

Approved February 25, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on February 23, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Senator Bogina
Dennis Moore, Johnson County District Attorney
Galen E. Davis, Office of the Governor
Gene Johnson, Sunflower Alcohol Safety Action Project, Inc.
Jim Clark, Kansas County and District Attorneys Association
Brenda Braden, Deputy Attorney General
Kyle G. Smith, KBI, Office of Attorney General

Senate Bill 594 - Mandatory sentencing for selling certain narcotic and hallucinogenic drugs.

Senator Bogina, prime sponsor of the bill, explained this bill is in response to a letter from the district attorney from Johnson County concerning drug trafficking and problems connected with it. It is a tougher sentencing bill for drug trafficking. Senator Bogina stated the results of incarcerating these people is worth the cost. He asked the committee to support the amendments of Dennis Moore that will be proposed this morning. A committee member commented your intentions are honorable, but in Sedgwick county their concerns start with picking out numbers in the bill, such as five pounds of marijuana. Senator Bogina responded the amounts indicate when the user becomes a pusher. This bill goes beyond normal usage.

Dennis Moore, Johnson County District Attorney, thanked Senator Bogina for introducing this legislation. He testified, under present Kansas law, a person convicted of possession of one gram of cocaine is subject to the same range of minimum sentence (three to five years) as a large scale drug dealer who is convicted of selling 25 pounds of cocaine. If the legislature wants to reduce the number of commitments to our state institutions, perhaps consideration should be given to reducing the penalty for possession of small quantities of an illegal drug, such as cocaine, from a C felony to a D (or E) felony. Mr. Moore added one ounce of cocaine is worth \$2,000 street value. When people push this amount, it is not for their own use. Mr. Moore then explained his proposed amendments. Copies of his handouts are attached (See Attachments I). During committee discussion, a committee member inquired, in terms of public policy, when you lower the penalty for smaller amounts of drugs and raise the penalty for selling, what message would the public get on this? If lower penalty, the state doesn't mind that you do that? Mr. Moore replied, I suppose. Some people will say we are getting soft on crime, but it is important if we present this in a proper posture. It is important that we be responsible as public officials. We have to educate the public on the drug situation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p~~ on February 23, 1988.

Senate Bill 594 continued

Another committee member stated in reading a report of the Judiciary from the Chief Justice of the Kansas Supreme Court, it was reported most dealers are users and he commented, you can't deal with a problem if you don't incarcerate them. Further committee discussion was held with Mr. Moore.

Galen E. Davis, Office of the Governor, appeared in support of the bill. He testified America has a rich history of leading the world in personal freedom, manufacturing, medicine, education, and many other positive areas. It is truly unfortunate that America also leads the world in one very sad, tragic, deadly area - illicit drug use. The governor is in support of the bill because it sends a clear message of swift and sure sanctions to drug traffickers who would try to bankrupt the people of this state financially, physically, emotionally and morally. A copy of his handout is attached (See Attachment II).

Gene Johnson, Sunflower Alcohol Safety Action Project, Inc., appeared in support of the bill. He testified we feel by placing that offender who is seeking a profit from his illegal drug activities should have a penalty as strict as the person who may have had several drinks and is attempting to operate a motor vehicle. A copy of his statement is attached (See Attachment III).

Jim Clark, Kansas County and District Attorneys Association, appeared in support of the bill. He said he has been before this committee before arguing the merits of mandatory sentencing. Prison overcrowding is one area this committee is concerned about. If this committee would look at the picture of allocation and prison resources they would see this should be done. On the federal side simple possession of cocaine is a misdemeanor. Reducing penalties for simple possession would be considered acceptable at the present time.

Brenda Braden, Deputy Attorney General, testified although this bill is well-intentioned, the bill does not accomplish this goal. Thus we cannot support it. The bill establishes possession of certain specified amount of different types of drugs as the criteria for imposition of mandatory sentences. This simply will not work. If an amount is set to distinguish big-time dealers, the dealers will simply carry just under the amount set. A copy of her statement is attached (See Attachment IV). She introduced Kyle G. Smith, KBI, and he was present to show the committee various drug samples, their value and amount. In response to a question Mr. Smith responded it is pretty well known people who deal do use. The chairman inquired if the attorney general had recommended amendments or suggest looking at another bill? She replied they suggest looking at another bill, and they encourage making manufacturer a felony. It is better to start with a different bill. Drug dealers should have a stronger sentence.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-23-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Clark	Topeka	KCOAA
Gene Bellis	Topeka	Law Office
Larry Hinton	"	SRS AORAS
RON CALBERT	NEWTON	U.J.U.
HAROLD PITTS	TOPEKA	
Galen Davis	Topeka	Governors Office
Laurie Hartman	TOPEKA	Ks. Bar Ass'n.
Brenda Braden	Topeka	AG
Kyle G. Smith	Topeka	KBI
Nancy Lindberg	Topeka	AG
Ronola Spector	"	AG
Gene Johnson	Topeka	TASAP
Alan E. Sims	Overlord Park	City of Overlord Park
BARB REINERT	TOPEKA	KPOA
S. Streff	Topeka	AP
Luis Cedeño	PANAMA	
JUAN A. ESCOBERO M.	PANAMA	
Manuel Chamblat	PANAMA	
Enrico Hauin	Panama	
Jim Smith	FT Scott Ks	FSCC (Comm Coll.)
JUAN Beitia		
Antonio Lou Alba	F.S. Ks	F.S.C.C., Ks
Amarilia Del R. Batista	F. Scott, Ks	Panama
Alvin Moore	Go Co. Courthouse	DA
Melvin Moore	F. Scott Ks	Panama

Att. V

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

June 10, 1987

Ms. Jane Lewis, Coordinator
Drug Abuse Programs
263-E, Statehouse
Topeka, Kansas 66612

Dear Ms. Lewis:

I have received your letter dated June 5, 1987, regarding a comprehensive anti-drug program for Kansas.

Specifically, in the area of law enforcement and prosecution, I would make the following recommendations:

(1) Large scale drug dealers should be subject to a mandatory prison sentence. All of our efforts in the area of law enforcement are to no avail if the person who is convicted of dealing large quantities of illicit drugs is placed on probation or parole without serving even a minimum sentence. I would propose that a threshold amount of various illicit drugs be set and a person dealing quantities of drugs above that threshold amount would be subject to a mandatory prison sentence. For example, one ounce of cocaine has a street value of approximately \$2,000. A person who is dealing ounce quantities of cocaine is not just a casual user and should be subject to a mandatory prison sentence. Likewise, a person dealing five pounds or more of marijuana should be subject to serving a least a minimum prison sentence. While I understand this proposal may adversely impact our overcrowded prisons, the number of large scale dealers is relatively small.

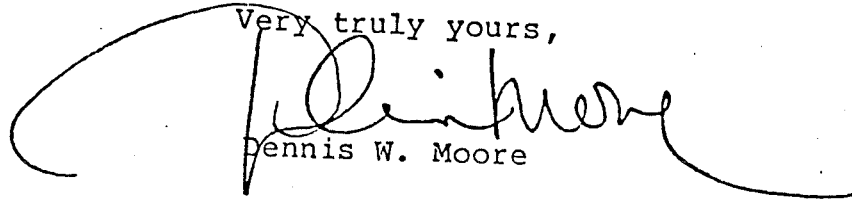
(2) Under present Kansas law, a person convicted of possession of one gram of cocaine is subject to the same range of minimum sentence (three to five years) as a large scale drug dealer who is convicted of selling twenty-five pounds of cocaine. Both are classified as C felonies and, upon conviction, the judge is required to set a minimum sentence between three and five years and a maximum sentence between ten and twenty years. As a very practical matter, the minimum sentence is the only time that counts in terms of establishing a parole eligibility date and determining release. In my judgment, it makes almost no sense to treat the casual user of cocaine who possesses a minute quantity the same in terms of sentence as a large scale drug

Att. I

dealer who makes thousands of dollars each year selling misery to other people. I recommend that the legislature consider amending the law to differentiate between possessors and sellers of illicit drugs.

If you have questions or if I can provide additional information, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis W. Moore". The signature is written in a cursive style with a large, sweeping initial "D".

Dennis W. Moore

DWM:JH

cc: Governor Mike Hayden

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

February 18, 1988

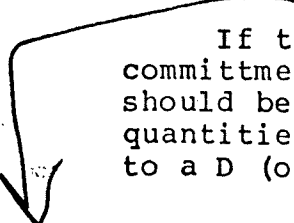
Governor Mike Hayden
State Capitol Building
Topeka, Kansas 66612

Re: Sentencing Commission

Dear Governor Hayden:

Enclosed is a "column" I wrote for the Kansas City Star last summer regarding problems in our sentencing laws. I hope the Governor, the Attorney General, the Legislature -- somebody -- will take the lead in establishing a sentencing commission. The sentencing commission, consisting of judges, prosecutors, law enforcement officials, legislators and citizens -- including crime victims -- would study Kansas crimes and penalties and make recommendations for changes where needed. Cost to the state would be nominal -- per diem and mileage for commission members. Our crimes and penalties laws were last reviewed on a comprehensive basis eighteen years ago. Since then new crimes have been added and penalties have been adjusted. What began as a consistent whole is now a patchwork of inconsistencies which, in too many cases, delivers an unjust result. (See the attached chart and narrative.)

This also would tie in nicely to the Legislature's attempt to address the prison overcrowding problem in Kansas. For example, the classification of felony and range of sentences is the same for a person who possesses one gram of cocaine as for the person who sells pounds of cocaine and makes thousands of dollars each year selling illegal drugs. Under present law, both crimes are a class C felony which carries a minimum sentence of three to five years in prison. I believe most people would agree that large scale drug dealers should be treated much differently than those persons who possess small quantities of drugs for their personal use. This does not in any way condone possession of illegal drugs but only recognizes the differences in how those people should be treated.



If the Legislature wants to reduce the number of committments to our state institutions, perhaps consideration should be given to reducing the penalty for possession of small quantities of an illegal drug, such as cocaine, from a C felony to a D (or E) felony. (Under federal law, possession of cocaine

is a misdemeanor.) This would make the convicted person eligible for services through a local Community Corrections Program. On the other hand, I would like to see large scale drug dealers who deal more than threshold amounts of certain drugs, such as cocaine, and adults who sell any quantity of drugs to a minor be subject to a mandatory prison sentence without opportunity for probation or parole. An ounce of cocaine has a street value of approximately \$2,000. In my judgment, people who deal ounces of cocaine are not casual users and may be classified as dealers for whom we want to get tough. I do not have figures, but I suspect the number of persons who fall in this category are relatively small and would not substantially impact the number of prison commitments if this law were in place.

Changes in Kansas law to treat a little less harshly the person who possesses a small quantity of cocaine and to really get tough with the person who sells large quantities of cocaine would be politically acceptable, I believe, and is really the right thing to do.

The proposal for a sentencing commission to suggest reforms in our sentencing laws is a long-term project but something that our state needs to undertake as soon as possible. People have little respect for a system which does not deliver a just result and in too many cases that is what happens under current Kansas law.

Please give me a call if you would like to discuss this or if you have questions.

Very truly yours,


Dennis W. Moore

DWM:JH
enclosure

cc: Kansas Senators
Kansas Representatives
Attorney General Robert Stephan
Secretary of Corrections Roger Endell
District Attorney Nick Tomasic
District Attorney Gene Olander
District Attorney Clark Owens
District Attorney Jim Flory
KCDAA Executive Director Jim Clark

It's not difficult to understand why the public's respect for our criminal justice system has reached an all-time low. If you steal \$150 you can be sentenced to a minimum of one to two years in prison. But did you know that if you embezzle \$250,000 the sentence is still the same? And the real kicker is that in both cases, Kansas law says the convicted person is presumed entitled to probation. This law was the legislature's response in 1984 to overcrowded prisons. But if that seems incredible to you, consider this: If you are convicted of stealing less than \$150, you are not presumed entitled to probation and the judge can send you to jail.

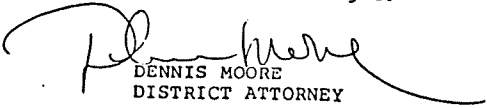
And there is more: a person convicted of possession of one gram of cocaine (a small quantity) can receive the same prison sentence as a large scale drug dealer who is convicted of selling twenty-five pounds of cocaine -- a minimum three to five years. And a person who shoots and causes permanent injury to another but doesn't kill the other person is sentenced the same as the person who gets into a fight, stabs and kills the other person-- as long as he didn't plan the killing. Again, both of those sentences are the same as the person who possesses a small quantity of cocaine. And who really is more dangerous? The person who drives under the influence of alcohol (a misdemeanor) or the person who steals more than \$150 (a felony)?

This is not to suggest that those who possess and use cocaine should not be prosecuted. But shouldn't somebody who makes a good living selling large quantities of illicit drugs be treated more harshly by our sentencing laws? And shouldn't the

employee who violates a trust relationship with an employer and embezzles thousands of dollars be treated differently than the mother who shoplifts \$200 worth of clothes for her children?

I could give you more examples, but the point is that our Kansas Sentencing Code is full of inconsistencies and disparities in the way it treats convicted persons. Sometimes it seems there is little relationship between the injuries or losses suffered by a victim and the penalty imposed on the criminal. The Kansas Sentencing Code was enacted by the legislature eighteen years ago. At that time, the penalties for crimes were part of a consistent whole. Since then, in response to various pressures, the legislature has changed crimes and penalties to the point that they no longer seem consistent with one another or, in some cases, even fair.

I believe a sentencing commission should be appointed at the state level consisting of prosecutors, judges, law enforcement officials, defense attorneys and, most importantly, real citizens -- some of whom were victims of crime -- to recommend needed changes in our laws; to tell the legislature what crime means to them and what is appropriate punishment. The commission should draft a new sentencing code to be submitted to the legislature with the intent of assuring that crimes and penalties are consistent, fair and just. After all, justice should be the goal of our criminal justice system - not just an afterthought.


DENNIS MOORE
DISTRICT ATTORNEY

<u>STATUTE</u>	<u>FELONY CRIME</u>	<u>EXAMPLE</u>	<u>CLASS</u>	<u>RANGE OF MINIMUM SENTENCE</u>
21-3403	Voluntary manslaughter	stabbing and killing somebody in a fight, (in heat of passion)	C	3 - 5 years
21-3414	Aggravated battery	shooting and wounding but not killing a person	C	3 - 5 years
65-4127	Possession of cocaine	possession of one <u>gram</u>	C	3 - 5 years
65-4127a	Sale of cocaine	sale of 25 <u>pounds</u>	C	3 - 5 years
21-3405	Aggravated vehicular homicide	getting drunk, driving a car and killing somebody	E	1 year
21-3707	Worthless check	writing a bad check for \$151	E	1 year
21-3701	Felony theft	stealing \$151	E	1 year
21-3701	Felony theft	embezzling \$275,000	E	1 year

COMMENT: The above chart indicates various crimes and the range of minimum penalties which can be imposed by a judge after conviction. Under Kansas sentencing laws, for example, the person who intentionally kills another "in the heat of passion" is treated the same as a person who possesses less than a gram of cocaine (who is treated the same as the person who makes \$300,000 per year selling cocaine). The person who gets drunk, drives his car and kills somebody may be treated the same under our laws as a person who writes a \$155 bad check. And that person may be treated the same as a person who embezzles \$250,000 (except the embezzler and the bad check writer are entitled to a presumption in favor of probation).

Dennis Moore
District Attorney
February 18, 1988

made
2-23-88

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto; or

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

Any person who violates this subsection shall be guilty of a class C felony.

(c) (1) Any person who is found guilty of selling, offering for sale or having in such person's possession with the intent to sell more than five pounds of any hallucinogenic drug designated in subsection (d)⁽¹³⁾ of K.S.A. 65-4105, and amendments thereto, or ~~designated in subsection (g) of K.S.A. 65-4107, and amendments thereto,~~ shall not be granted probation, assignment to a community correctional services program or suspension of sentence and such person shall be sentenced to not less than the minimum sentence of imprisonment for a class C felony.

(2) When a court has sentenced such person as provided above, the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with such person to the correctional instituiton, that such person has been sentenced pursuant to this section based on a finding by the court that such hallucinogenic drug was sold, offered for sale or possessed with the intent to sell in an amount of more than five pounds.

(e) (d) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound,

sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

Sec. 3. K.S.A. 65-4127a and K.S.A. 1987 Supp. 65-4127b are hereby repealed.

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

SENATE BILL NO. 8
By Senator Bogina

AN ACT relating to controlled substances; concerning mandatory sentencing for the sale thereof; amending K.S.A. 65-4127a and K.S.A. 1987 Supp. 65-4127b and repealing the existing sections.

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

Section 1. K.S.A. 65-4127a is hereby amended to read as follows: 65-4127a. (a) Except as authorized by the uniform controlled substances act and subsection (b), it shall be unlawful for any person to manufacture, possess, have under his such person's control, possess with intent to sell, sell, offer for sale, prescribe, administer, deliver, distribute, dispense or compound any opiates, opium or narcotic drugs. Any person who violates this section shall be guilty of a class C felony, except that, upon conviction for the second offense, such person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a class A felony, and the punishment shall be life imprisonment.

(b) (1) Any person who is found guilty of possession with intent to sell, selling or offering for sale more than one ounce substance containing opiates, opium or narcotic drugs shall not be granted probation, assignment to a community correctional services program or suspension of sentence and such person shall be sentenced to not less than the minimum sentence of imprisonment for a class C felony, except that, upon conviction for the second offense, such person shall be sentenced to not less than the minimum sentence of imprisonment for a class B felony, and upon conviction for a third or subsequent offense, such person shall be sentenced to life imprisonment.

(2) When a court has sentenced such person as provided

above, the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with such person to the correctional institutiton, that such person has been sentenced pursuant to this section based on a finding by the court that such ^{substance containing} opiates, opium or narcotic drugs were possessed with the intent to sell, sold or offered for sale in an amount of more than one ounce.

Sec. 2. K.S.A. 1987 Supp. 65-4127b is hereby amended to read as follows: 65-4127b. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense or compound:

- (1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;
- (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto; or
- (4) any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony upon conviction for a second or subsequent offense or if the substance was prescribed for or administered, delivered, distributed or dispensed to a child under 18 years of age.

(b) Except as authorized by the uniform controlled substances act and subsection (c), it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell:

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612-1590
(913) 296-3232

Mike Hayden Governor

Testimony Concerning SB 594
Presented To
The Senate Judiciary Committee
February 23, 1988

By
Galen E. Davis
Governor's Special Assistant on Drug Abuse

Mr. Chairman, members of the committee, thank you very much for the opportunity to testify before you today in favor of Senate Bill 594, which would require mandatory sentencing for selling narcotic and hallucinogenic drugs.

America has a rich history of leading the world in personal freedom, manufacturing, medicine, education, and many other positive areas. It is truly unfortunate that America also leads the world in one very sad, tragic, deadly area - illicit drug use. U.S. News and World Report announced that "Americans now consume 60% of the worlds production of illegal drugs." There seems to be no shortage of data to back-up that unfortunate claim. It is estimated that:

- * 24 million Americans have tried marijuana
- * 20 million have tried cocaine with 5 million using it regularly
- * \$110 billion is spent annually on illicit drugs - with other related costs estimated at another \$100 billion a year
- * 2/3's of the people entering the workforce have used illegal drugs - 44% have used them in the last year

Att. II

Sadly illicit drugs are no respecter of age. A nationwide annual survey of high school seniors showed that 57% of the class of 1987 had used an illicit drug. 36% of last years seniors used an illicit drug other than marijuana. Other indicators of this nations youth drug problem as reported in the 1987 senior survey includes:

- * 50% have used marijuana
- * 15% have used cocaine
- * 10% have tried hallucinogenic drugs
- * 21% have used stimulant medicines illegally

Kansan's know all too well that this nations drug epidemic is not limited to the east and west coast.

- * 35% of over 29,000 patients admitted for alcohol and drug treatment in Kansas had a problem with marijuana - 21% of the patients had a cocaine problem
- * Although experimentation with illicit drugs is generally lower among Kansas youth - daily use percentages are at the national norms.
- * In 1986 there were 3,639 people arrested on drug charges in Kansas.

Meeting Kansans face to face will underscore the fact that illicit drug use and trafficking has invaded rural as well as urban Kansas communities. As Governor Hayden traveled to all 105 counties during the 1986 campaign he was continually reminded by fellow Kansans of tragedies and fears related to illicit drugs. I recently visited five local drug enforcement units and a federal operation that all listed cocaine trafficking as the most prevalent drug crime being investigated. When asked does this mean that marijuana and methamphetamine trafficking has decreased the response was a uniform "No".

Without a doubt this state and nations illicit drug problem is a vast and complex dilemma that requires a comprehensive response. The Kansas response currently includes teacher and student drug education, community awareness, treatment, and expanding enforcement. Many of our leaders and programs are among the finest in the nation.

Legislation against drug trafficking is an important tool in a comprehensive approach to combatting the drug problem. Currently, there is no differentiation between levels of drug traffickers and no mandatory sentences for drug trafficking offenses. Senate Bill 594 addresses both of these shortcomings in Kansas law. Guaranteeing that major drug traffickers will serve the minimum of their sentences will help to send the message that the Governor, the Kansas Legislature and all caring Kansans want this state to be the very worst place in America to deal illicit drugs.

In considering this bill committee members may wish to know that the federal government has designed major drug trafficking threshold levels and sentencing tables for federal drug violations. Their tables include a:

- * Drug quantity and sentencing table
- * Drug equivalency table
- * Dosage equivalency table
- * Sentencing table

These tables which represent a national norm may be helpful as a detailed starting point to help you decide the threshold level for major drug trafficking in Kansas.

Our office just learned about and received this information late Monday afternoon, therefore we have not had an opportunity to discuss with other offices or agencies its applicability to Kansas drug laws. We do however believe that it is the most definitive work to date on this topic.

Additionally, we would support a change in this bill that would make the manufacturing of illicit substances a felony crime. This is being proposed in HB 2710.

As the Governor said in his 1988 Message to the Legislature, "We can not and we will not quietly resign ourselves to this threat simply because it is so complex and the occurrences have become so commonplace."

Governor Hayden supports SB594 because it sends a clear message of swift and sure sanctions to drug traffickers who would try to bankrupt the people of this state financially, physically, emotionally and morally.

Thank you for your attention to this matter and for the opportunity to appear before you today.

GD:np

PART D - OFFENSES INVOLVING DRUGS

1. UNLAWFUL MANUFACTURING, IMPORTING, EXPORTING, TRAFFICKING, OR POSSESSION; CONTINUING CRIMINAL ENTERPRISE

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)

(a) Base Offense Level:

- (1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or
- (2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or
- (3) For any other offense, the base offense level is the level specified in the Drug Quantity Table below.

(b) Specific Offense Characteristic

- (1) If a firearm or other dangerous weapon was possessed during commission of the offense, increase by 2 levels.

DRUG QUANTITY TABLE

Controlled Substances and Quantity*

Base Offense Level

<p>10 KG Heroin or equivalent Schedule I or II Opiates, 50 KG Cocaine or equivalent Schedule I or II Stimulants, 500 G Cocaine Base, 10 KG PCP or 1 KG Pure PCP, 100 G LSD or equivalent Schedule I or II Hallucinogens, 4 KG Fentanyl or 1 KG Fentanyl Analogue, 10,000 KG Marihuana, 100,000 Marihuana Plants, 2000 KG Hashish, 200 KG Hashish Oil (or more of any of the above)</p>	<p>Level 36</p>
<p>3-9.9 KG Heroin or equivalent Schedule I or II Opiates, 15-49.9 KG Cocaine or equivalent Schedule I or II Stimulants, 150-499 G Cocaine Base, 3-9.9 KG PCP or 300-999 G Pure PCP, 30-99 G LSD or equivalent Schedule I or II Hallucinogens, 1.2-3.9 KG Fentanyl or 300-999 G Fentanyl Analogue, 3000-9999 KG Marihuana, 30,000-99,999 Marihuana Plants, 600-1999 KG Hashish, 60-199 KG Hashish Oil</p>	<p>Level 34</p>
<p>1-2.9 KG Heroin or equivalent Schedule I or II Opiates, 5-14.9 KG Cocaine or equivalent Schedule I or II Stimulants, 50-149 G Cocaine Base, 1-2.9 KG PCP or 100-299 G Pure PCP, 10-29 G LSD or equivalent Schedule I or II Hallucinogens, 4-1.1 KG Fentanyl or 100-299 G Fentanyl Analogue, 1000-2999 KG Marihuana, 10,000-29,999 Marihuana Plants, 200-599 KG Hashish, 20-59.9 KG Hashish Oil</p>	<p>Level 32**</p>
<p>700-999 G Heroin or equivalent Schedule I or II Opiates, 3.5-4.9 KG Cocaine or equivalent Schedule I or II Stimulants, 35-49 G Cocaine Base, 700-999 G PCP or 70-99 G Pure PCP, 7-9.9 G LSD or equivalent Schedule I or II Hallucinogens, 280-399 G Fentanyl or 70-99 G Fentanyl Analogue, 700-999 KG Marihuana, 7000-9999 Marihuana Plants, 140-199 KG Hashish, 14-19.9 KG Hashish Oil</p>	<p>Level 30</p>
<p>400-699 G Heroin or equivalent Schedule I or II Opiates, 2-3.4 KG Cocaine or equivalent Schedule I or II Stimulants, 20-34.9 G Cocaine Base, 400-699 G PCP or 40-69 G Pure PCP, 4-6.9 G LSD or equivalent Schedule I or II Hallucinogens, 160-279 G Fentanyl or 40-69 G Fentanyl Analogue, 400-699 KG Marihuana, 4000-6999 Marihuana Plants, 80-139 KG Hashish, 8.0-13.9 KG Hashish Oil</p>	<p>Level 28</p>
<p>100-399 G Heroin or equivalent Schedule I or II Opiates, 5-1.9 KG Cocaine or equivalent Schedule I or II Stimulants, 5-19 G Cocaine Base, 100-399 G PCP or 10-39 G Pure PCP, 1-3.9 G LSD or equivalent Schedule I or II Hallucinogens, 40-159 G Fentanyl or 10-39 G Fentanyl Analogue, 100-399 KG Marihuana, 1000-3999 Marihuana Plants, 20-79 KG Hashish, 2.0-7.9 KG Hashish Oil</p>	<p>Level 26**</p>
<p>80-99 G Heroin or equivalent Schedule I or II Opiates, 400-499 G Cocaine or equivalent Schedule I or II Stimulants, 4-4.9 G Cocaine Base, 80-99 G PCP or 8-9.9 G Pure PCP, 800-999 MG LSD or equivalent Schedule I or II Hallucinogens, 32-39 G Fentanyl or 8-9.9 G Fentanyl Analogue, 80-99 KG Marihuana, 800-999 Marihuana Plants, 16-19.9 KG Hashish, 1.6-1.9 KG Hashish Oil</p>	<p>Level 24</p>
<p>60-79 G Heroin or equivalent Schedule I or II Opiates, 300-399 G Cocaine or equivalent Schedule I or II Stimulants, 3-3.9 G Cocaine Base, 60-79 G PCP or 6-7.9 G Pure PCP, 600 -799 MG LSD or equivalent Schedule I or II Hallucinogens, 24-31.9 G Fentanyl or 6-7.9 G Fentanyl Analogue, 60-79 KG Marihuana, 600-799 Marihuana Plants, 12-15.9 KG Hashish, 1.2-1.5 KG Hashish Oil</p>	<p>Level 22</p>
<p>40-59 G Heroin or equivalent Schedule I or II Opiates, 200-299 G Cocaine or equivalent Schedule I or II Stimulants, 2-2.9 G Cocaine Base, 40-59 G PCP or 4-5.9 G Pure PCP, 400-599 MG LSD or equivalent Schedule I or II Hallucinogens, 16-23.9 G Fentanyl or 4-5.9 G Fentanyl Analogue, 40-59 KG Marihuana, 400-599 Marihuana Plants, 8-11.9 KG Hashish, .8-1.1 KG Hashish Oil, 20 KG+ Schedule III or other Schedule I or II controlled substances</p>	<p>Level 20</p>

20-39 G Heroin or equivalent Schedule I or II Opiates, 100-199 G Cocaine or equivalent Schedule I or II Stimulants, 1-1.9 G Cocaine Base, 20-39 G PCP or 2-3.9 G Pure PCP, 200-399 MG LSD or equivalent Schedule I or II Hallucinogens, 8-15.9 G Fentanyl or 2-3.9 G Fentanyl Analogue, 20-39 KG Marihuana, 200-399 Marihuana Plants, 5-7.9 KG Hashish, 500-799 G Hashish Oil, 10-19 KG Schedule III or other Schedule I or II controlled substances	Level 18
10-19 G Heroin or equivalent Schedule I or II Opiates, 50-99 G Cocaine or equivalent Schedule I or II Stimulants, 500-999 MG Cocaine Base, 10-19.9 G PCP or 1-1.9 G Pure PCP, 100-199 MG LSD or equivalent Schedule I or II Hallucinogens, 4-7.9 G Fentanyl or 1-1.9 G Fentanyl Analogue, 10-19 KG Marihuana, 100-199 Marihuana Plants, 2-4.9 KG Hashish, 200-499 G Hashish Oil, 5-9.9 KG Schedule III or other Schedule I or II controlled substances	Level 16
5-9.9 G Heroin or equivalent Schedule I or II Opiates, 25-49 G Cocaine or equivalent Schedule I or II Stimulants, 250-499 MG Cocaine Base, 5-9.9 G PCP or 500-999 MG Pure PCP, 50-99 MG LSD or equivalent Schedule I or II Hallucinogens, 2-3.9 G Fentanyl or .5-.9 G Fentanyl Analogue, 5-9.9 KG Marihuana, 50-99 Marihuana Plants, 1-1.9 KG Hashish, 100-199 G Hashish Oil, 2.5-4.9 KG Schedule III or other Schedule I or II controlled substances	Level 14
Less than the following: 5 G Heroin or equivalent Schedule I or II Opiates, 25 G Cocaine or equivalent Schedule I or II Stimulants, 250 MG Cocaine Base, 5 G PCP or 500 MG Pure PCP, 50 MG LSD or equivalent Schedule I or II Hallucinogens, 2 G Fentanyl or 500 MG Fentanyl Analogue; 2.5-4.9 KG Marihuana, 25-49 Marihuana Plants, 500-999 G Hashish, 50-99 G Hashish Oil, 1.25-2.4 KG Schedule III or other Schedule I or II controlled substances, 20 KG+ Schedule IV	Level 12
1-2.4 KG Marihuana, 10-24 Marihuana Plants, 200-499 G Hashish, 20-49 G Hashish Oil, .50-1.24 KG Schedule III or other Schedule I or II controlled substances, 8-19 KG Schedule IV	Level 10
250-999 G Marihuana, 3-9 Marihuana Plants, 50-199 G Hashish, 10-19 G Hashish Oil, 125-449 G Schedule III or other Schedule I or II controlled substances, 2-7.9 KG Schedule IV, 20 KG+ Schedule V	Level 8
Less than the following: 250 G Marihuana, 3 Marihuana Plants, 50 G Hashish, 10 G Hashish Oil, 125 G Schedule III or other Schedule I or II controlled substances, 2 KG Schedule IV, 20 KG Schedule V	Level 6

* The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

** Statute specifies a mandatory minimum sentence.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841, 960.

Application Notes:

1. "Similar drug offense" as used in §2D1.1(a)(1) means a prior conviction as described in 21 U.S.C. §§ 841(b) or 962(b).

2. The statute and guideline also apply to "counterfeit" substances, which are defined in 21 U.S.C. § 802 to mean controlled substances that are falsely labeled so as to appear to have been legitimately manufactured or distributed.
3. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to §1B1.1 (Application Instructions). The enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. The adjustment should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet. The enhancement also applies to offenses that reference §2D1.1, i.e., §§2D1.2-2D1.4. The adjustment is to be applied even if several counts are involved and the weapon was present in any of them.
4. Distribution of "a small amount of marihuana for no remuneration", 21 U.S.C. §§ 841(b)(4), is treated as simple possession, to which §2D2.1 applies.
5. Any reference to a particular controlled substance in these guidelines includes all salts, isomers, and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed.
6. Where there are multiple transactions or multiple drug types, the quantities of drugs are to be added. Tables for making the necessary conversions are provided below.
7. Where a mandatory (statutory) minimum sentence applies, this mandatory minimum sentence may be "waived" and a lower sentence imposed (including a sentence below the applicable guideline range), as provided in 28 U.S.C. § 994(n), by reason of a defendant's "substantial assistance in the investigation or prosecution of another person who has committed an offense". See §5K1.1 (Substantial Assistance to Authorities).
8. A defendant who used special skills in the commission of the offense may be subject to an enhancement under §3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense.
9. Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure. The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

Congress provided an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. § 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. The first row of the table illustrates this

distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.

10. The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U.S.C. § 841(b)(1)), as the primary basis for the guideline sentences. The statute, however, provides direction only for the more common controlled substances, *i.e.*, heroin, cocaine, PCP, LSD and marihuana. The Drug Equivalency Tables set forth below provide conversion factors for other substances, which the Drug Quantity Table refers to as "equivalents" of these drugs. For example, one gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of two grams of a substance containing cocaine in applying the Drug Quantity Table.

The Drug Equivalency Tables also provide a means for combining differing controlled substances to obtain a single offense level. If all the drugs are "equivalents" of the same drug, *e.g.*, stimulants that are grouped with cocaine, convert them to that drug. In other cases, convert each of the drugs to either the heroin or marihuana equivalents, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level. Use the marihuana equivalents when the only substances involved are "Schedule I Marihuana," "Schedule III Substances," "Schedule IV Substances," "Schedule V Substances" or "Other Schedule I or II Substances." Otherwise, use the heroin equivalents.

Note: Because of the statutory equivalences, the ratios in the Drug Equivalency Tables do not necessarily reflect dosages based on pharmacological equivalents.

Examples:

- a. The defendant is convicted of selling seventy grams of a substance containing PCP (Level 22) and 250 milligrams of a substance containing LSD (Level 18). Both PCP and LSD are grouped together in the Drug Equivalency Tables under the heading "LSD, PCP and Other Schedule I and II Hallucinogens," which provide PCP equivalencies. The 250 milligrams of LSD is equivalent to twenty-five grams of PCP. The total is therefore ninety-five grams of PCP, for which the Drug Quantity Table provides an offense level of 24.
- b. The defendant is convicted of selling 500 grams of marihuana (Level 8) and five kilograms of diazepam (Level 8). The diazepam, a Schedule IV drug, is equivalent to 625 grams of marihuana. The total, 1.125 kilograms of marihuana, has an offense level of 10 in the Drug Quantity Table.
- c. The defendant is convicted of selling eighty grams of cocaine (Level 16) and five kilograms of marihuana (Level 14). The cocaine is equivalent to sixteen grams of heroin; the marihuana, to five grams of heroin. The total equivalent is twenty-one grams of heroin, which has an offense level of 18 in the Drug Quantity Table.

DRUG EQUIVALENCY TABLES

Schedule I or II Opiates

1 gm of Alpha-Methylfentanyl =	100 gm of heroin
1 gm of Dextromoramide =	0.67 gm of heroin
1 gm of Dipipanone =	0.25 gm of heroin
1 gm of 3-Methylfentanyl =	125 gm of heroin
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP =	0.7 gm of heroin
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP =	
0.7 gm of heroin	
1 gm of Alphaprodine =	0.1 gm of heroin
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) =	31.25 gm of heroin
1 gm of Hydromorphone/Dihydromorphinone =	2.5 gm of heroin
1 gm of Levorphanol =	2.5 gm of heroin
1 gm of Meperidine/Pethidine =	0.05 gm of heroin
1 gm of Methadone =	0.5 gm of heroin
1 gm of 6-Monoacetylmorphine =	1 gm of heroin
1 gm of Morphine =	0.5 gm of heroin
1 gm of Oxycodone =	0.5 gm of heroin
1 gm of Oxymorphone =	5 gm of heroin
1 gm of Racemorphan =	0.8 gm of heroin
1 gm of Codeine =	0.08 gm of heroin
1 gm of Dextropropoxyphene/Propoxyphene-Bulk =	0.05 gm of heroin
1 gm of Ethylmorphine =	0.165 gm of heroin
1 gm of Hydrocodone/Dihydrocodeinone =	0.5 gm of heroin
1 gm of Mixed Alkaloids of Opium/Papaveretum =	0.25 gm of heroin
1 gm of Opium =	0.05 gm of heroin

Cocaine and Other Schedule I and II Stimulants

1 gm of Cocaine =	0.2 gm of heroin
1 gm of N-Ethylamphetamine =	0.4 gm of cocaine/0.08 gm of heroin
1 gm of Fenethylamine =	0.2 gm of cocaine/0.04 gm of heroin
1 gm of Amphetamine =	1.0 gm of cocaine/0.2 gm of heroin
1 gm of Dextroamphetamine =	1.0 gm of cocaine/0.2 gm of heroin
1 gm of Methamphetamine =	2.0 gm of cocaine/0.4 gm of heroin
1 gm of L-Methamphetamine/Levo-methamphetamine/ L-Desoxyephedrine =	0.2 gm of cocaine/0.04 gm of heroin
1 gm of Phenmetrazine =	0.4 gm of cocaine/0.08 gm of heroin
1 gm of Phenylacetone/P ₂ P (amphetamine precursor) =	0.375 gm of cocaine/0.075 gm of heroin
1 gm of Phenylacetone/P ₂ P (methamphetamine precursor) =	0.833 gm of cocaine/0.167 gm of heroin
1 gm of Cocaine Base ("Crack") =	100 gm of cocaine/20 gm of heroin

LSD, PCP, and Other Schedule I and II Hallucinogens

1 gm of Bufotenine =	0.07 gm of heroin or PCP
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD =	100 gm of heroin or PCP
1 gm of Diethyltryptamine/DET =	0.08 gm of heroin or PCP
1 gm of Dimethyltryptamine/DMT =	0.1 gm of heroin or PCP
1 gm of Mescaline =	0.01 gm of heroin or PCP
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry) =	0.001 gm of heroin or PCP
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet) =	0.0001 gm of heroin or PCP
1 gm of Peyote (Dry) =	0.0005 gm of heroin or PCP
1 gm of Peyote (Wet) =	0.00005 gm of heroin or PCP
1 gm of Phencyclidine/PCP =	1 gm of heroin
1 gm of Phencyclidine (Pure PCP) =	10 gm of heroin or PCP
1 gm of Liquid Phencyclidine =	0.1 gm of heroin or PCP
1 gm of Psilocin =	0.5 gm of heroin or PCP
1 gm of Psilocybin =	0.5 gm of heroin or PCP
1 gm of Pyrrolidine Analog of Phencyclidine/PHP =	1 gm of heroin or PCP
1 gm of Thiophene Analog of Phencyclidine/TCP =	1 gm of heroin or PCP
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB =	2.5 gm of heroin or PCP
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM =	1.67 gm of heroin or PCP
1 gm of 3,4-Methylenedioxyamphetamine/MDA =	0.05 gm of heroin or PCP
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA =	0.035 gm of heroin or PCP
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC =	0.68 gm of heroin or PCP

Schedule I Marihuana

1 gm of Marihuana/Cannabis =	1 mg of heroin
1 Marihuana/Cannabis Plant =	0.1 gm of heroin/100 gm of marihuana
1 gm of Marihuana/Cannabis, granulated, powdered, etc. =	1 mg of heroin/1 gm of marihuana
1 gm of Hashish Oil =	0.05 gm of heroin/50 gm of marihuana
1 gm of Cannabis Resin or Hashish =	5 mg of heroin/5 gm of marihuana
1 gm of Tetrahydrocannabinol, Organic =	0.167 gm of heroin/167 gm of marihuana
1 gm of Tetrahydrocannabinol, Synthetic =	0.167 gm of heroin/167 gm of marihuana

Other Schedule I or II Substances

1 gm of Methaqualone =	0.7 mg of heroin/700 mg of marihuana
1 gm of Amobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Pentobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Secobarbital =	2 mg of heroin/2 gm of marihuana

Schedule III Substances

1 gm of Allobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Aprobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Barbiturate =	2 mg of heroin/2 gm of marihuana
1 gm of Butabarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Butalbital =	2 mg of heroin/2 gm of marihuana
1 gm of Butobarbital/butethal =	2 mg of heroin/2 gm of marihuana
1 gm of Cyclobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Cyclopentobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Glutethimide =	2 mg of heroin/2 gm of marihuana
1 gm of Heptabarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Hexethal =	2 mg of heroin/2 gm of marihuana
1 gm of Hexobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Metharbital =	2 mg of heroin/2 gm of marihuana
1 gm of Talbutal =	2 mg of heroin/2 gm of marihuana
1 gm of Thialbarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Thiamylal =	2 mg of heroin/2 gm of marihuana
1 gm of Thiobarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Thiohexethal =	2 mg of heroin/2 gm of marihuana
1 gm of Thiopental =	2 mg of heroin/2 gm of marihuana
1 gm of Vinbarbital =	2 mg of heroin/2 gm of marihuana
1 gm of Vinylbital =	2 mg of heroin/2 gm of marihuana
1 gm of Phendimetrazine =	2 mg of heroin/2 gm of marihuana
1 gm of Paregoric =	2 mg of heroin/2 gm of marihuana
1 gm of Hydrocodone Cough Syrups =	2 mg of heroin/2 gm of marihuana

Schedule IV Substances

1 gm of Phentermine =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Pentazocine =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Barbital =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Diazepam =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Phenobarbital =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Mephobarbital =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Methohexital =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Methylphenobarbital/Mephobarbital =	0.125 mg of heroin/0.125 gm of marihuana
1 gm of Nitrazepam =	0.125 mg of heroin/0.125 gm of marihuana

Schedule V Substances

1 gm of codeine cough syrup =	0.0125 mg of heroin/12.5 mg of marihuana
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To facilitate conversions to drug equivalencies, the following table is provided:

MEASUREMENT CONVERSION TABLE

1 oz = 28.35 gm
1 lb = 453.6 gm
1 lb = .4536 kg
1 gal = 3.785 liters
1 qt = .946 liters
1 gm = 1 ml (liquid)
1 liter = 1,000 ml
1 kg = 1,000 gm
1 gm = 1,000 mg
1 grain = 64.8 mg

The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of §2D1.1 of the guidelines in cases where the number of doses, but not the weight of the controlled substances, are known. The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose.

DOSAGE EQUIVALENCY TABLE

Hallucinogens

Anhalamine	300 mg
Anhalonide	300 mg
Anhalonine	300 mg
Bufotenine	1 mg
Diethyltryptamine	60 mg
Dimethyltryptamine	50 mg
Lophophorine	300 mg
LSD (Lysergic acid diethylamide)	.1 mg
LSD tartrate	.05 mg
MDA	100 mg
Mescaline	500 mg
PCP	5 mg
Pellotine	300 mg
Peyote	12 mg
Psilocin	10 mg
Psilocybin	10 mg
STP (DOM) Dimethoxyamphetamine	3 mg

Depressants

Barbiturates	100 mg
Brallobarbitol	30 mg
Eldoral	100 mg
Eunarcon	100 mg
Hexethel	100 mg
Methaqualone	300 mg
Thiobarbital	50 mg
Thiohexethal	60 mg

Stimulants

Amphetamines	10 mg
Ethylamphetamine HCl	12 mg
Ethylamphetamine SO ₄	12 mg
Methamphetamine combinations	5 mg
Methamphetamines	5 mg
Preludin	25 mg

11. Types and quantities of drugs not specified in the count of conviction may be considered in determining the offense level. See §1B1.3(a)(2) (Relevant Conduct). If the amount seized does not reflect the scale of the offense, see Application Note 2 of the Commentary to §2D1.4. If the offense involved negotiation to traffic in a controlled substance, see Application Note 1 of the Commentary to §2D1.4.

Background: Offenses under 21 U.S.C. §§ 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.

The base offense levels in §2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking. Levels 32 and 26 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Forces, who also advocate the necessity of these distinctions.

The base offense levels with two asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences with a lower limit as close to the statutory requirement as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.

Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, §§5D3.1-5D3.3.

SENTENCING TABLE

Criminal History Category

Offense Level	I	II	III	IV	V	VI
	0 or 1	2 or 3	4, 5, 6	7, 8, 9	10, 11, 12	13 or more
1	0 - 1	0 - 2	0 - 3	0 - 4	0 - 5	0 - 6
2	0 - 2	0 - 3	0 - 4	0 - 5	0 - 6	1 - 7
3	0 - 3	0 - 4	0 - 5	0 - 6	2 - 8	3 - 9
4	0 - 4	0 - 5	0 - 6	2 - 8	4 - 10	6 - 12
5	0 - 5	0 - 6	1 - 7	4 - 10	6 - 12	9 - 15
6	0 - 6	1 - 7	2 - 8	6 - 12	9 - 15	12 - 18
7	1 - 7	2 - 8	4 - 10	8 - 14	12 - 18	15 - 21
8	2 - 8	4 - 10	6 - 12	10 - 16	15 - 21	18 - 24
9	4 - 10	6 - 12	8 - 14	12 - 18	18 - 24	21 - 27
10	6 - 12	8 - 14	10 - 16	15 - 21	21 - 27	24 - 30
11	8 - 14	10 - 16	12 - 18	18 - 24	24 - 30	27 - 33
12	10 - 16	12 - 18	15 - 21	21 - 27	27 - 33	30 - 37
13	12 - 18	15 - 21	18 - 24	24 - 30	30 - 37	33 - 41
14	15 - 21	18 - 24	21 - 27	27 - 33	33 - 41	37 - 46
15	18 - 24	21 - 27	24 - 30	30 - 37	37 - 46	41 - 51
16	21 - 27	24 - 30	27 - 33	33 - 41	41 - 51	46 - 57
17	24 - 30	27 - 33	30 - 37	37 - 46	46 - 57	51 - 63
18	27 - 33	30 - 37	33 - 41	41 - 51	51 - 63	57 - 71
19	30 - 37	33 - 41	37 - 46	46 - 57	57 - 71	63 - 78
20	33 - 41	37 - 46	41 - 51	51 - 63	63 - 78	70 - 87
21	37 - 46	41 - 51	46 - 57	57 - 71	70 - 87	77 - 96
22	41 - 51	46 - 57	51 - 63	63 - 78	77 - 96	84 - 105
23	46 - 57	51 - 63	57 - 71	70 - 87	84 - 105	92 - 115
24	51 - 63	57 - 71	63 - 78	77 - 96	92 - 115	100 - 125
25	57 - 71	63 - 78	70 - 87	84 - 105	100 - 125	110 - 137
26	63 - 78	70 - 87	78 - 97	92 - 115	110 - 137	120 - 150
27	70 - 87	78 - 97	87 - 108	100 - 125	120 - 150	130 - 162
28	78 - 97	87 - 108	97 - 121	110 - 137	130 - 162	140 - 175
29	87 - 108	97 - 121	108 - 135	121 - 151	140 - 175	151 - 188
30	97 - 121	108 - 135	121 - 151	135 - 168	151 - 188	168 - 210
31	108 - 135	121 - 151	135 - 168	151 - 188	168 - 210	188 - 235
32	121 - 151	135 - 168	151 - 188	168 - 210	188 - 235	210 - 262
33	135 - 168	151 - 188	168 - 210	188 - 235	210 - 262	235 - 293
34	151 - 188	168 - 210	188 - 235	210 - 262	235 - 293	262 - 327
35	168 - 210	188 - 235	210 - 262	235 - 293	262 - 327	292 - 365
36	188 - 235	210 - 262	235 - 293	262 - 327	292 - 365	324 - 405
37	210 - 262	235 - 293	262 - 327	292 - 365	324 - 405	360 - life
38	235 - 293	262 - 327	292 - 365	324 - 405	360 - life	360 - life
39	262 - 327	292 - 365	324 - 405	360 - life	360 - life	360 - life
40	292 - 365	324 - 405	360 - life	360 - life	360 - life	360 - life
41	324 - 405	360 - life	360 - life	360 - life	360 - life	360 - life
42	360 - life	360 - life	360 - life	360 - life	360 - life	360 - life
43	life	life	life	life	life	life

Sentences in months



Sunflower Alcohol Safety Action Project, Inc.

Suite F, 112 S.E. 7th / Topeka, Kansas 66603 / Phone (913) 232-1415

TESTIMONY

Senate Bill No. 594

Senate Judicial Committee, February 23, 1988

Mr. Chairman and Members of the Committee:

I represent the Kansas Community Alcohol Safety Action Project Coordinator's Association. We provide approximately 9,000 evaluations annually for those individuals who have been arrested for driving while under the influence of alcohol and/or other drugs. Our organization supports Senate Bill No. 594. We have always supported tougher penalties for those individuals who seek to profit from the sale and distribution of illegal mind-altering drugs. We would hope that legislation such as this in which the offender realizes that if caught and convicted, he would not be granted probation and will be faced with serving considerable time in the correctional institutions will be a positive deterrent from his illegal activities.

We would make one suggestion that with any person that has been found guilty of those crimes which are classified as a Class A misdemeanor be sentenced to minimum time in jail such as we have under the current DWI law. Under the DWI law, (K.S.A. 8-1567) even the first time offender is subject to no less than forty-eight hours in jail up to a maximum of six months.

Testimony
Page Two

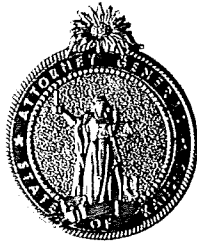
We feel by placing that offender who is seeking to seek a profit from his illegal drug activities should have a penalty as strict as the person who may have had several drinks and is attempting to operate a motor vehicle.

Respectively yours,


Gene Johnson

GJ/sm

2-23-88



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

TO: Senator Robert Frey, Chairman
Members of the Senate Judiciary

TESTIMONY OF BRENDA L. BRADEN
DEPUTY ATTORNEY GENERAL ON BEHALF OF
ROBERT T. STEPHAN, ATTORNEY GENERAL
ON SENATE BILL 594

I am here today on behalf of Attorney General Stephan regarding Senate Bill 594. The Attorney General believes all drug dealers should serve time in prison. Although Senate Bill 594 is well-intentioned, the bill does not accomplish this goal. Thus, we cannot support it.

The bill establishes possession of certain specified amount of different types of drugs as the criteria for imposition of mandatory sentences. This simply will not work. If an amount is set to distinguish big-time dealers, the dealers will simply carry just under the amount set. If the amount set is one ounce, then the dealer will carry 27 grams, instead of 28.35 grams.

Att. IV

The amounts established in this particular bill are unrealistically high. One must possess 5 pounds of an hallucinogenic to be subject to mandatory sentencing under this bill. Five pounds of marijuana is quite a large amount, not usually carried by dealers. You'd almost have to be a farmer of marijuana to have that amount. As for the 23 other hallucinogenic drugs, it's nearly impossible to comprehend 5 pounds. Five pounds of LSD would turn on the entire state of California.

One of Attorney General Stephan's greatest concerns is the sale of drugs to school children. This bill would not affect those sales because such sales typically are in small amounts.

Finally, we believe the bill sends the wrong messages to the judiciary and to the public. Judges are likely to look at this as a reason to not imprison dealers of lesser amounts on the theory that the legislature singled out only the very large dealers for imprisonment. The public will be told by headlines attendant to this bill that the state is imposing mandatory sentences for drug dealers, only to find dealers placed on probation time after time, because this provision would apply only in rare cases. This simply creates more distrust of our system of justice and we believe would be counterproductive in the fight against drugs.

Therefore, we reluctantly decline to support this bill.