

SENATE BILL No. 238

By Committee on Judiciary

2-10

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to ***aggravated endangering a child; increasing the criminal penalties***
3 ***in certain environments where any person is distributing, possessing***
4 ***with intent to distribute, manufacturing or attempting to manufacture***
5 ***fentanyl-related controlled substances; relating to*** crimes involving
6 controlled substances; adding the placing of controlled substances into
7 pills into the definition of manufacture; increasing the criminal
8 penalties for manufacturing or distributing fentanyl-related controlled
9 substances; creating a special sentencing rule for manufacturing or
10 distributing fentanyl-related controlled substances and any controlled
11 substances that are likely to be attractive to minors because of their
12 appearance or packaging; amending K.S.A. 2022 Supp. **21-5601**, 21-
13 5701, 21-5703, 21-5705 and 21-6805 and repealing the existing
14 sections; also repealing K.S.A. 2022 Supp. 21-5701b.

15

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

17

18 ***Section 1. K.S.A. 2022 Supp. 21-5601 is hereby amended to read as***
19 ***follows: 21-5601. (a) Endangering a child is knowingly and***
20 ***unreasonably causing or permitting a child under the age of 18 years to***
21 ***be placed in a situation in which the child's life, body or health may be***
22 ***endangered.***

22

23 ***(b) Aggravated endangering a child is:***

23

24 ***(1) Recklessly causing or permitting a child under the age of 18***
25 ***years to be placed in a situation in which the child's life, body or health***
26 ***is endangered;***

26

27 ***(2) causing or permitting such child to be in an environment where***
28 ***the person knows or reasonably should know that any person is***
29 ***distributing, possessing with intent to distribute, manufacturing or***
30 ***attempting to manufacture any methamphetamine, or analog thereof, as***
31 ***defined by ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1),~~***
32 ***and amendments thereto, or any fentanyl-related controlled substance; or***

32

33 ***(3) causing or permitting such child to be in an environment where***
34 ***the person knows or reasonably should know that drug paraphernalia or***
35 ***volatile, toxic or flammable chemicals are stored for the purpose of***
36 ***manufacturing or attempting to manufacture any methamphetamine, or***
37 ***analog thereof, as defined by ~~subsection (d)(3) or (f)(1) of K.S.A. 65-~~***

36

1 *4107(d)(3) or (f)(1), and amendments thereto, or any fentanyl-related*
2 *controlled substance.*

3 *(c) (1) Endangering a child is a class A person misdemeanor.*

4 *(2) Aggravated endangering a child is a severity level 9, person*
5 *felony. The sentence for a violation of aggravated endangering a child*
6 *shall be served consecutively to any other term or terms of imprisonment*
7 *imposed. Such sentence shall not be considered a departure and shall*
8 *not be subject to appeal.*

9 *(d) Nothing in subsection (a) shall be construed to mean a child is*
10 *endangered for the sole reason the child's parent or guardian, in good*
11 *faith, selects and depends upon spiritual means alone through prayer, in*
12 *accordance with the tenets and practice of a recognized church or*
13 *religious denomination, for the treatment or cure of disease or remedial*
14 *care of such child.*

15 *(e) As used in this section:*

16 ~~(1) "Manufacture" means the same as in K.S.A. 2022 Supp. 21-5701,~~
17 ~~and amendments thereto; and~~

18 ~~(2) "drug paraphernalia,"—means "fentanyl-related controlled~~
19 ~~substance" and "manufacture" mean the same as defined in K.S.A. 2022~~
20 ~~Supp. 21-5701, and amendments thereto.~~

21 ~~Section 1. Sec. 2.~~ K.S.A. 2022 Supp. 21-5701 is hereby amended to
22 read as follows: 21-5701. As used in K.S.A. 2022 Supp. 21-5701 through
23 21-5717, and amendments thereto:

24 (a) "Controlled substance" means any drug, substance or immediate
25 precursor included in any of the schedules designated in K.S.A. 65-4105,
26 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

27 (b) (1) "Controlled substance analog" means a substance that is
28 intended for human consumption, and at least one of the following:

29 (A) The chemical structure of the substance is substantially similar to
30 the chemical structure of a controlled substance listed in or added to the
31 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
32 thereto;

33 (B) the substance has a stimulant, depressant or hallucinogenic effect
34 on the central nervous system substantially similar to the stimulant,
35 depressant or hallucinogenic effect on the central nervous system of a
36 controlled substance included in the schedules designated in K.S.A. 65-
37 4105 or 65-4107, and amendments thereto; or

38 (C) with respect to a particular individual, such individual represents
39 or intends the substance to have a stimulant, depressant or hallucinogenic
40 effect on the central nervous system substantially similar to the stimulant,
41 depressant or hallucinogenic effect on the central nervous system of a
42 controlled substance included in the schedules designated in K.S.A. 65-
43 4105 or 65-4107, and amendments thereto.

1 (2) "Controlled substance analog" does not include:

2 (A) A controlled substance;

3 (B) a substance for which there is an approved new drug application;

4 or

5 (C) a substance with respect to which an exemption is in effect for
6 investigational use by a particular person under section 505 of the federal
7 food, drug, and cosmetic act, 21 U.S.C. § 355, to the extent conduct with
8 respect to the substance is permitted by the exemption.

9 (c) "Cultivate" means the planting or promotion of growth of five or
10 more plants that contain or can produce controlled substances.

11 (d) "Distribute" means the actual, constructive or attempted transfer
12 from one person to another of some item whether or not there is an agency
13 relationship. "Distribute" includes, but is not limited to, sale, offer for sale
14 or any act that causes some item to be transferred from one person to
15 another. "Distribute" does not include acts of administering, dispensing or
16 prescribing a controlled substance as authorized by the pharmacy act of the
17 state of Kansas, the uniform controlled substances act or otherwise
18 authorized by law.

19 (e) (1) "Drug" means:

20 (A) Substances recognized as drugs in the official United States
21 pharmacopeia, official homeopathic pharmacopoeia of the United States or
22 official national formulary or any supplement to any of them;

23 (B) substances intended for use in the diagnosis, cure, mitigation,
24 treatment or prevention of disease in humans or animals;

25 (C) substances, other than food, intended to affect the structure or any
26 function of the body of humans or animals; and

27 (D) substances intended for use as a component of any article
28 specified in subparagraph (A), (B) or (C).

29 (2) "Drug" does not include devices or their components, parts or
30 accessories.

31 (f) (1) "Drug paraphernalia" means all equipment and materials of
32 any kind that are used, or primarily intended or designed for use in
33 planting, propagating, cultivating, growing, harvesting, manufacturing,
34 compounding, converting, producing, processing, preparing, testing,
35 analyzing, packaging, repackaging, storing, containing, concealing,
36 injecting, ingesting, inhaling or otherwise introducing into the human body
37 a controlled substance and in violation of this act. "Drug paraphernalia"
38 shall include, but is not limited to:

39 ~~(A)~~ Kits used or intended for use in planting, propagating,
40 cultivating, growing or harvesting any species of plant that is a controlled
41 substance or from which a controlled substance can be derived;

42 ~~(B)~~ kits used or intended for use in manufacturing, compounding,
43 converting, producing, processing or preparing controlled substances;

- 1 (3)(C) isomerization devices used or intended for use in increasing
2 the potency of any species of plant that is a controlled substance;
- 3 (4)(D) testing equipment used or intended for use in identifying or in
4 analyzing the strength, effectiveness or purity of controlled substances;
- 5 (5)(E) scales and balances used or intended for use in weighing or
6 measuring controlled substances;
- 7 (6)(F) diluents and adulterants, including, but not limited to, quinine
8 hydrochloride, mannitol, mannite, dextrose and lactose that are used or
9 intended for use in cutting controlled substances;
- 10 (7)(G) separation gins and sifters used or intended for use in
11 removing twigs and seeds from or otherwise cleaning or refining
12 marijuana;
- 13 (8)(H) blenders, bowls, containers, spoons and mixing devices used
14 or intended for use in compounding controlled substances;
- 15 (9)(I) capsules, balloons, envelopes, bags and other containers used or
16 intended for use in packaging small quantities of controlled substances;
- 17 (10)(J) containers and other objects used or intended for use in
18 storing or concealing controlled substances;
- 19 (11)(K) hypodermic syringes, needles and other objects used or
20 intended for use in parenterally injecting controlled substances into the
21 human body;
- 22 (12)(L) objects used or primarily intended or designed for use in
23 ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
24 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into
25 the human body, such as:
- 26 (A)(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes
27 with or without screens, permanent screens, hashish heads or punctured
28 metal bowls;
- 29 (B)(ii) water pipes, bongs or smoking pipes designed to draw smoke
30 through water or another cooling device;
- 31 (C)(iii) carburetion pipes, glass or other ~~heat-resistant~~ *heat-resistant*
32 tubes or any other device used, intended to be used or designed to be used
33 to cause vaporization of a controlled substance for inhalation;
- 34 (D)(iv) smoking and carburetion masks;
- 35 (E)(v) roach clips, objects used to hold burning material, such as a
36 marijuana cigarette, that has become too small or too short to be held in
37 the hand;
- 38 (F)(vi) miniature cocaine spoons and cocaine vials;
- 39 (G)(vii) chamber smoking pipes;
- 40 (H)(viii) carburetor smoking pipes;
- 41 (I)(ix) electric smoking pipes;
- 42 (J)(x) air-driven smoking pipes;
- 43 (K)(xi) chillums;

- 1 ~~(L)~~(xii) bongs;
2 ~~(M)~~(xiii) ice pipes or chillers;
3 ~~(N)~~(xiv) any smoking pipe manufactured to disguise its intended
4 purpose;
5 ~~(O)~~(xv) wired cigarette papers; or
6 ~~(P)~~(xvi) cocaine freebase kits.
7 (2) "Drug paraphernalia"—~~shall~~ does not include any products,
8 chemicals or materials described in K.S.A. 2022 Supp. 21-5709(a), and
9 amendments thereto.

10 (g) "*Fentanyl-related controlled substance*" means any substance
11 designated in K.S.A. 65-4105(b)(1), (b)(2), (b)(4), (b)(10), (b)(11), (b)(14),
12 (b)(15), (b)(16), (b)(20), (b)(22), (b)(23), (b)(24), (b)(37), (b)(41), (b)(45),
13 (b)(46), (b)(47), (b)(49), (b)(57), (b)(58), (b)(59), (b)(60), (b)(61), (b)(62),
14 (b)(73), (b)(74), (b)(78), (g)(1) or (g)(2) or 65-4107(c)(1), (c)(6), (c)(9),
15 (c)(26), (c)(28), (c)(30), (f)(3)(A) or (f)(3)(B), and amendments thereto, or
16 any analog thereof.

17 (h) "Immediate precursor" means a substance that the state board of
18 pharmacy has found to be and by rules and regulations designates as being
19 the principal compound commonly used or produced primarily for use and
20 that is an immediate chemical intermediary used or likely to be used in the
21 manufacture of a controlled substance, the control of which is necessary to
22 prevent, curtail or limit manufacture.

23 ~~(h)~~(i) "Isomer" means all enantiomers and diastereomers.

24 ~~(h)~~(j) "Manufacture" means the production, preparation, propagation,
25 compounding, conversion or processing of *or placing into pill or capsule*
26 *form* a controlled substance either directly or indirectly or by extraction
27 from substances of natural origin or independently by means of chemical
28 synthesis or by a combination of extraction and chemical synthesis.
29 "Manufacture" does not include:

30 (1) The preparation or compounding of a controlled substance by an
31 individual for the individual's own lawful use or the preparation,
32 compounding, packaging or labeling of a controlled substance:

33 (A) By a practitioner or the practitioner's agent pursuant to a lawful
34 order of a practitioner as an incident to the practitioner's administering or
35 dispensing of a controlled substance in the course of the practitioner's
36 professional practice; or

37 (B) by a practitioner or by the practitioner's authorized agent under
38 such practitioner's supervision for the purpose of or as an incident to
39 research, teaching or chemical analysis or by a pharmacist or medical care
40 facility as an incident to dispensing of a controlled substance; or

41 (2) the addition of diluents or adulterants, including, but not limited to,
42 quinine hydrochloride, mannitol, mannite, dextrose or lactose that are
43 intended for use in cutting a controlled substance.

1 ~~(j)~~(k) "Marijuana" means all parts of all varieties of the plant
2 Cannabis whether growing or not, the seeds thereof, the resin extracted
3 from any part of the plant and every compound, manufacture, salt,
4 derivative, mixture or preparation of the plant, its seeds or resin.
5 "Marijuana" does not include:

6 (1) The mature stalks of the plant, fiber produced from the stalks, oil
7 or cake made from the seeds of the plant, any other compound,
8 manufacture, salt, derivative, mixture or preparation of the mature stalks,
9 except the resin extracted therefrom, fiber, oil or cake or the sterilized seed
10 of the plant that is incapable of germination;

11 (2) any substance listed in schedules II through V of the uniform
12 controlled substances act;

13 (3) drug products approved by the United States food and drug
14 administration as of the effective date of this act;

15 (4) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-
16 2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or

17 (5) industrial hemp as defined in K.S.A. 2-3901, and amendments
18 thereto, when cultivated, produced, possessed or used for activities
19 authorized by the commercial industrial hemp act.

20 ~~(k)~~(l) "Minor" means a person under 18 years of age.

21 ~~(l)~~(m) "Narcotic drug" means any of the following whether produced
22 directly or indirectly by extraction from substances of vegetable origin or
23 indirectly by means of chemical synthesis or by a combination of
24 extraction and chemical synthesis:

25 (1) Opium and opiate and any salt, compound, derivative or
26 preparation of opium or opiate;

27 (2) any salt, compound, isomer, derivative or preparation thereof that
28 is chemically equivalent or identical with any of the substances referred to
29 in paragraph (1) but not including the isoquinoline alkaloids of opium;

30 (3) opium poppy and poppy straw;

31 (4) coca leaves and any salt, compound, derivative or preparation of
32 coca leaves and any salt, compound, isomer, derivative or preparation
33 thereof that is chemically equivalent or identical with any of these
34 substances, but not including decocainized coca leaves or extractions of
35 coca leaves that do not contain cocaine or ecgonine.

36 ~~(m)~~(n) "Opiate" means any substance having an addiction-forming or
37 addiction-sustaining liability similar to morphine or being capable of
38 conversion into a drug having addiction-forming or addiction-sustaining
39 liability. "Opiate" does not include, unless specifically designated as
40 controlled under K.S.A. 65-4102, and amendments thereto, the
41 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
42 (dextromethorphan). "Opiate" does include its racemic and levorotatory
43 forms.

1 ~~(n)(o)~~ "Opium poppy" means the plant of the species *Papaver*
2 *somniferum* L. except its seeds.

3 ~~(p)~~ "Person" means an individual, corporation, government or
4 governmental subdivision or agency, business trust, estate, trust,
5 partnership, association or any other legal entity.

6 ~~(q)~~ "Poppy straw" means all parts, except the seeds, of the opium
7 poppy, after mowing.

8 ~~(r)~~ "Possession" means having joint or exclusive control over an item
9 with knowledge of and intent to have such control or knowingly keeping
10 some item in a place where the person has some measure of access and
11 right of control.

12 (r) "School property" means property upon which is located a
13 structure used by a unified school district or an accredited nonpublic
14 school for student instruction or attendance or extracurricular activities of
15 pupils enrolled in kindergarten or any of the grades one through 12. This
16 definition shall not be construed as requiring that school be in session or
17 that classes are actually being held at the time of the offense or that
18 children must be present within the structure or on the property during the
19 time of any alleged criminal act. If the structure or property meets the
20 above definition, the actual use of that structure or property at the time
21 alleged shall not be a defense to the crime charged or the sentence
22 imposed.

23 (s) "Simulated controlled substance" means any product that
24 identifies itself by a common name or slang term associated with a
25 controlled substance and that indicates on its label or accompanying
26 promotional material that the product simulates the effect of a controlled
27 substance.

28 ~~Sec. 2-3.~~ K.S.A. 2022 Supp. 21-5703 is hereby amended to read as
29 follows: 21-5703. (a) It shall be unlawful for any person to manufacture
30 any controlled substance or controlled substance analog.

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

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

34 (2) drug severity level 1 felony if:

35 (A) The controlled substance is not methamphetamine, as defined by
36 ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1), and~~
37 amendments thereto, or an analog thereof; ~~and~~

38 (B) *the controlled substance is not a fentanyl-related controlled*
39 *substance; and*

40 (C) the offender has a prior conviction for unlawful manufacturing of
41 a controlled substance under this section, K.S.A. 65-4159, prior to its
42 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or a substantially
43 similar offense from another jurisdiction and the substance was not

1 methamphetamine, as defined by ~~subsection (d)(3) or (f)(1)~~ of K.S.A. 65-
2 4107(d)(3) or (f)(1), and amendments thereto, or an analog thereof, in any
3 such prior conviction; and

4 (3) drug severity level 1 felony if the controlled substance is
5 methamphetamine, as defined by ~~subsection (d)(3) or (f)(1)~~ of K.S.A. 65-
6 4107(d)(3) or (f)(1), and amendments thereto, or an analog thereof, *or is a*
7 *fentanyl-related controlled substance*.

8 (c) The provisions of ~~subsection (d)~~ of K.S.A. 2022 Supp. 21-
9 5301(d), and amendments thereto, shall not apply to a violation of
10 attempting to unlawfully manufacture any controlled substance or
11 controlled substance analog pursuant to this section.

12 (d) For persons arrested and charged under this section, bail shall be
13 at least \$50,000 cash or surety, and such person shall not be released upon
14 the person's own recognizance pursuant to K.S.A. 22-2802, and
15 amendments thereto, unless the court determines, on the record, that the
16 defendant is not likely to re-offend, the court imposes pretrial supervision,
17 or the defendant agrees to participate in a licensed or certified drug
18 treatment program.

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

22 (f) The sentence of a person who violates this section, K.S.A. 65-
23 4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, prior to its
24 transfer, shall not be reduced because these sections prohibit conduct
25 identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their
26 repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 2022
27 Supp. 21-5705, and amendments thereto.

28 ~~Sec. 3.~~ 4. K.S.A. 2022 Supp. 21-5705 is hereby amended to read as
29 follows: 21-5705. (a) It shall be unlawful for any person to distribute or
30 possess with the intent to distribute any of the following controlled
31 substances or controlled substance analogs thereof:

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

35 (2) any depressant designated in ~~subsection (e)~~ of K.S.A. 65-4105(e),
36 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~
37 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b)~~, and amendments
38 thereto;

39 (3) any stimulant designated in ~~subsection (f)~~ of K.S.A. 65-4105(f),
40 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2)~~ of K.S.A. 65-4107(d)(2), (d)(4),
41 (d)(5) or (f)(2) or ~~subsection (e)~~ of K.S.A. 65-4109(e), and amendments
42 thereto;

43 (4) any hallucinogenic drug designated in ~~subsection (d)~~ of K.S.A.

1 65-4105(d), ~~subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
2 ~~K.S.A. 65-4109(g)~~, and amendments thereto;

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

6 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
7 ~~4109(f)~~, and amendments thereto; or

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

10 (b) It shall be unlawful for any person to distribute or possess with
11 the intent to distribute a controlled substance or a controlled substance
12 analog designated in K.S.A. 65-4113, and amendments thereto.

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

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

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

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

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

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

24 (2) Violation of subsection (a) with respect to material containing any
25 quantity of marijuana, or an analog thereof, is a:

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

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

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

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

34 (3) Violation of subsection (a) with respect to material containing any
35 quantity of heroin, as defined by ~~subsection (e)(1) of K.S.A. 65-4105(c)~~
36 ~~(1)~~, and amendments thereto, ~~or~~ methamphetamine, as defined by
37 ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1)~~, and
38 amendments thereto, *or a fentanyl-related controlled substance* or an
39 analog thereof, is a:

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

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

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

3 (D) drug severity level 1 felony if the quantity of the material was
4 100 grams or more.

5 (4) Violation of subsection (a) with respect to material containing any
6 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,
7 65-4109 or 65-4111, and amendments thereto, or an analog thereof,
8 distributed by dosage unit, is a:

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

11 (B) drug severity level 3 felony if the number of dosage units was at
12 least 10 but less than 100;

13 (C) drug severity level 2 felony if the number of dosage units was at
14 least 100 but less than 1,000; and

15 (D) drug severity level 1 felony if the number of dosage units was
16 1,000 or more.

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

21 (6) Violation of subsection (b) is a:

22 (A) Class A person misdemeanor, except as provided in subsection
23 (d)(6)(B); and

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

26 (7) Violation of subsection (c) is a:

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

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

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

33 (e) In any prosecution under this section, there shall be a rebuttable
34 presumption of an intent to distribute if any person possesses the following
35 quantities of controlled substances or analogs thereof:

36 (1) 450 grams or more of marijuana;

37 (2) 3.5 grams or more of heroin or methamphetamine;

38 (3) 100 dosage units or more containing a controlled substance; or

39 (4) 100 grams or more of any other controlled substance.

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

42 (1) Was acting in an agency relationship on behalf of any other party
43 in a transaction involving a controlled substance or controlled substance

1 analog;

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

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

7 (g) As used in this section:

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

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

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

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

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

28 ~~Sec. 4.~~ **5.** K.S.A. 2022 Supp. 21-6805 is hereby amended to read as
29 follows: 21-6805. (a) The provisions of this section shall be applicable to
30 the sentencing guidelines grid for drug crimes. The following sentencing
31 guidelines grid for drug crimes shall be applicable to felony crimes under
32 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto,
33 except as 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	204 194 185	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	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 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 (h) *The sentence for a violation of K.S.A. 2022 Supp. 21-5703 or 21-*
11 *5705, and amendments thereto, with respect to material containing any*
12 *quantity of a fentanyl-related controlled substance shall be presumed*
13 *imprisonment and shall be two times the maximum duration of the*
14 *presumptive term of imprisonment. Such sentence shall not be considered*
15 *a departure and shall not be subject to appeal.*

16 (i) *The sentence for a violation of K.S.A. 2022 Supp. 21-5703 or 21-*
17 *5705, and amendments thereto, shall be presumed imprisonment and shall*
18 *be two times the maximum duration of the presumptive term of*
19 *imprisonment if the trier of fact makes a finding beyond a reasonable*
20 *doubt that the controlled substance involved, because of its appearance or*
21 *packaging, was likely to be attractive to minors. Such sentence shall not*
22 *be considered a departure and shall not be subject to appeal.*

23 Sec.-5: 6. K.S.A. 2022 Supp. **21-5601**, 21-5701, 21-5701b, 21-5703,
24 21-5705 and 21-6805 are hereby repealed.

25 Sec.-6: 7. This act shall take effect and be in force from and after its
26 publication in the statute book.