

SENATE BILL No. 414

By Committee on Judiciary

1-29

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to controlled substances; increasing penalties for unlawful distribution
3 of controlled substances with respect to material containing any
4 quantity of a fentanyl-related controlled substance; creating a special
5 sentencing rule for such unlawful distribution thereof; amending
6 K.S.A. 21-5705 and 21-6805 and repealing the existing sections.

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

9 Section 1. K.S.A. 21-5705 is hereby amended to read as follows: 21-
10 5705. (a) It shall be unlawful for any person to distribute or possess with
11 the intent to distribute any of the following controlled substances or
12 controlled substance analogs thereof:

13 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
14 subsection ~~(d)(1), (d)(3) or (f)(1)~~ of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1),
15 and amendments thereto;

16 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
17 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~
18 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
19 thereto;

20 (3) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~
21 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~
22 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments
23 thereto;

24 (4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~
25 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
26 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

27 (5) any substance designated in ~~subsection (g) of K.S.A. 65-4105(g)~~
28 ~~and subsection (c), (d), (e), (f) or (g) of K.S.A. or 65-4111(c), (d), (e), (f)~~
29 ~~or (g),~~ and amendments thereto;

30 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
31 ~~4109(f),~~ and amendments thereto; or

32 (7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h),~~
33 and amendments thereto.

34 (b) It shall be unlawful for any person to distribute or possess with

1 the intent to distribute a controlled substance or a controlled substance
2 analog designated in K.S.A. 65-4113, and amendments thereto.

3 (c) It shall be unlawful for any person to cultivate any controlled
4 substance or controlled substance analog listed in subsection (a).

5 (d) (1) Except as provided further, violation of subsection (a) is a:

6 (A) Drug severity level 4 felony if the quantity of the material was
7 less than 3.5 grams;

8 (B) drug severity level 3 felony if the quantity of the material was at
9 least 3.5 grams but less than 100 grams;

10 (C) drug severity level 2 felony if the quantity of the material was at
11 least 100 grams but less than 1 kilogram; and

12 (D) drug severity level 1 felony if the quantity of the material was 1
13 kilogram or more.

14 (2) *Except as provided further*, violation of subsection (a) with respect
15 to material containing any quantity of marijuana, or an analog thereof, is a:

16 (A) Drug severity level 4 felony if the quantity of the material was
17 less than 25 grams;

18 (B) drug severity level 3 felony if the quantity of the material was at
19 least 25 grams but less than 450 grams;

20 (C) drug severity level 2 felony if the quantity of the material was at
21 least 450 grams but less than 30 kilograms; and

22 (D) drug severity level 1 felony if the quantity of the material was 30
23 kilograms or more.

24 (3) *Except as provided further*, violation of subsection (a) with
25 respect to material containing any quantity of a *fentanyl-related controlled*
26 *substance*, heroin; as defined by ~~subsection (e)(1) of~~ K.S.A. 65-4105(c)
27 (12), and amendments thereto, or methamphetamine; as defined by
28 ~~subsection (d)(3) or (f)(1) of~~ K.S.A. 65-4107(d)(3) or (f)(1), and
29 amendments thereto, or an analog thereof, is a:

30 (A) Drug severity level 4 felony if the quantity of the material was
31 less than 1 gram;

32 (B) drug severity level 3 felony if the quantity of the material was at
33 least 1 gram but less than 3.5 grams;

34 (C) drug severity level 2 felony if the quantity of the material was at
35 least 3.5 grams but less than 100 grams; and

36 (D) drug severity level 1 felony if the quantity of the material was
37 100 grams or more.

38 (4) *Except as provided further*, violation of subsection (a) with
39 respect to material containing any quantity of a controlled substance
40 designated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and
41 amendments thereto, or an analog thereof, distributed by dosage unit, is a:

42 (A) Drug severity level 4 felony if the number of dosage units was
43 fewer than 10;

1 (B) drug severity level 3 felony if the number of dosage units was at
2 least 10 but ~~less~~ ***fewer*** than 100;

3 (C) drug severity level 2 felony if the number of dosage units was at
4 least 100 but ~~less~~ ***fewer*** than 1,000; and

5 (D) drug severity level 1 felony if the number of dosage units was
6 1,000 or more.

7 (5) ***Violation of subsection (a) with respect to material containing
8 any quantity of a fentanyl-related controlled substance, distributed by
9 dosage unit, is a:***

10 (A) ***Drug severity level 4 felony if the number of dosage units was
11 fewer than 10;***

12 (B) ***drug severity level 3 felony if the number of dosage units was at
13 least 10 but fewer than 50;***

14 (C) ***drug severity level 2 felony if the number of dosage units was at
15 least 50 but fewer than 250; and***

16 (D) ***drug severity level 1 felony if the number of dosage units was
17 250 or more.***

18 (6) For any violation of subsection (a), the severity level of the
19 offense shall be increased one level if the controlled substance or
20 controlled substance analog was distributed or possessed with the intent to
21 distribute on or within 1,000 feet of any school property.

22 ~~(6)(7)~~ Violation of subsection (b) is a:

23 (A) Class A person misdemeanor, except as provided in subsection
24 ~~(d)(6)(B)~~ ***(d)(7)(B)***; and

25 (B) nondrug severity level 7, person felony if the substance was
26 distributed to or possessed with the intent to distribute to a minor.

27 ~~(7)(8)~~ Violation of subsection (c) is a:

28 (A) Drug severity level 3 felony if the number of plants cultivated
29 was more than 4 but fewer than 50;

30 (B) drug severity level 2 felony if the number of plants cultivated was
31 at least 50 but fewer than 100; and

32 (C) drug severity level 1 felony if the number of plants cultivated was
33 100 or more.

34 (e) In any prosecution under this section, there shall be ~~a rebuttable
35 presumption~~ ***an inference*** of an intent to distribute if ~~any such an
36 inference is supported by the facts and such~~ person possesses the
37 following quantities of controlled substances or analogs thereof:

38 (1) 450 grams or more of ~~material containing any quantity of~~
39 marijuana;

40 (2) 3.5 grams or more of ~~material containing any quantity of a~~
41 ***fentanyl-related controlled substance***, heroin or methamphetamine;

42 (3) ***50 dosage units or more containing any quantity of a fentanyl-
43 related controlled substance;***

1 (4) 100 dosage units or more containing a *any other* controlled
2 substance; or

3 ~~(4)(5)~~ 100 grams or more of ~~material containing~~ any other controlled
4 substance.

5 (f) It shall not be a defense to charges arising under this section that
6 the defendant:

7 (1) Was acting in an agency relationship on behalf of any other party
8 in a transaction involving a controlled substance or controlled substance
9 analog;

10 (2) did not know the quantity of the controlled substance or
11 controlled substance analog; or

12 (3) did not know the specific controlled substance or controlled
13 substance analog contained in the material that was distributed or
14 possessed with the intent to distribute.

15 (g) As used in this section:

16 (1) "Material" means the total amount of any substance, including a
17 compound or a mixture, which contains any quantity of a controlled
18 substance or controlled substance analog.

19 (2) "Dosage unit" means a controlled substance or controlled
20 substance analog distributed or possessed with the intent to distribute as a
21 discrete unit, including but not limited to, one pill, one capsule or one
22 microdot, and not distributed by weight.

23 (A) For steroids, or controlled substances in liquid solution legally
24 manufactured for prescription use, or an analog thereof, "dosage unit"
25 means the smallest medically approved dosage unit, as determined by the
26 label, materials provided by the manufacturer, a prescribing authority,
27 licensed health care professional or other qualified health authority.

28 (B) For illegally manufactured controlled substances in liquid
29 solution, or controlled substances in liquid products not intended for
30 ingestion by human beings, or an analog thereof, "dosage unit" means 10
31 milligrams, including the liquid carrier medium, except as provided in
32 subsection (g)(2)(C).

33 (C) For lysergic acid diethylamide (LSD) in liquid form, or an analog
34 thereof, a dosage unit is defined as 0.4 milligrams, including the liquid
35 medium.

36 Sec. 2. K.S.A. 21-6805 is hereby amended to read as follows: 21-
37 6805. (a) The provisions of this section shall be applicable to the
38 sentencing guidelines grid for drug crimes. The following sentencing
39 guidelines grid for drug crimes shall be applicable to felony crimes under
40 K.S.A. 21-5701 through 21-5717, and amendments thereto, except as
41 otherwise provided by law:

SENTENCING RANGE - DRUG OFFENSES

Category ↓	A	B	C	D	E	F	G	H	I
Severity Level I	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	2+ Misdemeanors	1 Misdemeanor No Record
I	204 184 185	186 186 176	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 48	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 22	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 22	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

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
5 the sentencing judge select the center of the range and reserve the upper
6 and lower limits for aggravating and mitigating factors insufficient to
7 warrant a departure. The sentencing court shall not distinguish between
8 the controlled substances cocaine base (9041L000) and cocaine
9 hydrochloride (9041L005) when sentencing within the sentencing
10 range of the grid 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
15 good time; and
16 (C) period of postrelease supervision at the sentencing hearing.
17 Failure to pronounce the period of postrelease supervision shall not
18 negate 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
25 below 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
28 an offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H, 4-I, 5-C or 5-
29 D, the court may impose an optional nonprison sentence as provided in
30 K.S.A. 21-6804(q), and amendments thereto.

31 (e) The sentence for a second or subsequent conviction for
32 unlawful manufacturing of a controlled substance, K.S.A. 65-4159,
33 prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer,
34 K.S.A. 21-5703, and amendments thereto, or a substantially similar
35 offense from another jurisdiction, if the controlled substance in any
36 prior conviction was methamphetamine, as defined by K.S.A. 65-
37 4107(d)(3) or (f)(1), and amendments thereto, or an analog thereof,
38 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
41 50% of the mandatory increase provided by this subsection upon
42 making a finding on the record that one or more of the mitigating
43 factors as specified in K.S.A. 21-6815, and amendments thereto, justify

1 such a reduction in sentence. Any decision made by the court regarding
2 the reduction in such sentence shall not be considered a departure and
3 shall 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.
6 21-36a06, prior to its transfer, or K.S.A. 21-5706, and amendments
7 thereto, shall be a presumptive term of imprisonment and the defendant
8 shall be sentenced to prison as provided by this section. The defendant's
9 term of imprisonment shall be served in the custody of the secretary of
10 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
15 of imprisonment may be served in a facility designated by the secretary
16 of corrections in the custody of the secretary of corrections to
17 participate in an intensive substance abuse treatment program. The
18 secretary's determination regarding the availability of treatment
19 resources shall not be subject to review. Upon the successful
20 completion of such intensive treatment program, the offender shall be
21 returned to the court and the court may modify the sentence by
22 directing that a less severe penalty be imposed in lieu of that originally
23 adjudged. If the offender's term of imprisonment expires, the offender
24 shall be placed under the applicable 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
31 drug 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 (3) The sentence under this subsection shall not be considered a
38 departure and shall not be subject to appeal.

39 (g) (1) Except as provided further, if the trier of fact makes a
40 finding 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. 21-6801 through 21-6824, and
43 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
9 of K.S.A. 21-5706 or 21-5713, and amendments thereto.

10 (h) *(1)* The sentence for a violation of ~~K.S.A. 21-5703, and~~
11 ~~amendments thereto~~, *the following* with respect to material containing
12 any quantity of a fentanyl-related controlled substance shall be
13 presumed imprisonment and shall be two times the maximum duration
14 of the presumptive term of imprisonment:

15 (A) *K.S.A. 21-5703, and amendments thereto; and*

16 (B) *K.S.A. 21-5705, and amendments thereto, if the violation is*
17 *classified as a drug severity level 1, 2 or 3 felony.*

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

20 (i) The sentence for a violation of K.S.A. 21-5703 or 21-5705, and
21 amendments thereto, shall be presumed imprisonment and shall be two
22 times the maximum duration of the presumptive term of imprisonment
23 if the trier of fact makes a finding beyond a reasonable doubt that the
24 controlled substance involved, because of its appearance or packaging,
25 was likely to be attractive to minors. Such sentence shall not be
26 considered a departure and shall not be subject to appeal.

27 Sec. 3. K.S.A. 21-5705 and 21-6805 are hereby repealed.

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