

SENATE BILL No. 247

By Committee on Judiciary

2-10

9 AN ACT concerning crimes, punishments and criminal procedure; re-
10 lating to controlled substances; amending K.S.A. 2004 Supp. 21-4717,
11 65-4161 and 65-4163 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2004 Supp. 21-4717 is hereby amended to read as
15 follows: 21-4717. (a) The following aggravating factors, which apply to
16 drug crimes committed on or after July 1, 1993, under the sentencing
17 guidelines system, may be considered in determining whether substantial
18 and compelling reasons for departure exist:

19 (1) The crime was committed as part of a major organized drug man-
20 ufacture, production, cultivation or delivery activity. Two or more of the
21 following nonexclusive factors constitute evidence of major organized
22 drug manufacture, production, cultivation or delivery activity:

23 (A) The offender derived a substantial amount of money or asset
24 ownership from the illegal drug sale activity.

25 (B) The presence of a substantial quantity or variety of weapons or
26 explosives at the scene of arrest or associated with the illegal drug activity.

27 (C) The presence of drug transaction records or customer lists that
28 indicate a drug sale activity of major size.

29 (D) The presence of manufacturing or distribution materials such as,
30 but not limited to, drug recipes, precursor chemicals, laboratory equip-
31 ment, lighting, irrigation systems, ventilation, power-generation, scales or
32 packaging material.

33 (E) Building acquisitions or building modifications including but not
34 limited to painting, wiring, plumbing or lighting which advanced or fa-
35 cilitated the commission of the offense.

36 (F) Possession of large amounts of illegal drugs or substantial quan-
37 tities of controlled substances.

38 (G) A showing that the offender has engaged in repeated criminal
39 acts associated with the manufacture, production, cultivation or delivery
40 of controlled substances.

41 (H) *The offender manufactured or attempted to manufacture con-*
42 *trolled substances in or on, or within 1,000 feet of any licensed day care,*
43 *public park, playground or school property upon which is located a struc-*

1 *ture used by a unified school district or an accredited nonpublic school*
2 *for student instruction or attendance or extracurricular activities of pupils*
3 *enrolled in kindergarten or any of the grades one through 12, or in the*
4 *presence of a person under 18 years of age.*

5 (2) The offender possessed illegal drugs:

6 (A) With intent to sell, which were sold or were offered for sale to a
7 person under 18 years of age; or

8 (B) with the intent to sell, deliver or distribute or which were sold or
9 offered for sale in the immediate presence of a person under 18 years of
10 age.

11 (3) The offender, 18 or more years of age, employs, hires, uses, per-
12 suades, induces, entices or coerces any individual under 16 years of age
13 to violate or assist in avoiding detection or apprehension for violation of
14 any provision of the uniform controlled substances act, K.S.A. 65-4101 *et*
15 *seq.* and amendments thereto or any attempt, conspiracy or solicitation
16 as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments
17 thereto to commit a violation of any provision of the uniform controlled
18 substances act regardless of whether the offender knew the age of the
19 individual under 16 years of age.

20 (4) The offender was incarcerated during the commission of the
21 offense.

22 (b) In determining whether aggravating factors exist as provided in
23 this section, the court shall review the victim impact statement.

24 Sec. 2. K.S.A. 2004 Supp. 65-4161 is hereby amended to read as
25 follows: 65-4161. (a) Except as authorized by the uniform controlled sub-
26 stances act, it shall be unlawful for any person to sell, offer for sale or
27 have in such person's possession with intent to sell, deliver or distribute;
28 prescribe; administer; deliver; distribute; or dispense any opiates, opium
29 or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3)
30 or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided
31 in subsections (b), (c) and (d), any person who violates this subsection
32 shall be guilty of a drug severity level 3 felony.

33 (b) If any person who violates this section has one prior conviction
34 under this section or a conviction for a substantially similar offense from
35 another jurisdiction, then that person shall be guilty of a drug severity
36 level 2 felony.

37 (c) If any person who violates this section has two or more prior
38 convictions under this section or substantially similar offenses under the
39 laws of another jurisdiction, then such person shall be guilty of a drug
40 severity level 1 felony.

41 (d) Notwithstanding any other provision of law, upon conviction of
42 any person for a first offense pursuant to subsection (a), such person shall
43 be guilty of a drug severity level 2 felony if such person is 18 or more

1 years of age and the substances involved were possessed with intent to
2 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000
3 feet of any *licensed day care, public park, playground or school property*
4 upon which is located a structure used by a unified school district or an
5 accredited nonpublic school for student instruction or attendance or ex-
6 tracurricular activities of pupils enrolled in kindergarten or any of the
7 grades one through 12; *or sold or offered for sale in the presence of a*
8 *person under 18 years of age.*

9 Nothing in this subsection shall be construed as requiring that school
10 be in session or that classes are actually being held at the time of the
11 offense or that children must be present within the structure or on the
12 property during the time of any alleged criminal act. If the structure or
13 property meets the description above, the actual use of that structure or
14 property at the time alleged shall not be a defense to the crime charged
15 or the sentence imposed.

16 (e) It shall not be a defense to charges arising under this section that
17 the defendant was acting in an agency relationship on behalf of any other
18 party in a transaction involving a controlled substance.

19 (f) For purposes of the uniform controlled substances act, the pro-
20 hibitions contained in this section shall apply to controlled substance an-
21 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
22 thereto.

23 (g) The provisions of this section shall be part of and supplemental
24 to the uniform controlled substances act.

25 Sec. 3. K.S.A. 2004 Supp. 65-4163 is hereby amended to read as
26 follows: 65-4163. (a) Except as authorized by the uniform controlled sub-
27 stances act, it shall be unlawful for any person to sell, offer for sale or
28 have in such person's possession with the intent to sell, deliver or distrib-
29 ute; cultivate; prescribe; administer; deliver; distribute; or dispense:

30 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
31 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
32 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

33 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
34 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
35 65-4109, and amendments thereto;

36 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
37 4105, and amendments thereto or designated in subsection (g) of K.S.A.
38 65-4107 and amendments thereto or designated in subsection (g) of
39 K.S.A. 65-4109 and amendments thereto;

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

43 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-

1 4109, and amendments thereto.

2 Except as provided in subsection (b), any person who violates this sub-
3 section shall be guilty of a drug severity level 3 felony.

4 (b) Notwithstanding any other provision of law, upon conviction of
5 any person pursuant to subsection (a) for an offense in which the sub-
6 stances involved were possessed with intent to sell, sold or offered for
7 sale in or on, or within 1,000 feet of any *licensed day care, public park,*
8 *playground or* school property upon which is located a structure used by
9 a unified school district or an accredited nonpublic school for student
10 instruction or attendance or extracurricular activities of pupils enrolled in
11 kindergarten or any of the grades one through 12 and such person is 18
12 or more years of age; *or with intent to sell, sold or offered for sale in the*
13 *presence of a person under 18 years of age;* such person shall be guilty of
14 a drug severity level 2 felony.

15 Nothing in this subsection shall be construed as requiring that school
16 be in session or that classes are actually being held at the time of the
17 offense or that children must be present within the structure or on the
18 property during the time of any alleged criminal act. If the structure or
19 property meets the description above, the actual use of that structure or
20 property at the time alleged shall not be a defense to the crime charged
21 or the sentence imposed.

22 (c) It shall not be a defense to charges arising under this section that
23 the defendant was acting in an agency relationship on behalf of any other
24 party in a transaction involving a controlled substance.

25 (d) For purposes of the uniform controlled substances act, the pro-
26 hibitions contained in this section shall apply to controlled substance an-
27 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
28 thereto.

29 (e) The provisions of this section shall be part of and supplemental
30 to the uniform controlled substances act.

31 Sec. 4. K.S.A. 2004 Supp. 21-4717, 65-4161 and 65-4163 are hereby
32 repealed.

33 Sec. 5. This act shall take effect and be in force from and after its
34 publication in the statute book.