

As Further Amended by House Committee

As Amended by House Committee

As Amended by Senate Committee

Session of 2024

SENATE BILL No. 414

By Committee on Judiciary

1-29

1 AN ACT concerning crimes, punishment and criminal procedure; **relating**
2 **to crimes against persons; creating the crime of encouraging**
3 **suicide and providing criminal penalties therefor; relating to**
4 **aggravated endangering a child; increasing the criminal penalties**
5 **in certain environments associated with fentanyl-related controlled**
6 **substances or when bodily harm to the child results; relating to**
7 controlled substances; increasing penalties for unlawful distribution of
8 controlled substances with respect to material containing any quantity
9 of a fentanyl-related controlled substance; creating a special sentencing
10 rule for such unlawful distribution thereof; **relating to crimes**
11 **involving violations of personal rights; eliminating the element of**
12 **concealment from the crime of breach of privacy related to**
13 **installing or using a device to photograph or record another**
14 **identifiable person under or through the clothing being worn by**
15 **that other person or another identifiable person who is nude or in a**
16 **state of undress; relating to sentencing; calculation of confinement;**
17 **excluding certain types of incarceration time from the allowance of**
18 **time against a person's criminal sentence; amending K.S.A. 21-**
19 **5601, 21-5705, 21-6101, 21-6615 and 21-6805 and repealing the**
20 existing sections.
21

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

23 **New Section 1. (a) Encouraging suicide is knowingly encouraging**
24 **another person to commit or attempt to commit suicide when the**
25 **person knows that such other person has communicated a desire to**
26 **commit suicide and such encouragement:**

27 **(1) Is made proximate in time to the other person committing or**
28 **attempting to commit suicide; and**

29 **(2) substantially influences the other person's decision or methods**
30 **used to commit or attempt to commit suicide.**

31 **(b) Encouraging suicide is a:**

32 **(1) Severity level 5, person felony if the other person attempts to**

1 **commit suicide; and**

2 **(2) severity level 4, person felony if the other person commits**
3 **suicide.**

4 **(c) As used in this section:**

5 **(1) "Attempt to commit suicide" means any physical action done**
6 **by a person with the intent to commit suicide; and**

7 **(2) "encouraging a person to commit or attempt to commit**
8 **suicide" means oral, written or visual communication that is**
9 **persuasive or intended to be persuasive and that gives advice to**
10 **commit suicide, attempt to commit suicide or develop a plan to**
11 **commit suicide.**

12 **(d) This section shall be a part of and supplemental to the Kansas**
13 **criminal code.**

14 **(e) This section shall take effect on and after July 1, 2024.**

15 **Sec. 2. On and after July 1, 2024, K.S.A. 21-5601 is hereby**
16 **amended to read as follows: 21-5601. (a) Endangering a child is**
17 **knowingly and unreasonably causing or permitting a child under the**
18 **age of 18 years to be placed in a situation in which the child's life,**
19 **body or health may be endangered.**

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

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

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

30 **(3) causing or permitting such child to be in an environment**
31 **where the person knows or reasonably should know that:**

32 **(A) Drug paraphernalia or volatile, toxic or flammable chemicals**
33 **are stored or used for the purpose of manufacturing or attempting to**
34 **manufacture any methamphetamine, or analog thereof, as defined by**
35 **subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or**

36 **(B) drug paraphernalia or toxic materials, compounds or mixtures**
37 **are stored or used for the purpose of manufacturing or attempting to**
38 **manufacture any fentanyl-related controlled substance.**

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

40 **(2) Aggravated endangering a child is a:**

41 **(A) Severity level 9, person felony except as provided in subsection**
42 **(c)(2)(B); and**

43 **(B) severity level 6, person felony when bodily harm is inflicted upon**

1 *the child.*

2 (3) **The sentence for a violation of aggravated endangering a child**
 3 **shall be served consecutively to any other term or terms of**
 4 **imprisonment imposed. Such sentence shall not be considered a**
 5 **departure and shall not be subject to appeal.**

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

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

13 (1) *"Drug paraphernalia," "fentanyl-related controlled substance"*
 14 *and "manufacture" means mean the same as defined in K.S.A. 21-5701,*
 15 *and amendments thereto; and*

16 (2) *"drug paraphernaliamethamphetamine" means the same as any*
 17 *substance designated in K.S.A. ~~21-5701~~ 65-4107(d)(3) or (f)(1), and*
 18 *amendments thereto, or any analog thereof.*

19 ~~Section 1.~~ **Sec. 3. On and after July 1, 2024,** K.S.A. 21-5705 is
 20 hereby amended to read as follows: 21-5705. (a) It shall be unlawful for
 21 any person to distribute or possess with the intent to distribute any of
 22 the following controlled substances or controlled substance analogs thereof:

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

26 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
 27 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~
 28 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
 29 thereto;

30 (3) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~
 31 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~
 32 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments
 33 thereto;

34 (4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~
 35 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
 36 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

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

40 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
 41 ~~4109(f),~~ and amendments thereto; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (D) drug severity level 1 felony if the quantity of the material was
38 100 grams or more.

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

43 (A) Drug severity level 4 felony if the number of dosage units was

1 fewer than 10;

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

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

6 (D) drug severity level 1 felony if the number of dosage units was
7 1,000 or more.

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

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

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

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

17 (D) ***drug severity level 1 felony if the number of dosage units was***
18 ***250 or more.***

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

23 ~~(6)~~(7) Violation of subsection (b) is a:

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

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

28 ~~(7)~~(8) Violation of subsection (c) is a:

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

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

33 (C) drug severity level 1 felony if the number of plants cultivated was
34 100 or more.

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

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

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

43 (3) **50 dosage units or more containing any quantity of a fentanyl-**

1 ***related controlled substance;***

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

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

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

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

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

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

16 (g) As used in this section:

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

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

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

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

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

37 **Sec. 4. On and after July 1, 2024, K.S.A. 21-6101 is hereby**
38 **amended to read as follows: 21-6101. (a) Breach of privacy is**
39 **knowingly and without lawful authority:**

40 (1) **Intercepting, without the consent of the sender or receiver, a**
41 **message by telephone, telegraph, letter or other means of private**
42 **communication;**

43 (2) **divulging, without the consent of the sender or receiver, the**

1 existence or contents of such message if such person knows that the
2 message was illegally intercepted, or if such person illegally learned of
3 the message in the course of employment with an agency in
4 transmitting ~~it~~ such message;

5 (3) entering with intent to listen surreptitiously to private
6 conversations in a private place or to observe the personal conduct of
7 any other person or persons entitled to privacy therein;

8 (4) installing or using outside or inside a private place any device
9 for hearing, recording, amplifying or broadcasting sounds originating
10 in such place, which sounds would not ordinarily be audible or
11 comprehensible without the use of such device, without the consent of
12 the person or persons entitled to privacy therein;

13 (5) installing or using any device or equipment for the
14 interception of any telephone, telegraph or other wire or wireless
15 communication without the consent of the person in possession or
16 control of the facilities for such communication;

17 (6) installing or using a ~~connected~~ camcorder, motion picture
18 camera or photographic camera of any type to ~~secretly~~ videotape, film,
19 photograph or record, by electronic or other means, another
20 identifiable person under or through the clothing being worn by that
21 other person or another identifiable person who is nude or in a state of
22 undress, for the purpose of viewing the body of, or the undergarments
23 worn by, that other person, without the consent or knowledge of that
24 other person, with the intent to invade the privacy of that other
25 person, under circumstances in which that other person has a
26 reasonable expectation of privacy;

27 (7) disseminating or permitting the dissemination of any
28 videotape, photograph, film or image obtained in violation of
29 subsection (a)(6); or

30 (8) disseminating any videotape, photograph, film or image of
31 another identifiable person 18 years of age or older who is nude or
32 engaged in sexual activity and under circumstances in which such
33 identifiable person had a reasonable expectation of privacy, with the
34 intent to harass, threaten or intimidate such identifiable person, and
35 such identifiable person did not consent to such dissemination.

36 (b) Breach of privacy as defined in:

37 (1) Subsection (a)(1) through (a)(5) is a class A nonperson
38 misdemeanor;

39 (2) subsection (a)(6) or (a)(8) is a:

40 (A) Severity level 8, person felony, except as provided in
41 subsection (b)(2)(B); and

42 (B) severity level 5, person felony upon a second or subsequent
43 conviction within the previous five years; and

1 **(3) subsection (a)(7) is a severity level 5, person felony.**

2 **(c) Subsection (a)(1) shall not apply to messages overheard**
3 **through a regularly installed instrument on a telephone party line or**
4 **on an extension.**

5 **(d) The provisions of this section shall not apply to:**

6 **(1)– An operator of a switchboard, or any officer, employee or**
7 **agent of any public utility providing telephone communications**
8 **service, whose facilities are used in the transmission of a**
9 **communication, to intercept, disclose or use that communication in**
10 **the normal course of employment while engaged in any activity which**
11 **is incident to the rendition of public utility service or to the protection**
12 **of the rights of property of such public utility;**

13 **(2)– a provider of an interactive computer service, as defined in 47**
14 **U.S.C. § 230, for content provided by another person;**

15 **(3)– a radio common carrier, as defined in K.S.A. 66-1,143, and**
16 **amendments thereto; and**

17 **(4)– a local exchange carrier or telecommunications carrier as**
18 **defined in K.S.A. 66-1,187, and amendments thereto.**

19 **(e) The provisions of subsection (a)(8) shall not apply to a person**
20 **acting with a bona fide and lawful scientific, educational,**
21 **governmental, news or other similar public purpose.**

22 **(f) As used in this section, "private place" means a place where**
23 **one may reasonably expect to be safe from uninvited intrusion or**
24 **surveillance.**

25 **Sec. 5. K.S.A. 21-6615 is hereby amended to read as follows: 21-**
26 **6615. (a) (1) In any criminal action in which the defendant is**
27 **convicted, the judge, if the judge sentences the defendant to**
28 **confinement, shall direct that for the purpose of computing *the***
29 **defendant's sentence and parole eligibility and conditional release**
30 **dates thereunder, that such sentence is to be computed from a date, to**
31 **be specifically designated by the court in the sentencing order of the**
32 **journal entry of judgment. Such date shall be established to reflect**
33 **and shall be computed as an allowance for the time—~~which~~ *that* the**
34 **defendant has spent incarcerated pending the disposition of the**
35 **defendant's case. *The defendant shall be entitled to have credit applied***
36 ***for each day spent incarcerated.* In recording the commencing date of**
37 **such sentence the date as specifically set forth by the court shall be**
38 **used as the date of sentence and all good time allowances as are**
39 **authorized by the secretary of corrections are to be allowed on such**
40 **sentence from such date as though the defendant were actually**
41 **incarcerated in any of the institutions of the state correctional system.**

42 **(2) *When computing the defendant's sentence, the following shall not***
43 ***be considered time spent incarcerated pending disposition of the***

1 *defendant's case:*

2 (A) *Any time awarded as credit in another case when consecutive*
3 *sentences are imposed on a defendant; or*

4 (B) *any time spent incarcerated in another jurisdiction if no hold has*
5 *been issued in such jurisdiction for the case being sentenced.*

6 **(b) In any criminal action in which probation, or assignment to a**
7 **conservation camp or assignment to community corrections is revoked**
8 **and the defendant is sentenced to confinement, for the purpose of**
9 **computing the defendant's sentence and parole eligibility and**
10 **conditional release date, the defendant's sentence is to be computed**
11 **from a date, hereafter to be specifically designated in the sentencing**
12 **order of the journal entry of judgment. Such date shall be established**
13 **to reflect and shall be computed as an allowance for the time**~~which~~
14 ~~that~~ **the defendant has spent in a residential facility while on**
15 **probation, or assignment to a conservation camp or assignment to**
16 **community correctional residential services program. The**
17 **commencing date of such sentence shall be used as the date of sentence**
18 **and all good time allowances as are authorized by law are to be**
19 **allowed on such sentence from such date as though the defendant were**
20 **actually incarcerated in a correctional institution.**

21 **(c) Such credit is not to be considered to reduce the minimum or**
22 **maximum terms of confinement authorized by law for the offense of**
23 **which the defendant has been convicted.**

24 **Sec. ~~2~~ 6. On and after July 1, 2024, K.S.A. 21-6805 is hereby**
25 **amended to read as follows: 21-6805. (a) The provisions of this section**
26 **shall be applicable to the sentencing guidelines grid for drug crimes. The**
27 **following sentencing guidelines grid for drug crimes shall be applicable to**
28 **felony crimes under K.S.A. 21-5701 through 21-5717, and amendments**
29 **thereto, 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 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 69	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	29 27 25	27 25 23	25 23 21	23 21 19
V	42 40 37	36 34 32	32 30 28	28 26 24	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 K.S.A.
30 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. 21-5703,
34 and amendments thereto, or a substantially similar offense from another
35 jurisdiction, if the controlled substance in any prior conviction was
36 methamphetamine, as defined by K.S.A. 65-4107(d)(3) or (f)(1), and
37 amendments thereto, or an analog thereof, shall be a presumptive term of
38 imprisonment of two times the maximum duration of the presumptive term
39 of imprisonment. The court may impose an optional reduction in such
40 sentence of not to exceed 50% of the mandatory increase provided by this
41 subsection upon making a finding on the record that one or more of the
42 mitigating factors as specified in K.S.A. 21-6815, and amendments
43 thereto, justify such a reduction in sentence. Any decision made by the

1 court regarding the reduction in such sentence shall not be considered a
2 departure and shall not be subject to appeal.

3 (f) (1) The sentence for a third or subsequent felony conviction of
4 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-
5 36a06, prior to its transfer, or K.S.A. 21-5706, and amendments thereto,
6 shall be a presumptive term of imprisonment and the defendant shall be
7 sentenced to prison as provided by this section. The defendant's term of
8 imprisonment shall be served in the custody of the secretary of corrections
9 in a facility designated by the secretary. Subject to appropriations
10 therefore, the defendant shall participate in an intensive substance abuse
11 treatment program, of at least four months duration, selected by the
12 secretary of corrections. If the secretary determines that substance abuse
13 treatment resources are otherwise available, such term of imprisonment
14 may be served in a facility designated by the secretary of corrections in the
15 custody of the secretary of corrections to participate in an intensive
16 substance abuse treatment program. The secretary's determination
17 regarding the availability of treatment resources shall not be subject to
18 review. Upon the successful completion of such intensive treatment
19 program, the offender shall be returned to the court and the court may
20 modify the sentence by directing that a less severe penalty be imposed in
21 lieu of that originally adjudged. If the offender's term of imprisonment
22 expires, the offender shall be placed under the applicable period of
23 postrelease supervision.

24 (2) Such defendant's term of imprisonment shall not be subject to
25 modification under paragraph (1) if:

26 (A) The defendant has previously completed a certified drug abuse
27 treatment program, as provided in K.S.A. 75-52,144, and amendments
28 thereto;

29 (B) has been discharged or refused to participate in a certified drug
30 abuse treatment program, as provided in K.S.A. 75-52,144, and
31 amendments thereto;

32 (C) has completed an intensive substance abuse treatment program
33 under paragraph (1); or

34 (D) has been discharged or refused to participate in an intensive
35 substance abuse treatment program under paragraph (1).

36 (3) The sentence under this subsection shall not be considered a
37 departure and shall not be subject to appeal.

38 (g) (1) Except as provided further, if the trier of fact makes a finding
39 that an offender carried a firearm to commit a drug felony, or in
40 furtherance of a drug felony, possessed a firearm, in addition to the
41 sentence imposed pursuant to K.S.A. 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. 21-5706 or 21-5713, and amendments thereto.

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

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

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

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

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

26 **Sec. 7. K.S.A. 21-6615 is hereby repealed.**

27 ~~Sec. 3.~~ **8. On and after July 1, 2024, K.S.A. 21-5601, 21-5705, 21-**
28 **6101 and 21-6805 are hereby repealed.**

29 ~~Sec. 4.~~ **9. This act shall take effect and be in force from and after its**
30 **publication in the ~~statute book~~ Kansas register.**