

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 24, 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
Bev Renner - Committee Secretary

Conferees appearing before the committee:

Others attending:

See Attached

SB 11 - Creating community advisory committee to participate in annual budget planning process of juvenile justice authority.

Representative Pauls made a motion to recommend SB 11 favorable for passage. Representative Kassebaum seconded the motion. The motion carried.

SB 14 - Criteria for employment in adult care homes and by home health agencies.

Representative Carter made a motion to move SB 14 out favorably. Representative Carlin seconded the motion.

Representative Pauls made a motion to amend SB 14 to make exceptions for adjudication of a juvenile offender for an offense described in K.S.A. 21-3701 (Attachment 1). Representative Dillmore seconded the motion. The motion carried.

Representative Pauls made a motion to amend SB 14 to exclude minor guardianship, on page 6, lines 23-26. Representative Carter seconded the motion. The motion carried.

Representative Pauls made a motion to move SB 14 favorably for passage as amended. Representative Carter seconded the motion. The motion carried.

SB 123 - Drug convictions; possessions is a level D4 classification; mandatory drug treatment; border boxes on D4 replace with probation boxes.

Sub SB 209 - Fire districts; recovery of costs of arson investigation.

Chairperson Loyd offered a balloon (Attachment 2). Jill Wolters, Office of Revisors explained the changes entailed in the balloon: The substantive crimes go into effect November 1, 2003 but the program is to gear up and the taxes will go into effect on July 1, 2003; The establishment of a drug abuse treatment program fund; Add the language contained in Substitute for SB 209; Additional non-prison sanctions would be for subsequent violations of the original; and, the funding mechanism outlined in Chris Courtwright's paper submitted at the March 20th meeting.

Representative Kassebaum made a motion to amend SB 123 with the balloon. Representative Carter seconded the motion. The motion carried.

Minority Member Ward made a motion to strike subsection G and new section 9 (the funding mechanism)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at on March 24, 2003, in Room 526-S of the Capitol.

from SB 123. Representative Dillmore seconded the motion. The motion failed.

Ranking Minority Member Ward proposed an amendment to **SB 123** (Attachment 3). Someone who continually demonstrates an unwillingness or inability to conform their behavior after several opportunities for treatment needs to go to jail. Failure to complete treatment two times will make the offender eligible to serve the prison sentence. The third failure will result in a doubling of the underlying sentence. The fourth time will be mandatory prison.

Ranking Minority Member Ward made a motion to amend SB 123 by adding this balloon. Representative Carter seconded the motion.

A discussion was held of the remaining amendments to be considered regarding policy enhancements for **SB 123**. Representative Kassebaum introduced an amendment to clarify a person's third or subsequent felony conviction of possession after completing a certified drug abuse treatment program or failure or refusal to participate in a certified drug abuse program would result in a presumptive term of imprisonment (Attachment 4). Chairperson Loyd proposed additional options to **SB 123** to provide those who had failed treatment for the third time be charged at a level three conviction on the sentencing grid or double the underlying sentence. A bed impact study showed that in the early years there was no significant impact, but in later years a favorable result was seen.

The discussion on **SB 123** was held over until tomorrow.

The meeting was adjourned at 3:26 p.m. The next scheduled meeting is March 25, 2003.

1 provide to the operator requesting information under this section infor-
2 mation in writing and within three working days of receipt of such infor-
3 mation from the appropriate court of jurisdiction or Kansas department
4 of corrections regarding confirmation regarding the criminal history rec-
5 ord information.

6 (3) Whenever the criminal history record information reveals that the
7 subject of the request has no criminal history on record, the secretary
8 shall provide notice to each operator requesting information under this
9 section, in writing and within three working days after receipt of such
10 information from the Kansas bureau of investigation.

11 (4) The secretary of health and environment shall not provide each
12 operator requesting information under this section with the juvenile crim-
13 inal history record information which relates to a person subject to a
14 background check as is provided by K.S.A. 38-1618 and amendments
15 thereto. The secretary shall notify the operator that requested the infor-
16 mation, in writing and within three working days of receipt of such in-
17 formation from the Kansas bureau of investigation, whether juvenile
18 criminal history record information received pursuant to this section re-
19 veals that the operator would or would not be prohibited by this section
20 from employing the subject of the request for information.

,except for adjudications of a juvenile
offender for an offense described in K.S.A.
21-3701, and amendments thereto

21 (5) An operator who receives criminal history record information un-
22 der this subsection (f) shall keep such information confidential, except
23 that the operator may disclose such information to the person who is the
24 subject of the request for information. A violation of this paragraph (5)
25 shall be an unclassified misdemeanor punishable by a fine of \$100.

and whether such information contains
adjudications of a juvenile offender for an
offense described in K.S.A. 21-3701, and
amendments thereto.

26 (g) No person who works for an adult care home and who is currently
27 licensed or registered by an agency of this state to provide professional
28 services in the state and who provides such services as part of the work
29 which such person performs for the adult care home shall be subject to
30 the provisions of this section.

31 (h) A person who volunteers in an adult care home shall not be sub-
32 ject to the provisions of this section because of such volunteer activity.

33 (i) No person who has been employed by the same adult care home
34 for five consecutive years immediately prior to the effective date of this
35 act shall be subject to the provisions of this section while employed by
36 such adult care home.

37 (j) The operator of an adult care home shall not be required under
38 this section to conduct a background check on an applicant for employ-
39 ment with the adult care home if the applicant has been the subject of a
40 background check under this act within one year prior to the application
41 for employment with the adult care home. The operator of an adult care
42 home where the applicant was the subject of such background check may
43 release a copy of such background check to the operator of an adult care

H. Corr's J.J.
3-24-03
Attachment 1

1 inal history record information, and when further confirmation regarding
 2 criminal history record information is required from the appropriate court
 3 of jurisdiction or Kansas department of corrections, the secretary shall
 4 notify each operator that requests information under this section in writ-
 5 ing and within three working days of receipt from the Kansas bureau of
 6 investigation that further confirmation is required. The secretary shall
 7 provide to the operator requesting information under this section infor-
 8 mation in writing and within three working days of receipt of such infor-
 9 mation from the appropriate court of jurisdiction or Kansas department
 10 of corrections regarding confirmation regarding the criminal history rec-
 11 ord information.

12 (3) Whenever the criminal history record information reveals that the
 13 subject of the request has no criminal history on record, the secretary
 14 shall provide notice to each operator requesting information under this
 15 section, in writing and within three working days after receipt of such
 16 information from the Kansas bureau of investigation.

17 (4) The secretary of health and environment shall not provide each
 18 operator requesting information under this section with the juvenile crim-
 19 inal history record information which relates to a person subject to a
 20 background check as is provided by K.S.A. 38-1618 and amendments
 21 thereto. The secretary shall notify the operator that requested the infor-
 22 mation, in writing and within three working days of receipt of such in-
 23 formation from the Kansas bureau of investigation, whether juvenile
 24 criminal history record information received pursuant to this section re-
 25 veals that the operator would or would not be prohibited by this section
 26 from employing the subject of the request for information.

,except for adjudications of a juvenile
 offender for an offense described in K.S.A.
 21-3701, and amendments thereto

27 (5) An operator who receives criminal history record information un-
 28 der this subsection (f) shall keep such information confidential, except
 29 that the operator may disclose such information to the person who is the
 30 subject of the request for information. A violation of this paragraph (5)
 31 shall be an unclassified misdemeanor punishable by a fine of \$100.

and whether such information contains
 adjudications of a juvenile offender for an
 offense described in K.S.A. 21-3701, and
 amendments thereto.

32 (g) No person who works for a home health agency and who is cur-
 33 rently licensed or registered by an agency of this state to provide profes-
 34 sional services in this state and who provides such services as part of the
 35 work which such person performs for the home health agency shall be
 36 subject to the provisions of this section.

37 (h) A person who volunteers to assist a home health agency shall not
 38 be subject to the provisions of this section because of such volunteer
 39 activity.

40 (i) No person who has been employed by the same home health
 41 agency for five consecutive years immediately prior to the effective date
 42 of this act shall be subject to the requirements of this section while em-
 43 ployed by such home health agency.

(Corrected)

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Section of 2003

SENATE BILL No. 123

By Special Committee on Judiciary

2-3

AN ACT concerning crimes and punishment; relating to possession of drugs; mandatory treatment; amending K.S.A. 65-4160 and K.S.A. 2002 Supp. 21-4603d, 21-4705, 21-4714, 22-3716 and 75-5291 and repealing the existing sections.

increasing the rate imposed on alcohol gallonage taxation; creating the drug abuse treatment program fund;

, 41-501

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

New Section 1. ~~(a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders ~~who are sentenced on or after the effective date of this act.~~~~ Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto:

On and after November 1, 2003:

(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no prior felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes and such offender has no prior felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, if such person felonies committed by the offender were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) (1) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to a drug abuse assessment.

(2) The drug abuse assessment shall include a statewide, mandatory, standardized risk assessment tool or and an instrument validated for drug abuse treatment program placements and shall include a clinical interview with a mental health professional. Such assessment shall assign

H. Corr. & J.J.
3-24-03
Attached 2

Proposed amendment
Representative Loyd /
March 23, 2003

2-2

1 a high or low risk status to the offender and include a recommendation
2 concerning drug abuse treatment for the offender.

3 (c) The sentencing court shall commit the offender to treatment in a
4 drug abuse treatment program until determined suitable for discharge by
5 the court but the term of treatment shall not exceed 18 months.

6 (d) Offenders ~~who are assigned a high risk status~~ shall be supervised
7 by community correctional services. ~~Offenders who are assigned a low
8 risk status shall be supervised by court service officers.~~

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

12 (f)(1) Offenders in drug abuse treatment programs shall be dis-
13 charged from such program if the offender:

14 (A) Is convicted of a new felony, other than a felony conviction of
15 K.S.A. 65-4160 or 65-4162, and amendments thereto; or

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

19 (2) Offenders who are discharged from such program shall be subject
20 to the revocation provisions of subsection (n) of K.S.A. 21-4603d. and
21 amendments thereto.

22 (g) As used in this section, "mental health professional" includes li-
23 censed social workers, licensed psychiatrists, licensed psychologists, li-
24 censed professional counselors or registered alcohol and other drug abuse
25 counselors licensed or certified as addiction counselors who have been
26 certified by the secretary of corrections to treat offenders pursuant to
27 section 2, and amendments thereto.

28 New Sec 2. (a) Drug abuse treatment programs certified in accord-
29 ance with subsection (b) shall provide:

30 (1) Presentence drug abuse assessments of any person who is con-
31 victed of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
32 thereto, and meets the requirements of section 1, and amendments
33 thereto;

34 (2) ~~supervision and monitoring~~ *treatment* of all persons who are con-
35 victed of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
36 thereto, and meet the requirements of section 1, and amendments
37 thereto, and whose sentence requires completion of a certified drug abuse
38 treatment program, as provided in this section;

39 (3) ~~Δ treatment options (to address)~~ the continuum of services needed
40 to reach recovery: Detoxification, rehabilitation, continuing care and af-
41 tercare, and relapse prevention;

42 (4) treatment options to incorporate family and auxiliary support serv-
43 ices; and

one or more

in

[DOC amendments]

1 (5) treatment options for alcohol abuse when indicated by the as-
2 sessment of the offender or required by the court.

3 (b) ~~The presentence drug abuse assessment shall be conducted by a~~
4 ~~drug abuse treatment program certified in accordance with the provisions~~
5 ~~of this subsection to provide assessment and supervision services. A drug~~
6 ~~abuse treatment program shall be certified by the secretary of corrections.~~

7 The secretary may establish qualifications for the certification of pro-
8 grams, which may include requirements for supervision and monitoring
9 of clients; fee reimbursement procedures; handling of conflicts of inter-
10 est; delivery of services to clients unable to pay; and other matters relating
11 to quality and delivery of services by the program. ~~Drug abuse treat-~~

12 ~~ment [can] include community based [and/or] faith based programs.~~

13 The certification shall be for a four-year period. Recertification of a pro-
14 gram shall be by the secretary. To be eligible for certification under this
15 subsection, the secretary shall determine that a drug abuse treatment
16 program: (1) Meets the qualifications established by the secretary; (2) is
17 capable of providing the assessments, supervision and monitoring re-
18 quired under subsection (a); (3) has employed or contracted with certified
19 treatment providers; and (4) meets any other functions and duties spec-
20 ified by law.

21 (c) Any treatment provider who is employed or has contracted with
22 a certified drug abuse treatment program who provides services to of-
23 fenders shall be certified by the secretary of corrections. The secretary
24 shall require education and training which shall include, but not be lim-
25 ited to, case management and cognitive behavior training. The duties of
26 providers who prepare the presentence drug abuse assessment may also
27 include appearing at sentencing and probation hearings in accordance
28 with the orders of the court, monitoring offenders in the treatment pro-
29 grams, notifying the probation department and the court of any offender
30 failing to meet the conditions of probation or referrals to treatment, ap-
31 pearing at revocation hearings as may be required and providing assis-
32 tance and data reporting and program evaluation.

33 (d) The cost ~~of any~~ for all drug abuse assessments and certified
34 drug abuse treatment programs for any person shall be paid by ~~such~~
35 ~~person~~ the Kansas sentencing commission from funds appropriated
36 for such purpose. The Kansas sentencing commission shall contract
37 for payment for such services with the supervising agency. The sen-
38 tencing court shall determine the extent, if any, that such person is
39 able to pay for such assessment and treatment. Such payments shall
40 be used by the supervising agency to offset costs to the state. If such
41 financial obligations are not met or cannot be met, the sentencing court
42 shall be notified for the purpose of collection or review and further action
43 on the offender's sentence.

The presentence criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer.

treatment program placement

treatment

[DOC amendments]

may

and

[Revisor amendments]

1 (e) *The community corrections staff ~~and court services officers~~*
 2 *shall work with the substance abuse treatment staff to ensure effective*
 3 *supervision and monitoring of the offender.*

4 (f) The secretary of corrections is hereby authorized to adopt rules
 5 and regulations to carry out the provisions of this section.

6 ~~New Sec. 2. (a) Persons who were convicted of a felony violation of~~
 7 ~~K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, but prior to the~~
 8 ~~effective date of this act, shall have their sentences modified according~~
 9 ~~to the provisions of this section. Persons who meet the requirements of~~
 10 ~~section 1, and amendments thereto, shall have such persons' sentence~~
 11 ~~modified and be subject to the mandatory drug abuse treatment pro-~~
 12 ~~grams. For the purpose of such mandatory drug abuse treatment~~
 13 ~~programs, upon such modification of the offender's sentence, the~~
 14 ~~offender's sentence shall be a drug severity level 1 felony and re-~~
 15 ~~quired to fulfill the nonprison sanction pursuant to subsection (a)~~
 16 ~~of section 1, and amendments thereto.~~

17 ~~(b) (1) The department of corrections shall conduct a review and~~
 18 ~~prepare a report on all persons who committed such crimes during such~~
 19 ~~dates. A copy of the report shall be transmitted to the inmate, the county~~
 20 ~~or district attorney for the county from which the inmate was sentenced~~
 21 ~~and the sentencing court.~~

22 ~~(2) The department of corrections shall complete and submit to the~~
 23 ~~appropriate parties the report on all imprisoned inmates who were con-~~
 24 ~~vinced of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July~~
 25 ~~1, 1993 but prior to the effective date of this act, and who have greater~~
 26 ~~than 180 days to serve on such inmates' sentence prior to such inmates'~~
 27 ~~initial release date. The department of corrections shall review inmates~~
 28 ~~based on such inmate's custody or security classification in the following~~
 29 ~~order. Minimum, within 60 days of the effective date of this act, medium,~~
 30 ~~within 90 days of the effective date of this act, and maximum, within 120~~
 31 ~~days of the effective date of this act.~~

32 ~~(c) Prior to the modification of the sentence of offenders who were~~
 33 ~~convicted of a second or subsequent violation of K.S.A. 65-4160, and~~
 34 ~~amendments thereto, the department of corrections shall review such~~
 35 ~~offenders' records and make a finding recommendation that the safety~~
 36 ~~of the members of the public will not be jeopardized by such modification~~
 37 ~~of sentence. The department of corrections shall conduct a public~~
 38 ~~safety evaluation. The results of such evaluation shall be included~~
 39 ~~in the report required by this subsection.~~

40 ~~(d) The modification of sentence as determined by the department~~
 41 ~~of corrections shall be deemed to be correct unless objection thereto is~~
 42 ~~filed by either the person or the prosecution officer within the 60-day~~
 43 ~~period provided to request a hearing. If an objection is filed, the sen-~~

(g) There is hereby established in the state treasury the drug abuse treatment program fund which shall be administered by the executive director of the Kansas sentencing commission. All money credited to the drug abuse treatment program fund shall be used to pay for costs related to the certified drug abuse treatment programs pursuant to this section. All expenditures from the ~~alcoholic beverage control special revenue~~ fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director of the Kansas sentencing commission or the executive director's designee.

drug abuse treatment program

1 ~~sentencing court shall determine the person's modification of sentence. The~~
2 ~~burden of proof shall be on the prosecution officer to prove that the safety~~
3 ~~of the members of the public will be jeopardized by such modification of~~
4 ~~sentence.~~

5 ~~—(c) (1) Within 60 days of the issuance of such report, the prosecution~~
6 ~~officer shall have the right to request a hearing by filing a motion with~~
7 ~~the sentencing court, regarding the modification of the sentence under~~
8 ~~this act to be held in the jurisdiction where the original criminal case was~~
9 ~~filed. The secretary of corrections shall be provided written notice of any~~
10 ~~request for a hearing. If a request for a hearing is not filed within 60 days~~
11 ~~of the issuance of the report, the department shall modify the person's~~
12 ~~sentence to one provided for under this act and provide notification of~~
13 ~~that action to the person, the prosecution officer, and the court in the~~
14 ~~jurisdiction where the original criminal case was held. The secretary of~~
15 ~~corrections shall be authorized to implement a modified sentence as pro-~~
16 ~~vided in this act, if the secretary has not received written notice of a~~
17 ~~request for a hearing by the close of normal business hours on the fifth~~
18 ~~business day after expiration of the 60-day period.~~

19 ~~—(2) In the event a hearing is requested and held, the court shall de-~~
20 ~~termine whether the safety of the members of the public will be jeop-~~
21 ~~ardized by such modification of sentence.~~

22 ~~—(3) In the event a hearing is requested, and the court deems the~~
23 ~~hearing is necessary, the court shall schedule and hold the hearing within~~
24 ~~60 days after it was requested and shall rule on the issues raised by the~~
25 ~~parties within 30 days after the hearing.~~

26 ~~—(4) Such offender shall be represented by counsel pursuant to the~~
27 ~~provisions of K.S.A. 22-4501 et seq. and amendments thereto.~~

28 ~~—(5) Nothing contained in this section shall be construed as requiring~~
29 ~~the appearance in person of the offender or creating such a right of ap-~~
30 ~~pearance in person of the offender at the hearing provided in this section~~
31 ~~regarding the modification of a sentence under this section.~~

32 ~~—(6) The court shall enter an order regarding the person's modification~~
33 ~~of sentence and forward that order to the secretary of corrections who~~
34 ~~shall administer the modification of sentence.~~

35 ~~—(f) All sentence modifications that result in an offender being re-~~
36 ~~leased from a state correctional facility shall be placed under the super-~~
37 ~~vision of community corrections.~~

38 ~~—(g) (1) In the case of any person to whom the provisions of this sec-~~
39 ~~tion shall apply, who committed a crime prior to the effective date of this~~
40 ~~act, but was sentenced after the effective date of this act, the sentencing~~
41 ~~court shall impose a sentence as provided by this act.~~

42 ~~—(2) In the case of any person to whom the provisions of this section~~
43 ~~shall apply, who was sentenced prior to the effective date of this act, but~~

2-6

1 ~~is in county jail waiting to be admitted into a department of corrections~~
2 ~~facility after the effective date of this act, the secretary of corrections is~~
3 ~~authorized to implement a modified sentence as provided in this act~~
4 ~~within 180 days of the effective date of this act.~~

On and after November 1, 2003,

5 Sec. ~~4~~ /3./ ~~¶~~ K.S.A. 2002 Supp. 21-4603d is hereby amended to read
6 as follows: 21-4603d. (a) Whenever any person has been found guilty of
7 a crime, the court may adjudge any of the following:

8 (1) Commit the defendant to the custody of the secretary of correc-
9 tions if the current crime of conviction is a felony and the sentence pre-
10 sumes imprisonment, or the sentence imposed is a dispositional departure
11 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
12 term provided by law;

13 (2) impose the fine applicable to the offense;

14 (3) release the defendant on probation if the current crime of con-
15 viction and criminal history fall within a presumptive nonprison category
16 or through a departure for substantial and compelling reasons subject to
17 such conditions as the court may deem appropriate. In felony cases except
18 for violations of K.S.A. 8-1567 and amendments thereto, the court may
19 include confinement in a county jail not to exceed 60 days, which need
20 not be served consecutively, as a condition of an original probation sen-
21 tence and up to 60 days in a county jail upon each revocation of the
22 probation sentence, or community corrections placement;

23 (4) assign the defendant to a community correctional services pro-
24 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
25 a departure for substantial and compelling reasons subject to such con-
26 ditions as the court may deem appropriate, including orders requiring full
27 or partial restitution;

28 (5) assign the defendant to a conservation camp for a period not to
29 exceed six months as a condition of probation followed by a six-month
30 period of follow-up through adult intensive supervision by a community
31 correctional services program, if the offender successfully completes the
32 conservation camp program;

33 (6) assign the defendant to a house arrest program pursuant to K.S.A.
34 21-4603b and amendments thereto;

35 (7) order the defendant to attend and satisfactorily complete an al-
36 cohol or drug education or training program as provided by subsection
37 (3) of K.S.A. 21-4502 and amendments thereto;

38 (8) order the defendant to repay the amount of any reward paid by
39 any crime stoppers chapter, individual, corporation or public entity which
40 materially aided in the apprehension or conviction of the defendant; repay
41 the amount of any costs and expenses incurred by any law enforcement
42 agency in the apprehension of the defendant, if one of the current crimes
43 of conviction of the defendant includes escape, as defined in K.S.A. 21-

1-2

1 3809 and amendments thereto or aggravated escape, as defined in K.S.A.
 2 21-3810 and amendments thereto; ~~or repay the amount of any public~~
 3 funds utilized by a law enforcement agency to purchase controlled sub-
 4 stances from the defendant during the investigation which leads to the
 5 defendant's conviction. Such repayment of the amount of any such costs
 6 and expenses incurred by a law enforcement agency ~~or any public funds~~
 7 utilized by a law enforcement agency shall be deposited and credited to
 8 the same fund from which the public funds were credited to prior to use
 9 by the law enforcement agency.

10 (9) order the defendant to pay the administrative fee authorized by
 11 K.S.A. 2002 Supp. 22-4529 and amendments thereto, unless waived by
 12 the court;

13 (10) order the defendant to pay a domestic violence special program
 14 fee authorized by K.S.A. 2002 Supp. 20-369, and amendments thereto;

15 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
 16 (7), (8), (9) and (10); or

17 (12) suspend imposition of sentence in misdemeanor cases.

18 (b) (1) In addition to or in lieu of any of the above, the court shall
 19 order the defendant to pay restitution, which shall include, but not be
 20 limited to, damage or loss caused by the defendant's crime, unless the
 21 court finds compelling circumstances which would render a plan of res-
 22 titution unworkable. If the court finds a plan of restitution unworkable,
 23 the court shall state on the record in detail the reasons therefor.

24 (2) If the court orders restitution, the restitution shall be a judgment
 25 against the defendant which may be collected by the court by garnishment
 26 or other execution as on judgments in civil cases. If, after 60 days from
 27 the date restitution is ordered by the court, a defendant is found to be in
 28 noncompliance with the plan established by the court for payment of
 29 restitution, and the victim to whom restitution is ordered paid has not
 30 initiated proceedings in accordance with K.S.A. 2002 Supp. 60-4301 *et*
 31 *seq.* and amendments thereto, the court shall assign an agent procured
 32 by the attorney general pursuant to K.S.A. 75-719 and amendments
 33 thereto to collect the restitution on behalf of the victim. The adminis-
 34 trative judge of each judicial district may assign such cases to an appropriate
 35 division of the court for the conduct of civil collection proceedings.

36 (c) In addition to or in lieu of any of the above, the court shall order
 37 the defendant to submit to and complete an alcohol and drug evaluation,
 38 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
 39 4502 and amendments thereto.

40 (d) In addition to any of the above, the court shall order the defend-
 41 ant to reimburse the county general fund for all or a part of the expend-
 42 itures by the county to provide counsel and other defense services to the
 43 defendant. Any such reimbursement to the county shall be paid only after

repay expenses incurred by a fire district, fire department or fire company
 responding to a fire which has been determined to be arson under K.S.A. 21-
 3718 or 21-3719, and amendments thereto, if the defendant is convicted of such
 crime;

, fire district, fire department or fire company

[from substitute for SB 209]

1 any order for restitution has been paid in full. In determining the amount
2 and method of payment of such sum, the court shall take account of the
3 financial resources of the defendant and the nature of the burden that
4 payment of such sum will impose. A defendant who has been required
5 to pay such sum and who is not willfully in default in the payment thereof
6 may at any time petition the court which sentenced the defendant to
7 waive payment of such sum or any unpaid portion thereof. If it appears
8 to the satisfaction of the court that payment of the amount due will im-
9 pose manifest hardship on the defendant or the defendant's immediate
10 family, the court may waive payment of all or part of the amount due or
11 modify the method of payment.

12 (e) In imposing a fine the court may authorize the payment thereof
13 in installments. In releasing a defendant on probation, the court shall
14 direct that the defendant be under the supervision of a court services
15 officer. If the court commits the defendant to the custody of the secretary
16 of corrections or to jail, the court may specify in its order the amount of
17 restitution to be paid and the person to whom it shall be paid if restitution
18 is later ordered as a condition of parole ~~or~~ conditional release *or post-*
19 *release supervision.*

20 (f) When a new felony is committed while the offender is incarcer-
21 ated and serving a sentence for a felony or while the offender is on pro-
22 bation, assignment to a community correctional services program, parole,
23 conditional release, or postrelease supervision for a felony, a new sentence
24 shall be imposed pursuant to the consecutive sentencing requirements of
25 K.S.A. 21-4608, and amendments thereto, and the court may sentence
26 the offender to imprisonment for the new conviction, even when the new
27 crime of conviction otherwise presumes a nonprison sentence. In this
28 event, imposition of a prison sentence for the new crime does not con-
29 stitute a departure. When a new felony is committed while the offender
30 is on release for a felony pursuant to the provisions of article 28 of chapter
31 22 of the Kansas Statutes Annotated, a new sentence may be imposed
32 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608
33 and amendments thereto, and the court may sentence the offender to
34 imprisonment for the new conviction, even when the new crime of con-
35 viction otherwise presumes a nonprison sentence. In this event, imposi-
36 tion of a prison sentence for the new crime does not constitute a
37 departure.

38 (g) Prior to imposing a dispositional departure for a defendant whose
39 offense is classified in the presumptive nonprison grid block of either
40 sentencing guideline grid, prior to sentencing a defendant to incarceration
41 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
42 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H,
43 ~~or 3-I, 4-E or 4-F~~ of the sentencing guidelines grid for drug crimes, prior

1 to sentencing a defendant to incarceration whose offense is classified in
2 grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes
3 and whose offense does not meet the requirements of section 1, and
4 amendments thereto, prior to revocation of a nonprison sanction of a
5 defendant whose offense is classified in grid blocks 4-E or 4-F of the
6 sentencing guideline grid for drug crimes and whose offense does not meet
7 the requirements of section 1, and amendments thereto, or prior to rev-
8 ocation of a nonprison sanction of a defendant whose offense is classified
9 in the presumptive nonprison grid block of either sentencing guideline
10 grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for
11 nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, ~~or 3-I, 4-E or 4-F~~
12 of the sentencing guidelines grid for drug crimes, the court shall consider
13 placement of the defendant in the Labette correctional conservation
14 camp, conservation camps established by the secretary of corrections pur-
15 suant to K.S.A. 75-52,127, and amendment thereto or a community inter-
16 mediate sanction center. Pursuant to this paragraph the defendant
17 shall not be sentenced to imprisonment if space is available in a conser-
18 vation camp or a community intermediate sanction center and the de-
19 fendant meets all of the conservation camp's or a community intermediate
20 sanction center's placement criteria unless the court states on the record
21 the reasons for not placing the defendant in a conservation camp or a
22 community intermediate sanction center.

23 (h) The court in committing a defendant to the custody of the sec-
24 retary of corrections shall fix a term of confinement within the limits
25 provided by law. In those cases where the law does not fix a term of
26 confinement for the crime for which the defendant was convicted, the
27 court shall fix the term of such confinement.

28 (i) In addition to any of the above, the court shall order the defendant
29 to reimburse the state general fund for all or a part of the expenditures
30 by the state board of indigents' defense services to provide counsel and
31 other defense services to the defendant. In determining the amount and
32 method of payment of such sum, the court shall take account of the
33 financial resources of the defendant and the nature of the burden that
34 payment of such sum will impose. A defendant who has been required
35 to pay such sum and who is not willfully in default in the payment thereof
36 may at any time petition the court which sentenced the defendant to
37 waive payment of such sum or any unpaid portion thereof. If it appears
38 to the satisfaction of the court that payment of the amount due will im-
39 pose manifest hardship on the defendant or the defendant's immediate
40 family, the court may waive payment of all or part of the amount due or
41 modify the method of payment. The amount of attorney fees to be in-
42 cluded in the court order for reimbursement shall be the amount claimed
43 by appointed counsel on the payment voucher for indigents' defense serv-

1 ices or the amount prescribed by the board of indigents' defense services
2 reimbursement tables as provided in K.S.A. 22-4522, and amendments
3 thereto, whichever is less.

4 (j) This section shall not deprive the court of any authority conferred
5 by any other Kansas statute to decree a forfeiture of property, suspend
6 or cancel a license, remove a person from office, or impose any other civil
7 penalty as a result of conviction of crime.

8 (k) An application for or acceptance of probation or assignment to a
9 community correctional services program shall not constitute an acqui-
10 escence in the judgment for purpose of appeal, and any convicted person
11 may appeal from such conviction, as provided by law, without regard to
12 whether such person has applied for probation, suspended sentence or
13 assignment to a community correctional services program.

14 (l) The secretary of corrections is authorized to make direct place-
15 ment to the Labette correctional conservation camp or a conservation
16 camp established by the secretary pursuant to K.S.A. 75-52.127, and
17 amendments thereto, of an inmate sentenced to the secretary's custody
18 if the inmate: (1) Has been sentenced to the secretary for a probation
19 revocation, as a departure from the presumptive nonimprisonment grid
20 block of either sentencing grid, ~~or~~ for an offense which is classified in
21 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
22 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, or 3-I, ~~4-E, or 4-F~~ of the
23 sentencing guidelines grid for drug crimes, *or for an offense which is*
24 *classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for*
25 *drug crimes and such offense does not meet the the requirements of section*
26 *1, and amendments thereto, and (2) otherwise meets admission criteria*
27 *of the camp. If the inmate successfully completes a conservation camp*
28 *program, the secretary of corrections shall report such completion to the*
29 *sentencing court and the county or district attorney. The inmate shall*
30 *then be assigned by the court to six months of follow-up supervision*
31 *conducted by the appropriate community corrections services program.*
32 *The court may also order that supervision continue thereafter for the*
33 *length of time authorized by K.S.A. 21-4611 and amendments thereto.*

34 (m) When it is provided by law that a person shall be sentenced pur-
35 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
36 this section shall not apply.

37 (n) *In addition to any of the above, for felony violations of K.S.A. 65-*
38 *4160 or 65-4162, and amendments thereto, the court shall require the*
39 *defendant who meets the requirements established in section 1, and*
40 *amendments thereto, to participate in a certified drug abuse treatment*
41 *program, as provided in section 2, and amendments thereto, including*
42 *but not limited to, an approved after-care plan. If the defendant fails to*
43 *participate in or has a pattern of intentional conduct that demonstrates*

2-11

1 *the offender's refusal to comply with or participate in the treatment pro-*
 2 *gram, as established by judicial finding, the defendant shall be subject to*
 3 *revocation of ~~postrelease supervision or probation~~ and the defendant shall*
 4 *serve the underlying prison sentence as established in K.S.A. 21-4705, and*
 5 *amendments thereto. For those offenders who are convicted on or*
 6 *after the effective date of this act: ~~Upon~~, upon completion of the*
 7 *underlying prison sentence, the defendant shall not be subject to a period*
 8 *of postrelease supervision. The amount of time spent participating in such*
 9 *program shall not be credited as service on the underlying prison sentence.*

On and after November 1, 2003,

10 Sec. ~~5~~ [4.] ~~¶~~ K.S.A. 2002 Supp. 21-4705 is hereby amended to read
 11 as follows: 21-4705. (a) For the purpose of sentencing, the following sen-
 12 tencing guidelines grid for drug crimes shall be applied in felony cases
 13 under the uniform controlled substances act for crimes committed on or
 14 after July 1, 1993:

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

SENTENCING RANGE - DRUG OFFENSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

1	1	1	1	1	1
2	1	1	1	1	1
3	1	1	1	1	1
4	1	1	1	1	1
5	1	1	1	1	1
6	1	1	1	1	1
7	1	1	1	1	1
8	1	1	1	1	1
9	1	1	1	1	1
10	1	1	1	1	1
11	1	1	1	1	1
12	1	1	1	1	1
13	1	1	1	1	1
14	1	1	1	1	1
15	1	1	1	1	1
16	1	1	1	1	1
17	1	1	1	1	1
18	1	1	1	1	1
19	1	1	1	1	1
20	1	1	1	1	1
21	1	1	1	1	1
22	1	1	1	1	1
23	1	1	1	1	1
24	1	1	1	1	1
25	1	1	1	1	1
26	1	1	1	1	1
27	1	1	1	1	1
28	1	1	1	1	1
29	1	1	1	1	1
30	1	1	1	1	1
31	1	1	1	1	1
32	1	1	1	1	1
33	1	1	1	1	1
34	1	1	1	1	1
35	1	1	1	1	1
36	1	1	1	1	1
37	1	1	1	1	1
38	1	1	1	1	1
39	1	1	1	1	1
40	1	1	1	1	1
41	1	1	1	1	1
42	1	1	1	1	1
43	1	1	1	1	1

Legend
Presumptive Probation
Presumptive Imprisonment
Presumptive Probation
Presumptive Imprisonment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

SENTENCING RANGE - DRUG OFFENSES

SB 123—Am. by SCW

13

Category ↓	A	B	C	D	E	F	G	H	I
Severity Level ↓	3. Person Felony	2. Person Felony	1 Person & 1 Misdemeanor Felony	1. Person Felony	2. Misdemeanor Felony	2. Misdemeanor Felony	1. Misdemeanor Felony	2. Misdemeanor	1. Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	178 170 161	170 162 154	167 158 150	162 154 146	161 153 142	154 146 138
II	83 76 71	77 71 68	72 68 65	68 64 60	63 59 55	59 56 52	57 54 51	54 51 48	51 49 46
III	51 49 46	47 44 41	43 40 37	36 34 32	32 31 28	26 24 23	22 20 18	18 17 16	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 (b) The provisions of subsection (a) will apply for the purpose of
2 sentencing violations of the uniform controlled substances act except as
3 otherwise provided by law. Sentences expressed in the sentencing guide-
4 lines grid for drug crimes in subsection (a) represent months of
5 imprisonment.

6 (c) (1) The sentencing court has discretion to sentence at any place
7 within the sentencing range. The sentencing judge shall select the center
8 of the range in the usual case and reserve the upper and lower limits for
9 aggravating and mitigating factors insufficient to warrant a departure. The
10 sentencing court shall not distinguish between the controlled substances
11 cocaine base (9041L000) and cocaine hydrochloride (9041L005) when
12 sentencing within the sentencing range of the grid block.

13 (2) In presumptive imprisonment cases, the sentencing court shall
14 pronounce the complete sentence which shall include the prison sen-
15 tence, the maximum potential reduction to such sentence as a result of
16 good time and the period of postrelease supervision at the sentencing
17 hearing. Failure to pronounce the period of postrelease supervision shall
18 not negate the existence of such period of postrelease supervision.

19 (3) In presumptive nonprison cases, the sentencing court shall pro-
20 nounce the prison sentence as well as the duration of the nonprison sanc-
21 tion at the sentencing hearing.

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such of-
24 fender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be nonimprison-
26 ment. If an offense is classified in a grid block above the dispositional
27 line, the presumptive disposition shall be imprisonment. If an offense is
28 classified in grid blocks 3-E, 3-F, 3-G, 3-H, or 3-I, ~~4-E or 4-F~~, the court
29 may impose an optional nonprison sentence upon making the following
30 findings on the record:

31 (1) An appropriate treatment program exists which is likely to be
32 more effective than the presumptive prison term in reducing the risk of
33 offender recidivism; and

34 (2) the recommended treatment program is available and the of-
35 fender can be admitted to such program within a reasonable period of
36 time; or

37 (3) the nonprison sanction will serve community safety interests by
38 promoting offender reformation.

39 Any decision made by the court regarding the imposition of an optional
40 nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-
41 G, 3-H, or 3-I, ~~4-E or 4-F~~ shall not be considered a departure and shall
42 not be subject to appeal.

43 (e) The sentence for a second or subsequent conviction of K.S.A. 65-

1 4159 and amendments thereto, manufacture of any controlled substance
 2 or controlled substance analog shall be a presumptive term of imprison-
 3 ment of two times the maximum duration of the presumptive term of
 4 imprisonment. The court may impose an optional reduction in such sen-
 5 tence of not to exceed 50% of the mandatory increase provided by this
 6 subsection upon making a finding on the record that one or more of the
 7 mitigating factors as specified in K.S.A. 21-4716 and amendments thereto
 8 justify such a reduction in sentence. Any decision made by the court
 9 regarding the reduction in such sentence shall not be considered a de-
 10 parture and shall not be subject to appeal.

11 ~~Sec. 6-15.~~ § K.S.A. 2002 Supp. 21-4714 is hereby amended to read
 12 as follows: 21-4714. (a) The court shall order the preparation of the pre-
 13 sentence investigation report by the court services officer as soon as pos-
 14 sible after conviction of the defendant.

15 (b) Each presentence report prepared for an offender to be sen-
 16 tenced for one or more felonies committed on or after July 1, 1993, shall
 17 be limited to the following information:

18 (1) A summary of the factual circumstances of the crime or crimes
 19 of conviction.

20 (2) If the defendant desires to do so, a summary of the defendant's
 21 version of the crime.

22 (3) When there is an identifiable victim, a victim report. The person
 23 preparing the victim report shall submit the report to the victim and
 24 request that the information be returned to be submitted as a part of the
 25 presentence investigation. To the extent possible, the report shall include
 26 a complete listing of restitution for damages suffered by the victim.

27 (4) An appropriate classification of each crime of conviction on the
 28 crime severity scale.

29 (5) A listing of prior adult convictions or juvenile adjudications for
 30 felony or misdemeanor crimes or violations of county resolutions or city
 31 ordinances comparable to any misdemeanor defined by state law. Such
 32 listing shall include an assessment of the appropriate classification of the
 33 criminal history on the criminal history scale and the source of informa-
 34 tion regarding each listed prior conviction and any available source of
 35 journal entries or other documents through which the listed convictions
 36 may be verified. If any such journal entries or other documents are ob-
 37 tained by the court services officer, they shall be attached to the pre-
 38 sentence investigation report. Any prior criminal history worksheets of
 39 the defendant shall also be attached.

40 (6) A proposed grid block classification for each crime, or crimes of
 41 conviction and the presumptive sentence for each crime, or crimes of
 42 conviction.

43 (7) If the proposed grid block classification is a grid block which pre-

On and after November 1, 2003,

1 sumes imprisonment, the presumptive prison term range and the pre-
 2 sumptive duration of postprison supervision as it relates to the crime
 3 severity scale.

4 (8) If the proposed grid block classification does not presume prison,
 5 the presumptive prison term range and the presumptive duration of the
 6 nonprison sanction as it relates to the crime severity scale and the court
 7 services officer's professional assessment as to recommendations for con-
 8 ditions to be mandated as part of the nonprison sanction.

9 (9) *For defendants who are being sentenced for a conviction of a fel-*
 10 *ony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, and*
 11 *meet the requirements of section 1, and amendments thereto, the drug*
 12 *and alcohol assessment as provided in section 1, and amendments thereto.*

13 (c) The presentence report will become part of the court record and
 14 shall be accessible to the public, except that the official version, defend-
 15 ant's version and the victim's statement, any psychological reports and
 16 drug and alcohol reports *and assessments* shall be accessible only to the
 17 parties, the sentencing judge, the department of corrections, and if re-
 18 quested, the Kansas sentencing commission. If the offender is committed
 19 to the custody of the secretary of corrections, the report shall be sent to
 20 the secretary and, in accordance with K.S.A. 75-5220 and amendments
 21 thereto to the warden of the state correctional institution to which the
 22 defendant is conveyed.

23 (d) The criminal history worksheet will not substitute as a present-
 24 ence report.

25 (e) The presentence report will not include optional report compo-
 26 nents, which would be subject to the discretion of the sentencing court
 27 in each district except for psychological reports and drug and alcohol
 28 reports.

29 (f) The court can take judicial notice in a subsequent felony proceed-
 30 ing of an earlier presentence report criminal history worksheet prepared
 31 for a prior sentencing of the defendant for a felony committed on or after
 32 July 1, 1993.

33 (g) All presentence reports in any case in which the defendant has
 34 been convicted of a felony shall be on a form approved by the Kansas
 35 sentencing commission.

36 Sec. 7 /6./ ΔK.S.A. 2002 Supp. 22-3716 is hereby amended to read
 37 as follows: 22-3716. (a) At any time during probation, assignment to a
 38 community correctional services program, suspension of sentence or pur-
 39 suant to subsection (d) for defendants who committed a crime prior to
 40 July 1, 1993, and at any time during which a defendant is serving a non-
 41 prison sanction for a crime committed on or after July 1, 1993, or pursuant
 42 to subsection (d), the court may issue a warrant for the arrest of a de-
 43 fendant for violation of any of the conditions of release or assignment, a

On and after November 1, 2003,

2-17

1 notice to appear to answer to a charge of violation or a violation of the
2 defendant's nonprison sanction. The notice shall be personally served
3 upon the defendant. The warrant shall authorize all officers named in the
4 warrant to return the defendant to the custody of the court or to any
5 certified detention facility designated by the court. Any court services
6 officer or community correctional services officer may arrest the defend-
7 ant without a warrant or may deputize any other officer with power of
8 arrest to do so by giving the officer a written statement setting forth that
9 the defendant has, in the judgment of the court services officer or com-
10 munity correctional services officer, violated the conditions of the de-
11 fendant's release or a nonprison sanction. The written statement delivered
12 with the defendant by the arresting officer to the official in charge of a
13 county jail or other place of detention shall be sufficient warrant for the
14 detention of the defendant. After making an arrest, the court services
15 officer or community correctional services officer shall present to the
16 detaining authorities a similar statement of the circumstances of violation.
17 Provisions regarding release on bail of persons charged with a crime shall
18 be applicable to defendants arrested under these provisions.

19 (b) Upon arrest and detention pursuant to subsection (a), the court
20 services officer or community correctional services officer shall immedi-
21 ately notify the court and shall submit in writing a report showing in what
22 manner the defendant has violated the conditions of release or assignment
23 or a nonprison sanction. Thereupon, or upon an arrest by warrant as
24 provided in this section, the court shall cause the defendant to be brought
25 before it without unnecessary delay for a hearing on the violation charged.
26 The hearing shall be in open court and the state shall have the burden of
27 establishing the violation. The defendant shall have the right to be rep-
28 resented by counsel and shall be informed by the judge that, if the de-
29 fendant is financially unable to obtain counsel, an attorney will be ap-
30 pointed to represent the defendant. The defendant shall have the right
31 to present the testimony of witnesses and other evidence on the defend-
32 ant's behalf. Relevant written statements made under oath may be ad-
33 mitted and considered by the court along with other evidence presented
34 at the hearing. Except as otherwise provided, if the violation is estab-
35 lished, the court may continue or revoke the probation, assignment to a
36 community correctional services program, suspension of sentence or non-
37 prison sanction and may require the defendant to serve the sentence
38 imposed, or any lesser sentence, and, if imposition of sentence was sus-
39 pended, may impose any sentence which might originally have been im-
40 posed. Except as otherwise provided, no offender for whom a violation
41 of conditions of release or assignment or a nonprison sanction has been
42 established as provided in this section shall be required to serve any time
43 for the sentence imposed or which might originally have been imposed

1 in a state facility in the custody of the secretary of corrections for such
2 violation, unless such person has already at least one prior assignment to
3 a community correctional services program related to the crime for which
4 the original sentence was imposed, except these provisions shall not apply
5 to offenders who violate a condition of release or assignment or a non-
6 prison sanction by committing a new misdemeanor or felony offense. The
7 provisions of this subsection shall not apply to adult felony offenders as
8 described in subsection (a)(3) of K.S.A. 75-5291, and amendments
9 thereto. The court may require an offender for whom a violation of con-
10 ditions of release or assignment or a nonprison sanction has been estab-
11 lished as provided in this section to serve any time for the sentence im-
12 posed or which might originally have been imposed in a state facility in
13 the custody of the secretary of corrections without a prior assignment to
14 a community correctional services program if the court finds and sets
15 forth with particularity the reasons for finding that the safety of the mem-
16 bers of the public will be jeopardized or that the welfare of the inmate
17 will not be served by such assignment to a community correctional serv-
18 ices program. When a new felony is committed while the offender is on
19 probation or assignment to a community correctional services program,
20 the new sentence shall be imposed pursuant to the consecutive sentenc-
21 ing requirements of K.S.A. 21-4608 and amendments thereto, and the
22 court may sentence the offender to imprisonment for the new conviction,
23 even when the new crime of conviction otherwise presumes a nonprison
24 sentence. In this event, imposition of a prison sentence for the new crime
25 does not constitute a departure.

26 (c) A defendant who is on probation, assigned to a community cor-
27 rectional services program, under suspension of sentence or serving a
28 nonprison sanction and for whose return a warrant has been issued by
29 the court shall be considered a fugitive from justice if it is found that the
30 warrant cannot be served. If it appears that the defendant has violated
31 the provisions of the defendant's release or assignment or a nonprison
32 sanction, the court shall determine whether the time from the issuing of
33 the warrant to the date of the defendant's arrest, or any part of it, shall
34 be counted as time served on probation, assignment to a community cor-
35 rectional services program, suspended sentence or pursuant to a nonpri-
36 son sanction.

37 (d) The court shall have 30 days following the date probation, assign-
38 ment to a community correctional service program, suspension of sen-
39 tence or a nonprison sanction was to end to issue a warrant for the arrest
40 or notice to appear for the defendant to answer a charge of a violation of
41 the conditions of probation, assignment to a community correctional serv-
42 ice program, suspension of sentence or a nonprison sanction.

43 (e) Notwithstanding the provisions of any other law to the contrary,

2-19

1 an offender whose nonprison sanction is revoked and a term of impris-
 2 onment imposed pursuant to either the sentencing guidelines grid for
 3 nondrug or drug crimes shall not serve a period of postrelease supervision
 4 upon the completion of the prison portion of that sentence. The provi-
 5 sions of this subsection shall not apply to offenders sentenced to a non-
 6 prison sanction pursuant to a dispositional departure, whose offense falls
 7 within a border box of either the sentencing guidelines grid for nondrug
 8 or drug crimes, offenders sentenced for a "sexually violent crime" as de-
 9 fined by K.S.A. 22-3717, and amendments thereto, or whose nonprison
 10 sanction was revoked as a result of a conviction for a new misdemeanor
 11 or felony offense. The provisions of this subsection shall not apply to
 12 offenders who are serving or are to begin serving a sentence for any other
 13 felony offense that is not excluded from postrelease supervision by this
 14 subsection on the effective date of this subsection. The provisions of this
 15 subsection shall be applied retroactively. The department of corrections
 16 shall conduct a review of all persons who are in the custody of the de-
 17 partment as a result of only a revocation of a nonprison sanction. On or
 18 before September 1, 2000, the department shall have discharged from
 19 postrelease supervision those offenders as required by this subsection.

20 ~~(f) Offenders who have been sentenced pursuant to section 1, and~~
 21 ~~amendments thereto, and who violate a condition of the drug and alcohol~~
 22 ~~abuse treatment program shall be subject to an additional nonprison sanc-~~
 23 ~~tion. Such nonprison sanctions shall include, but not be limited to, up to~~
 24 ~~60 days in a county jail, fines, community service, intensified treatment,~~
 25 ~~house arrest and electronic monitoring.~~

subsequently

for any such subsequent violation

On and after November 1, 2003,

26 Sec. ~~§ 17.~~ ~~¶~~ K.S.A. 65-4160 is hereby amended to read as follows:
 27 65-4160. (a) Except as authorized by the uniform controlled substances
 28 act, it shall be unlawful for any person to possess or have under such
 29 person's control any opiates, opium or narcotic drugs, or any stimulant
 30 designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and
 31 amendments thereto. ~~Except as provided in subsections (b) and (c).~~ Any
 32 person who violates this subsection shall be guilty of a drug severity level
 33 4 felony.

34 ~~(b) If any person who violates this section has one prior conviction~~
 35 ~~under this section or a conviction for a substantially similar offense from~~
 36 ~~another jurisdiction, then that person shall be guilty of a drug severity~~
 37 ~~level 2 felony.~~

38 ~~(c) If any person who violates this section has two or more prior~~
 39 ~~convictions under this section or substantially similar offenses under the~~
 40 ~~laws of another jurisdiction, then such person shall be guilty of a drug~~
 41 ~~severity level 1 felony.~~

42 ~~(d) It shall not be a defense to charges arising under this section that~~
 43 ~~the defendant was acting in an agency relationship on behalf of any other~~

1 party in a transaction involving a controlled substance.

2 ~~(c)~~ (c) For purposes of the uniform controlled substances act, the
3 prohibitions contained in this section shall apply to controlled substance
4 analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
5 thereto.

6 ~~(d)~~ (d) The provisions of this section shall be part of and supplemental
7 to the uniform controlled substances act.

On and after November 1, 2003,

8 Sec. ~~9~~ /S. / ~~K.S.A.~~ 2002 Supp. 75-5291 is hereby amended to read
9 as follows: 75-5291. (a) (1) The secretary of corrections may make grants
10 to counties for the development, implementation, operation and improve-
11 ment of community correctional services including, but not limited to,
12 restitution programs, victim services programs, preventive or diversionary
13 correctional programs, community corrections centers and facilities for
14 the detention or confinement, care or treatment of offenders as provided
15 in this section except that no community corrections funds shall be ex-
16 pended by the secretary for the purpose of establishing or operating a
17 conservation camp as provided by K.S.A. 75-52.127 and amendments
18 thereto.

19 (2) Except as otherwise provided, placement of offenders in com-
20 munity correctional services programs by the court shall be limited to
21 placement of adult offenders, convicted of a felony offense:

22 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-C of the
23 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F,
24 3-G, 3-H; or 3-I, ~~4-E~~ or ~~4-F~~ of the sentencing guidelines grid for drug
25 crimes. In addition, the court may place in a community correctional
26 services program adult offenders, convicted of a felony offense, whose
27 offense is classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H
28 or 7-I of the sentencing guidelines grid for nondrug crimes:

29 (B) whose severity level and criminal history score designate a pre-
30 sumptive prison sentence on either sentencing guidelines grid but receive
31 a nonprison sentence as a result of departure:

32 (C) all offenders convicted of an offense which satisfies the definition
33 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
34 which is classified as a severity level 7 or higher offense and who receive
35 a nonprison sentence, regardless of the manner in which the sentence is
36 imposed;

37 (D) any offender for whom a violation of conditions of release or
38 assignment or a nonprison sanction has been established as provided in
39 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting
40 in the offender being required to serve any time for the sentence imposed
41 or which might originally have been imposed in a state facility in the
42 custody of the secretary of corrections;

43 (E) any offender who is determined to be "high risk or needs, or

2-21

1 of community corrections and field services shall designate two members
2 from the state at large. The secretary shall have final appointment ap-
3 proval of the members designated by the deputy secretary. The commit-
4 tee shall reflect the diversity of community correctional services with re-
5 spect to geographical location and average daily population of offenders
6 under supervision.

7 (3) Each member shall be appointed for a term of three years, except
8 of the initial appointments, such terms shall be staggered as determined
9 by the secretary. Members shall be eligible for reappointment.

10 (4) The committee, in collaboration with the deputy secretary of com-
11 munity corrections and field services or the deputy secretary's designee,
12 shall routinely examine and report to the secretary on the following issues:

- 13 (A) Efficiencies in the delivery of field supervision services;
- 14 (B) effectiveness and enhancement of existing interventions; and
- 15 (C) identification of new interventions.

16 (5) The committee's report concerning enhanced or new interven-
17 tions shall address:

- 18 (A) measurable goals and objectives;
- 19 (B) projected costs;
- 20 (C) the impact on public safety; and
- 21 (D) the evaluation process.

22 (6) The committee shall submit its report to the secretary annually
23 on or before July 15 in order for the enhanced or new interventions to
24 be considered for inclusion within the department of corrections budget
25 request for community correctional services or in the department's en-
26 hanced services budget request for the subsequent fiscal year.

27 ~~[New Sec. 9. If the funds appropriated for drug abuse treat-
28 ment programs are insufficient to fund the drug abuse treatment
29 programs for all eligible offenders, then when such funds are no
30 longer available, the program will no longer be offered to eligible
31 offenders.]~~

32 Sec. 10. ~~K.S.A. 65-4160 and K.S.A. 2002 Supp. 21-4603d, 21-4705,
33 21-4714, 22-3716 and 75-5291 are hereby repealed.~~

34 Sec. 11. This act shall take effect and be in force from and after its
35 publication in the Kansas register ~~[statute book and shall be imple-
36 mented on or before November 1, 2003].~~

37
38
39
40
41
42
43

Sec. 9. K.S.A. 2002 Supp. 41-501 is hereby amended to read as follows.
New Sec. 10. [Sec. 9 and 10, see attached]
Sec. 11. K.S.A. 2002 Supp. 41-501 is hereby repealed.
Renumber remaining sections accordingly.

On and after November 1, 2003,

statute book

Sec. 9. K.S.A. 2002 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) "Malt product" means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of ~~\$.18~~ \$.27 per gallon on beer and cereal malt beverage; ~~\$.20~~ \$.30 per gallon on all wort or liquid malt; ~~\$.10~~ \$.15 per pound on all malt syrup or malt extract; ~~\$.30~~ \$.45 per gallon on wine containing 14% or less alcohol by volume; ~~\$.75~~ \$1.13 per gallon on wine containing more than 14% alcohol by volume; and ~~\$2.50~~ \$3.78 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the liquor or cereal malt beverage was manufactured in this state but was shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) Retail sales of alcoholic liquor, sales of beer to consumers by microbreweries and sales of wine to consumers by farm wineries shall not

be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax provided for in this act.

(h) Notwithstanding any ordinance to the contrary, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, farm winery, retailer or nonbeverage user under this act and doing business within the boundaries of the city except as specifically authorized by K.S.A. 41-310, and amendments thereto.

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit ~~1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.~~ as follows: (1) A sum equal to 33.3% of the moneys collected from taxes imposed upon beer and cereal malt beverage to the drug abuse treatment program fund and the balance of such moneys collected shall be credited to the state general fund: (2) A sum equal to 33.3% of the moneys collected from taxes imposed upon all wort or liquid malt to the drug abuse treatment program fund and the balance of such moneys collected shall be credited to the state general fund: (3) A sum equal to 33.3% of the moneys collected from taxes imposed on malt syrup or malt extract to the drug abuse treatment program fund and the balance of such moneys collected shall be credited to the state general fund: (4) A sum equal to 33.3% of the moneys collected from taxes imposed upon wine containing 14% or less alcohol by volume to the drug abuse treatment program fund and the balance of such moneys collected to the state general fund: (5) 33.3% of the moneys collected from taxes imposed upon wine containing more than 14% alcohol by volume to the drug abuse treatment program fund and the balance of such moneys collected to the state general fund: (6) A sum equal to 6.6% of moneys collected from taxes imposed on alcohol and spirits to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, a sum equal to 33.3% to the drug abuse treatment program fund and the balance of such moneys collected shall be credited to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine,

the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, farm winery, manufacturer or distributor.

New Sec. 10. On July 1, 2003, a tax at the rate of \$.09 per gallon on all beer and cereal malt beverage, \$.15 per gallon for wine containing 14% or less of alcohol by volume, \$.38 per gallon for wine containing more than 14% alcohol by volume, \$1.28 per gallon on alcohol and spirits, \$.10 per gallon on wort and liquid malt and \$.05 per pound of malt syrup and malt extract, is hereby imposed on the manufacture, use, sale storage or purchase of such alcoholic liquors owned at 12:01 a.m. on July 1, 2003, by a licensed distributor or retail dealer as to which the tax has been imposed as provided in K.S.A. 41-501, and amendments thereto. Such tax shall be paid by the licensed distributor or retail dealer owning such alcoholic liquors, cereal malt beverage or beer at such time and date. On or before June 25, 2003, every such distributor and retail dealer shall make a report to the director on a form prescribed and furnished by the director showing the total number of gallons of such alcoholic liquors, cereal malt beverage or beer so owned at 12:01 a.m. on July 2, 2003, and such report shall be accompanied by a remittance of the tax due. The license of any licensed distributor or retail dealer who shall fail to make such report or pay such tax, within the time prescribed, shall be subject to suspension or revocation as provided by K.S.A. 41-320, and amendments thereto. All taxes collected by the director under this section shall be paid into the state treasury and the state treasurer shall credit the same to the drug abuse treatment program fund.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(Corrected)
[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Section of 2003

SENATE BILL No. 123

By Special Committee on Judiciary

2-3

Proposed amendment
Representative Ward
March 23, 2003

H. Corr's JJ
3-24-03
Attachment

AN ACT concerning crimes and punishment; relating to possession of drugs; mandatory treatment; amending K.S.A. 65-4160 and K.S.A. 2002 Supp. 21-4603d, 21-4705, 21-4714, 22-3716 and 75-5291 and repealing the existing sections.

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

New Section 1. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders *[who are sentenced on or after the effective date of this act]*. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto:

(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no ~~prior~~ felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes and such offender has no ~~prior~~ felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, if such person felonies committed by the offender were severity level 8, 9 or 10 *or nongrid offenses* of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) (1) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to a drug abuse assessment.

(2) The drug abuse assessment shall ~~be~~ *include* a statewide, mandatory, standardized risk assessment tool ~~or~~ *and an* instrument validated for drug abuse treatment program placements and shall include a clinical interview with a mental health professional. Such assessment shall assign

3 ~~4~~-2

1 ices or the amount prescribed by the board of indigents' defense services
 2 reimbursement tables as provided in K.S.A. 22-4522, and amendments
 3 thereto, whichever is less.

4 (j) This section shall not deprive the court of any authority conferred
 5 by any other Kansas statute to decree a forfeiture of property, suspend
 6 or cancel a license, remove a person from office, or impose any other civil
 7 penalty as a result of conviction of crime.

8 (k) An application for or acceptance of probation or assignment to a
 9 community correctional services program shall not constitute an acqui-
 10 escence in the judgment for purpose of appeal, and any convicted person
 11 may appeal from such conviction, as provided by law, without regard to
 12 whether such person has applied for probation, suspended sentence or
 13 assignment to a community correctional services program.

14 (l) The secretary of corrections is authorized to make direct place-
 15 ment to the Labette correctional conservation camp or a conservation
 16 camp established by the secretary pursuant to K.S.A. 75-52,127, and
 17 amendments thereto, of an inmate sentenced to the secretary's custody
 18 if the inmate: (1) Has been sentenced to the secretary for a probation
 19 revocation, as a departure from the presumptive nonimprisonment grid
 20 block of either sentencing grid, ~~or~~ for an offense which is classified in
 21 grid blocks 5-H, 5-I, or 6-C of the sentencing guidelines grid for nondrug
 22 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, ~~or 3-I, 4-E, or 4-F~~ of the
 23 sentencing guidelines grid for drug crimes, *or for an offense which is*
 24 *classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for*
 25 *drug crimes and such offense does not meet the the requirements of section*
 26 *1, and amendments thereto*, and (2) otherwise meets admission criteria
 27 of the camp. If the inmate successfully completes a conservation camp
 28 program, the secretary of corrections shall report such completion to the
 29 sentencing court and the county or district attorney. The inmate shall
 30 then be assigned by the court to six months of follow-up supervision
 31 conducted by the appropriate community corrections services program.
 32 The court may also order that supervision continue thereafter for the
 33 length of time authorized by K.S.A. 21-4611 and amendments thereto.

34 (m) When it is provided by law that a person shall be sentenced pur-
 35 suant to K.S.A. 1993 Supp. 21-462S, prior to its repeal, the provisions of
 36 this section shall not apply.

37 (n) ~~In addition to any of the above, for felony violations of K.S.A. 65-~~
 38 ~~4160 or 65-4162, and amendments thereto, the court shall require the~~
 39 ~~defendant who meets the requirements established in section 1, and~~
 40 ~~amendments thereto, to participate in a certified drug abuse treatment~~
 41 ~~program, as provided in section 2, and amendments thereto, including~~
 42 ~~but not limited to, an approved after-care plan. If the defendant fails to~~
 43 ~~participate in or has a pattern of intentional conduct that demonstrates~~

Except as provided by subsection (f) of K.S.A. 21-4705, and amendments
 thereto,

3 ~~2~~-3

1 4159 and amendments thereto, manufacture of any controlled substance
 2 or controlled substance analog shall be a presumptive term of imprison-
 3 ment of two times the maximum duration of the presumptive term of
 4 imprisonment. The court may impose an optional reduction in such sen-
 5 tence of not to exceed 50% of the mandatory increase provided by this
 6 subsection upon making a finding on the record that one or more of the
 7 mitigating factors as specified in K.S.A. 21-4716 and amendments thereto
 8 justify such a reduction in sentence. Any decision made by the court
 9 regarding the reduction in such sentence shall not be considered a de-
 10 parture and shall not be subject to appeal.

11 ~~Sec. 6/15.~~ K.S.A. 2002 Supp. 21-4714 is hereby amended to read
 12 as follows: 21-4714. (a) The court shall order the preparation of the pre-
 13 sentence investigation report by the court services officer as soon as pos-
 14 sible after conviction of the defendant.

15 (b) Each presentence report prepared for an offender to be sen-
 16 tenced for one or more felonies committed on or after July 1, 1993, shall
 17 be limited to the following information:

18 (1) A summary of the factual circumstances of the crime or crimes
 19 of conviction.

20 (2) If the defendant desires to do so, a summary of the defendant's
 21 version of the crime.

22 (3) When there is an identifiable victim, a victim report. The person
 23 preparing the victim report shall submit the report to the victim and
 24 request that the information be returned to be submitted as a part of the
 25 presentence investigation. To the extent possible, the report shall include
 26 a complete listing of restitution for damages suffered by the victim.

27 (4) An appropriate classification of each crime of conviction on the
 28 crime severity scale.

29 (5) A listing of prior adult convictions or juvenile adjudications for
 30 felony or misdemeanor crimes or violations of county resolutions or city
 31 ordinances comparable to any misdemeanor defined by state law. Such
 32 listing shall include an assessment of the appropriate classification of the
 33 criminal history on the criminal history scale and the source of informa-
 34 tion regarding each listed prior conviction and any available source of
 35 journal entries or other documents through which the listed convictions
 36 may be verified. If any such journal entries or other documents are ob-
 37 tained by the court services officer, they shall be attached to the pre-
 38 sentence investigation report. Any prior criminal history worksheets of
 39 the defendant shall also be attached.

40 (6) A proposed grid block classification for each crime, or crimes of
 41 conviction and the presumptive sentence for each crime, or crimes of
 42 conviction.

43 (7) If the proposed grid block classification is a grid block which pre-

(f) The sentence for a felony conviction of K.S.A. 65-4160 or
 65-4162, and amendments thereto, shall be a presumptive term of
 imprisonment of two times the maximum duration of the term of
 imprisonment, if the defendant has twice previously failed or refused to
 participate in a certified drug abuse treatment program, as provided in
 section 2, and amendments thereto. Such sentence shall not be considered
 a departure and shall not be subject to appeal.

3 ~~4~~

1 an offender whose nonprison sanction is revoked and a term of impris-
2 onment imposed pursuant to either the sentencing guidelines grid for
3 nondrug or drug crimes shall not serve a period of postrelease supervision
4 upon the completion of the prison portion of that sentence. The provi-
5 sions of this subsection shall not apply to offenders sentenced to a non-
6 prison sanction pursuant to a dispositional departure, whose offense falls
7 within a border box of either the sentencing guidelines grid for nondrug
8 or drug crimes, offenders sentenced for a "sexually violent crime" as de-
9 fined by K.S.A. 22-3717, and amendments thereto, or whose nonprison
10 sanction was revoked as a result of a conviction for a new misdemeanor
11 or felony offense. The provisions of this subsection shall not apply to
12 offenders who are serving or are to begin serving a sentence for any other
13 felony offense that is not excluded from postrelease supervision by this
14 subsection on the effective date of this subsection. The provisions of this
15 subsection shall be applied retroactively. The department of corrections
16 shall conduct a review of all persons who are in the custody of the de-
17 partment as a result of only a revocation of a nonprison sanction. On or
18 before September 1, 2000, the department shall have discharged from
19 postrelease supervision those offenders as required by this subsection.

20 *(f) Offenders who have been sentenced pursuant to section 1, and*
21 *amendments thereto, and who violate a condition of the drug and alcohol*
22 *abuse treatment program shall be subject to an additional nonprison sanc-*
23 *tion. Such nonprison sanctions shall include, but not be limited to, up to*
24 *60 days in a county jail, fines, community service, intensified treatment,*
25 *house arrest and electronic monitoring.*

26 Sec. ~~9~~ [7.] K.S.A. 65-4160 is hereby amended to read as follows:
27 65-4160. (a) Except as authorized by the uniform controlled substances
28 act, it shall be unlawful for any person to possess or have under such
29 person's control any opiates, opium or narcotic drugs, or any stimulant
30 designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and
31 amendments thereto. ~~Except as provided in subsections (b) and (c),~~ Any
32 person who violates this subsection shall be guilty of a drug severity level
33 4 felony.

34 ~~(b) If any person who violates this section has one prior conviction~~
35 ~~under this section or a conviction for a substantially similar offense from~~
36 ~~another jurisdiction, then that person shall be guilty of a drug severity~~
37 ~~level 2 felony.~~

38 ~~(c) If any person who violates this section has two or more prior~~
39 ~~convictions under this section or substantially similar offenses under the~~
40 ~~laws of another jurisdiction, then such person shall be guilty of a drug~~
41 ~~severity level 1 felony.~~

42 ~~(d) It shall not be a defense to charges arising under this section that~~
43 ~~the defendant was acting in an agency relationship on behalf of any other~~

If any person who violates this section has four or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 2 felony.

(c)

Re-letter subsections accordingly.

3 ~~4~~-5

1 of community corrections and field services shall designate two members
2 from the state at large. The secretary shall have final appointment ap-
3 proval of the members designated by the deputy secretary. The commit-
4 tee shall reflect the diversity of community correctional services with re-
5 spect to geographical location and average daily population of offenders
6 under supervision.

7 (3) Each member shall be appointed for a term of three years, except
8 of the initial appointments, such terms shall be staggered as determined
9 by the secretary. Members shall be eligible for reappointment.

10 (4) The committee, in collaboration with the deputy secretary of com-
11 munity corrections and field services or the deputy secretary's designee,
12 shall routinely examine and report to the secretary on the following issues:

- 13 (A) Efficiencies in the delivery of field supervision services;
- 14 (B) effectiveness and enhancement of existing interventions; and
- 15 (C) identification of new interventions.

16 (5) The committee's report concerning enhanced or new interven-
17 tions shall address:

- 18 (A) measurable goals and objectives;
- 19 (B) projected costs;
- 20 (C) the impact on public safety; and
- 21 (D) the evaluation process.

22 (6) The committee shall submit its report to the secretary annually
23 on or before July 15 in order for the enhanced or new interventions to
24 be considered for inclusion within the department of corrections budget
25 request for community correctional services or in the department's en-
26 hanced services budget request for the subsequent fiscal year.

27 *[New Sec. 9. If the funds appropriated for drug abuse treat-
28 ment programs are insufficient to fund the drug abuse treatment
29 programs for all eligible offenders, then when such funds are no
30 longer available, the program will no longer be offered to eligible
31 offenders.]*

32 Sec. 10. K.S.A. 65-4160 and K.S.A. 2002 Supp. 21-4603d, 21-4705,
33 21-4714, 22-3716 and 75-5291 are hereby repealed.

34 Sec. 11. This act shall take effect and be in force from and after its
35 publication in the ~~Kansas register~~ *[statute book and shall be imple-*
36 *mented on or before November 1, 2003].*

—————New Sec. 10. If there is no funding for the nonprison sanction of certified
drug abuse treatment programs, as established in section 1, and amendments
thereto, provisions of this act, including the amendments to statutes, shall not
take effect and be in force.

Renumber remaining sections accordingly.

37
38
39
40
41
42
43

(Corrected)
[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 123

By Special Committee on Judiciary

2-3

AN ACT concerning crimes and punishment; relating to possession of drugs; mandatory treatment; amending K.S.A. 65-4160 and K.S.A. 2002 Supp. 21-4603d, 21-4705, 21-4714, 22-3716 and 75-5291 and repealing the existing sections.

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

New Section 1. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders *[who are sentenced on or after the effective date of this act]*. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto:

(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no ~~prior~~ felony conviction of K.S.A. 65- 4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes and such offender has no ~~prior~~ felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, if such person felonies committed by the offender were severity level 8, 9 or 10 *or nongrid offenses* of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) (1) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to a drug abuse assessment.

(2) The drug abuse assessment shall ~~be~~ *include* a statewide, mandatory, standardized risk assessment tool ~~or~~ *and an* instrument validated for drug abuse treatment program placements and shall include a clinical interview with a mental health professional. Such assessment shall assign

Proposed amendment
Representative Kassebaum
March 22, 2003

H. Corr. & J.J.
3-24-03
Attachment 4

2-7

1 ices or the amount prescribed by the board of indigents' defense services
2 reimbursement tables as provided in K.S.A. 22-4522, and amendments
3 thereto, whichever is less.

4 (j) This section shall not deprive the court of any authority conferred
5 by any other Kansas statute to decree a forfeiture of property, suspend
6 or cancel a license, remove a person from office, or impose any other civil
7 penalty as a result of conviction of crime.

8 (k) An application for or acceptance of probation or assignment to a
9 community correctional services program shall not constitute an acqui-
10 escence in the judgment for purpose of appeal, and any convicted person
11 may appeal from such conviction, as provided by law, without regard to
12 whether such person has applied for probation, suspended sentence or
13 assignment to a community correctional services program.

14 (l) The secretary of corrections is authorized to make direct place-
15 ment to the Labette correctional conservation camp or a conservation
16 camp established by the secretary pursuant to K.S.A. 75-52,127, and
17 amendments thereto, of an inmate sentenced to the secretary's custody
18 if the inmate: (1) Has been sentenced to the secretary for a probation
19 revocation, as a departure from the presumptive nonimprisonment grid
20 block of either sentencing grid, ~~or~~ for an offense which is classified in
21 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
22 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, ~~or 3-I, 4-E, or 4-F~~ of the
23 sentencing guidelines grid for drug crimes, *or for an offense which is*
24 *classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for*
25 *drug crimes and such offense does not meet the the requirements of section*
26 *1, and amendments thereto*, and (2) otherwise meets admission criteria
27 of the camp. If the inmate successfully completes a conservation camp
28 program, the secretary of corrections shall report such completion to the
29 sentencing court and the county or district attorney. The inmate shall
30 then be assigned by the court to six months of follow-up supervision
31 conducted by the appropriate community corrections services program.
32 The court may also order that supervision continue thereafter for the
33 length of time authorized by K.S.A. 21-4611 and amendments thereto.

34 (m) When it is provided by law that a person shall be sentenced pur-
35 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
36 this section shall not apply.

37 (n) ~~In~~ *In addition to any of the above, for felony violations of K.S.A. 65-*
38 *4160 or 65-4162, and amendments thereto, the court shall require the*
39 *defendant who meets the requirements established in section 1, and*
40 *amendments thereto, to participate in a certified drug abuse treatment*
41 *program, as provided in section 2, and amendments thereto, including*
42 *but not limited to, an approved after-care plan. If the defendant fails to*
43 *participate in or has a pattern of intentional conduct that demonstrates*

Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto,

1 4159 and amendments thereto, manufacture of any controlled substance
 2 or controlled substance analog shall be a presumptive term of imprison-
 3 ment of two times the maximum duration of the presumptive term of
 4 imprisonment. The court may impose an optional reduction in such sen-
 5 tence of not to exceed 50% of the mandatory increase provided by this
 6 subsection upon making a finding on the record that one or more of the
 7 mitigating factors as specified in K.S.A. 21-4716 and amendments thereto
 8 justify such a reduction in sentence. Any decision made by the court
 9 regarding the reduction in such sentence shall not be considered a de-
 10 parture and shall not be subject to appeal.

11 Sec. ~~6~~ [5.] K.S.A. 2002 Supp. 21-4714 is hereby amended to read
 12 as follows: 21-4714. (a) The court shall order the preparation of the pre-
 13 sentence investigation report by the court services officer as soon as pos-
 14 sible after conviction of the defendant.

15 (b) Each presentence report prepared for an offender to be sen-
 16 tenced for one or more felonies committed on or after July 1, 1993, shall
 17 be limited to the following information:

18 (1) A summary of the factual circumstances of the crime or crimes
 19 of conviction.

20 (2) If the defendant desires to do so, a summary of the defendant's
 21 version of the crime.

22 (3) When there is an identifiable victim, a victim report. The person
 23 preparing the victim report shall submit the report to the victim and
 24 request that the information be returned to be submitted as a part of the
 25 presentence investigation. To the extent possible, the report shall include
 26 a complete listing of restitution for damages suffered by the victim.

27 (4) An appropriate classification of each crime of conviction on the
 28 crime severity scale.

29 (5) A listing of prior adult convictions or juvenile adjudications for
 30 felony or misdemeanor crimes or violations of county resolutions or city
 31 ordinances comparable to any misdemeanor defined by state law. Such
 32 listing shall include an assessment of the appropriate classification of the
 33 criminal history on the criminal history scale and the source of informa-
 34 tion regarding each listed prior conviction and any available source of
 35 journal entries or other documents through which the listed convictions
 36 may be verified. If any such journal entries or other documents are ob-
 37 tained by the court services officer, they shall be attached to the pre-
 38 sentence investigation report. Any prior criminal history worksheets of
 39 the defendant shall also be attached.

40 (6) A proposed grid block classification for each crime, or crimes of
 41 conviction and the presumptive sentence for each crime, or crimes of
 42 conviction.

43 (7) If the proposed grid block classification is a grid block which pre-

(f) The sentence for a third or subsequent felony conviction of
 K.S.A. 65-4160 or 65-4162, and amendments thereto, shall be a
 presumptive term of imprisonment and the defendant shall be sentenced
 to prison as provided by this section, if the defendant has previously
 completed a certified drug abuse treatment program, as provided in
 section 2, and amendments thereto, or has failed or refused to participate
 in a certified drug abuse treatment program, as provided in section 2, and
 amendments thereto. Such sentence shall not be considered a departure
 and shall not be subject to appeal.