

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on March 18, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Revisor of Statutes
Mitch Rice - Revisor of Statutes
Jerry Ann Donaldson - Legislative Research Department
Martha Dorsey - Legislative Research Department
Nicoletta Buonasera - Legislative Research Department
Marilyn Revell for Committee Secretary

Conferees appearing before the committee:

Judge Johnson, Chairman—Kansas Sentencing Commission
Barbara Tombs, Executive Director—Kansas Sentencing Commission
Paul Morrison, District Attorney of the 10th Judicial District; Vice-Chairman, Kansas Sentencing Commission
Judge Eric Rosen, Shawnee County District Court, Division IV
Dan Hermes, Program Administrator—Kansas Association of Addiction Professionals
Shakira Sentwali, Registered Nurse
David H. Wilkinson, Criminal Justice and Mercy Ministries (written testimony)
Roger Werholtz, Secretary—Kansas Department of Corrections
Doug Martin, Clay County Attorney
Diana Cvollins, President—Kansas Association of Court Services Officers
Barry Wilkerson, Pottawatomie County Attorney
Brenda Johnson, Assistant Riley County Attorney (written testimony)

Others attending:

See attached

SB 123 - Drug Convictions; possession is a level D4 classification; mandatory drug treatment; border boxes on D4 replaced with probation boxes.

Chairperson Loyd opened the hearing on SB 123.

Judge Johnson, Chairman of the Kansas Sentencing Commission appeared as a proponent of **SB 123**. This bill represents a substantial modification in the way criminal defendants in general are treated. The target population is made up of drug violators; simple possession offenders. Treatments would be provided to these defendants and would be required of these defendants. The hoped-for results would be right for the drug addicts and benefit the state in eliminating the population influx into prisons.

Barbara Tombs, Executive Director of the Kansas Sentencing Commission spoke as a proponent of **SB 123** (Attachment 1). The target population in the mandatory treatment program is restricted to drug possession only, no prior person felony convictions and no prior convictions for drug trafficking, drug manufacturing or drug possession with intent to sell. This would entail several sentencing policy changes: 1) All drug possession convictions would be sentenced on Severity Level 4 of the Drug Grid instead of the current practice that enhances the severity level for second and subsequent possession convictions. 2) Border boxes would be replaced with presumptive non-prison boxes. 3) Offenders sentenced under this policy would be sentenced to mandatory drug treatment for a period of up to 18 months. 4) Possession of marijuana would be treated in the same manner. 5) Upon successful completion of the substance abuse treatment program, the offender would be discharged and not subject to a period of post-release supervision. If the offender is unsuccessfully discharged or voluntarily quits the mandatory treatment, the offender would be subject to the entire underlying prison sentence, with no credit for time served in the mandatory treatment program. Treatment programs will be required to address detoxification,

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MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on March 18, 2003, in Room Rm. 526-S of the Capitol.

rehabilitation, continuing care/aftercare and relapse prevention. Using 2002 figures, Ms. Tombs was able to forecast the impact of the proposed alternative sentencing policy for drug offenders. A total of 2,739 offenders were sentenced for all drug offenses; 1,571 were sentenced for drug possession offenses; 1,236 were presumptive non-prison or probation sentences. Of these, the target population for placement in mandatory treatment totals 1,255 offenders, of which 1,109 offenders received presumptive non-prison sentences and 281 received prison sentences. This will not only reduce the threat of prison overcrowding, it is the right thing to do. We are recycling individuals rather than providing the level of treatment required in a timely manner for the potential of a successful recovery.

Paul Morrison, Vice Chairman of the Kansas Sentencing Commission was introduced as a proponent for **SB 123** (Attachment 2). This bill will target a narrow group of drug offenders who are in prison strictly because of addiction problems. It provides meaningful treatment alternatives and supervision for non-violent inmates so that expensive prison cells can be reserved for people who threaten the public safety. This legislation would require proper funding provisions.

District Court Judge Eric Rosen appeared in support of **SB 123**. The sentencing grid has become more severe in the last 10 years to address the needs of the "war on drugs." This punishment model has not worked as evidenced by the increased number of repeat offenders. A good alternative is the Drug Courts that have been established in Shawnee and Sedgwick Counties. A drug Court is a pre-charging intervention; a glorified diversion. The Judge, the Prosecutor, Court Services and Defense Attorney are involved in the case up front and are in strictly supervised treatment intervention with the offender. The probation officer is involved and a team approach is used to deal with the offender on a weekly basis.

Dan Hermes, Kansas Alcohol and Drug Service Providers Association spoke in support of **SB 123** (Attachment 3). This bill is good public policy and would save the state money. A recent study supports the importance of a treatment program with the findings that participants who completed the program were 33 percent less likely to be rearrested, 45 percent less likely to be reconvicted and 87 percent less likely to return to prison. Also, program participants were three and one-half times more likely to be employed after completion than before their arrest.

Shukura Sentwali, Registered Nurse and member of Uhuru Faith Ministries, Inc., and a member of the Prisoners of Conscious Committee appeared in support of **SB 123** (Attachment 4). According to federal crime reports, violent crime has been on the decline for over 10 years and at the same time the prison population and construction has increased; due largely to the imprisonment of non-violent offenders with the majority convicted of drug related charges. Ms. Sentwali referred to several statistics emphasizing the disparity in racial makeup of prison population. The amendment regarding retroactivity should be returned to this legislation.

Written testimony from David Wilkinson, Criminal Justice and Mercy Ministries in support of **SB 123** (Attachment 5) was presented.

Secretary Roger Werholtz, Kansas Department of Corrections, was recognized to speak from a neutral position on **SB 123** (Attachment 6). Since the Department of Corrections would be the point of implementation of this program, Secretary Werholtz offered provisions of the bill that need to be addressed: 1) Language in Section 3 to eliminate potential ambiguity regarding ex post facto claims as it relates to revocation. 2) The description of the pre-sentence drug abuse assessment needs to be clarified in the areas of responsibility of preparation—the criminal risk-need assessment needs to be done by court services and that the assessment validated for drug abuse treatment placement be conducted by treatment providers. 3) The full continuum of services from the drug abuse education to residential or detoxification services at one location would be difficult for many treatment providers to furnish, especially in rural areas.

Doug Martin, Clay County Attorney was welcomed to the podium to speak in opposition to **SB 123** (Attachment 7). He is opposed to mandatory treatment for second and subsequent offenders of dangerous narcotics, such as methamphetamines and cocaine. Present law provides incentive not to receive a repeat

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conviction because of the consequences.

Diana Collins, President of the Kansas Association of Court Services Officers spoke in opposition to **SB 123 (Attachment 8)**. She and her organization are concerned about the funding for additional officers for Court Services and Community Corrections that would be needed if this bill should become law. Another concern is who would handle the disbursement of the funding to these programs.

Barry Wilkerson, Pottawatomie County Attorney was recognized to speak in opposition to **SB 123 (Attachment 9)**. As the number of criminals in our state increases and we run out of prison space, we lessen punishment. Sentencing guidelines have had the positive effect of keeping more violent criminals behind bars for longer periods of time but there is concern that every time we get near capacity we look for another crime or group of crimes to treat those offenders outside the system. Mr. Wilkerson asked that judgement be done on a case-by-case basis, not to mandate presumptive probation.

Written testimony was submitted by Brenda Jordan, Assistant Riley County Attorney in opposition to **SB 123 (Attachment 10)**.

The meeting was adjourned at 3:30 p.m. The next scheduled meeting is March 19, 2003.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

GUEST LIST

DATE March 19, 2003

NAME	REPRESENTING
Mary Beth Kidd	OGA
Mary Collins	KACSO
Tim & Joan Collins	Monta, KS
Ysmael Johnson	KSC
Barbara Tombs	KSC
Paul Morrison	KSC
Brenda Harmon	KSC
Michael White	KCDAA
Eric Rosen	SENTENCING Comm.
Wicki Bourne	
Charles G. Toure	
Roger Harant	KDOC
Linden Appel	KDOC
Roger Werholtz	KDOC
Dave Perkins	HUD
Kyle Smith	KBI
Wicki Jackson	kekcc/student
Bobbie McClain	kekcc/student
Jacob MEELWOP	
Adrian Serene	student / Washburn Law
Linda Procter & Rachel Procter	—
Kathy Pank	Judicial Branch
Mark Gleeson	Judicial Branch
Tom Collier	VISITOR

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE March 18, 2003

NAME	REPRESENTING
Peter Ninemire	FAMM
DAVID H. WILKINSON	THE UNITED METHODIST CHURCH
Marilynn Ault	KCSOV
Rodney Preber	Patron of 68 th House District
Trista Curzydlo	KS Bar Assn.
DOUG MARTIN, CLAY COUNTY ATT	
Sister Therese Bangert	KS. Cath. CONF.

**SB 123
PROPOSED ALTERNATIVE SENTENCING POLICY
FOR
DRUG OFFENDERS**

Goal of the Alternative Drug Policy – The goal of the alternative drug policy is to provide community punishment and the opportunity for treatment to nonviolent offenders with drug abuse problems in order to more effectively address the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

Target Population – The Sentencing Commission believed it was critical to clearly define the target population of “nonviolent drug offenders” since prior criminal history and potential public safety issues are of great concern. The target population for placement in the mandatory treatment program is defined as follows:

- Current offense of conviction is for drug possession only, does not include manufacturing, drug trafficking or drug possession with intent to sell offenses
- Criminal history classifications of I to E only, no prior person felony convictions
- No prior convictions for drug trafficking, drug manufacturing or drug possession with intent to sale
- Offenders with prior convictions for drug possession would be eligible
- Offenders with prior conviction for person felonies on Non-Drug Severity Level 8, 9, and 10 would be eligible upon the finding of the court that the offender does not pose a significant threat to public safety
- Current Departure procedures would be applicable

Sentencing Policy Changes - Mandatory treatment in lieu of incarceration would result in several changes in our current sentencing practices for offenders convicted of drug possession. These policies would focus on various levels of treatment options, establishment of certain and immediate sanctions for continued drug usage, and a comprehensive continuum of sanctions that include offender accountability, while safe guarding public safety. Since this is a post conviction sentencing policy, all offenders sentenced under the proposed policy would result in a felony conviction.

- All drug possession convictions would be sentenced on Severity Level 4 of the Drug Grid instead of the current practice that enhances the severity level to severity level 1 and 2 for second, third and subsequent possession convictions
- Border Boxes on Severity Level 4 of the Drug Grid would be replaced with presumptive non-prison boxes
- Offenders sentenced under this policy would be sentenced to mandatory drug treatment for a period of up to 18 months
- Possession of marijuana – First conviction for this offense is classified as a misdemeanor and second and subsequent are classified as a felony. The misdemeanor classification will remain in effect for the first conviction but all subsequent simple possession of marijuana convictions would be sentenced as a drug severity level 4 felony offense

H. Corr & J.J.
3-18-03
Attachment 1

- Upon successful completion of the substance abuse treatment program, the offender would be discharged and not subject to a period of postrelease supervision.
- The proposed Sentencing Policy would become effective upon publication in the statute book.

Offender Accountability

- If the offender is unsuccessfully discharged or voluntarily quits the mandatory treatment, the offender would be subject to the entire underlying prison sentence, with no credit for time served in the mandatory treatment program
- Establishment of criteria that would result in the dismissal of the offender from the mandatory treatment program:
 - a) Conviction of a new felony offense other than felony drug possession
 - b) Judicial finding that the offender has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the terms of treatment and supervision
 - c) Absent a judicial finding, condition violations alone will not result in discharge from the treatment program
 - d) Each and every condition violation shall be subject to some form of non-prison sanctions as defined by statute. Non-prison sanction may include, but not limited to, county jail time, fines, community service, intensified treatment, house arrest, electronic monitoring, etc

Offender Assessment

- Target population will define which offenders will be assessed for placement in a drug treatment program
- Assessment will be done prior to sentencing and will be part of the pre-sentence investigation report (PSI) and available to the Court at the time of sentencing.
- All assessments will be standardized and completed using the following:
 - 1) Level of Service Inventory-Revised (LSI-R) to determine risk of re-offending
 - 2) ASI and SASI to determine level and degree of substance abuse problem
 - 3) Clinical interview with mental health screening to assess dual diagnosis offenders and mental health problems
- Target population defined as Higher Risk offenders will be placed under the supervision of Community Corrections and Lower Risk offenders will be placed under the supervision of Court Services

Treatment Structure

Comprehensive treatment programs will be required to have components that address the four phases of recovery: detoxification, rehabilitation, continuing care/aftercare and relapse prevention. The Commission is recommending the establishment of a state-wide comprehensive drug treatment delivery system that includes a continuum of services that allows the offender to move up or down the continuum as the recovery process requires. Statewide substance abuse treatment should include at a minimum:

- Core treatment options must be available in every jurisdiction
- Individual jurisdictions should tailor treatment programs to meet specific needs of the local community
- Initially, it may be necessary for residential placements to be outside of an offender's local community especially in rural areas, given the current limited number of facilities available and their geographic locations
- Alcohol treatment will be available in addition to drug treatment when needed or required
- Drug Abuse Treatment programs can include faith based programs
- Regardless of the level of substance abuse treatment assessed, all treatment plans will include an aftercare component
- Exploration of increased funding for Drug Courts to enable accommodation of a post-plea drug offender population should vigorously be pursued
- Treatment programs should incorporate family and auxiliary support services
- Establishment of Regional Residential Treatment Facilities will be required. It is recommended that four Community Based Therapeutic Communities be established for offenders with the most severe substance abuse problems. In addition, current residential treatment facilities will require bed expansion to accommodate the projected increase in clients.

Treatment Providers

It is recognized that this specific target population will provide a challenge to many drug treatment providers due to the extent of their anti-social behavior and the criminal component of their drug abusing lifestyle. It is recommended that treatment providers under this policy comply with the following:

- Treatment providers will be required to obtain additional certification through the Department of Corrections in addition to any other state licensing or certification requirements to provide Drug and Alcohol Treatment. Certification will focus on case management, cognitive behavior training and other requirements currently utilized by the Department of Corrections
- The Department of Corrections will complete certification of all Drug and Alcohol treatment providers by November 1, 2003
- Certified Treatment Providers will be placed on a statewide "Preferred Provider List" for the courts and/or the supervising agency for placement of offenders for the appropriate substance abuse treatment
- It will be imperative that Mental Health providers work in unison with Drug and Alcohol Treatment Providers to address the needs of the significant number of anticipated "Dual Diagnosis" offenders and medication requirements of this population. Offenders with both mental illness and substance abuse problems must have both conditions treated simultaneously for effective recovery.

Impact of Proposed Alternative Sentencing Policy for Drug Offenders

As noted earlier, during the calendar year 2002, a total of 2,739 offenders were sentenced for all drug offenses. Of that total, 1,571 offenders were sentenced for the offense of drug possession. The distribution of those 1,571 drug possession sentences indicates that 731 were prison sentences and 1,236 were presumptive non-prison or probation sentences. When the established criteria identifying the target population for placement in the mandatory treatment program is applied (criminal history categories E to I and no prior convictions for drug trafficking or manufacturing), the target population for placement in the mandatory treatment policy totals 1,255 offenders, of which 1,109 offenders received presumptive non-prison sentences and 281 received prison sentences. Outlined below is a summary of the sentencing trends for drug offenses during calendar year 2002.

I. Summary of All Drug Sentences Imposed by Severity Level and Type of Sentence

Severity Level	Prison	Probation	Subtotal
D1	207	56	263
D2	98	43	141
D3	168	520	688
D4	258	1389	1647
Total	731	2008	2739

II. Summary of All Drug Possession Sentences Imposed by Severity Level and Sentence Type

Severity Level	Prison	Probation	Subtotal
D1	16	4	20
D2	58	27	85
D4	207	1205	1412
Total	281	1236	1517

III. Summary of Drug Possession Sentences with Criminal History Categories E to I (Target Population Only) by Severity Level and Type of Sentence Imposed

Severity Level	Prison	Probation	Subtotal
D1	13	4	17
D2	46	21	67
D4	87	1084	1171
Total	146	1109	1255

IV. Summary of Dug Possession Sentences for Target Population by Criminal History Categories

Criminal History Category	Number of Sentences
E	181
F	108
G	251
H	233
I	482
Total	1255

V. Summary of Drug Possession Sentences for Target Population by Type of Offense

Offense Type	Number of Sentences
Opiates or Narcotics Possession, 1 st	980
Opiates or Narcotics Possession, 2 nd	67
Opiates or Narcotics Possession, 3 rd	17
Depressants, Stimulants, Hallucinogenic, etc.; Possession, 2 nd and Subsequent	191
Total	1255

78%

When comparing sentences imposed for the target population of drug possession convictions with admissions to prison for that same target population the impact of both condition probation violators and condition postrelease violators becomes very evident. Condition violators accounted for 364 (78%) of the total 472 prison admissions. Outlined below is a summary of calendar year 2002 prison admissions for the target population of drug possession convictions.

Calendar Year 2002 Prison Admissions for Drug Possession Target Population

Severity Level	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
D1	6	2	7	15
D2	35	12	26	73
D4	67	225	92	384
Total	108	239	125	472

Projected Prison Bed Impact

In calculating the project prison beds savings, certain assumptions were applied in order to ensure that the impact of the policy did not over state the number of anticipated prison beds saved A

24% failure rate was applied to successful completion of the drug treatment program and return to prison, with 33% failing after 6 months in the program, 33% failing after 12 months in the program and another 33% failing after 15 months in the program. It is assumed that upon admission to prison, the average length of sentence served will be 15 months. In addition, within 120 days of the implementation of the proposed policy, condition postrelease violators are factored out of the projections. The tables below presents the projected prison bed savings if the alternative drug sentencing policy is implemented as proposed. The total prison bed impact is presented, followed by the impact by gender.

impact w/ retroactivity fact

Total Prison Bed Impact Assessment

June of Each Year	If Current Policy Unchanged, Beds Required	If Current Policy Changed, Beds Required	Total Beds Saved
2004	432	192	240
2005	508	176	332
2006	540	136	404
2007	547	125	422
2008	589	112	477
2009	628	114	514
2010	658	95	563
2011	629	94	535
2012	655	103	552
2013	670	101	569

Male Prison Bed Impact

June of Each Year	If Current Policy Unchanged, Beds Needed	If Current Policy Changed, Beds Needed	Male Beds Saved
2004	345	153	192
2005	404	143	261
2006	423	109	314
2007	428	100	328
2008	466	91	375
2009	490	94	396
2010	517	74	443
2011	502	75	427
2012	536	80	456
2013	548	77	471

Female Prison Bed Impact

June of Each Year	If Current Policy Unchanged, Beds Needed	If Current Policy Changed, Beds Needed	Total Beds Saved
2004	87	39	48
2005	104	33	71
2006	117	27	90
2007	119	25	94
2008	123	21	102
2009	138	20	118
2010	141	21	120
2011	127	19	108
2012	119	23	96
2013	122	24	98

Projected Substance Abuse Treatment Costs

In defining the anticipated increase for substance abuse treatment under this proposed policy, both offenders sentenced to prison and offenders who initially received a presumptive non-prison sentence must be considered since the policy mandates treatment for all nonviolent drug possession offenders defined in the target group. Calendar year 2002 sentences identify 1,255 offenders eligible for placement in treatment. Of that total, 89% (1,109) were currently sentenced to presumptive non-prison sentences and may currently be receiving some level of substance abuse treatment, although probably not an appropriate level of treatment. Only 12% (146) of the target group were sentenced directly to prison by the courts. In addition, any one in prison on the date of enactment of this bill, who meets the re-sentencing criteria, would also be placed in a mandatory treatment program.

The Commission projects that the total population for treatment will total 1,318 offenders per year. This figure includes a 5% error rate as to minimize the possibility of under estimating the treatment population. It should be noted that approximately 77% of this total number of offenders have non-prison sentences now and are either in some level of treatment or on a waiting list to enter treatment. Thus, the policy itself does not create a significant increase in the demand for treatment, but rather attempts to ensure that an appropriate level and volume of treatment services are available to meet the current demands and needs of this population.

As stated earlier, the effectiveness of treatment is closely aligned with matching the level of treatment to the substance abuse needs of an offender. There is no one perfect drug treatment program that will work for every offender. To elevate the chances of successful treatment the level of substance abuse problem must be matched with the appropriate treatment, whether that treatment is defined as long-term residential, intensive outpatient, substance abuse education or relapse prevention. Placing an offender in the wrong type or level of treatment does little to address the underlying substance abuse problem. In addition, a continuum of treatment needs to be available so that an offender can move up and down the spectrum of treatment options depending on the needs of that offender.

The Sentencing Commission included treatment providers in discussions relating to level of substance abuse seen by providers and the projected costs of treatment options to adequately provide the required treatment. In addition, the Commission reviewed substance abuse levels encountered from states that have enacted similar drug policy reforms. Information provided to the Commission indicated that:

- 20% of the target population would require extremely high levels of treatment
- 20% of the target population would require high levels of treatment
- 30% of the target population would require medium levels of treatment
- 30 % of the target population would require low levels of treatment

The Commission, with the assistance of treatment providers, assigned an average cost to each level of treatment identified using three scenarios that project different lengths of stay in specific programs, as well as movements up and down the continuum of treatment services available. A total costs and an average annual cost per offender are calculated:

Projected Treatment Costs			
Level of Treatment Assessed	Full Range Of Treatment Options	Medium Range Of Treatment Options	Minimal Range Of Treatment Options
Extremely High – 20% 263 Offenders	\$4,023,900	\$2,682,600	\$1,709,500
<i>Extremely High Average Cost Per Offender</i>	<i>\$ 15,300</i>	<i>\$ 10,200</i>	<i>\$ 6,500</i>
High – 20% 263 Offenders	\$1,420,200	\$1,209,800	\$ 920,500
<i>High Average Cost Per Offender</i>	<i>\$ 5,400</i>	<i>\$ 4,600</i>	<i>\$ 3,500</i>
Medium – 30% 396 Offenders	\$1,782,000	\$1,386,000	\$ 792,000
<i>Medium Average Cost Per Offender</i>	<i>\$ 4,500</i>	<i>\$ 3,500</i>	<i>\$ 2,000</i>
Low – 30% 396 Offenders	\$ 891,000	\$ 594,000	\$ 475,200
<i>Low Average Cost Per Offender</i>	<i>\$ 2,250</i>	<i>\$ 1,500</i>	<i>\$ 1,200</i>
Relapse Prevention – 100% 1,318 Offenders	\$ 475,798	\$ 475,798	\$ 475,798
<i>Relapse Prevention Average Cost per Offender</i>	<i>\$ 361</i>	<i>\$ 361</i>	<i>\$ 361</i>
Less Current Treatment Costs 330 Offenders	\$ (165,000)	\$ (165,000)	\$ (156,000)
<i>Current Average Treatment Costs Per Offender</i>	<i>\$ (500)</i>	<i>\$ (500)</i>	<i>\$ (500)</i>
Projected Total Cost 1,318 Offenders	\$8,427,848	\$6,183,198	\$4,216,998
Total Annual Average Cost Per Offender	\$ 6,394	\$ 4,691	\$ 3,200

The projected total cost of treatment includes costs for relapse prevention for every offender regardless of the level of treatment assessed. The Commission believes it is critical that aftercare and relapse prevention be provided and funded to enable offenders to successfully reach and maintain a lifestyle that is no longer dependent on drug usage. A cost for offenders currently receiving some level of drug treatment was also factored into the annual costs that were assessed. Information provided to the Commission indicated that approximately one fourth of the offenders who need substance abuse treatment are receiving a minimal level through either participation in Alcoholics Anonymous, Narcotics Anonymous or limited outpatient services, which are in most situations not adequate to address the offender's level of substance abuse. It was projected that the average cost of treatment for this specific population is approximately \$500 per offender. Since this cost is currently being assumed by the criminal justice system, the total cost of the projected treatment was adjusted to reflect that amount.

It was indicated by treatment providers that annual treatment costs vary depending on the volume of offenders participating in treatment, which can reduce the actual cost per offender. In addition, co-payments from offenders participating in treatment also can impact the total costs of treatment provided. The Commission has attempted to provide a preliminary overview of projected treatment costs, which are in no way to be interpreted as all inclusive but rather as a basis for cost consideration of this proposed alternative sentencing policy for nonviolent drug offenders.

Prison Construction and Operating Costs

The Department of Corrections has indicated that construction of a cell house at the El Dorado correction facility that would house between 128 to 256 offenders depending on custody classification of the offenders would cost an estimated \$7.1 million dollars; the construction of two cell houses at that same facility would house between 256 to 512 offenders would cost an estimated \$14.4 million dollars. In addition, annual operating costs (minus the one-time start-up costs) would be as follows:

	One Cell House		Two Cell Houses ¹	
	128 cell/ 128 inmates	128 cell/ 256 inmates	256 cell/ 256 inmates	256 cell/ 512 inmates
Salaries & Wages	\$2,257,000	\$2,405,000	\$3,258,000	\$3,509,000
Other Operating	286,000	525,000	705,000	1,024,000
Programs	143,000	286,000	286,000	573,000
Health Care	317,000	549,000	549,000	1,355,000
Food Service	191,000	382,000	382,000	764,000
Total	\$3,194,000	\$4,147,000	\$5,180,000	\$7,225,000
<i>Ave\$/Inmate</i>	<i>\$25,000</i>	<i>\$16,200</i>	<i>\$20,200</i>	<i>\$14,100</i>

¹ Table contained in the Department of Corrections "Committee Overview" to House Committee on Corrections and Juvenile Justice.

Conclusion

The Sentencing Commission's proposed alternative sentencing policy for non-violent drug offenders focuses on several issues. First is providing the opportunity for appropriate treatment to non-violent offenders who would most likely not be involved in the criminal justice system if it weren't for their substance abuse problem, which not only impacts the criminal justice system, but their families, employers and communities. By providing the level of treatment required in a timely manner, the potential for successful recovery is enhanced.

Second is the issue of offender accountability for his criminal actions and behavior. The policy is directed at offenders who have been convicted of felony drug possession and treatment is mandatory, not an option for the offender. In addition, the offender is held accountable with clearly defined consequences for his behavior while participating in treatment and under the supervision of the criminal justice system.

Finally, the proposed policy enhances public safety. The vast majority of offenders convicted of drug possession receive presumptive non-prison sentences. They are currently living in our communities without the benefit of the necessary drug treatment. With an insufficient number of treatment programs available and long waiting list to enter a program, these offenders continue to use drugs and are at risk to commit other offenses to finance their drug problem, which increases the cost of their substance abuse problem to both society and to their victims. Eventually their presumptive non-prison sentence is revoked and the offender is placed in prison at an estimated cost of approximately \$20,000 per year. Given the limited number of substance abuse programs currently available in prison, the likelihood of an offender leaving prison with the same substance abuse problem that ultimately resulted in the period of incarceration is high. The cycle will begin all over again. By providing adequate treatment opportunities, this cycle can be broken for a large portion of these offenders.

This proposed policy is intended to combine the criminal justice model and the medical model approach towards substance abuse and treatment. Understanding that treatment is not a quick process and that periods of relapse often occur, the policy provides for an appropriate length of treatment, development of a continuum of treatment options and provides for the necessary aftercare or relapse prevention that is often critical for successful recovery. At the same time the policy requires supervision of the offender by the criminal justice system while in treatment, designates criteria for removal from a treatment program and provides for consequences for drug related behavior. The offender is accountable for his behavior regardless of his substance abuse problem. The Sentencing Commission believes this balanced approach can decrease the number of offenders entering the criminal justice system with substance abuse problems and reduce the numerous social costs of substance abuse to the State. Finally, enactment of the proposed policy will result in additional prison beds being available to incarcerate the serious and violent offenders who pose the greatest threat to public safety.

Although the Sentencing Commission is required by statutory mandate to bring forth recommendations to the legislature on ways to reduce prison population, the two year process that Commission went through in developing this proposal was enlightening and educational for its members. Given the backgrounds of the various members, the discussions on this topic were often frank and intense. As priorities were identified, criteria established and implementation issues worked through, a heightened sense of awareness was reached by members that this proposed alternative sentencing policy was the right thing to do independent of the economic situation faced by the state or the current prison capacity issues. Sentencing Guidelines are effective; the state of Kansas now has more violent offenders incarcerated serving longer

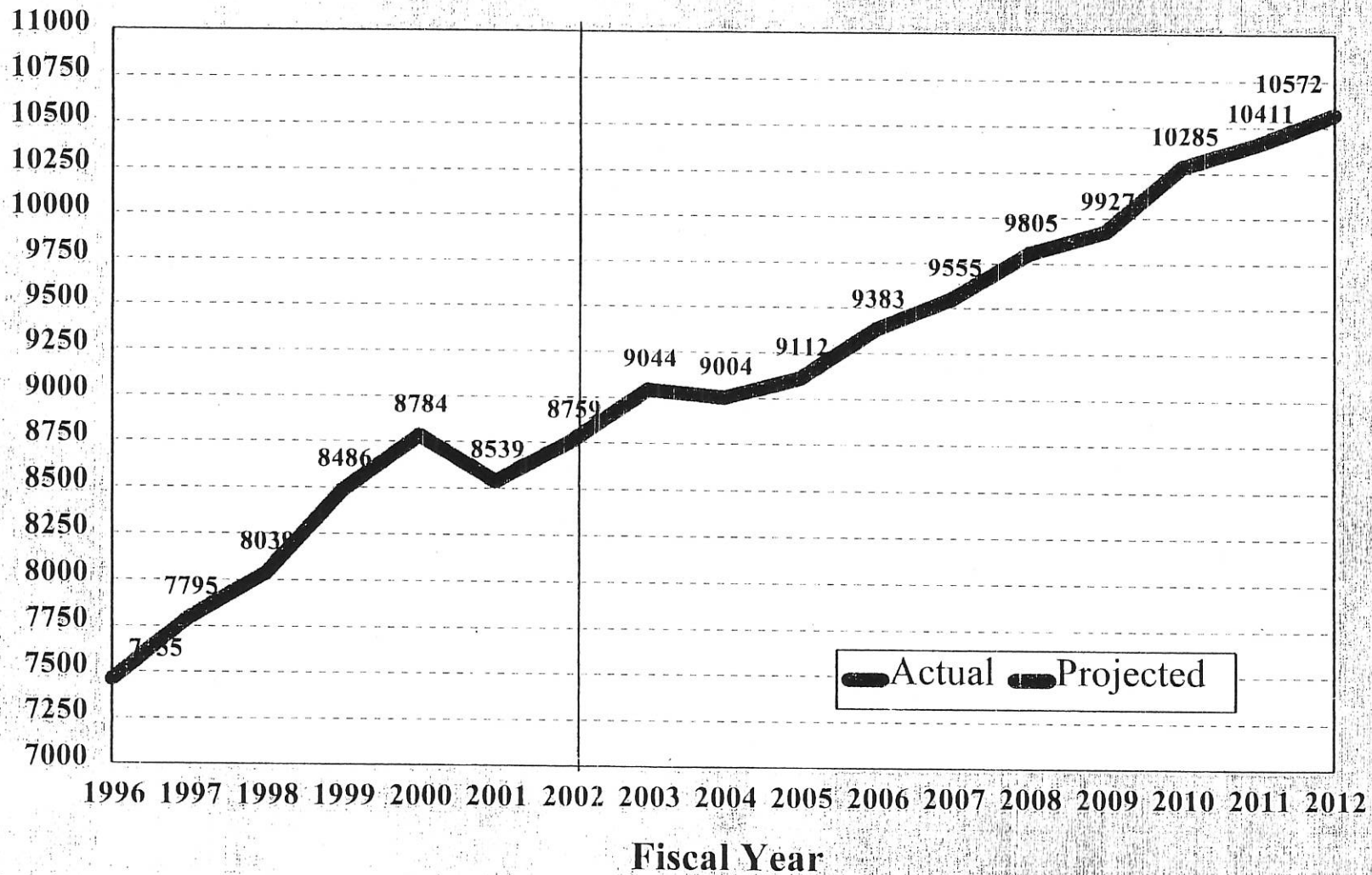
sentences than before Sentencing Guidelines were enacted. However, for this specific target population of non-violent drug offenders, a current sentencing approach is effective and an alternative sentencing options need to be available that include meaningful treatment to address the issues surrounding substance abuse and addiction. President Bush recently acknowledged the power of addiction in his State of the Union speech when he stated that "Addiction crowds out friendship, ambition, moral conviction and reduces the richness of life to a single destructive desire."

The Sentencing Commission respectfully request your favorable consideration of SB 123. The Commission is available to answer any questions or provide any additional information at your request.

Barbara Tombs, Executive Director
785-296-0923
btombs@ink.org

KANSAS PRISON POPULATION TRENDS

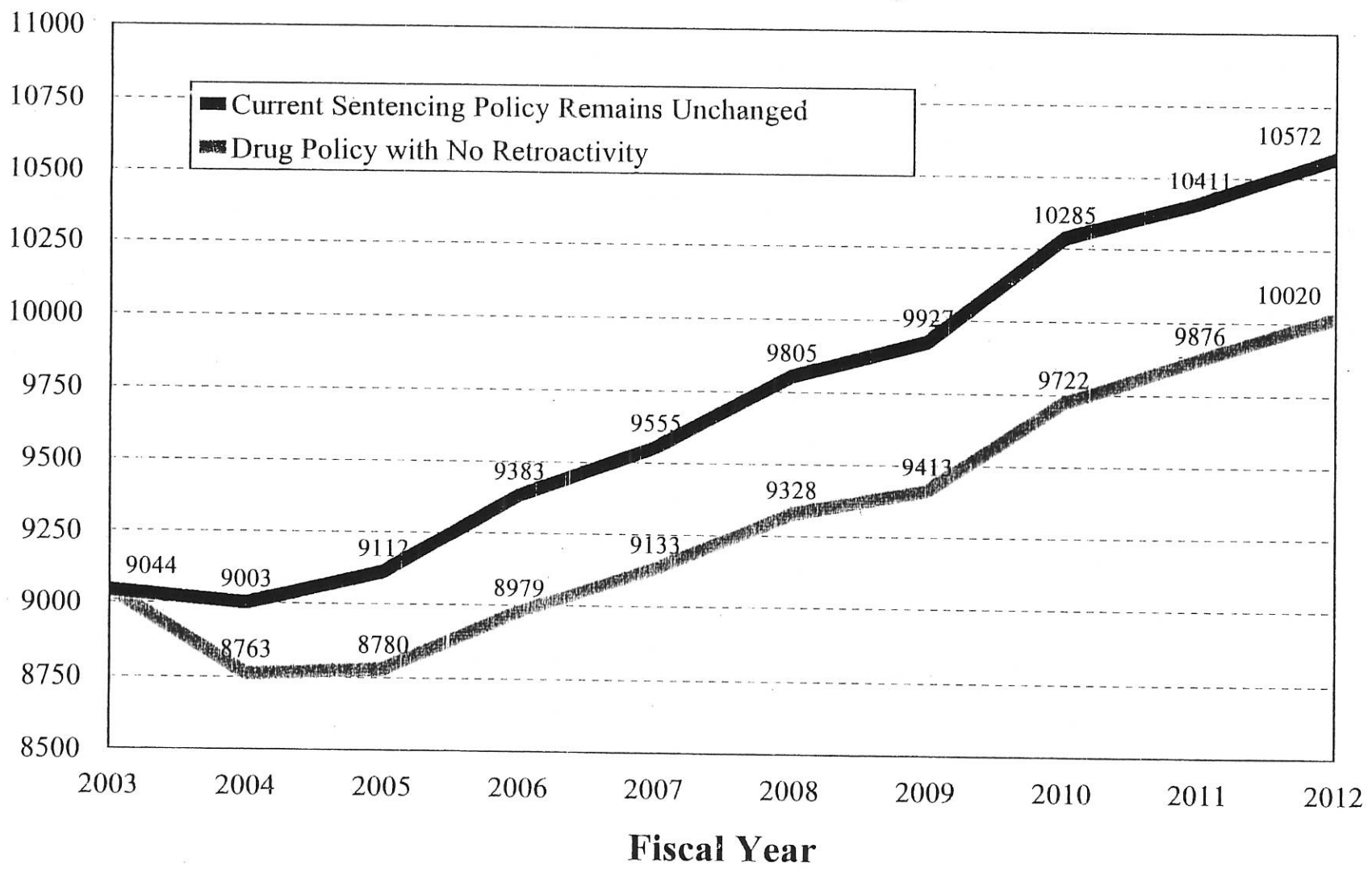
Actual and Projected Population



1-12

KANSAS PRISON POPULATION PROJECTIONS

Comparison between Current Sentencing Policy and Drug Policy with No Retroactivity



Testimony in Support of Senate Bill 123

Paul J. Morrison, District Attorney of the 10th Judicial District

March 18, 2003

I'm a member of the Kansas Sentencing Commission, currently sitting as Vice Chair. Except for a brief period of time in the early 1990s, I have been a member of the Commission since it was formed by Governor Hayden in 1989. As such, I've been fairly heavily involved in the evolution of structured sentencing in Kansas over the last 15 years or so. Prior to that I prosecuted for many years under the "old" indeterminate sentencing structure here in Kansas. As such, I have been most interested in following sentencing trends, not only in Kansas but across the country.

I think it would be fair to say that since the Guidelines were passed in 1993, the inmate population in Kansas has changed dramatically. We've gone from a system that housed primarily property offenders to a system that houses primarily violent offenders. There is no doubt that the Guidelines have ushered in longer sentences for violent offenders. This fact, coupled with a lack of new prison construction over the last few years, has filled our prisons to capacity.

One anomaly in these statistics is the fact that a percentage of the inmate population who are drug offenders has increased from 15% in 1993 to 22% today. This is particularly interesting in light of the fact that drug offenses by far have the highest downward departure rates. Simply put, this means that drug offenders routinely receive shorter sentences than that currently prescribed by legislation. These are usually agreed upon by all parties, including the prosecutor and judge. Many of these offenders are in prison strictly for drug usage and have no history of any other type of criminal offense. Senate Bill 123 would effect this narrow class of drug

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offenders.

Senate Bill 123 will target this narrow group of drug offenders who are in prison strictly because of addiction problems. Burglars who use drugs do not qualify. Drug users who have a history of hurting people do not qualify. Nonetheless, this group of non-violent drug users will be forced to deal with their problems in their communities. This will include drug treatment, supervision by probation or community corrections as well as the use of intermediate sanctions to encourage compliance with the rules that we all have to live by. These intermediate sanctions or “community punishments” can include things such as shock incarceration in the county jail, electronic monitoring, community service, and a whole host of sanctions currently used across this State with a variety of offenders. If the offender decides to reject treatment or absconds, then he or she will be placed back in prison. This bill gives the judge authority to order just that.

I believe this bill is responsible. It is good public policy. It provides meaningful treatment alternatives and supervision for non-violent inmates so that those expensive prison cells can be reserved for people that we should be afraid of.

PUBLIC SOLUTIONS

DAN HERMES
2512 SW OSBORN ROAD
TOPEKA, KS 66614

*MANAGEMENT CONSULTING,
ASSOCIATION MANAGEMENT AND
LOBBYING SERVICES*

PHONE: 785.271.0433
CELLULAR: 785.221.7419
E-MAIL: HERMES4@MINDSPRING.COM

LEGISLATIVE TESTIMONY

TO: Chairman Ward Loyd and Members of the House Committee on Corrections and Juvenile Justice

DATE: March 18, 2003

SUBJECT: HB 2309 and SB 123

Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent KADSPA, the program administrator section of the Kansas Association of Addiction Professionals. In addition, I represent several organizations that provide substance abuse service to the offender population.

I appear today in support of the recommended Alternative Sentencing Policy for Drug Offenders included in both HB 2309 and SB 123. The addiction professional field would also like to thank the Sentencing Commission for including treatment providers in the process of outlining an effective structure for the treatment process.

As you have heard much from the earlier conferees, I will only highlight several of the essential elements from the treatment provider perspective.

1. An effective program must be adequately financed

The substance abuse system in our state is already under significant stress. Providers that provide services for low-income Kansans currently provide about \$1.8 million annually in uncompensated care. This amounts to roughly 13 percent of the contracts for services that currently exist. It is imperative that the proposal be adequately financed. Providers strongly believe that offenders should have the responsibility to pay the bill when possible. To fairly balance this issue, courts should determine the level that offenders should be responsible for and providers should be responsible for collection.

2. An effective program must be clearly structured.

Supervision of offenders is not the appropriate role for substance abuse providers. Supervision should clearly be the responsibility of court services and community corrections. Treatment providers need to work closely with offender supervisors but sanctions and offender management should be the role of court services and community corrections.

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3. Training needs to be available for treatment providers

Needless to say, the offender population presents some unique challenges to treatment providers. In order to serve offenders in the proposed program, approval is necessary for a program from the Secretary of Corrections. To assure that adequate numbers of providers are approved to provide services across the state and increase the likelihood of successful treatment programs, training is critical.

4. Residential treatment programs need to be expanded

The Sentencing Commission recommends that four community based therapeutic communities be established for offenders with the most severe substance abuse problems. As this proposal moves forward in the process, the budget committees need to be included to assure the recommendations not included in the bill but necessary for a successful program are implemented.

5. Treatment is effective and less expensive than incarceration

The research is in; treatment of drug offenders is more effective than incarceration in reducing crime. In addition, it has been demonstrated to cost less than half than incarceration. According to the National Center on Addiction and Substance Abuse (CASA) at Columbia University, drug-addicted, non-violent felony offenders with five prior drug arrests and an average of four years behind bars achieved significantly lower recidivism rates and higher employment rates through a drug treatment program than comparable offenders that were sent to prison. These results were achieved at about half the cost of incarceration.

This five-year study of a program in New York, similar to the program that would be established under HB 2309 and SB 123, found that participants who completed the program were 33 percent less likely to be rearrested, 45 percent less likely to be reconvicted, and 87 percent less likely to return to prison. In addition, program participants were three and one-half times more likely to be employed after completion than before their arrest.

I thank the committee for its time and attention and would stand for any questions.

To: Corrections & Juvenile Justice Committee (3/18/03 @ 1:30pm)
From: Shukura Sentwali, Resident Wichita, Sedgwick County, Kansas
Date: March 17, 2003

Good day. My name is Shukura Sentwali, member of Uhuru Faith Ministries, Inc. a community service organization, P.O.C.C. (Prisoners of Conscious Committee) member and I'm an RN who resides in Wichita, Sedgwick County, Kansas and the prison crisis concerns me. I will give testimony in support of HB 2309 and SB 123 with amendments.

Easing drug laws as it relates to non-violent offenders is 'not being soft on crime but rather it is being smart on crime' a phrase used by Rep. Donald Betts, Jr. that is much more than a catchy phrase. We must have the long-view in dealing with this issue for long term favorable results. It is not only about saving dollars now or delay prison construction for a year or two. It is about establishing laws that incarcerate those who commit crimes not those who are addicted to drugs, it is about saving and using tax dollars for healthcare, education, crime & substance abuse prevention, and to create employment/economic development opportunities for citizens.

According to the federal crime report violent crime has been on the decline for over 10 years and at the same time the prison population and construction has increased. The increase in the prison population is due largely because of the imprisonment of non-violent offenders and the majority of non-violent offenders are convicted of drug related charges. So, the elections won on the "get tough on crime" hype has been just that, hype and a play on the fears and emotions of the public. The government's federal crime reports shows that prison overcrowding is due to the increase in prison sentences for non-violent drug offenders not violent criminals (or even white collar criminals). Criminals should go to prison and sick individuals need treatment.

There are some other statistics that can't be overlooked as it relates to this issue:

- According to Bureau of Justice Statistics: Among persons convicted of drug felonies in state courts, whites were less likely than Africans to be sent to prison. Thirty-three percent (33%) of convicted white defendants received a prison sentence, while 51% of African defendants received prison sentences.
- According to the US Dept. of Justice, in the US in 2000 the incarceration rate overall was 690 prisoners per 100,000 US residents. For African women the rate is 380 per 100,000; for African men, the rate was 4,848 per 100,000; the rate for Latino women was 119 per 100,000; for Latino men the rate was 1,668 per 100,000; the rate for white women was 67 per 100,000; and for white men, the rate was 705 per 100,000.
- One in three black men between the ages of 20 and 29 years old is under correctional supervision or control. Marc Mauer, of the Sentencing Project of Washington, DC continued to say, "If one in three young white men were under criminal justice supervision, the nation would declare a national emergency."
- At current levels of incarceration, newborn Black males in this country have a greater than 1 in 4 chance of going to prison during their lifetimes, while Latino

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males have a 1 in 6 chance, and white males have a 1 in 23 chance of serving time. According to the US Dept of Justice, March 1997.

- The US non-violent prisoner population is larger than the combined populations of Wyoming and Alaska. There are one million non-violent prisoners according to the Justice Policy Institute, 1999.
- Regardless of similar or equal levels of illicit drug use during pregnancy, black women are 10 times more likely than white women to be reported to child welfare agencies for prenatal drug use. New England Journal of Medicine 322:1202-1206 (1990).
- Due to harsh new sentencing guidelines, such as 'three-strikes, you're out,' "a disproportionate number of young Black and Latino men are likely to be imprisoned for life under scenarios in which they are guilty of little more than a history of untreated addiction and several prior drug-related offenses... States will absorb the staggering cost of not only constructing additional prisons to accommodate increasing numbers of prisoners who will never be released but also warehousing them into old age." ('The Past and Future of US Prison Policy: Twenty-five Years After the Stanford Prison Experiment,' American Psychologist, Vol. 53, No. 7 July 1998 p. 718.

Phenomena are interrelated — the influx of drugs into communities permeates families and results in the breakdown of the most basic unit of society. Eased drug laws for non-violent offenders is not being soft on crime it is being smart on crime. With adequate, effective drug treatment residential and outpatient facilities, a significant number of non-violent offenders could be "successful" in recovery and become vital participating citizens who can be responsible and accountable to their families, children, and community.

This can happen with a bill that allows for: 1. Non-prison sanction of mandatory drug treatment, amend current criminal statutes related to drug possession to reduce all criminal penalties involving illegal drug possession regardless of second, third or subsequent possession conviction. 2. Retroactivity for those convicted of only drug possession on or after 1986, 1988 or 1990; and for those imprisoned because of a "technical" parole violation ex: dirty UA, inability to pay program fees when their original conviction was for nonviolent drug offense. 3. Adequate number of effective, cultural-specific treatment programs.

In closing, California, Florida and now other states are establishing 'drug courts' that offer nonviolent drug offenders treatment and other alternatives to incarceration, this is not an unreasonable position. I understand the position of politicians who fear not being reelected if they support a bill such as this, that the attorney general's job is 'to put people in jail,' and the need for budget cuts, however, for a democracy to liquidate the due process of law and equal protection under the law, or justice then it truly is a hypocrisy and this state and this country will continue to deteriorate and erode from the inside out. The Bush regime can continue to look for "demons" on the outside to attack but the real danger is within. As constitutional rights are being relinquished at alarming rates as with the USA Patriot Act I and II, as race relations continue to erode, the increasing distrust

for law enforcement and courts, without effective long range changes in the laws prison construction will be never ending. With the statistics that show that the drug laws are racist in nature, costly to taxpayers and costly in terms of lives and families as legislators you have to take a long, hard, honest, objective look at how changes in the drug laws can impact families, communities and the State favorably in the long term. I urge each of you to support HB 2309 and SB 123 with amendments. Thank you.



17 March 2003

Dear Honorable Representative,

The Criminal Justice and Mercy Ministries of the Kansas West Conference of The United Methodist Church recently voted to support the recommendations made by the Kansas Sentencing Commission that are now in the form of Senate Bill 123. Our understanding is that the legislation that passed the Kansas Senate last week has been forwarded to the Kansas House. We are supportive of the bill as was amended and approved by the Senate. We feel this smart on crime measure begins to address the problem of addiction as it relates to imprisonment for non-violent first time offenses of people convicted of drug possession. We believe this legislation is fiscally responsible because it addresses the root cause of addiction verses building more prisons and thusly not tackling the underlying medical condition of addiction.

The fact is this bill will in the long term save money and save lives as it addresses the underlying causes of people with the medical condition of addiction. People will be restored to their communities, be more able to care for themselves and their families and become productive tax paying citizens of Kansas. This prospect is far more sensible and practical than building more institutions of incarceration. Given those facts we urge you to support this measure in the form approved by the Senate. Our concern is that with recidivism rates over 60% in Kansas and that without reforms such as this the continued rates of incarceration will climb, while overall crime has gone down, and the taxpayers and citizens will continue to pay the price monetarily, emotionally and physically.

We urge you to not only support this legislation but are unanimous in our belief that to successfully implement this reform funds must be provided to fund drug treatment programs in the appropriations bills to be considered in the near term. These funds committed now will realize both our mutual long term goals of reducing crime but as well, possibly eliminate the need to build more prisons that do not solve the underlying causes of this serious social problem.

Please let us know how we can work with you to redress these and other issues related to reforms in Kansas' practices in dealing with the issues of drug addiction and incarceration. Again, thanks for your support of these worthwhile and positive changes in how our state deals with these challenging problems.

Sincerely,

John Chalmers, Chair
Nancy Jackson, Co-Chair
Criminal Justice and Mercy Ministries
Kansas West Conference of The United Methodist Church

David H. Wilkinson
Conference Director
AfterCare Action Initiative
Criminal Justice and Mercy Ministries
Kansas West Conference
The United Methodist Church

**Criminal Justice and Mercy Ministries~Kansas West Conference of The United Methodist Church
9440 East Boston~Wichita, Kansas 67207~1.800.745.2350~1.316.806.7289~aftercareaction@cox.net**

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KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Memorandum

To: House Corrections and Juvenile Justice. Committee

From: Roger Werholtz, Secretary of Corrections 

Subject: Senate Bill 123

Date: March 18, 2003

SUMMARY OF SB 123

SB 123, as amended and passed by the Senate, amends the state's sentencing provisions for certain offenders convicted of drug possession. The bill's provisions apply to offenders: whose current offense of conviction is for drug possession only; who have criminal history classifications of I to E, with no person felony convictions; who have no convictions for drug trafficking, drug manufacturing or drug possession with intent to sell. Offenders with prior convictions for drug possession are eligible, as are offenders with convictions for person felonies in severity levels 8-10, or non-grid offenses, if the court makes a finding that the offender does not pose a significant threat to public safety.

Under the bill's provisions:

- The offenders affected by the bill would receive a mandatory non-prison sentencing disposition of certified drug abuse treatment. The treatment program length would be up to 18 months.
- The presentence investigation would include standardized risk assessment of the offender validated for drug abuse treatment program placements.
- Offenders assessed as high risk would be supervised by community corrections; those assessed as low risk would be supervised by court services.
- Offenders who violate treatment program conditions are subject to additional non-prison sanctions, including up to 60 days in county jail.

- Offenders convicted of a new felony (other than drug possession) would be discharged from the program, as would offenders who demonstrate refusal to comply or participate in the program. Offenders who are discharged are subject to revocation.
- Offenders who are revoked and admitted to prison would not be subject to postrelease supervision upon release.
- The Secretary of Corrections is required to certify programs authorized to provide drug abuse treatment services to offenders.

As amended, the effective date of the bill is upon publication in the statute book with implementation on or before November 1, 2003.

IMPACT ON KDOC

This bill would have several areas of major impact on the Department of Corrections, including: admissions to prison and the size of the inmate population; implementation of the provider certification program; and grants to community corrections.

Impact on the Inmate Population. The Sentencing Commission estimates that the bill would reduce admissions to prison by 438-455 annually during the period FY 2004 – FY 2013. As a result, the commission estimates that the bill, as amended, would reduce the growth in KDOC’s capacity requirements by 240-569 beds as compared to what would otherwise be required. The table below summarizes the bill’s impact on the total inmate population, and the impact on the male inmate population, which is the more pressing concern regarding future capacity requirements. (Note: the commission’s projections of the bill’s impact run through FY 2013, but the baseline projections are through FY 2012. Therefore, the table below only shows the impact comparisons through FY 2012.)

FY	Total # of Inmates		Total # of Male Inmates	
	Current Law	With SB 123	Current Law	With SB 123
2004	9,003	8,763	8,474	8,281
2005	9,112	8,780	8,577	8,316
2006	9,383	8,979	8,832	8,518
2007	9,555	9,133	8,991	8,665
2008	9,805	9,328	9,223	8,849
2009	9,927	9,413	9,339	8,943
2010	10,285	9,722	9,674	9,231
2011	10,411	9,876	9,796	9,368
2012	10,572	10,020	9,951	9,494

The department’s current capacity is 9,114 for the entire inmate population, and 8,482 for the male inmate population. The shaded areas in the table indicate population levels that exceed existing

capacity. The bill's impact is evident throughout the projection period. However, while SB 123 would delay and reduce the need for future capacity expansion, the projected male inmate population would still exceed capacity through most years in the FY 2004 – FY 2012 period.

SB 123 does not erase the need for future capacity expansion, but it would result in avoidance of both construction and annual operating costs for the 383-571 beds projected to be saved as compared to current law. To give an indication of potential capacity expansion costs that might be avoided, we have estimated costs for several project alternatives.

Regarding minimum security beds, the department has identified several options at existing facilities. Two options (at Winfield and at Lansing's South Unit at Osawatomie) involve renovation of existing buildings at an estimated cost of \$7,585 - \$9,948 per bed. Three options (at Hutchinson, El Dorado, and Lansing) involve construction of new minimum security living units at an estimated cost of \$16,409 - \$20,144 per bed. We have not done operating cost estimates specific to these project options, but the average cost per ADP at Winfield Correctional Facility, the department's only facility which houses minimum custody inmates exclusively, is budgeted in FY 2004 at \$18,803 plus \$591 for programs for a total of \$19,394.

Regarding projects to add higher custody beds, we have estimated the construction cost of expansion at El Dorado Correctional Facility to be \$28,000-\$56,000 per bed (depending on whether the living units are used for maximum custody or medium custody inmates). Annual operating costs for the additional beds would range from \$14,100-\$25,000 per bed, again depending on the specifics of the project configuration. This would result, then, including the new beds, in total annual operating costs for El Dorado Correctional Facility that would range from \$18,335 to \$20,304 per bed.

Certification of Drug Treatment Programs

New Section 2 of the bill identifies certain service requirements to be provided to the target population by drug abuse treatment programs, establishes a certification requirement for these treatment programs, and places the responsibility for certifying such programs with the Secretary of Corrections. The treatment requirements include a presentence drug abuse assessment including a "statewide, mandatory, standardized risk assessment tool". Certification requirements also require education and training in, at a minimum, case management and cognitive behavior training.

To manage the certification requirements of the bill, the Department will require implementation of at least three processes:

- Verification of the drug treatment program's capability to provide the required treatment services, including current and appropriate licensure by SRS/MHAAPS;

- Development and delivery of education and training for treatment providers in the use of the risk and need assessment instrument¹, and in the principles of effective interventions and case management techniques for criminal justice clients; and
- Conducting routine quality assurance and compliance monitoring of the certified drug abuse treatment programs.

Implementation of these responsibilities will require additional resources for the department, estimated at three FTE, if our understanding of the expectations, as described above, is accurate.

In testimony submitted to the Senate Judiciary Committee, The Department raised several issues relating to the treatment program provisions of the bill that we believed needed to be addressed. As amended, the current form of the bill has addressed many of these. However, the Department would like to present the following issues which we believe should be brought to the Committee's attention:

The Department recommends amending Section 3, subsection (n), lines 8 and 9 to read: "For those offenders who commit violations of K.S.A. 65-4160 or K.S.A. 65-4162 and amendments thereto on or after the effective date of this act, the amount of time spent participating in such program shall not be credited as service on the underlying prison sentence." This language would eliminate potential ambiguity regarding ex post facto claims by certain offenders.

Presentence Drug Abuse Assessment. The bill requires a presentence drug abuse assessment to be conducted which includes a statewide standardized risk assessment instrument to determine risk, which in turn will determine whether the offender is to be supervised by community corrections or court services. Both KDOC and the Sentencing Commission have current initiatives to implement the Level of Services Inventory-Revised (LSI-R) as the statewide standard risk-need assessment instrument. New Section 2(b) provides that the certified drug treatment program conduct the presentence assessment prior to determination of supervision placement. We suggest amending this provision by making it clear that the criminal risk-need assessment be done by court services and that the assessment validated for drug abuse treatment placement be conducted by treatment providers. Once supervision placement is determined, the supervising agency would refer the offender to a certified drug treatment program to complete the clinical drug abuse assessment to determine treatment plans.

¹ Under our recommended change, training in the use of the risk-need assessment instrument would be for court services officers, not the treatment providers.

Continuum of Services. New Section 2(a)(3) lists several treatment modalities which make up a continuum of services needed for recovery and which certified drug treatment programs shall provide. However, it is not clear if the bill intends to require each treatment program to provide every service listed or whether certain programs can specialize in specific components with referrals to other programs for different services. It may be difficult to find many treatment providers who provide the full continuum of services from drug abuse education to residential or detoxification services. If this were required, it would limit the treatment availability in many locations, especially in rural areas.

Unavailability of Treatment. It is not clear what the bill's intent is regarding sentencing dispositions for offenders in the target group if there is no certified program placement available. This situation is likely to be encountered, at least in the early stages of implementation, and perhaps longer for the rural areas of the state.

Community Corrections

This bill would increase the caseloads of community corrections agencies, where the current basic grant award averages approximately \$2,906 per ADP.

TESTIMONY BY DOUG MARTIN, CLAY COUNTY ATTORNEY
BEFORE THE KANSAS LEGISLATURE - MARCH 18, 2003
PO Box 134, Clay Center, Kansas 67432
785/632-3226

Background Information on Doug Martin:

dmartin@kansas.net

- Lifelong Resident of Kansas
- Graduate of University of Kansas School of Law in 1984 (J.D.)
- Graduate of United States Naval Academy (1975) (B.S.)
- Graduate of Webster University 1981 (M.A.)
- Served six (6) years on active duty as front-line carrier Navy Pilot and Instructor Pilot flying A-4s, A-7s, and T-2s, with 187 jet aircraft carrier landings
- Assistant Attorney General for State of Kansas from 1984 to 1986
- Shawnee County Counselor from 1986 to 1991
- Private law practice in Topeka, Kansas from 1991 to 1995
- Private law practice in Clay Center, Kansas from 1996 to present with the law firm of Bosch & Martin, LLC
- Elected Clay County Attorney in 1996 and 2000, with 6 years prosecuting experience prosecuting drug and felony cases in Clay County, Kansas at all levels
- Prosecuted 128 adult felony drug counts, and over 300 separate adult felony cases

I am strongly opposed to the provisions of SB 123 that substantially reduce the penalties for 2nd time and multiple repeat possessors of methamphetamine and cocaine.

I am **not** opposed to a requirement for treating individuals convicted solely of possessing methamphetamine or cocaine, **when it is their first conviction** for possessing controlled substances. **However, when the individual shows no amenability to treatment, they are a clear and present danger to society and need to be incarcerated in prison for second and subsequent possession convictions.**

As it stands today, virtually all defendants who do not go to prison, are required to have some type of drug and alcohol treatment, either in-patient or out-patient, as a condition of probation. I can think of no exceptions even today, before SB 123. They are given an underlying prison sentence, and usually immediate probation, to begin their drug treatment. The Kansas Legislature should not be misled into thinking there is no drug treatment now. There is substantial and considerable in-patient and out-patient treatment going on already in Kansas.

If drug treatment is going to work, then these people will quit using drugs, and there shouldn't be any "second" or "third" or "fourth" convictions. (I for one do not put as much hope and faith in treatment as do the proponents of SB 123). If the proponents of "treatment" truly believe it will work, then they should be willing to allow individuals who get treatment, and are later convicted of second and third possession offenses be sent to prison. **In short, if drug treatment really works, then treatment alone for first time possessors should reduce prison populations. I personally do not think treatment alone will work.** In order to explain why I am so strongly opposed to SB 123, let me make several points.

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Point 1: SB 123 drastically reduces the punishment for 2nd time, 3rd time, and repeat possessors of methamphetamine and cocaine. Under current Kansas Law (early 2003) possession of methamphetamine or cocaine carries the following penalties:

1st time possession - Level 4 Drug Felony, presumptive probation for most (virtually all are now required by the courts to get drug treatment);

2nd time possession - Level 2 Drug Felony, presumptive prison at 46 or more months in prison unless it is pled down;

3rd time possession - Level 1 Drug Felony, presumptive prison at 138 or more months in prison unless it is pled down;

Under current Kansas Law (early 2003) for possession of marihuana, the penalties are as follows:

1st time possession - Class A Misdemeanor (no min jail time, no min fine)

2nd time possession - Level 4 Drug Felony, presumptive probation for most (virtually all are now required by the courts to get drug treatment);

3rd time possession - Level 4 Drug Felony, presumptive probation for most (virtually all are now required by the courts to get drug treatment);

4th time possession and any number on up - Level 4 Drug Felony, presumptive probation for most (virtually all are now required by the courts to get drug treatment);

SB 123 would make the punishment for possession of methamphetamine the same as possession of marihuana, **and this is a great mistake**. SB 123 takes away any leverage power that a prosecuting attorney has to get repeat possessors to plead to anything meaningful. Due to the short probation period, and high likelihood that a person will serve no time for a Level 4 Drug Felony, a conviction for that crime is of little consequence to the defendant. There will be little incentive for a person addicted to meth to stay away from the drug. One of the options that a prosecuting attorney might have under current law is to allow a person charged with second time meth possession to plead to a Level 3 Drug Felony, with an agreement for them to do the lesser amount of time in prison. This leverage power will be taken away from prosecutors by SB 123.

Point 2: Our number one (#1) source and cause of crime in Kansas is methamphetamine. We are seeing methamphetamine being used by kids these days, and we are seeing individuals test positive for methamphetamine that they did not know they ingested because it was dusted onto their marihuana. Methamphetamine presents a tremendous challenge to rural areas of Kansas. **Methamphetamine is a very, very dangerous drug.**

Point 3: There is a strong tie between the use of methamphetamine and violent crime in Kansas. There is also a strong tie between methamphetamine use and methamphetamine sale & manufacturing. Talk to your local prosecuting attorneys. Talk to victims of crime.

Point 4: When individuals have a history of person felony crimes, and are convicted of possessing methamphetamine, they should go to prison without probation. Period.

Point 5: Methamphetamine is a social drug. Users like to get others to use with them. Whenever methamphetamine is used, it was either purchased (a Drug Severity Level 3) or it was manufactured (a Drug Severity Level 1). These are all serious crimes.

Point 6: SB 123, by reducing penalties for repeat possessors of methamphetamine, will not only **increase violent crime in Kansas**, it will in my opinion increase the number of individuals who are **convicted of selling and manufacturing methamphetamine**, thus driving our prison population even higher. SB 123 will have a two-fold effect of increasing prison population.

Point 7: The failed and faulty logic behind Senate Bill 323, that reduced probation times for many felons in Kansas, is similar to the failed logic behind Senate Bill 123. This failed logic of being more lenient will not only lead to increased crime and suffering in Kansas, but it will cause our prisons to fill up even faster than we anticipated. This same thing happened when Senate Bill 323 promised to solve our prison capacity problems, but did not. With presumptive probation for multi-repeat possessors of cocaine and methamphetamine, I predict the State will have increased violent crime, increased child abuse, increased Child in Need of Care cases, more SRS cases, increased child molestation, greater numbers of illegitimate births, and greater prison populations. Finally, I believe the damage that will be caused by SB 123 will be substantially greater than the great damage that was clearly caused by SB 323 when it was passed in 2000.

Note: Crime increased in Kansas from 1997 to 2000, according to the Federal Bureau of Justice and Statistics, whereas in the United States as a whole, crime decreased 12%!!!

Point 8: Toughness pays off. The United States Supreme Court recently upheld the California "Three-Strikes" law. The experience of California has been that crime has been substantially reduced in California. According to the California Secretary of State, crime has been nearly cut **in half from 1993 to 2000**. See, http://www.ss.ca.gov/executive/press_releases/2000/00-51.htm Furthermore, due to the toughness of their laws in California, that state is now exporting parolees from California, who are leaving "in record numbers" according to the California Secretary of State. We can only guess that the parolees are going to the states that have lenient laws. In addition, California's "Three-Strikes" law has not overflowed the state's prisons. In fact, there is negligible, 1.3% growth, in the state prison population in California in the year 2002. See, <http://www.threestrikes.org/>

Point 9: Many individuals convicted of possessing methamphetamine are "Recreational Users," who have no inclination or intent or desire to quit use of their drug of choice. The Recreational User of methamphetamine, sees no need to quit, and will not be a good candidate for treatment. In fact, attempting in-patient treatment of "Recreational Users" who see no need to quit is a tremendous waste of tax dollars.

Point 10: The Crime rate in Kansas for the year 2000 was 6.5% greater than the crime rate on average in the entire United States. See, "The Disaster Center," at <http://www.disastercenter.com/crime/> Why is crime in Kansas greater than our national average?

Point 11: Even though Kansas has a higher than average rate of crime, compared to other states, our prison population per 100,000 is substantially below the national average. The incarceration rate in state prison in Kansas, as of December 31, 2001, was 318 per 100,000 population, whereas the incarceration rate in state prisons on average in the United States on December 31, 2001 was 422. Thus, the rate of incarceration in state prison in Kansas, was 25% below the national average, even though our crime rate in Kansas is above the national average. For supporting documentation, see the attached ranking obtained from the internet.

Fiscal Note: By beginning to build additional prison space now through the use of bonded indebtedness, there will be little impact on the State budget for several years.

Point 12: In terms of addictiveness, when methamphetamine is smoked, it is perhaps one of the most addictive substances known to man, ranking at 99 on a scale of 100. See, <http://www.ccguides.org.uk/addicts.html>

Point 13: I believe that criminals tend to gravitate to locations which accommodate their behavior, and that they tend to migrate from locations that have tougher sentencing laws. See for instance, the reference to the quote from the California Secretary of State who was claiming that parolees are leaving California due to their tougher sentencing laws. I see individuals who come from states such as Florida, Texas, Oklahoma, and other states, for reasons that make me suspect they do not want to remain in a state that is terribly inhospitable to crime. Individuals in prison have plenty of time on their hands, and can do plenty of research on which state is tough on crime, and tough on drugs, and they will know whether Kansas is tough or not on repeat methamphetamine possessors and repeat cocaine possessors.

Point 14: I encourage the Kansas Legislature to seek views from professionals such as Dr. Eric Voth, here in Topeka, Kansas, who has studied the problems of drug use for many years. He has a unique knowledge and understanding of the processes of addiction, and can help the Kansas Legislature know what is needed to motivate repeat possessors of stimulants to remain away from those dangerous drugs. See the attached copy of the letter from Dr. Voth.

In Summary, SB 123's reduction of penalties for repeat possessors of dangerous stimulants will take away from a prosecutor's ability to put people in prison who need to be in prison, it will increase crime, and it will lead to a greater growth of our prison population in the long run. Some could argue that SB 123 is the "Nose of the Camel Under the Tent" of de-criminalizing drugs in Kansas, due to the substantial reductions in penalties for those who possess dangerous drugs. Once SB 123 passes, it is clearly possible that advocates of legalizing marijuana will propose making repeat possessions of marijuana be a Class A or Class B Misdemeanor only, instead of a Drug Severity Level 4 Felony. After all, it only makes sense to treat marijuana less severely than methamphetamine and cocaine. Because of the strong tie between violent crime and methamphetamine, because of the need for prosecutors to hold persistent possessors of methamphetamine accountable, I ask you to vote against SB 123.

Comparison of the Prison Population and Incarceration Rates Among States, as of 12-31-2001

Region and Jurisdiction	Total in Prison as of 12/31/2001	Prison Incarceration Rate per 100,000	Region and Jurisdiction	Total in Prison as of 12/31/2001	Prison Incarceration Rate per 100,000
			South	562,239	526
U.S. Total	1,406,031	470	Alabama	26,741	584
Federal	156,993	48	Arkansas	12,159	447
State	1,249,038	422	Delaware	7,006	504
			District of Columbia	2,750	na
			Florida	72,406	437
			Georgia	45,937	542
Northeast	172,614	304	Kentucky	15,424	371
Connecticut	19,196	387	Louisiana	35,710	800
Maine	1,704	127	Maryland	23,752	422
Massachusetts	10,602	243	Mississippi	21,460	715
New Hampshire	2,392	188	North Carolina	31,979	335
New Jersey	28,142	331	Oklahoma	22,780	658
New York	67,534	355	South Carolina	22,576	529
Pennsylvania	38,062	310	Tennessee	23,671	411
Rhode Island	3,241	181	Texas	162,070	711
Vermont	1,741	213	Virginia	31,603	431
			West Virginia	4,215	231
Midwest	240,739	370	West	273,446	408
Illinois	44,348	355	Alaska	4,546	300
Indiana	20,966	341	Arizona	27,710	492
Iowa	7,962	272	California	159,444	453
Kansas	8,577	318	Colorado	17,448	391
Michigan	48,849	488	Hawaii	5,454	298
Minnesota	6,606	132	Idaho	6,006	451
Missouri	28,757	509	Montana	3,328	368
Nebraska	3,937	225	Nevada	10,201	474
North Dakota	1,111	161	New Mexico	5,668	295
Ohio	45,281	398	Oregon	11,455	327
South Dakota	2,812	370	Utah	5,343	230
Wisconsin	21,533	383	Washington	15,159	249
			Wyoming	1,684	340

Source: *Prisoners in 2001*, Allen J. Beck and Paige M. Harrison, Bureau of Justice Statistics, July 2002; Sourcebook of Criminal Justice Statistics, BJS online.

- Rates are calculated per 100,000 adults within each state's population, and are based on prisoners with a sentence of more than one year.
- Year 2001 prison statistics are based on preliminary (advance) data.

This letter is from the Topeka Capital-Journal, and is a letter to the editor from the on-line edition of March 4, 2003

Perils of treatment

I never hesitate to enter a good drug policy debate, and the issue of drug treatment for offenders is such an issue. I strongly agree with the commentary of Rick Sargent (Feb. 15) regarding the need for supervision of drug treatment for criminal offenders. It would be a huge mistake to make treatment a "get-out-of-jail-free" card. Evidence is clear that chemically dependent individuals have a higher rate of sobriety if closely supervised and if they have something at stake. In my treatment and supervision of thousands of chemically dependent individuals, this has been very evident.

It is also important that the public understand that much of the movement driving treatment instead of incarceration is driven by groups and individuals seeking to tear down restrictive drug policy. Many of that group do not simply want to reduce cost and be compassionate, but rather to get the criminal justice system off the backs of drug users. They enlist the support of well-meaning but uninformed prominent figures to advance their causes. Examples abound throughout the country. You should also know that many of those jailed for "possession" charges have pleaded down from dealing or other felonious acts. Let's also keep in mind that 70 to 80 percent of violent crime is committed under the influence of alcohol or other drugs.

http://www.cjonline.com/stories/030403/opi_letters.shtml

CJOnline.com | The Topeka Capital-Journal | Letters to the editor 03/04/03

Specific suggestions that might work include: 1) Drug courts that tightly supervise non-violent low level users. Along with this, intensifying arrests on users and simple possession. Moving to incarceration when there is failure to remain clean. 2) Specific treatment-based incarceration where prison sentences are served instead of hard time as long as the individual remains "clean" and participates. 3) Broad-based demand reduction and prevention programs in schools, workplace, and in prisons to reduce drug use among young people. This could markedly reduce the cost of pure prison incarceration.

Any movement in this arena must be carefully considered and developed by those who understand all the issues and will ultimately be responsible for its outcomes. The last thing we need is more drug abusers running around our streets because of hasty actions on the part of lawmakers.

-- ERIC A. VOTH, M.D., chairman, The Institute on Global Drug Policy, Topeka

NEWS RELEASE

California Secretary of State Bill Jones

BJ00:51

FOR IMMEDIATE RELEASE
Friday, May 5, 2000

Contact: Alfie Charles
Shad Balch

**California's Crime Rate Has Been Nearly Cut in Half Since
the Three Strikes Law Was Enacted Six Years Ago**
*California Crime Index is Down an Unprecedented 46.8 Percent Since 1993;
Homicide Rate is Down 52.4 Percent*

SACRAMENTO --- The legislative author of California's Three Strikes and You're Out law, Secretary of State Bill Jones, today released a survey of crime statistics from the last six years which continues to demonstrate a remarkable decline in California's crime rate since the popular Three Strikes and You're Out law was enacted early in 1994. Using crime statistics compiled by the California Department of Justice, Jones reported that the crime rate has declined a record 46.8 percent since 1993, resulting in 1.5 million fewer crimes against California residents during that period.

"By targeting California's most prolific repeat felons, we have seen a dramatic reduction in our crime rate in a relatively short period of time," said Jones. "The law's focus on repeat serious and violent felons has helped put the most dangerous criminals behind bars, but has not overburdened our prison system as was initially predicted.

"Critics who attack Three Strikes often present only half of the picture to the media and the public," said Jones. "As they strive for headlines, opponents of tough sentencing often argue that an individual is sent to prison for 25 years to life because of what they claim is a low-level felony. Unfortunately, these stories rarely, if ever, include a full detailed account of their life of crime – including multiple serious and violent felony convictions.

"These sensational reports rarely, if ever, report that both the judge and the District Attorney have the discretion to seek shorter sentences 'in the furtherance of justice.' The debate on the Three Strikes law has been heated, but it must also be fair," said Jones. "In my opinion, the statistics speak for themselves.

"While Three Strikes is not the sole reason for the reduction in crime, it's clearly a major factor that has contributed to the most significant and sustained decline in the crime rate in California history," said Jones. "If the pre-Three Strikes crime rate of 1993 had been allowed to continue, more than 1.5 million additional crimes would have been committed against Californians in the last six years."

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The following chart illustrates the reduction in the crime rate and number of crimes for specific crimes during the last six years. The number of crimes prevented is derived by comparing the actual number of crimes committed to the number of crimes that would have been committed if the 1993 crime rates continued:

Crimes Prevented During Three Strikes Era (1994-1999*)

Crime	1999 Crime Rate per 100,000 Californians	Reduction in Crime Rate	Crimes Not Committed
Homicide	6.1	↓ 52.4%	7,625
Forcible Rape	27.8	↓ 25.0%	9,509
Robbery	180.2	↓ 54.7%	236,686
Aggravated Assault	412.1	↓ 32.5%	167,221
Burglary	655.0	↓ 49.7%	644,909
Motor Vehicle Theft	511.1	↓ 49.2%	489,420
Total	<u>1792.3</u>	<u>↓ 46.8%</u>	<u>1,555,370</u>

* Statistics for 1999 are derived from the California Department of Justice' Report "Crime In Selected California Jurisdictions, January through December 1999" Released March 29, 2000. Statistics for 1993-1998 are from final California Crime Index reports published by the Department of Justice.

In 1998, Jones released a Five Year Report on the Three Strikes law that, in addition to showing significant decreases in crime, also showed that the number of inmates in California prisons was actually 3,000 fewer than were projected to be incarcerated even before the Three Strikes law took effect. As noted in that report, the early predictions that Three Strikes would rapidly overload the California prison system have proven untrue.

Jones' 1998 report also showed that parolees were leaving California in record numbers despite a 1995 requirement that forbids parolees from being granted approval to leave California until they have paid all of their fines and restitution.

A chart demonstrating the annual decline in the California Crime Index is attached. Copies of Jones' Five Year report on Three Strikes can be obtained through the Secretary of State's press office.

Three Strikes (AB 971 – Jones) was signed into law on March 7, 1994. Later that year, the voters of California overwhelmingly passed an identical measure, Proposition 184, with 72 percent of the vote in the November 1994 general election.

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Links:

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TESTIMONY TO THE
HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
DIANA COLLINS, PRESIDENT
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS
ON 2003 SENATE BILL 123
MARCH 17, 2003

Representative Loyd and Members of the Committee:

I am Diana Collins, President for the Kansas Association of Court Services Officers. The purpose of Senate Bill 123 is to reduce the prison population by reorganizing the sentencing grid for drug felonies and mandating treatment for those placed on supervision.

On behalf of over 340 members of the Kansas Association of Court Services Officers, I am here to express our concerns regarding this bill. If properly funded, Senate Bill 123 could be a good idea. However, this bill will increase the number of offenders under supervision by not only Court Services, but also Community Corrections. This bill does not include the funding of additional officers for either Court Services or Community Corrections.

I know that this committee is not the Ways and Means Committee, and would fully expect that, if SB 123 is enacted, the House Ways and Means Committee will consider this issue and will have the opportunity to add funding for Court Services and Community Corrections officers. However, I think that the need for

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adequate community supervision for those drug offenders who would remain in the community under SB 123 is something the Legislature needs to be considering at all times in conjunction with the merits of this bill.

Kansas Association of Court Services Officers members are also concerned about the funding of appropriate treatment programs and who handles disbursement of the funding to these programs. The logically agency to do this is the Kansas Department of Corrections. With the influx of offenders being placed on probation by this bill, numerous treatment programs would need to be available statewide.

Another concern would be public safety. In retrospect, Senate Bill 323 released several convicted felons from state prisons without realizing the risk to the community. We feel that Senate Bill 123 needs to consider public safety when placing drug offenders on supervision in our communities.

The most pressing concern in the implementation of Senate Bill 123 is funding. In a year when we are all facing budget cuts, shortfalls, and bleak projections of future budgets, it is questionable whether there are adequate financial resources to develop effective and appropriate treatment resources along with funding additional Court Services Officers to provide effective supervision of these drug offenders and ensure the public safety of our communities.

On behalf of the Kansas Association of Court Services Officers,
we appreciate your consideration of this matter.



Pottawatomie County Courthouse

OFFICE OF THE COUNTY ATTORNEY

BARRY WILKERSON

Pottawatomie County Courthouse

P.O. Box 219

WESTMORELAND, KS 66549

Telephone 785-457-3511

FAX 785-457-3896

SHERRI L. SCHUCK

Assistant County Attorney

ANDREA B. KARNES

Office Administrator

Victim/Witness Coordinator

CHAIRMAN WARD LLOYD
Kansas House of Representatives
House Committee on Juvenile Justice
and Corrections

March 18, 2003

RE: SB 123

WRITTEN TESTIMONY

Senators it has come to my attention that the Kansas Senate is again considering SB 123. I would like to express my opposition to SB 123. In particular those provisions which would grant probation to persons convicted of drug crimes whose classification on the Sentencing Grid places them in category 4A-D and whose person felony convictions were for level 8, 9 and 10 person felonies. In addition persons who are classified in category 4E through 4I will receive probation if they have not been convicted of a drug felony.

I believe there are serious flaws in our current approach to criminal punishment in this state. When the Kansas Sentencing Guidelines act was first enacted it was sold to the public on the basis that certain criminals would be rehabilitated outside the prison. This has failed. The number of criminals continues to grow and the legislative response has been to lower incarceration rates. It should be obvious that rehabilitation through Community Corrections has failed otherwise we would not be considering placing offenders whose prior records may include convictions for person felonies on probation.

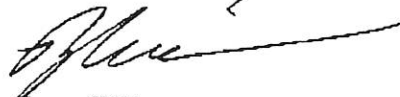
Based upon a study completed by my daughter with the help of Community Corrections Officers and Court Service Officers, between 1992 and 1998, persons who committed serious felonies, Level 5 to off grid crimes in Riley County, 92% of those persons were either using drugs at the time the offense was committed or committed the crime to obtain drugs. The provision in SB 123 that has been removed that would make probation possible for felony drug users do in fact endanger the health and welfare of persons in the State of Kansas.

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Attachment 9

I have personally prosecuted Homicides, Rapes, Aggravated Batteries, Aggravated Robberies which occurred either because the person was under the influence of narcotics or needed money to support a drug habit.

The bottom line philosophy in the State of Kansas towards persons convicted of felonies, has been to keep the incarceration rates down regardless of the crime rate or the number of criminals convicted of felonies. Said in another way, with more people committing felonies in Kansas the legislature has answered this problem by reducing punishment. I believe it should be the other way. We have more people committing felonies so we need to send a stronger message and take a stronger stance on crime.

Sincerely

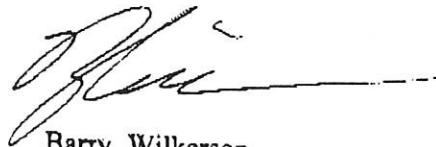
A handwritten signature in black ink, appearing to read 'Barry Wilkerson', with a long horizontal flourish extending to the right.

Barry Wilkerson
Pottwatomie County Attorney

Last drug arrest we found two children under the ages of five in the same room with razor blade mirror and narcotics

Will reduce pleas that are accepted because some Level 4 drug violators are presumptive incarceration.

Sincerely

A handwritten signature in black ink, appearing to read 'Barry Wilkerson', with a long horizontal flourish extending to the right.

Barry Wilkerson
Pottawatomie County Attorney



COUNTY ATTORNEY'S OFFICE

William E. Kennedy III
Riley County Attorney

Carnegie Building, 2nd Floor
105 Courthouse Plaza
Manhattan, Kansas 66502-0106
Phone: 785-537-6390
Fax: 785-537-6334

March 18, 2003

Chairman Ward Loyd
House Corrections and Juvenile Justice Committee

Re: Senate Bill 123

Dear Representative Loyd and Members of the Committee:

I am sorry that I could not be here to speak to you in person. However, at the time you have scheduled for testimony, I will be involved in the first of seven (7) preliminary hearings involving six (6) counts of aggravated Robbery, conspiracy to commit aggravated robbery, one count of aggravated burglary and other related charges, which allegedly arose from discussion among this group sitting around smoking marihuana and deciding to go rob a guy who they thought had "drugs and money".

I am providing this information to discuss the proposed changes to the Drug Sentencing grid of the Kansas Sentencing Guidelines Act. On the face of the proposed changes, it would seem that the proposals are appropriate. That would be the point of view of someone who is looking at the changes, having not practiced daily in the criminal justice system and thus, not having seen what occurs. I am sure that for the average law abiding citizen, the following statement is in their minds when you mention drug possession: Who are they hurting but themselves? Why shouldn't we just focus on treatment and not punish them for the addiction?

The problem with these statements, is that the rationale is incorrect. The reality is that those who are 'just using' drugs are hurting the community as a whole.

- **Simple economics:** Business can't operate without customers: Drug dealers are operating a business. They are not distributing controlled substances for any reason other than monetary gain. Thus, as with any business, if you remove the customers, the 'users', then you cut off the demand and hurt the dealers. If you don't stop the demand, the business grows and spreads unfortunately down to the youngest children in the communities.
- **Users are hurting the community:** A large majority of the cases involving Forgery, theft, burglary, i.e. property type crimes are committed so that the offender can obtain money, or even just trade the items stolen, for drugs. Thus, the average citizen who has their checks stolen and forged, who has their car burglarized and property stolen, or even their homes broken into and items stolen, is being hurt by those who are "just using drugs."

Brenda M. Jordan
Assistant County Attorney

Valerie L. Peterson
Assistant County Attorney

Terry D. Holdren
Assistant County Attorney

Karla Hagemister
Victim/Witness Coordinator
785-537-6383

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This effect is also seen with Robbery, aggravated battery, murder, and other violent type crimes, but is just more common and directly tied, with the property type crimes. In 1997, we convicted three individuals of murder of a victim who was an innocent party, but the death resulted from a drug deal gone bad. Riley County has prosecuted other murder cases that had a drug connection, either victim/defendant using before the murder. (I am confident other counties have as well.) Users do stupid things when they are under the effects of controlled substances.

Additionally, we are seeing more and more situations where those connected with dealing drugs are committed burglaries and robberies to steal the money and drugs back from buyers. The concern with this trend is the innocent people who are in the wrong place at the wrong time, and other consequences that can occur from these robberies.

- **Treatment without consequences:** Believe it or not, the status of the law is not a secret to the offenders. When SB 323 was passed, we were told by probation officers that they were receiving phone calls from probationers, asking if their time would be cut short due to the bill. Passage of this bill, which in effect eliminates the existence of consequences for continuing to use drugs, eliminates the incentive for successful treatment. Remember these are people who do not accept that drug usage is a bad thing, thus, treatment and the benefits of a drug free life style will not be enough of an incentive. Remember, you can lead a horse to water, but you can't make it drink!
- **Provisions of the bill itself:** Treatment is currently being ordered by the Sentencing Courts. The persons that are being sent to prison for convictions of 65-4160 and 65-4162 are those that have failed at treatment already.
 - Treatment program discharge occurs for new conviction, but not if convicted of possession of drug again? Again, where is the incentive to stop using drugs?
 - Are they going to look at what treatment options and programs have been tried and failed before the sentencing court sent the person to the prison? If not, once again, where is the incentive to stay drug free when they are released?
 - Quantify/define: safety of the public, only those who commit violent person crimes or subject to punishment, or are those who commit property crimes going to be held accountable for the safety of the public?
 - The work and the costs are being trickled down to the local jurisdictions who are in the same budget situation as the State, if not worse due to lack of financial transfers from the state.

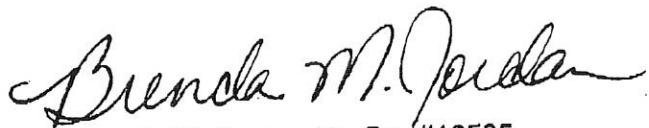
Prosecutors, law enforcement and probation supervisors have increasingly taken a harder stance against drug offenses in the last few years. We are sending cases to the federal prosecution level to increase penalties, especially for large quantities and repeat offenders. Law enforcement, narcotics divisions, are cracking down on drugs and distribution, trying to make it bad to be involved as a distributor and user. Prosecutors are building the history on

the dealers to establish that they need to be punished. This is a matter of economics for the drug culture. With the drug culture comes violence, and related crimes, property crimes, etc., all of which hurt the citizens of our communities.

Currently, the sentencing courts are ordering treatment for users of drugs. The sentencing courts and thus, the probation officers are trying to get the offenders to treatment. Our courts have even given ISO's the authority to search the offenders and homes for substances used to mask the drug tests. However, the offenders know that there is a punishment if they do not comply. If this bill is passed that possibility for punishment will be removed and thus, the incentive to comply is gone.

But, none of these efforts will make a difference in the "war on drugs" if the legislature continues to decrease the punishment aspect of being involved with drugs, even just as a user. Instead of decreasing the penalties, increase them, remove distribution and possession with the intent from the border boxes, don't remove the punishment for possession, make it stiffer, make it occur swifter. Let the local courts have the authority to say enough is enough.

Sincerely,



Brenda M. Jordan, Ks. Bar #16585
Assistant Riley County Attorney