

HOUSE BILL No. 2673

By Committee on Corrections and Juvenile Justice

2-9

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing for drug crimes; expanding the number of presumptive
3 probation and border grid blocks; modifying the sentence terms for
4 certain drug offenders; authorizing more offenders to be sentenced to
5 participate in the certified drug abuse treatment program; amending
6 K.S.A. 2021 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. 2021 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. 2021 Supp. 21-5701 through 21-5717, and amendments thereto,
15 except as otherwise provided by law:

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* or
29 ~~5-D~~ *5-B or 5-C*, the court may impose an optional nonprison sentence as
30 provided in ~~subsection (q)~~ of K.S.A. 2021 Supp. 21-6804(q), and
31 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. 2021
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. 2021 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. 2021 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 *the defendant has*:

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. 2021 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. 2021 Supp. 21-5706 or 21-5713, and amendments thereto.

11 Sec. 2. K.S.A. 2021 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 2021 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. 2021 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. 2021 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. 2021
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 risk status to the offender.

4 (c) If the offender is assigned a risk status as determined by the drug
5 abuse assessment performed pursuant to subsection (b)(1) and a risk status
6 as determined by the criminal risk-need assessment performed pursuant to
7 subsection (b)(2) that meets the criteria for participation in a drug abuse
8 treatment program as determined by the Kansas sentencing commission,
9 the sentencing court shall commit the offender to treatment in a drug abuse
10 treatment program until the court determines the offender is suitable for
11 discharge by the court. The term of treatment shall not exceed 18 months.
12 The court may extend the term of probation, pursuant to K.S.A. 2021
13 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may
14 not exceed the term of probation.

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

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

22 (3) If the offender is permitted to go from the judicial district of the
23 sentencing court, the court may, pursuant to K.S.A. 2021 Supp. 21-6610,
24 and amendments thereto:

25 (A) Transfer supervision of the offender from that judicial district to
26 another; and

27 (B) either transfer or retain jurisdiction of the offender.

28 (e) Placement of offenders under subsection (a)(2) shall be subject to
29 the departure sentencing statutes of the revised Kansas sentencing
30 guidelines act.

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

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

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

37 (2) Offenders who are discharged from such program shall be subject
38 to the revocation provisions of K.S.A. 2021 Supp. 21-6604(n), and
39 amendments thereto.

40 (g) As used in this section, "mental health professional" includes
41 licensed social workers, persons licensed to practice medicine and surgery,
42 licensed psychologists, licensed professional counselors or registered
43 alcohol and other drug abuse counselors licensed or certified as addiction

1 counselors who have been certified by the secretary of corrections to treat
2 offenders pursuant to K.S.A. 75-52,144, and amendments thereto.

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

6 (A) Are residents of another state and are returning to such state
7 pursuant to the interstate corrections compact or the interstate compact for
8 adult offender supervision;~~or~~

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

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

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

14 (i) The court may order an offender who otherwise does not meet the
15 requirements of subsection (c) to undergo one additional drug abuse
16 assessment while such offender is on probation. Such offender may be
17 ordered to undergo drug abuse treatment pursuant to subsection (a) if such
18 offender is determined to meet the requirements of subsection (c). The cost
19 of such assessment shall be paid by such offender.

20 Sec. 3. K.S.A. 2021 Supp. 21-6805 and 21-6824 are hereby repealed.

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