

HOUSE BILL No. 2068

By Committee on Corrections and Juvenile Justice

1-18

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; multiple sentences for persons convicted of a new crime;
3 modifying how certain prior convictions are counted for the special
4 sentencing rule related to possession of a controlled substance;
5 amending K.S.A. 2022 Supp. 21-6606 and 21-6805 and repealing the
6 existing sections.
7

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

9 Section 1. K.S.A. 2022 Supp. 21-6606 is hereby amended to read as
10 follows: 21-6606. (a) When separate sentences of imprisonment for
11 different crimes are imposed on a defendant on the same date, including
12 sentences for crimes for which suspended sentences, probation or
13 assignment to a community correctional services program have been
14 revoked, such sentences shall run concurrently or consecutively, as the
15 court directs. Whenever the record is silent as to the manner in which two
16 or more sentences imposed at the same time shall be served, they shall be
17 served concurrently, except as otherwise provided in subsections (c), (d)
18 and (e).

19 (b) Any person who is convicted and sentenced for a crime
20 committed while on probation, assignment to a community correctional
21 services program, parole or conditional release for a misdemeanor shall
22 serve the sentence concurrently with or consecutively to the term or terms
23 under which the person was on probation, assigned to a community
24 correctional services program or on parole or conditional release, as the
25 court directs.

26 (c) Any person who is convicted and sentenced for a crime
27 committed while on probation, assigned to a community correctional
28 services program, on parole, on conditional release or on postrelease
29 supervision for a felony shall serve the sentence consecutively to the term
30 or terms under which the person was on probation, assigned to a
31 community correctional services program or on parole or conditional
32 release.

33 (d) Any person who is convicted and sentenced for a crime
34 committed while on release for a felony pursuant to article 28 of chapter
35 22 of the Kansas Statutes Annotated, and amendments thereto, shall serve
36 the sentence *concurrently or* consecutively to the term or terms under

1 which the person was released, *as the court directs*.

2 (e) (1) Any person who is convicted and sentenced for a crime
3 committed while such person is incarcerated and serving a sentence for a
4 felony in any place of incarceration shall serve the sentence consecutively
5 to the term or terms under which the person was incarcerated.

6 (2) If a person is sentenced to prison for a crime committed on or
7 after July 1, 1993, while the person was imprisoned for an offense
8 committed prior to July 1, 1993, and the person is not eligible for the
9 retroactive application of the sentencing guidelines act, the new sentence
10 shall not be aggregated with the old sentence but shall begin when the
11 person is paroled or reaches the conditional release date on the old
12 sentence, whichever is earlier. If the offender was past the offender's
13 conditional release date at the time the new offense was committed, the
14 new sentence shall not be aggregated with the old sentence but shall begin
15 when the person is ordered released by the prisoner review board or
16 reaches the maximum sentence date on the old sentence, whichever is
17 earlier. The new sentence shall then be served as otherwise provided by
18 law. The period of post incarceration supervision shall be based on the
19 longest term of post incarceration supervision imposed for all crimes upon
20 which sentence was imposed or until discharged from supervision by the
21 prisoner review board. The term of post incarceration supervision imposed
22 by this paragraph shall apply retroactively to crimes committed prior to
23 July 1, 2008.

24 (3) As used in this subsection, "post incarceration supervision"
25 includes parole and postrelease supervision.

26 (f) The provisions of this subsection relating to parole eligibility shall
27 be applicable to persons convicted of crimes committed prior to January 1,
28 1979, but shall be applicable to persons convicted of crimes committed on
29 or after that date only to the extent that the terms of this subsection are not
30 in conflict with the provisions of K.S.A. 22-3717, and amendments
31 thereto. In calculating the time to be served on concurrent and consecutive
32 sentences, the following rules shall apply:

33 (1) When indeterminate terms run concurrently, the shorter minimum
34 terms merge in and are satisfied by serving the longest minimum term and
35 the shorter maximum terms merge in and are satisfied by conditional
36 release or discharge on the longest maximum term if the terms are imposed
37 on the same date.

38 (2) When concurrent terms are imposed on different dates,
39 computation will be made to determine which term or terms require the
40 longest period of imprisonment to reach parole eligibility, conditional
41 release and maximum dates, and that sentence will be considered the
42 controlling sentence. The parole eligibility date may be computed and
43 projected on one sentence and the conditional release date and maximum

1 may be computed and projected from another to determine the controlling
2 sentence.

3 (3) When indeterminate terms imposed on the same date are to be
4 served consecutively, the minimum terms are added to arrive at an
5 aggregate minimum to be served equal to the sum of all minimum terms
6 and the maximum terms are added to arrive at an aggregate maximum
7 equal to the sum of all maximum terms.

8 (4) When indeterminate sentences are imposed to be served
9 consecutively to sentences previously imposed in any other court or the
10 sentencing court, the aggregated minimums and maximums shall be
11 computed from the effective date of the subsequent sentences ~~which~~ *that*
12 have been imposed as consecutive. For the purpose of determining the
13 sentence begins date and the parole eligibility and conditional release
14 dates, the inmate shall be given credit on the aggregate sentence for time
15 spent imprisoned on the previous sentences, but not exceeding an amount
16 equal to the previous minimum sentence less the maximum amount of
17 good time credit that could have been earned on the minimum sentence.
18 For the purpose of computing the maximum date, the inmate shall be given
19 credit for all time spent imprisoned on the previous sentence. This method
20 for computation of the maximum sentence shall be utilized for all
21 sentences computed pursuant to this subsection after July 1, 1983. Nothing
22 in this ~~subsection (f)~~ *(4) paragraph* shall affect the authority of the prisoner
23 review board to determine the parole eligibility of inmates pursuant to
24 ~~subsection (d)~~ of K.S.A. 22-3717(d), and amendments thereto.

25 (5) When consecutive sentences are imposed ~~which~~ *that* are to be
26 served consecutive to sentences for which a prisoner has been on
27 probation, assigned to a community correctional services program, on
28 parole or on conditional release, the amount of time served on probation,
29 on assignment to a community correctional services program, on parole or
30 on conditional release shall not be credited as service on the aggregate
31 sentence in determining the parole eligibility, conditional release and
32 maximum dates, except that credit shall be given for any amount of time
33 spent in a residential facility while on probation or assignment to a
34 community correctional residential services program.

35 (g) When a definite and an indefinite term run consecutively, the
36 period of the definite term is added to both the minimum and maximum of
37 the indeterminate term and both sentences are satisfied by serving the
38 indeterminate term. The provisions of this subsection shall not apply to
39 crimes committed on or after July 1, 1993.

40 (h) When a defendant is sentenced in a state court and is also under
41 sentence from a federal court or other state court or is subject to sentence
42 in a federal court or other state court for an offense committed prior to the
43 defendant's sentence in a Kansas state court, the court may direct that

1 custody of the defendant may be relinquished to federal or other state
2 authorities and that such state sentences as are imposed may run
3 concurrently with any federal or other state sentence imposed.

4 Sec. 2. K.S.A. 2022 Supp. 21-6805 is hereby amended to read as
5 follows: 21-6805. (a) The provisions of this section shall be applicable to
6 the sentencing guidelines grid for drug crimes. The following sentencing
7 guidelines grid for drug crimes shall be applicable to felony crimes under
8 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto,
9 except as otherwise provided by law:

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	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 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	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, *when such person being sentenced has one or*
36 *more prior felony convictions for a violation of K.S.A. 65-4159, prior to its*
37 *repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, K.S.A. 2022*
38 *Supp. 21-5703, and amendments thereto, or a substantially similar offense*
39 *from another jurisdiction*, if the controlled substance in any prior
40 conviction was methamphetamine, as defined by ~~subsection (d)(3) or (f)(1)~~
41 ~~of~~ K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog
42 thereof, shall be a presumptive term of imprisonment of two times the
43 maximum duration of the presumptive term of imprisonment. The court

1 may impose an optional reduction in such sentence of not to exceed 50%
2 of the mandatory increase provided by this subsection upon making a
3 finding on the record that one or more of the mitigating factors as specified
4 in K.S.A. 2022 Supp. 21-6815, and amendments thereto, justify such a
5 reduction in sentence. Any decision made by the court regarding the
6 reduction in such sentence shall not be considered a departure and shall
7 not be subject to appeal.

8 (f) (1) The sentence for a ~~third or subsequent~~ felony conviction of
9 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-
10 36a06, prior to its transfer, or K.S.A. 2022 Supp. 21-5706, and
11 amendments thereto, *when such person being sentenced has two or more*
12 *prior felony convictions for a violation of K.S.A. 65-4610 or 65-4162,*
13 *prior to their repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or*
14 *K.S.A. 2022 Supp. 21-5706, and amendments thereto,* shall be a
15 presumptive term of imprisonment and the defendant shall be sentenced to
16 prison as provided by this section. The defendant's term of imprisonment
17 shall be served in the custody of the secretary of corrections in a facility
18 designated by the secretary. Subject to appropriations therefore, the
19 defendant shall participate in an intensive substance abuse treatment
20 program, of at least four months duration, selected by the secretary of
21 corrections. If the secretary determines that substance abuse treatment
22 resources are otherwise available, such term of imprisonment may be
23 served in a facility designated by the secretary of corrections in the
24 custody of the secretary of corrections to participate in an intensive
25 substance abuse treatment program. The secretary's determination
26 regarding the availability of treatment resources shall not be subject to
27 review. Upon the successful completion of such intensive treatment
28 program, the offender shall be returned to the court and the court may
29 modify the sentence by directing that a less severe penalty be imposed in
30 lieu of that originally adjudged. If the offender's term of imprisonment
31 expires, the offender shall be placed under the applicable period of
32 postrelease supervision.

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

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

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

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

43 (D) has been discharged or refused to participate in an intensive

1 substance abuse treatment program under paragraph (1).

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

4 (g) (1) Except as provided further, if the trier of fact makes a finding
5 that an offender carried a firearm to commit a drug felony, or in
6 furtherance of a drug felony, possessed a firearm, in addition to the
7 sentence imposed pursuant to K.S.A. 2022 Supp. 21-6801 through 21-
8 6824, and amendments thereto, the offender shall be sentenced to:

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

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

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

16 (3) The provisions of this subsection shall not apply to violations of
17 K.S.A. 2022 Supp. 21-5706 or 21-5713, and amendments thereto.

18 Sec. 3. K.S.A. 2022 Supp. 21-6606 and 21-6805 are hereby repealed.

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