

HOUSE BILL No. 2751

By Committee on Judiciary

Requested by Representative L. Williams

2-6

1 AN ACT concerning crimes, punishment and criminal procedure;
2 increasing the minimum bail requirements for certain crimes from
3 \$50,000 to \$100,000; requiring certain findings to reduce such
4 requirements; amending K.S.A. 21-5703, 21-5709, 21-5710, 21-6316
5 and 21-6329 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 21-5703 is hereby amended to read as follows: 21-
9 5703. (a) It shall be unlawful for any person to manufacture any controlled
10 substance or controlled substance analog.

11 (b) Violation or attempted violation of subsection (a) is a:

12 (1) Drug severity level 2 felony, except as provided in subsections (b)
13 (2) and (b)(3);

14 (2) drug severity level 1 felony if:

15 (A) The controlled substance is not methamphetamine, as defined by
16 K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog
17 thereof;

18 (B) the controlled substance is not a fentanyl-related controlled
19 substance; and

20 (C) the offender has a prior conviction for unlawful manufacturing of
21 a controlled substance under this section, K.S.A. 65-4159, prior to its
22 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or a substantially
23 similar offense from another jurisdiction and the substance was not
24 methamphetamine, as defined by K.S.A. 65-4107(d)(3) or (f)(1), and
25 amendments thereto, or an analog thereof, in any such prior conviction;
26 and

27 (3) drug severity level 1 felony if the controlled substance is
28 methamphetamine, as defined by K.S.A. 65-4107(d)(3) or (f)(1), and
29 amendments thereto, or an analog thereof, or is a fentanyl-related
30 controlled substance.

31 (c) The provisions of K.S.A. 21-5301(d), and amendments thereto,
32 shall not apply to a violation of attempting to unlawfully manufacture any
33 controlled substance or controlled substance analog pursuant to this
34 section.

35 (d) For persons arrested and charged under this section, bail shall be

1 at least ~~\$50,000~~ \$100,000 cash or surety, and such person shall not be
2 released upon the person's own recognizance pursuant to K.S.A. 22-2802,
3 and amendments thereto; ~~unless the court determines, on the record, that~~
4 ~~the defendant is not likely to re-offend, the court imposes pretrial~~
5 ~~supervision, or the defendant agrees to participate in a licensed or certified~~
6 ~~drug treatment program. Such bond shall not be reduced or modified~~
7 ~~downward unless the magistrate determines by a preponderance of the~~
8 ~~evidence at an evidentiary hearing and makes a written finding on the~~
9 ~~record that the person is not a public safety risk and not a flight risk. At~~
10 ~~such evidentiary hearing, there shall be a presumption that the person is~~
11 ~~both a public safety risk and a flight risk. If such bond is modified~~
12 ~~downward, such bond shall be conditioned upon such person's placement~~
13 ~~in a house arrest program pursuant to K.S.A. 21-6609, and amendments~~
14 ~~thereto.~~

15 (e) The sentence of a person who violates this section shall not be
16 subject to statutory provisions for suspended sentence, community service
17 work or probation.

18 (f) The sentence of a person who violates this section, K.S.A. 65-
19 4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, prior to its
20 transfer, shall not be reduced because these sections prohibit conduct
21 identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their
22 repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 21-
23 5705, and amendments thereto.

24 Sec. 2. K.S.A. 21-5709 is hereby amended to read as follows: 21-
25 5709. (a) It shall be unlawful for any person to possess ephedrine,
26 pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine,
27 anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or
28 their salts, isomers or salts of isomers with an intent to use the product to
29 manufacture a controlled substance.

30 (b) It shall be unlawful for any person to use or possess with intent to
31 use any drug paraphernalia to:

32 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
33 distribute a controlled substance; or

34 (2) store, contain, conceal, inject, ingest, inhale or otherwise
35 introduce a controlled substance into the human body.

36 (c) It shall be unlawful for any person to use or possess with intent to
37 use anhydrous ammonia or pressurized ammonia in a container not
38 approved for that chemical by the Kansas department of agriculture.

39 (d) It shall be unlawful for any person to purchase, receive or
40 otherwise acquire at retail any compound, mixture or preparation
41 containing more than 3.6 grams of pseudoephedrine base or ephedrine
42 base in any single transaction or any compound, mixture or preparation
43 containing more than nine grams of pseudoephedrine base or ephedrine

1 base within any 30-day period.

2 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;

3 (2) violation of subsection (b)(1) is a:

4 (A) Drug severity level 5 felony, except as provided in subsection (e)
5 (2)(B); and

6 (B) class B nonperson misdemeanor if the drug paraphernalia was
7 used to cultivate fewer than five marijuana plants;

8 (3) violation of subsection (b)(2) is a class B nonperson
9 misdemeanor;

10 (4) violation of subsection (c) is a drug severity level 5 felony; and

11 (5) violation of subsection (d) is a class A nonperson misdemeanor.

12 (f) For persons arrested and charged under subsection (a) or (c), bail
13 shall be at least ~~\$50,000~~ \$100,000 cash or surety, and such person shall not
14 be released upon the person's own recognizance pursuant to K.S.A. 22-
15 2802, and amendments thereto, ~~unless the court determines, on the record,~~
16 ~~that the defendant is not likely to reoffend, the court imposes pretrial~~
17 ~~supervision or the defendant agrees to participate in a licensed or certified~~
18 ~~drug treatment program. Such bond shall not be reduced or modified~~
19 ~~downward unless the magistrate determines by a preponderance of the~~
20 ~~evidence at an evidentiary hearing and makes a written finding on the~~
21 ~~record that the person is not a public safety risk and not a flight risk. At~~
22 ~~such evidentiary hearing, there shall be a presumption that the person is~~
23 ~~both a public safety risk and a flight risk. If such bond is modified~~
24 ~~downward, such bond shall be conditioned upon such person's placement~~
25 ~~in a house arrest program pursuant to K.S.A. 21-6609, and amendments~~
26 ~~thereto.~~

27 Sec. 3. K.S.A. 21-5710 is hereby amended to read as follows: 21-
28 5710. (a) It shall be unlawful for any person to advertise, market, label,
29 distribute or possess with the intent to distribute:

30 (1) Any product containing ephedrine, pseudoephedrine, red
31 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
32 pressurized ammonia or phenylpropanolamine or their salts, isomers or
33 salts of isomers if the person knows or reasonably should know that the
34 purchaser will use the product to manufacture a controlled substance or
35 controlled substance analog; or

36 (2) any product containing ephedrine, pseudoephedrine or
37 phenylpropanolamine, or their salts, isomers or salts of isomers for
38 indication of stimulation, mental alertness, weight loss, appetite control,
39 energy or other indications not approved pursuant to the pertinent federal
40 over-the-counter drug final monograph or tentative final monograph or
41 approved new drug application.

42 (b) It shall be unlawful for any person to distribute, possess with the
43 intent to distribute or manufacture with intent to distribute any drug

1 paraphernalia, knowing or under circumstances where one reasonably
2 should know that it will be used to manufacture or distribute a controlled
3 substance or controlled substance analog in violation of K.S.A. 21-5701
4 through 21-5717, and amendments thereto.

5 (c) It shall be unlawful for any person to distribute, possess with
6 intent to distribute or manufacture with intent to distribute any drug
7 paraphernalia, knowing or under circumstances where one reasonably
8 should know, that it will be used as such in violation of K.S.A. 21-5701
9 through 21-5717, and amendments thereto, except subsection (b) of K.S.A.
10 21-5706, and amendments thereto.

11 (d) It shall be unlawful for any person to distribute, possess with
12 intent to distribute or manufacture with intent to distribute any drug
13 paraphernalia, knowing, or under circumstances where one reasonably
14 should know, that it will be used as such in violation of subsection (b) of
15 K.S.A. 21-5706, and amendments thereto.

16 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;

17 (2) violation of subsection (b) is a:

18 (A) Drug severity level 5 felony, except as provided in subsection (e)
19 (2)(B); and

20 (B) drug severity level 4 felony if the trier of fact makes a finding that
21 the offender distributed or caused drug paraphernalia to be distributed to a
22 minor or on or within 1,000 feet of any school property;

23 (3) violation of subsection (c) is a:

24 (A) Nondrug severity level 9, nonperson felony, except as provided in
25 subsection (e)(3)(B); and

26 (B) drug severity level 5 felony if the trier of fact makes a finding that
27 the offender distributed or caused drug paraphernalia to be distributed to a
28 minor or on or within 1,000 feet of any school property; and

29 (4) violation of subsection (d) is a:

30 (A) Class A nonperson misdemeanor, except as provided in
31 subsection (e)(4)(B); and

32 (B) nondrug severity level 9, nonperson felony if the trier of fact
33 makes a finding that the offender distributed or caused drug paraphernalia
34 to be distributed to a minor or on or within 1,000 feet of any school
35 property.

36 (f) For persons arrested and charged under subsection (a), bail shall
37 be at least ~~\$50,000~~ \$100,000 cash or surety, and such person shall not be
38 released upon the person's own recognizance pursuant to K.S.A. 22-2802,
39 and amendments thereto; ~~unless the court determines, on the record, that~~
40 ~~the defendant is not likely to re-offend, the court imposes pretrial~~
41 ~~supervision or the defendant agrees to participate in a licensed or certified~~
42 ~~drug treatment program. Such bond shall not be reduced or modified~~
43 ~~downward unless the magistrate determines by a preponderance of the~~

1 *evidence at an evidentiary hearing and makes a written finding on the*
2 *record that the person is not a public safety risk and not a flight risk. At*
3 *such evidentiary hearing, there shall be a presumption that the person is*
4 *both a public safety risk and a flight risk. If such bond is modified*
5 *downward, such bond shall be conditioned upon such person's placement*
6 *in a house arrest program pursuant to K.S.A. 21-6609, and amendments*
7 *thereto.*

8 (g) As used in this section, "or under circumstances where one
9 reasonably should know" that an item will be used in violation of this
10 section, shall include, but not be limited to, the following:

11 (1) Actual knowledge from prior experience or statements by
12 customers;

13 (2) inappropriate or impractical design for alleged legitimate use;

14 (3) receipt of packaging material, advertising information or other
15 manufacturer supplied information regarding the item's use as drug
16 paraphernalia; or

17 (4) receipt of a written warning from a law enforcement or
18 prosecutorial agency having jurisdiction that the item has been previously
19 determined to have been designed specifically for use as drug
20 paraphernalia.

21 Sec. 4. K.S.A. 21-6316 is hereby amended to read as follows: 21-
22 6316. When a criminal street gang member is arrested for a person felony,
23 bail shall be at least ~~\$50,000~~ \$100,000 cash or surety, and such person
24 shall not be released upon the person's own recognizance pursuant to
25 K.S.A. 22-2802, and amendments thereto, ~~unless the court determines on~~
26 ~~the record that the defendant is not likely to reoffend, an appropriate~~
27 ~~intensive pre-trial supervision program is available and the defendant~~
28 ~~agrees to comply with the mandate of such pre-trial supervision. Such~~
29 ~~bond shall not be reduced or modified downward unless the magistrate~~
30 ~~determines by a preponderance of the evidence at an evidentiary hearing~~
31 ~~and makes a written finding on the record that the person is not a public~~
32 ~~safety risk and not a flight risk. At such evidentiary hearing, there shall be~~
33 ~~a presumption that the person is both a public safety risk and a flight risk.~~
34 ~~If such bond is modified downward, such bond shall be conditioned upon~~
35 ~~such person's placement in a house arrest program pursuant to K.S.A. 21-~~
36 ~~6609, and amendments thereto.~~

37 Sec. 5. K.S.A. 21-6329 is hereby amended to read as follows: 21-
38 6329. (a) Except as provided in subsection (b), it is unlawful for any
39 covered person:

40 (1) Who has recklessly received any proceeds derived, directly or
41 indirectly, from a pattern of racketeering activity or through the collection
42 of an unlawful debt to use or invest, whether directly or indirectly, any part
43 of such proceeds, or the proceeds derived from the investment or use

1 thereof, in the acquisition of any title to, or any right, interest, or equity in,
2 real property or in the establishment or operation of any enterprise;

3 (2) through a pattern of racketeering activity or through the collection
4 of an unlawful debt, to recklessly acquire or maintain, directly or
5 indirectly, any interest in or control of any enterprise or real property; or

6 (3) employed by, or associated with, any enterprise to recklessly
7 conduct or participate, directly or indirectly, in such enterprise through a
8 pattern of racketeering activity or the collection of an unlawful debt.

9 (b) It is not unlawful for a covered person to violate subsection (a)
10 through the collection of an unlawful debt if such person was not a
11 participant in a violation described in subsection (i) of K.S.A. 21-6328,
12 and amendments thereto, which created such unlawful debt.

13 (c) Violation of this section or conspiracy to commit a violation of
14 this section is a severity level 2, person felony.

15 (d) The provisions of subsection (d) of K.S.A. 21-5302, and
16 amendments thereto, shall not apply to conspiracy to commit a violation of
17 this section.

18 (e) (1) Notwithstanding the provisions of K.S.A. 21-6611, and
19 amendments thereto, any person convicted of engaging in conduct in
20 violation of this section, through which the person derived pecuniary
21 value, or by which the person caused personal injury or property damage
22 or other loss, may be sentenced to pay a fine that does not exceed three
23 times the gross value gained or three times the gross loss caused,
24 whichever is the greater, plus court costs and the costs of investigation and
25 prosecution, reasonably incurred.

26 (2) The court shall hold a hearing to determine the amount of the fine
27 authorized by this subsection.

28 (3) For the purposes of this subsection, "pecuniary value" means:

29 (A) Anything of value in the form of money, a negotiable instrument,
30 or a commercial interest or anything else the primary significance of which
31 is economic advantage; and

32 (B) any other property or service that has a value in excess of \$100.

33 (f) For persons arrested and charged under this section, bail shall be
34 at least ~~\$50,000~~ \$100,000 cash or surety, and such person shall not be
35 released upon the person's own recognizance pursuant to K.S.A. 22-2802,
36 and amendments thereto, ~~unless the court determines on the record that the~~
37 ~~defendant is not likely to re-offend, an appropriate intensive pretrial~~
38 ~~supervision program is available and the defendant agrees to comply with~~
39 ~~the mandate of such pretrial supervision. Such bond shall not be reduced~~
40 ~~or modified downward unless the magistrate determines by a~~
41 ~~preponderance of the evidence at an evidentiary hearing and makes a~~
42 ~~written finding on the record that the person is not a public safety risk and~~
43 ~~not a flight risk. At such evidentiary hearing, there shall be a presumption~~

1 *that the person is both a public safety risk and a flight risk. If such bond is*
2 *modified downward, such bond shall be conditioned upon such person's*
3 *placement in a house arrest program pursuant to K.S.A. 21-6609, and*
4 *amendments thereto.*

5 Sec. 6. K.S.A. 21-5703, 21-5709, 21-5710, 21-6316 and 21-6329 are
6 hereby repealed.

7 Sec. 7. This act shall take effect and be in force from and after its
8 publication in the statute book.