

As Amended by Senate Committee

Session of 2013

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:

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	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	36 34 32	34 32 30	33 31 29	36 35 34
V	42 40 37	36 34 32	32 30 28	36 34 32	32 30 28	32 30 28	32 30 28	32 30 28	32 30 28

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. 2012 Supp. 21-6804, and amendments thereto.

31 (e) The sentence for a second or subsequent conviction of K.S.A. 65-
32 4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer,
33 or K.S.A. 2012 Supp. 21-5703, and amendments thereto, manufacture of
34 any controlled substance or controlled substance analog, shall be a
35 presumptive term of imprisonment of two times the maximum duration of
36 the presumptive term of imprisonment. The court may impose an optional
37 reduction in such sentence of not to exceed 50% of the mandatory increase
38 provided by this subsection upon making a finding on the record that one
39 or more of the mitigating factors as specified in K.S.A. 2012 Supp. 21-
40 6815, and amendments thereto, justify such a reduction in sentence. Any
41 decision made by the court regarding the reduction in such sentence shall
42 not be considered a departure and shall not be subject to appeal.

43 (f) (1) The sentence for a third or subsequent felony conviction of

1 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-
2 36a06, prior to its transfer, or K.S.A. 2012 Supp. 21-5706, and
3 amendments thereto, shall be a presumptive term of imprisonment and the
4 defendant shall be sentenced to prison as provided by this section. The
5 defendant's term of imprisonment shall be served in the custody of the
6 secretary of corrections in a facility designated by the secretary. Subject to
7 appropriations therefore, the defendant shall participate in an intensive
8 substance abuse treatment program, of at least four months duration,
9 selected by the secretary of corrections. If the secretary determines that
10 substance abuse treatment resources are otherwise available, such term of
11 imprisonment may be served in a facility designated by the secretary of
12 corrections in the custody of the secretary of corrections to participate in
13 an intensive substance abuse treatment program. The secretary's
14 determination regarding the availability of treatment resources shall not be
15 subject to review. Upon the successful completion of such intensive
16 treatment program, the offender shall be returned to the court and the court
17 may modify the sentence by directing that a less severe penalty be
18 imposed in lieu of that originally adjudged. If the offender's term of
19 imprisonment expires, the offender shall be placed under the applicable
20 period of postrelease supervision.

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

23 (A) The defendant has previously completed a certified drug abuse
24 treatment program, as provided in K.S.A. 2012 Supp. 75-52,144, and
25 amendments thereto;

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

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

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

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

35 (g) (1) Except as provided further, if the trier of fact makes a finding
36 that an offender ~~carried~~ *possessed* a firearm ~~to commit a drug felony~~ *and*
37 *such firearm was readily accessible during the commission of*, or in
38 furtherance of, a drug felony, ~~possessed a firearm~~, *or any attempt or*
39 *conspiracy to commit such offense*, in addition to the sentence imposed
40 pursuant to K.S.A. 2012 Supp. 21-6801 through 21-6824, and amendments
41 thereto, the offender shall be sentenced to:

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

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

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

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

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

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