

SENATE BILL No. 41

By Committee on Judiciary

1-17

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to sentencing; relating to possession of a firearm during a drug crime;
3 amending K.S.A. 2012 Supp. 21-6805 and repealing the existing
4 section.
5

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

7 Section 1. K.S.A. 2012 Supp. 21-6805 is hereby amended to read as
8 follows: 21-6805. (a) The provisions of this section shall be applicable to
9 the sentencing guidelines grid for drug crimes. The following sentencing
10 guidelines grid for drug crimes shall be applicable to felony crimes under
11 K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto,
12 except as otherwise provided by law:
13

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

16 (c) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. In the usual case it is recommended that the
18 sentencing judge select the center of the range and reserve the upper and
19 lower limits for aggravating and mitigating factors insufficient to warrant a
20 departure. The sentencing court shall not distinguish between the
21 controlled substances cocaine base (9041L000) and cocaine hydrochloride
22 (9041L005) when sentencing within the sentencing range of the grid
23 block.

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

26 (A) Prison sentence;

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

29 (C) period of postrelease supervision at the sentencing hearing.
30 Failure to pronounce the period of postrelease supervision shall not negate
31 the existence of such period of postrelease supervision.

32 (3) In presumptive nonprison cases, the sentencing court shall
33 pronounce the prison sentence as well as the duration of the nonprison
34 sanction at the sentencing hearing.

35 (d) Each grid block states the presumptive sentencing range for an
36 offender whose crime of conviction and criminal history place such



1 offender in that grid block. If an offense is classified in a grid block below
2 the dispositional line, the presumptive disposition shall be
3 nonimprisonment. If an offense is classified in a grid block above the
4 dispositional line, the presumptive disposition shall be imprisonment. If an
5 offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H, 4-I, 5-C or 5-D, the
6 court may impose an optional nonprison sentence as provided in
7 subsection (q) of K.S.A. 2012 Supp. 21-6804, and amendments thereto.

8 (e) The sentence for a second or subsequent conviction of K.S.A. 65-
9 4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer,
10 or K.S.A. 2012 Supp. 21-5703, and amendments thereto, manufacture of
11 any controlled substance or controlled substance analog, shall be a
12 presumptive term of imprisonment of two times the maximum duration of
13 the presumptive term of imprisonment. The court may impose an optional
14 reduction in such sentence of not to exceed 50% of the mandatory increase
15 provided by this subsection upon making a finding on the record that one
16 or more of the mitigating factors as specified in K.S.A. 2012 Supp. 21-
17 6815, and amendments thereto, justify such a reduction in sentence. Any
18 decision made by the court regarding the reduction in such sentence shall
19 not be considered a departure and shall not be subject to appeal.

20 (f) (1) The sentence for a third or subsequent felony conviction of
21 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-
22 36a06, prior to its transfer, or K.S.A. 2012 Supp. 21-5706, and
23 amendments thereto, shall be a presumptive term of imprisonment and the
24 defendant shall be sentenced to prison as provided by this section. The
25 defendant's term of imprisonment shall be served in the custody of the
26 secretary of corrections in a facility designated by the secretary. Subject to
27 appropriations therefore, the defendant shall participate in an intensive
28 substance abuse treatment program, of at least four months duration,
29 selected by the secretary of corrections. If the secretary determines that
30 substance abuse treatment resources are otherwise available, such term of
31 imprisonment may be served in a facility designated by the secretary of
32 corrections in the custody of the secretary of corrections to participate in
33 an intensive substance abuse treatment program. The secretary's
34 determination regarding the availability of treatment resources shall not be
35 subject to review. Upon the successful completion of such intensive
36 treatment program, the offender shall be returned to the court and the court
37 may modify the sentence by directing that a less severe penalty be
38 imposed in lieu of that originally adjudged. If the offender's term of
39 imprisonment expires, the offender shall be placed under the applicable
40 period of postrelease supervision.

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

43 (A) The defendant has previously completed a certified drug abuse

1 treatment program, as provided in K.S.A. 2012 Supp. 75-52,144, and
2 amendments thereto;

3 (B) has been discharged or refused to participate in a certified drug
4 abuse treatment program, as provided in K.S.A. 2012 Supp. 75-52,144,
5 and amendments thereto;

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

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

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

12 (g) (1) Except as provided further, if the trier of fact makes a finding
13 that an offender ~~carried~~ *possessed* a firearm ~~to commit a drug felony~~
14 *during the commission of*, or in furtherance of, a drug felony, ~~possessed a~~
15 ~~firearm~~, *or any attempt or conspiracy to commit such offense*, in addition
16 to the sentence imposed pursuant to K.S.A. 2012 Supp. 21-6801 through
17 21-6824, and amendments thereto, the offender shall be sentenced to:

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

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

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

25 (3) The provisions of this subsection shall not apply to violations of
26 K.S.A. 2012 Supp. 21-5706 or 21-5713, and amendments thereto.

27 Sec. 2. K.S.A. 2012 Supp. 21-6805 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.

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