

HOUSE BILL No. 2072

By Committee on Corrections and Juvenile Justice

1-18

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; reducing the range for an offender classified in grid
3 blocks 5-A through 5-H and increasing the range for an offense
4 classified in grid block 5-I; amending K.S.A. 2022 Supp. 21-6805 and
5 repealing the existing section.

6

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

8 Section 1. K.S.A. 2022 Supp. 21-6805 is hereby amended to read as
9 follows: 21-6805. (a) The provisions of this section shall be applicable to
10 the sentencing guidelines grid for drug crimes. The following sentencing
11 guidelines grid for drug crimes shall be applicable to felony crimes under
12 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto,
13 except as otherwise provided by law:

SENTENCING RANGE - DRUG OFFENSES

| Category → | A | B | C | D | E | F | G | H | I |
|---------------|-------------------------|-----------------------|-------------------------------------|-----------------------|----------------------------|--------------------------|--------------------------|------------------|-------------------------------|
| Severest ↓ | 3 + Person Felony | 2 Person Felony | 1 Person & 1 Nonperson Felony | 1 Person Felony | 3 + Nonperson Felony | 2 Nonperson Felony | 1 Nonperson Felony | 1 Misdemeanor | 1 Misdemeanor No Record |
| I | 204 194 185 | 196 186 176 | 179 170 161 | 170 161 | 170 162 154 150 | 167 159 150 | 162 154 146 | 161 150 142 | 154 146 138 |
| II | 144 136 130 | 137 130 122 | 123 117 111 | 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 | 68 65 60 | 64 60 | 62 59 55 | 59 56 52 | 57 54 51 | 54 51 49 | 51 49 46 |
| IV | 51 49 46 41 | 47 44 41 | 42 40 37 32 | 36 34 32 | 32 30 28 24 20 | 30 28 24 20 | 28 26 24 20 | 26 24 22 20 | 24 22 20 18 16 14 |
| V | 42 40 37 | 36 34 32 | 32 30 28 24 20 | 28 26 24 20 | 22 20 18 16 14 | 18 17 16 | 16 15 14 | 14 13 12 | 12 11 10 |

| LEGEND |
|-------------------------------------|
| Presumptive Probation |
| Presumptive Imprisonment |

SENTENCING RANGE - DRUG OFFENSES

| Category | A | B | C | D | E | F | G | H | I |
|------------------|--------------------|-------------------|-----------------------------------|-----------------|----------------------|-------------------|-----------------|--------------|-----------------------|
| | 3+ Person Felonies | 2 Person Felonies | 1 Person & 1 Misdemeanor Felonies | 1 Person Felony | 3+ Non-Drug Felonies | Non-Drug Felonies | Non-Drug Felony | Misdemeanors | Misdemeanor No Record |
| Severity Level I | 204 184 105 | 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 | 30 28 26 | 28 26 24 | 26 24 22 | 24 22 20 |
| V | 23 21 19 | 20 19 18 | 18 17 16 | 16 15 14 | 15 14 13 | 13 12 11 | 13 12 11 | 13 12 11 | 13 12 11 |

| 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 Sec. 2. K.S.A. 2022 Supp. 21-6805 is hereby repealed.

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