

Senate Substitute for HOUSE BILL No. 2049

By Committee on Corrections and Juvenile Justice

1-27

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to possession of controlled substances; burglary; amending K.S.A.
3 2015 Supp. 21-5706 and 21-5807 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2015 Supp. 21-5706 is hereby amended to read as
7 follows: 21-5706. (a) It shall be unlawful for any person to possess any
8 opiates, opium or narcotic drugs, or any stimulant designated in ~~subsection~~
9 ~~(d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1),~~ and
10 amendments thereto, or a controlled substance analog thereof.

11 (b) It shall be unlawful for any person to possess any of the following
12 controlled substances or controlled substance analogs thereof:

13 (1) Any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
14 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~
15 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
16 thereto;

17 (2) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~
18 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~
19 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments
20 thereto;

21 (3) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~
22 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
23 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

24 (4) any substance designated in ~~subsection (g) of K.S.A. 65-4105(g)~~
25 ~~and subsection (e), (d), (e), (f) or (g) of K.S.A. 65-4111(c), (d), (e), (f) or~~
26 ~~(g),~~ and amendments thereto;

27 (5) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
28 ~~4109(f),~~ and amendments thereto;

29 (6) any substance designated in K.S.A. 65-4113, and amendments
30 thereto; or

31 (7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h),~~
32 and amendments thereto.

33 (c) (1) Violation of subsection (a) is a drug severity level 5 felony;
34 ~~and.~~

35 (2) *Except as provided in subsection (c)(3):*

36 (A) Violation of subsection (b) is a class A nonperson misdemeanor,

1 except as provided in subsection (c)(2)(B); and

2 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
3 severity level 5 felony if that person has a prior conviction under such
4 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially
5 similar offense from another jurisdiction, or under any city ordinance or
6 county resolution for a substantially similar offense if the substance
7 involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana
8 as designated in ~~subsection (d) of~~ K.S.A. 65-4105(d), and amendments
9 thereto, or any substance designated in ~~subsection (h) of~~ K.S.A. 65-
10 4105(h), and amendments thereto, or an analog thereof.

11 (3) *If the substance involved is marijuana, as designated in K.S.A.*
12 *65-4105(d), and amendments thereto, violation of subsection (b) is a:*

13 (A) *Class B nonperson misdemeanor, except as provided in (c)(3)(B)*
14 *and (c)(3)(C);*

15 (B) *class A nonperson misdemeanor if that person has a prior*
16 *conviction under such subsection, under K.S.A. 65-4162, prior to its*
17 *repeal, under a substantially similar offense from another jurisdiction, or*
18 *under any city ordinance or county resolution for a substantially similar*
19 *offense; and*

20 (C) *drug severity level 5 felony if that person has two or more prior*
21 *convictions under such subsection, under K.S.A. 65-4162, prior to its*
22 *repeal, under a substantially similar offense from another jurisdiction, or*
23 *under any city ordinance or county resolution for a substantially similar*
24 *offense.*

25 (d) It shall not be a defense to charges arising under this section that
26 the defendant was acting in an agency relationship on behalf of any other
27 party in a transaction involving a controlled substance or controlled
28 substance analog.

29 Sec. 2. K.S.A. 2015 Supp. 21-5807 is hereby amended to read as
30 follows: 21-5807. (a) Burglary is, without authority, entering into or
31 remaining within any:

32 (1) Dwelling, with intent to commit a felony, theft or sexually
33 motivated crime therein;

34 (2) building, manufactured home, mobile home, tent or other
35 structure which is not a dwelling, with intent to commit a felony, theft or
36 sexually motivated crime therein; or

37 (3) vehicle, aircraft, watercraft, railroad car or other means of
38 conveyance of persons or property, with intent to commit a felony, theft or
39 sexually motivated crime therein.

40 (b) Aggravated burglary is, without authority, entering into or
41 remaining within any:

42 (1) *Dwelling in which there is a human being, with intent to commit a*
43 *felony, theft or sexually motivated crime therein;*

1 (2) building, manufactured home, mobile home, tent or other
2 structure *which is not a dwelling in which there is a human being, with*
3 *intent to commit a felony, theft or sexually motivated crime therein; or*

4 (3) ~~any~~ vehicle, aircraft, watercraft, railroad car or other means of
5 conveyance of persons or property in which there is a human being with
6 intent to commit a felony, theft or sexually motivated crime therein.

7 (c) (1) Burglary as defined in:

8 (A) ~~Subsection (a)(1) is a severity level 7, person felony, except as~~
9 ~~provided in subsection (c)(2);~~

10 (B) ~~subsection (a)(2) is a severity level 7, nonperson felony, except as~~
11 ~~provided in subsection (c)(2);~~

12 (C) ~~subsection (a)(3) is a severity level 9, nonperson felony, except as~~
13 ~~provided in subsection (c)(2); and~~

14 (2) ~~subsection (a)(1), (a)(2) or (a)(3) with the intent to commit the~~
15 ~~theft of a firearm is a severity level 5, nonperson felony.~~

16 (A) (i) *Subsection (a)(1) is a severity level 6, person felony, except as*
17 *provided in subsection (c)(1)(B);*

18 (ii) *subsection (a)(2) is a severity level 7, nonperson felony, except as*
19 *provided in subsection (c)(1)(B); and*

20 (iii) *subsection (a)(3) is a severity level 9, nonperson felony, except*
21 *as provided in subsection (c)(1)(B); and*

22 (B) (i) *subsection (a)(1), with intent to commit the theft of a firearm,*
23 *is a severity level 5, person felony; and*

24 (ii) *subsection (a)(2) or (a)(3), with intent to commit the theft of a*
25 *firearm, is a severity level 5, nonperson felony.*

26 (3)(2) Aggravated burglary as defined in:

27 (A) *Subsection (b)(1) is a severity level 4, person felony; and*

28 (B) *subsection (b)(2) or (b)(3) is a severity level 5, person felony.*

29 (d) As used in this section, "sexually motivated" means that one of
30 the purposes for which the defendant committed the crime was for the
31 purpose of the defendant's sexual gratification.

32 (e) *This section shall not apply to any premises that are, at the time,*
33 *open to the public.*

34 Sec. 3. K.S.A. 2015 Supp. 21-5706 and 21-5807 are hereby repealed.

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