

**As Amended by House Committee**

---

***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 that  
36 an offender ~~earrned~~ *possessed* a firearm ~~to commit a drug felony and such~~  
37 ***firearm was readily accessible during the commission of,*** or in furtherance  
38 of, ~~a drug felony~~ ***a felony violation of any provision of article 57 of***  
39 ***chapter 21, and amendments thereto,*** ~~possessed a firearm, or any~~  
40 ~~attempt or conspiracy to commit such offense,~~ in addition to the sentence  
41 imposed pursuant to K.S.A. 2012 Supp. 21-6801 through 21-6824, and  
42 amendments thereto, the offender shall be sentenced to:

43 (A) Except as provided in subsection (g)(1)(B), an additional 6

1 months' imprisonment; and

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

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

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

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 K.S.A. 2012 Supp. 21-6805 is hereby repealed.

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