances into pills into the definition of manufacture;  
4 increasing the criminal penalties for manufacturing or distributing  
5 fentanyl-related controlled substances; creating a special sentencing  
6 rule for manufacturing or distributing fentanyl-related controlled  
7 substances and any controlled substances that are likely to be attractive  
8 to minors because of their appearance or packaging; amending K.S.A.  
9 2022 Supp. 21-5701, 21-5703, 21-5705 and 21-6805 and repealing the  
10 existing sections; also repealing K.S.A. 2022 Supp. 21-5701b.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 2022 Supp. 21-5701 is hereby amended to read as  
14 follows: 21-5701. As used in K.S.A. 2022 Supp. 21-5701 through 21-  
15 5717, and amendments thereto:

16 (a) "Controlled substance" means any drug, substance or immediate  
17 precursor included in any of the schedules designated in K.S.A. 65-4105,  
18 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

19 (b) (1) "Controlled substance analog" means a substance that is  
20 intended for human consumption, and at least one of the following:

21 (A) The chemical structure of the substance is substantially similar to  
22 the chemical structure of a controlled substance listed in or added to the  
23 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments  
24 thereto;

25 (B) the substance has a stimulant, depressant or hallucinogenic effect  
26 on the central nervous system substantially similar to the stimulant,  
27 depressant or hallucinogenic effect on the central nervous system of a  
28 controlled substance included in the schedules designated in K.S.A. 65-  
29 4105 or 65-4107, and amendments thereto; or

30 (C) with respect to a particular individual, such individual represents  
31 or intends the substance to have a stimulant, depressant or hallucinogenic  
32 effect on the central nervous system substantially similar to the stimulant,  
33 depressant or hallucinogenic effect on the central nervous system of a  
34 controlled substance included in the schedules designated in K.S.A. 65-  
35 4105 or 65-4107, and amendments thereto.

36 (2) "Controlled substance analog" does not include:

1 (A) A controlled substance;

2 (B) a substance for which there is an approved new drug application;  
3 or

4 (C) a substance with respect to which an exemption is in effect for  
5 investigational use by a particular person under section 505 of the federal  
6 food, drug, and cosmetic act, 21 U.S.C. § 355, to the extent conduct with  
7 respect to the substance is permitted by the exemption.

8 (c) "Cultivate" means the planting or promotion of growth of five or  
9 more plants that contain or can produce controlled substances.

10 (d) "Distribute" means the actual, constructive or attempted transfer  
11 from one person to another of some item whether or not there is an agency  
12 relationship. "Distribute" includes, but is not limited to, sale, offer for sale  
13 or any act that causes some item to be transferred from one person to  
14 another. "Distribute" does not include acts of administering, dispensing or  
15 prescribing a controlled substance as authorized by the pharmacy act of the  
16 state of Kansas, the uniform controlled substances act or otherwise  
17 authorized by law.

18 (e) (1) "Drug" means:

19 (A) Substances recognized as drugs in the official United States  
20 pharmacopeia, official homeopathic pharmacopoeia of the United States or  
21 official national formulary or any supplement to any of them;

22 (B) substances intended for use in the diagnosis, cure, mitigation,  
23 treatment or prevention of disease in humans or animals;

24 (C) substances, other than food, intended to affect the structure or any  
25 function of the body of humans or animals; and

26 (D) substances intended for use as a component of any article  
27 specified in subparagraph (A), (B) or (C).

28 (2) "Drug" does not include devices or their components, parts or  
29 accessories.

30 (f) (1) "Drug paraphernalia" means all equipment and materials of  
31 any kind that are used, or primarily intended or designed for use in  
32 planting, propagating, cultivating, growing, harvesting, manufacturing,  
33 compounding, converting, producing, processing, preparing, testing,  
34 analyzing, packaging, repackaging, storing, containing, concealing,  
35 injecting, ingesting, inhaling or otherwise introducing into the human body  
36 a controlled substance and in violation of this act. "Drug paraphernalia"  
37 shall include, but is not limited to:

38 (1)(A) Kits used or intended for use in planting, propagating,  
39 cultivating, growing or harvesting any species of plant that is a controlled  
40 substance or from which a controlled substance can be derived;

41 (2)(B) kits used or intended for use in manufacturing, compounding,  
42 converting, producing, processing or preparing controlled substances;

43 (3)(C) isomerization devices used or intended for use in increasing

- 1 the potency of any species of plant that is a controlled substance;
- 2 ~~(4)~~(D) testing equipment used or intended for use in identifying or in  
3 analyzing the strength, effectiveness or purity of controlled substances;
- 4 ~~(5)~~(E) scales and balances used or intended for use in weighing or  
5 measuring controlled substances;
- 6 ~~(6)~~(F) diluents and adulterants, including, but not limited to, quinine  
7 hydrochloride, mannitol, mannite, dextrose and lactose that are used or  
8 intended for use in cutting controlled substances;
- 9 ~~(7)~~(G) separation gins and sifters used or intended for use in  
10 removing twigs and seeds from or otherwise cleaning or refining  
11 marijuana;
- 12 ~~(8)~~(H) blenders, bowls, containers, spoons and mixing devices used  
13 or intended for use in compounding controlled substances;
- 14 ~~(9)~~(I) capsules, balloons, envelopes, bags and other containers used  
15 or intended for use in packaging small quantities of controlled substances;
- 16 ~~(10)~~(J) containers and other objects used or intended for use in  
17 storing or concealing controlled substances;
- 18 ~~(11)~~(K) hypodermic syringes, needles and other objects used or  
19 intended for use in parenterally injecting controlled substances into the  
20 human body;
- 21 ~~(12)~~(L) objects used or primarily intended or designed for use in  
22 ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish,  
23 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into  
24 the human body, such as:
- 25 ~~(A)~~(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes  
26 with or without screens, permanent screens, hashish heads or punctured  
27 metal bowls;
- 28 ~~(B)~~(ii) water pipes, bongs or smoking pipes designed to draw smoke  
29 through water or another cooling device;
- 30 ~~(C)~~(iii) carburetion pipes, glass or other ~~heat-resistant~~ *heat-resistant*  
31 tubes or any other device used, intended to be used or designed to be used  
32 to cause vaporization of a controlled substance for inhalation;
- 33 ~~(D)~~(iv) smoking and carburetion masks;
- 34 ~~(E)~~(v) roach clips, objects used to hold burning material, such as a  
35 marijuana cigarette, that has become too small or too short to be held in  
36 the hand;
- 37 ~~(F)~~(vi) miniature cocaine spoons and cocaine vials;
- 38 ~~(G)~~(vii) chamber smoking pipes;
- 39 ~~(H)~~(viii) carburetor smoking pipes;
- 40 ~~(I)~~(ix) electric smoking pipes;
- 41 ~~(J)~~(x) air-driven smoking pipes;
- 42 ~~(K)~~(xi) chillums;
- 43 ~~(L)~~(xii) bongs;

- 1       ~~(M)~~(xiii) ice pipes or chillers;
- 2       ~~(N)~~(xiv) any smoking pipe manufactured to disguise its intended
- 3 purpose;
- 4       ~~(O)~~(xv) wired cigarette papers; or
- 5       ~~(P)~~(xvi) cocaine freebase kits.
- 6       (2) "Drug paraphernalia"—~~shall~~ does not include any products,
- 7 chemicals or materials described in K.S.A. 2022 Supp. 21-5709(a), and
- 8 amendments thereto.
- 9       (g) "*Fentanyl-related controlled substance*" means any substance
- 10 designated in K.S.A. 65-4105(b)(1), (b)(2), (b)(4), (b)(10), (b)(11), (b)(14),
- 11 (b)(15), (b)(16), (b)(20), (b)(22), (b)(23), (b)(24), (b)(37), (b)(41), (b)(45),
- 12 (b)(46), (b)(47), (b)(49), (b)(57), (b)(58), (b)(59), (b)(60), (b)(61), (b)(62),
- 13 (b)(73), (b)(74), (b)(78), (g)(1) or (g)(2) or 65-4107(c)(1), (c)(6), (c)(9),
- 14 (c)(26), (c)(28), (c)(30), (f)(3)(A) or (f)(3)(B), and amendments thereto, or
- 15 any analog thereof.
- 16       (h) "Immediate precursor" means a substance that the state board of
- 17 pharmacy has found to be and by rules and regulations designates as being
- 18 the principal compound commonly used or produced primarily for use and
- 19 that is an immediate chemical intermediary used or likely to be used in the
- 20 manufacture of a controlled substance, the control of which is necessary to
- 21 prevent, curtail or limit manufacture.
- 22       ~~(h)~~(i) "Isomer" means all enantiomers and diastereomers.
- 23       ~~(i)~~(j) "Manufacture" means the production, preparation, propagation,
- 24 compounding, conversion or processing of *or placing into pill or capsule*
- 25 *form* a controlled substance either directly or indirectly or by extraction
- 26 from substances of natural origin or independently by means of chemical
- 27 synthesis or by a combination of extraction and chemical synthesis.
- 28 "Manufacture" does not include:
- 29       (1) The preparation or compounding of a controlled substance by an
- 30 individual for the individual's own lawful use or the preparation,
- 31 compounding, packaging or labeling of a controlled substance:
- 32       (A) By a practitioner or the practitioner's agent pursuant to a lawful
- 33 order of a practitioner as an incident to the practitioner's administering or
- 34 dispensing of a controlled substance in the course of the practitioner's
- 35 professional practice; or
- 36       (B) by a practitioner or by the practitioner's authorized agent under
- 37 such practitioner's supervision for the purpose of or as an incident to
- 38 research, teaching or chemical analysis or by a pharmacist or medical care
- 39 facility as an incident to dispensing of a controlled substance; or
- 40       (2) the addition of diluents or adulterants, including, but not limited
- 41 to, quinine hydrochloride, mannitol, mannite, dextrose or lactose that are
- 42 intended for use in cutting a controlled substance.
- 43       ~~(j)~~(k) "Marijuana" means all parts of all varieties of the plant

1 Cannabis whether growing or not, the seeds thereof, the resin extracted  
2 from any part of the plant and every compound, manufacture, salt,  
3 derivative, mixture or preparation of the plant, its seeds or resin.  
4 "Marijuana" does not include:

5 (1) The mature stalks of the plant, fiber produced from the stalks, oil  
6 or cake made from the seeds of the plant, any other compound,  
7 manufacture, salt, derivative, mixture or preparation of the mature stalks,  
8 except the resin extracted therefrom, fiber, oil or cake or the sterilized seed  
9 of the plant that is incapable of germination;

10 (2) any substance listed in schedules II through V of the uniform  
11 controlled substances act;

12 (3) drug products approved by the United States food and drug  
13 administration as of the effective date of this act;

14 (4) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-  
15 2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or

16 (5) industrial hemp as defined in K.S.A. 2-3901, and amendments  
17 thereto, when cultivated, produced, possessed or used for activities  
18 authorized by the commercial industrial hemp act.

19 ~~(k)~~(l) "Minor" means a person under 18 years of age.

20 ~~(j)~~(m) "Narcotic drug" means any of the following whether produced  
21 directly or indirectly by extraction from substances of vegetable origin or  
22 independently by means of chemical synthesis or by a combination of  
23 extraction and chemical synthesis:

24 (1) Opium and opiate and any salt, compound, derivative or  
25 preparation of opium or opiate;

26 (2) any salt, compound, isomer, derivative or preparation thereof that  
27 is chemically equivalent or identical with any of the substances referred to  
28 in paragraph (1) but not including the isoquinoline alkaloids of opium;

29 (3) opium poppy and poppy straw;

30 (4) coca leaves and any salt, compound, derivative or preparation of  
31 coca leaves and any salt, compound, isomer, derivative or preparation  
32 thereof that is chemically equivalent or identical with any of these  
33 substances, but not including decocainized coca leaves or extractions of  
34 coca leaves that do not contain cocaine or ecgonine.

35 ~~(m)~~(n) "Opiate" means any substance having an addiction-forming or  
36 addiction-sustaining liability similar to morphine or being capable of  
37 conversion into a drug having addiction-forming or addiction-sustaining  
38 liability. "Opiate" does not include, unless specifically designated as  
39 controlled under K.S.A. 65-4102, and amendments thereto, the  
40 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts  
41 (dextromethorphan). "Opiate" does include its racemic and levorotatory  
42 forms.

43 ~~(n)~~(o) "Opium poppy" means the plant of the species *Papaver*

1 somniferum l. except its seeds.

2 ~~(p)~~(p) "Person" means an individual, corporation, government or  
3 governmental subdivision or agency, business trust, estate, trust,  
4 partnership, association or any other legal entity.

5 ~~(q)~~(q) "Poppy straw" means all parts, except the seeds, of the opium  
6 poppy, after mowing.

7 ~~(q)~~—"Possession" means having joint or exclusive control over an item  
8 with knowledge of and intent to have such control or knowingly keeping  
9 some item in a place where the person has some measure of access and  
10 right of control.

11 (r) "School property" means property upon which is located a  
12 structure used by a unified school district or an accredited nonpublic  
13 school for student instruction or attendance or extracurricular activities of  
14 pupils enrolled in kindergarten or any of the grades one through 12. This  
15 definition shall not be construed as requiring that school be in session or  
16 that classes are actually being held at the time of the offense or that  
17 children must be present within the structure or on the property during the  
18 time of any alleged criminal act. If the structure or property meets the  
19 above definition, the actual use of that structure or property at the time  
20 alleged shall not be a defense to the crime charged or the sentence  
21 imposed.

22 (s) "Simulated controlled substance" means any product that  
23 identifies itself by a common name or slang term associated with a  
24 controlled substance and that indicates on its label or accompanying  
25 promotional material that the product simulates the effect of a controlled  
26 substance.

27 Sec. 2. K.S.A. 2022 Supp. 21-5703 is hereby amended to read as  
28 follows: 21-5703. (a) It shall be unlawful for any person to manufacture  
29 any controlled substance or controlled substance analog.

30 (b) Violation or attempted violation of subsection (a) is a:

31 (1) Drug severity level 2 felony, except as provided in subsections (b)

32 (2) and (b)(3);

33 (2) drug severity level 1 felony if:

34 (A) The controlled substance is not methamphetamine, as defined by  
35 ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1), and~~  
36 amendments thereto, or an analog thereof; ~~and~~

37 (B) *the controlled substance is not a fentanyl-related controlled*  
38 *substance; and*

39 (C) the offender has a prior conviction for unlawful manufacturing of  
40 a controlled substance under this section, K.S.A. 65-4159, prior to its  
41 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or a substantially  
42 similar offense from another jurisdiction and the substance was not  
43 methamphetamine, as defined by ~~subsection (d)(3) or (f)(1) of K.S.A. 65-~~

1 4107(d)(3) or (f)(1), and amendments thereto, or an analog thereof, in any  
2 such prior conviction; and

3 (3) drug severity level 1 felony if the controlled substance is  
4 methamphetamine, as defined by ~~subsection (d)(3) or (f)(1) of K.S.A. 65-~~  
5 4107(d)(3) or (f)(1), and amendments thereto, or an analog thereof, *or is a*  
6 *fentanyl-related controlled substance*.

7 (c) The provisions of ~~subsection (d) of K.S.A. 2022 Supp. 21-~~  
8 5301(d), and amendments thereto, shall not apply to a violation of  
9 attempting to unlawfully manufacture any controlled substance or  
10 controlled substance analog pursuant to this section.

11 (d) For persons arrested and charged under this section, bail shall be  
12 at least \$50,000 cash or surety, and such person shall not be released upon  
13 the person's own recognizance pursuant to K.S.A. 22-2802, and  
14 amendments thereto, unless the court determines, on the record, that the  
15 defendant is not likely to re-offend, the court imposes pretrial supervision,  
16 or the defendant agrees to participate in a licensed or certified drug  
17 treatment program.

18 (e) The sentence of a person who violates this section shall not be  
19 subject to statutory provisions for suspended sentence, community service  
20 work or probation.

21 (f) The sentence of a person who violates this section, K.S.A. 65-  
22 4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, prior to its  
23 transfer, shall not be reduced because these sections prohibit conduct  
24 identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their  
25 repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 2022  
26 Supp. 21-5705, and amendments thereto.

27 Sec. 3. K.S.A. 2022 Supp. 21-5705 is hereby amended to read as  
28 follows: 21-5705. (a) It shall be unlawful for any person to distribute or  
29 possess with the intent to distribute any of the following controlled  
30 substances or controlled substance analogs thereof:

31 (1) Opiates, opium or narcotic drugs, or any stimulant designated in  
32 ~~subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1),~~  
33 and amendments thereto;

34 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~  
35 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~  
36 4109(b) or (c) or ~~subsection (b) of K.S.A. 65-4111(b),~~ and amendments  
37 thereto;

38 (3) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~  
39 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~  
40 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments  
41 thereto;

42 (4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~  
43 65-4105(d), ~~subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~

- 1 ~~K.S.A. 65-4109(g)~~, and amendments thereto;
- 2 (5) any substance designated in ~~subsection (g) of K.S.A. 65-4105(g)~~  
3 ~~and subsection (e), (d), (e), (f) or (g) of K.S.A. 65-4111(c), (d), (e), (f) or~~  
4 ~~(g)~~, and amendments thereto;
- 5 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~  
6 ~~4109(f)~~, and amendments thereto; or
- 7 (7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h)~~,  
8 and amendments thereto.
- 9 (b) It shall be unlawful for any person to distribute or possess with  
10 the intent to distribute a controlled substance or a controlled substance  
11 analog designated in K.S.A. 65-4113, and amendments thereto.
- 12 (c) It shall be unlawful for any person to cultivate any controlled  
13 substance or controlled substance analog listed in subsection (a).
- 14 (d) (1) Except as provided further, violation of subsection (a) is a:
- 15 (A) Drug severity level 4 felony if the quantity of the material was  
16 less than 3.5 grams;
- 17 (B) drug severity level 3 felony if the quantity of the material was at  
18 least 3.5 grams but less than 100 grams;
- 19 (C) drug severity level 2 felony if the quantity of the material was at  
20 least 100 grams but less than 1 kilogram; and
- 21 (D) drug severity level 1 felony if the quantity of the material was 1  
22 kilogram or more.
- 23 (2) Violation of subsection (a) with respect to material containing any  
24 quantity of marijuana, or an analog thereof, is a:
- 25 (A) Drug severity level 4 felony if the quantity of the material was  
26 less than 25 grams;
- 27 (B) drug severity level 3 felony if the quantity of the material was at  
28 least 25 grams but less than 450 grams;
- 29 (C) drug severity level 2 felony if the quantity of the material was at  
30 least 450 grams but less than 30 kilograms; and
- 31 (D) drug severity level 1 felony if the quantity of the material was 30  
32 kilograms or more.
- 33 (3) Violation of subsection (a) with respect to material containing any  
34 quantity of heroin, as defined by ~~subsection (e)(1) of K.S.A. 65-4105(c)~~  
35 ~~(1)~~, and amendments thereto, ~~or methamphetamine, as defined by~~  
36 ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1)~~, and  
37 amendments thereto, *or a fentanyl-related controlled substance* or an  
38 analog thereof, is a:
- 39 (A) Drug severity level 4 felony if the quantity of the material was  
40 less than 1 gram;
- 41 (B) drug severity level 3 felony if the quantity of the material was at  
42 least 1 gram but less than 3.5 grams;
- 43 (C) drug severity level 2 felony if the quantity of the material was at



1 least 3.5 grams but less than 100 grams; and

2 (D) drug severity level 1 felony if the quantity of the material was  
3 100 grams or more.

4 (4) Violation of subsection (a) with respect to material containing any  
5 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,  
6 65-4109 or 65-4111, and amendments thereto, or an analog thereof,  
7 distributed by dosage unit, is a:

8 (A) Drug severity level 4 felony if the number of dosage units was  
9 fewer than 10;

10 (B) drug severity level 3 felony if the number of dosage units was at  
11 least 10 but less than 100;

12 (C) drug severity level 2 felony if the number of dosage units was at  
13 least 100 but less than 1,000; and

14 (D) drug severity level 1 felony if the number of dosage units was  
15 1,000 or more.

16 (5) For any violation of subsection (a), the severity level of the  
17 offense shall be increased one level if the controlled substance or  
18 controlled substance analog was distributed or possessed with the intent to  
19 distribute on or within 1,000 feet of any school property.

20 (6) Violation of subsection (b) is a:

21 (A) Class A person misdemeanor, except as provided in subsection  
22 (d)(6)(B); and

23 (B) nondrug severity level 7, person felony if the substance was  
24 distributed to or possessed with the intent to distribute to a minor.

25 (7) Violation of subsection (c) is a:

26 (A) Drug severity level 3 felony if the number of plants cultivated  
27 was more than 4 but fewer than 50;

28 (B) drug severity level 2 felony if the number of plants cultivated was  
29 at least 50 but fewer than 100; and

30 (C) drug severity level 1 felony if the number of plants cultivated was  
31 100 or more.

32 (e) In any prosecution under this section, there shall be a rebuttable  
33 presumption of an intent to distribute if any person possesses the following  
34 quantities of controlled substances or analogs thereof:

35 (1) 450 grams or more of marijuana;

36 (2) 3.5 grams or more of heroin or methamphetamine;

37 (3) 100 dosage units or more containing a controlled substance; or

38 (4) 100 grams or more of any other controlled substance.

39 (f) It shall not be a defense to charges arising under this section that  
40 the defendant:

41 (1) Was acting in an agency relationship on behalf of any other party  
42 in a transaction involving a controlled substance or controlled substance  
43 analog;

1 (2) did not know the quantity of the controlled substance or  
2 controlled substance analog; or

3 (3) did not know the specific controlled substance or controlled  
4 substance analog contained in the material that was distributed or  
5 possessed with the intent to distribute.

6 (g) As used in this section:

7 (1) "Material" means the total amount of any substance, including a  
8 compound or a mixture, which contains any quantity of a controlled  
9 substance or controlled substance analog.

10 (2) "Dosage unit" means a controlled substance or controlled  
11 substance analog distributed or possessed with the intent to distribute as a  
12 discrete unit, including but not limited to, one pill, one capsule or one  
13 microdot, and not distributed by weight.

14 (A) For steroids, or controlled substances in liquid solution legally  
15 manufactured for prescription use, or an analog thereof, "dosage unit"  
16 means the smallest medically approved dosage unit, as determined by the  
17 label, materials provided by the manufacturer, a prescribing authority,  
18 licensed health care professional or other qualified health authority.

19 (B) For illegally manufactured controlled substances in liquid  
20 solution, or controlled substances in liquid products not intended for  
21 ingestion by human beings, or an analog thereof, "dosage unit" means 10  
22 milligrams, including the liquid carrier medium, except as provided in  
23 subsection (g)(2)(C).

24 (C) For lysergic acid diethylamide (LSD) in liquid form, or an analog  
25 thereof, a dosage unit is defined as 0.4 milligrams, including the liquid  
26 medium.

27 Sec. 4. K.S.A. 2022 Supp. 21-6805 is hereby amended to read as  
28 follows: 21-6805. (a) The provisions of this section shall be applicable to  
29 the sentencing guidelines grid for drug crimes. The following sentencing  
30 guidelines grid for drug crimes shall be applicable to felony crimes under  
31 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto,  
32 except as otherwise provided by law:

1

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level I	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	42 40 37	36 34 32	32 30 28	26 24 22	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 22	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, the  
29 court may impose an optional nonprison sentence as provided in  
30 subsection (q) of K.S.A. 2022 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. 2022  
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. 2022 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. 2022 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. 2022 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. 2022 Supp. 21-5706 or 21-5713, and amendments thereto.

10 (h) *The sentence for a violation of K.S.A. 2022 Supp. 21-5703 or 21-*  
11 *5705, and amendments thereto, with respect to material containing any*  
12 *quantity of a fentanyl-related controlled substance shall be presumed*  
13 *imprisonment and shall be two times the maximum duration of the*  
14 *presumptive term of imprisonment. Such sentence shall not be considered*  
15 *a departure and shall not be subject to appeal.*

16 (i) *The sentence for a violation of K.S.A. 2022 Supp. 21-5703 or 21-*  
17 *5705, and amendments thereto, shall be presumed imprisonment and shall*  
18 *be two times the maximum duration of the presumptive term of*  
19 *imprisonment if the trier of fact makes a finding beyond a reasonable*  
20 *doubt that the controlled substance involved, because of its appearance or*  
21 *packaging, was likely to be attractive to minors. Such sentence shall not*  
22 *be considered a departure and shall not be subject to appeal.*

23 Sec. 5. K.S.A. 2022 Supp. 21-5701, 21-5701b, 21-5703, 21-5705 and  
24 21-6805 are hereby repealed.

25 Sec. 6. This act shall take effect and be in force from and after its  
26 publication in the statute book.