Session of 2021

## HOUSE BILL No. 2146

By Committee on Corrections and Juvenile Justice

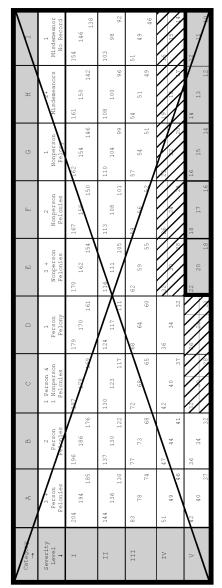
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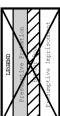
AN ACT concerning crimes, punishment and criminal procedure; relating
 to sentencing; drug crimes; expanding the number of presumptive
 probation and border grid blocks; modifying the sentence terms for
 certain drug offenses; authorizing more offenders to be sentenced to
 participate in the certified drug abuse treatment program; amending
 K.S.A. 2020 Supp. 21-6805 and 21-6824 and repealing the existing
 sections.

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9 Be it enacted by the Legislature of the State of Kansas:

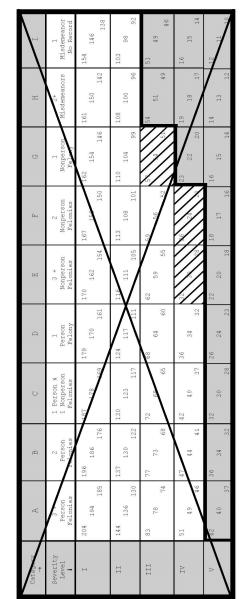
Section 1. K.S.A. 2020 Supp. 21-6805 is hereby amended to read as follows: 21-6805. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for drug crimes. The following sentencing guidelines grid for drug crimes shall be applicable to felony crimes under K.S.A. 2020 Supp. 21-5701 through 21-5717, and amendments thereto, except as otherwise provided by law: 1





SENTENCING RANGE - DRUG OFFENSES

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LEGEND	Presumptive Probation	Presumptive Imprisonment
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SENTENCING RANGE - DRUG OFFENSES

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SENTENCING RANGE - DRUG OFFENSES

I	1 Misdemeanor No Record	146 138	98 92	49 46	15 14	12 11
	Mis N	154	103	15	16	13
	nors	142	96	49	17	11
н	2+ Misdemeanors	150	100	51	18	12
	Mi	161	108	54	19	13
	cson 1y	146	66	51	20	12
U	1 Nonperson Felony	154	104	54	22	13
		162	110	57	52	14
	son	150	101	52	///	14
Eu.	2 Nonperson Felonies	158	108	56	[]]	15
		167	113	59		16
	+ erson ies	2 154	1 105	55		16
ы	3 + Nonperson Felonies	0 162	6 111	59	///	17
		161	111	60	H	18
A	son voi	170 16	117 11	64		20 1
	1 Person Felony	179	124 11			
		169	117	65	H	
D	1 Person & 1 Nonperson Felonies	178	123	68		
	1 Per 1 Non Felc	187 1	130 1	72 6		$\square$
		1 176	122	68	41	H
m	2 Person Felonies	186	130	73	44	$\square$
	P: Fel	196	137	LL	47	
		185	130	74	46	32
Ŕ	3 + Person Felonies	194	136	78	49	34
	ц Б Б	204	144	83	51	36
Ā	ž					
Category →	Severity Level	н	II	III	IV	٨
Ö	ŝ					

LEGE Fresumptive Presumptive I
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(b) Sentences expressed in the sentencing guidelines grid for drug 1 2 crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place 3 within the sentencing range. In the usual case it is recommended that the 4 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 the existence of such period of postrelease supervision. 18

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 offender in that grid block. If an offense is classified in a grid block below 24 25 presumptive disposition the dispositional line. the shall be nonimprisonment. If an offense is classified in a grid block above the 26 27 dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H, 4-I, 5-C 28 29 or 5-D or 3-G, 5-B or 5-C, the court may impose an optional nonprison sentence as provided in-subsection (g) of K.S.A. 2020 Supp. 21-6804(q), 30 31 and amendments thereto.

32 (e) The sentence for a second or subsequent conviction for unlawful 33 manufacturing of a controlled substance, K.S.A. 65-4159, prior to its 34 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, K.S.A. 2020 35 Supp. 21-5703, and amendments thereto, or a substantially similar offense from another jurisdiction, if the controlled substance in any prior 36 37 conviction was methamphetamine, as defined by subsection (d)(3) or (f)(1)of K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog 38 39 thereof, shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court 40 41 may impose an optional reduction in such sentence of not to exceed 50% 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. 2020 Supp. 21-6815, and amendments thereto, justify such a
reduction in sentence. Any decision made by the court regarding the
reduction in such sentence shall not be considered a departure and shall
not be subject to appeal.

5 (f) (1) The sentence for a third or subsequent felony conviction of 6 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-7 36a06, prior to its transfer, or K.S.A. 2020 Supp. 21-5706, and 8 amendments thereto, shall be a presumptive term of imprisonment and the 9 defendant shall be sentenced to prison as provided by this section. The 10 defendant's term of imprisonment shall be served in the custody of the secretary of corrections in a facility designated by the secretary. Subject to 11 12 appropriations therefore, the defendant shall participate in an intensive substance abuse treatment program, of at least four months duration, 13 14 selected by the secretary of corrections. If the secretary determines that 15 substance abuse treatment resources are otherwise available, such term of imprisonment may be served in a facility designated by the secretary of 16 17 corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The secretary's 18 19 determination regarding the availability of treatment resources shall not be 20 subject to review. Upon the successful completion of such intensive 21 treatment program, the offender shall be returned to the court and the court 22 may modify the sentence by directing that a less severe penalty be 23 imposed in lieu of that originally adjudged. If the offender's term of imprisonment expires, the offender shall be placed under the applicable 24 25 period of postrelease supervision.

26 (2) Such defendant's term of imprisonment shall not be subject to 27 modification under paragraph (1) if:

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

31 (B) has been discharged or refused to participate in a certified drug 32 abuse treatment program, as provided in K.S.A. 75-52,144, and 33 amendments thereto;

34 (C) has completed an intensive substance abuse treatment program35 under paragraph (1); or

36 (D) has been discharged or refused to participate in an intensive37 substance abuse treatment program under paragraph (1).

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

40 (g) (1) Except as provided further, if the trier of fact makes a finding 41 that an offender carried a firearm to commit a drug felony, or in 42 furtherance of a drug felony, possessed a firearm, in addition to the 43 sentence imposed pursuant to K.S.A. 2020 Supp. 21-6801 through 211 6824, and amendments thereto, the offender shall be sentenced to:

2 (A) Except as provided in subsection (g)(1)(B), an additional 6 3 months' imprisonment; and

4 (B) if the trier of fact makes a finding that the firearm was 5 discharged, an additional 18 months' imprisonment.

6 (2) The sentence imposed pursuant to subsection (g)(1) shall be 7 presumptive imprisonment. Such sentence shall not be considered a 8 departure and shall not be subject to appeal.

9 (3) The provisions of this subsection shall not apply to violations of 10 K.S.A. 2020 Supp. 21-5706 or 21-5713, and amendments thereto.

Sec. 2. K.S.A. 2020 Supp. 21-6824 is hereby amended to read as 11 12 follows: 21-6824. (a) There is hereby established a nonprison sanction of 13 certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in 14 certified drug abuse treatment programs by the court shall be limited to 15 16 placement of adult offenders, convicted of a felony violation of K.S.A. 17 2020 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense 18 is classified in grid blocks:

(1) 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or

26 (2) <del>5-A, 5-B, 4-C, 4-D,</del> 4-E, 4-F, 4-G, 4-H-<del>or</del>, 4-I, 3-G, 3-H or 3-I of 27 the sentencing guidelines grid for drug crimes, such offender has no felony 28 conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16. 29 prior to their transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705 or 21-5716, 30 31 and amendments thereto, or any substantially similar offense from another 32 jurisdiction, if the person felonies in the offender's criminal history were 33 severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines 34 grid for nondrug crimes, and the court finds and sets forth with 35 particularity the reasons for finding that the safety of the members of the 36 public will not be jeopardized by such placement in a drug abuse treatment 37 program.

(b) As a part of the presentence investigation pursuant to K.S.A. 2020
Supp. 21-6813, and amendments thereto, offenders who meet the
requirements of subsection (a), unless otherwise specifically ordered by
the court, shall be subject to:

42 (1) A drug abuse assessment which shall include a clinical interview 43 with a mental health professional and a recommendation concerning drug 1 abuse treatment for the offender; and

2 (2) a criminal risk-need assessment. The criminal risk-need 3 assessment shall assign a high or low risk status to the offender.

4 (c) If the offender is assigned a high risk status as determined by the 5 drug abuse assessment performed pursuant to subsection (b)(1) and a 6 moderate or high risk status as determined by the criminal risk-need 7 assessment performed pursuant to subsection (b)(2), the sentencing court 8 shall commit the offender to treatment in a drug abuse treatment program 9 until the court determines the offender is suitable for discharge by the 10 court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to K.S.A. 2020 Supp. 21-6608(c) 11 (3), and amendments thereto. The term of treatment may not exceed the 12 13 term of probation.

(d) (1) Offenders who are committed to a drug abuse treatment
 program pursuant to subsection (c) shall be supervised by community
 correctional services.

17 (2) Offenders who are not committed to a drug abuse treatment 18 program pursuant to subsection (c) shall be supervised by community 19 correctional services or court services based on the result of the criminal 20 risk assessment.

(e) Placement of offenders under subsection (a)(2) shall be subject to
 the departure sentencing statutes of the revised Kansas sentencing
 guidelines act.

24 (f) (1) Offenders in drug abuse treatment programs shall be 25 discharged from such program if the offender:

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(A) Is convicted of a new felony; or

(B) has a pattern of intentional conduct that demonstrates the
offender's refusal to comply with or participate in the treatment program,
as established by judicial finding.

30 (2) Offenders who are discharged from such program shall be subject
31 to the revocation provisions of K.S.A. 2020 Supp. 21-6604(n), and
32 amendments thereto.

(g) As used in this section, "mental health professional" includes
licensed social workers, persons licensed to practice medicine and surgery,
licensed psychologists, licensed professional counselors or registered
alcohol and other drug abuse counselors licensed or certified as addiction
counselors who have been certified by the secretary of corrections to treat
offenders pursuant to K.S.A. 75-52,144, and amendments thereto.

(h) (1) Offenders who meet the requirements of subsection (a) shall
not be subject to the provisions of this section and shall be sentenced as
otherwise provided by law, if such offenders:

42 (A) Are residents of another state and are returning to such state 43 pursuant to the interstate corrections compact or the interstate compact for 1 adult offender supervision; or

2 (B) are not lawfully present in the United States and being detained 3 for deportation; or 4

(C) do not meet the risk assessment levels provided in subsection (c).

(2) Such sentence shall not be considered a departure and shall not be 5 6 subject to appeal.

7 (i) The court may order an offender who otherwise does not meet the 8 requirements of subsection (c) to undergo one additional drug abuse assessment while such offender is on probation. Such offender may be 9 ordered to undergo drug abuse treatment pursuant to subsection (a) if such 10 offender is determined to meet the requirements of subsection (c). The cost 11 of such assessment shall be paid by such offender. 12

Sec. 3. K.S.A. 2020 Supp. 21-6805 and 21-6824 are hereby repealed. 13

Sec. 4. This act shall take effect and be in force from and after its 14 15 publication in the statute book.