

**SENATE BILL No. 58**

By Committee on Judiciary

1-22

1 AN ACT concerning crimes, criminal procedure and punishment; relating  
2 to manufacture of methamphetamine; amending K.S.A. 2012 Supp. 21-  
3 5703 and 21-6805 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 21-5703 is hereby amended to read as  
7 follows: 21-5703. (a) It shall be unlawful for any person to manufacture  
8 any controlled substance or controlled substance analog.

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

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

12 (2) drug severity level 1 felony if:

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

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

23 (3) drug severity level 1 felony if the controlled substance is  
24 methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-  
25 4107, and amendments thereto, or an analog thereof.

26 (c) The provisions of subsection (d) of K.S.A. 2012 Supp. 21-5301,  
27 and amendments thereto, shall not apply to a violation of attempting to  
28 unlawfully manufacture any controlled substance or controlled substance  
29 analog pursuant to this section.

30 (d) For persons arrested and charged under this section, bail shall be  
31 at least \$50,000 cash or surety, unless the court determines, on the record,  
32 that the defendant is not likely to re-offend, the court imposes pretrial  
33 supervision, or the defendant agrees to participate in a licensed or certified  
34 drug treatment program.

35 (e) The sentence of a person who violates this section shall not be  
36 subject to statutory provisions for suspended sentence, community service

1 work or probation.

2 (f) The sentence of a person who violates this section ~~or~~, K.S.A. 65-  
3 4159, prior to its repeal *or K.S.A. 2010 Supp. 21-36a03, prior to its*  
4 *transfer*, shall not be reduced because these sections prohibit conduct  
5 identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their  
6 repeal, *K.S.A. 2010 Supp. 21-36a05, prior to its transfer*, or K.S.A. 2012  
7 Supp. 21-5705, and amendments thereto.

8 Sec. 2. K.S.A. 2012 Supp. 21-6805 is hereby amended to read as  
9 follows: 21-6805. (a) The provisions of this section shall be applicable to  
10 the sentencing guidelines grid for drug crimes. The following sentencing  
11 guidelines grid for drug crimes shall be applicable to felony crimes under  
12 K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto,  
13 except as otherwise provided by law:  
14

**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	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	30 28 26	28 26 24	26 24 22	24 22 20
V	42 40 37	36 34 32	32 30 28	30 28 26	28 26 24	26 24 22	24 22 20	22 20 18	20 18 16
								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. 2012 Supp. 21-6804, and amendments thereto.

31 (e) The sentence for a second or subsequent conviction—~~of for~~  
32 *unlawful manufacturing of a controlled substance*, K.S.A. 65-4159, prior  
33 to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, ~~or~~ K.S.A.  
34 2012 Supp. 21-5703, and amendments thereto, ~~manufacture of any~~  
35 ~~controlled substance or controlled substance analog~~ *or a substantially*  
36 *similar offense from another jurisdiction, if the controlled substance in*  
37 *any prior conviction was methamphetamine, as defined by subsection (d)*  
38 *(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog*  
39 *thereof*, shall be a presumptive term of imprisonment of two times the  
40 maximum duration of the presumptive term of imprisonment. The court  
41 may impose an optional reduction in such sentence of not to exceed 50%  
42 of the mandatory increase provided by this subsection upon making a  
43 finding on the record that one or more of the mitigating factors as specified

1 in K.S.A. 2012 Supp. 21-6815, and amendments thereto, justify such a  
2 reduction in sentence. Any decision made by the court regarding the  
3 reduction in such sentence shall not be considered a departure and shall  
4 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. 2012 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  
11 secretary of corrections in a facility designated by the secretary. Subject to  
12 appropriations therefore, the defendant shall participate in an intensive  
13 substance abuse treatment program, of at least four months duration,  
14 selected by the secretary of corrections. If the secretary determines that  
15 substance abuse treatment resources are otherwise available, such term of  
16 imprisonment may be served in a facility designated by the secretary of  
17 corrections in the custody of the secretary of corrections to participate in  
18 an intensive substance abuse treatment program. The secretary's  
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  
24 imprisonment expires, the offender shall be placed under the applicable  
25 period of postrelease supervision.

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

28 (A) The defendant has previously completed a certified drug abuse  
29 treatment program, as provided in K.S.A. 2012 Supp. 75-52,144, and  
30 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. 2012 Supp. 75-52,144,  
33 and amendments thereto;

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

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

38 The sentence under this subsection shall not be considered a departure  
39 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. 2012 Supp. 21-6801 through 21-

1 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. 2012 Supp. 21-5706 or 21-5713, and amendments thereto.

11 Sec. 3. K.S.A. 2012 Supp. 21-5703 and 21-6805 are hereby repealed.

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