

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:34 a.m. on February 12, 2003, in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor of Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Judge Ernest Johnson, Chairperson Kansas Sentencing Commission and  
29<sup>th</sup> Judicial District, Wyandotte County  
Barb Tombs, Executive Director, Kansas Sentencing Commission  
Paul Morrison, District Attorney, Johnson County and Vice Chairman of the  
Kansas Sentencing Commission  
Dan Hermes, Kansas Alcohol and Drug Service Providers Association  
Sonny Scroggins, National Action Network  
Stuart Little, Kansas Community Corrections Association (written only)  
Roger Werholtz, Secretary of Corrections  
Diana Collins, President, Kansas Association of Court Services Officers  
Capt. Bob Hinshaw, Sedgwick County Sheriff's Department  
Tom Drees, Ellis County Attorney  
Brenda Jordan, Assistant Riley County Attorney  
Kyle Smith, Kansas Bureau of Investigation  
Doug Murphy, Quad County Drug Task Force (written only)

Others attending: see attached list

Chairman Vratil announced that the hearing on **SB 111** would be postponed until next February 18.

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

The Chair opened the hearing on **SB 123**. Judge Johnson, Chairman of the Kansas Sentencing Commission (KSC), testified in support of **SB 123**. He summarized the bill saying the legislature could free up prison beds by requiring drug treatment for the drug possession offender rather than incarceration. He stated that the treatment component was the linchpin of the proposal, and KSC members were unanimous that they could not support any modification to the bill that compromises the treatment requirement. (Attachment 1)

Conferee Tombs testified in support of **SB 123**, and explained the prison population projections, and what this bill would do to better utilize the state's correctional facilities for the serious and violent offenders who pose a significant threat to public safety. Ms. Tombs briefly touched on the cost benefit to the state with the enactment of this proposed legislation. Her written testimony detailed the costs and benefits. (Attachment 2)

Conferee Morrison testified in support of **SB 123**, and talked about the Kansas prison system that once housed primarily property offenders but has changed to a system which houses primarily violent offenders. He said that the percentage of the inmate population who are drug offenders has increased from 15% in 1993 to 22% today. He added that many of these offenders are in prison strictly for drug usage and have no history of any other type of criminal offense. He stated that **SB 123** would effect this narrow class of drug offenders, and they will be required to go through drug treatment, and supervision by probation or community corrections. (Attachment 3)

Conferee Hermes spoke in favor of **SB 123**, and supported the recommended Alternative Sentencing Policy for drug offenders. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 12, 2003 in Room 123-S of the Capitol.

Conferee Scroggins testified in support of **SB 123**, and stated that the National Action Network endorses the Kansas Sentencing Commissions recommendations for treating rather than incarcerating drug offenders. (Attachment 5)

Stuart Little, Kansas Community Corrections Association (KCCA), submitted written testimony in favor of **SB 123**. He said that KCCA supports enhanced drug treatment for substance abusing offenders as defined within this proposed legislation. (Attachment 6)

The Chair called upon Roger Werholtz who testified as a neutral conferee. He spoke on several areas of major impact on the Department of Corrections including prison admissions, the size of the inmate population, implementation of the provider certification program, implementation of sentence modifications for eligible offenders in the existing inmate population, and grants to community corrections. He stated that implementation of the added responsibilities will require additional resources for the department, estimated at three FTE's. Mr. Werholz explained the responsibilities for the drug abuse treatment programs oversight is placed with the Department of Corrections. He also shared two other options of adding additional beds, which were not in his written testimony, at Winfield and Norton. He expressed a concern with the implementation date which is upon publication in the Kansas Register, and said this would be impossible to meet. He also offered several possible amendments (Attachment 7), and called attention to the fiscal note on this proposed bill. (Attachment 8)

The Chairman called upon the first opponent, Diana Collins. She expressed her concerns regarding the proposed bill which included the increased number of offenders put under the supervision of Court Services and Community Corrections. She said the bill did not include the funding for additional officers for either Court Services or Community Corrections. She added that Court Services Officers members were also concerned about funding of appropriate treatment programs and public safety. (Attachment 9)

Captain Robert Hinshaw, Sedgwick County Sheriff's Department, testified in opposition of **SB 123**. He expressed concerns regarding inmate housing in county jails. He said that the proposed non-prison sanction holds the promise of overwhelming a local jail's ability to house inmates in a safe and efficient manner. He talked about the current population numbers within the county jails, and said that his county is having to pay other counties to house the overflow of inmates. (Attachment 10)

Conferee Drees testified in opposition to **SB 123**, and encouraged the legislature to ensure that treatment facilities are available as well as funding before passing this proposed bill. He stated that the retroactive provisions would wreak havoc on the state-wide judicial system. He asked the Committee to eliminate the retroactive provision. Mr. Drees included with his written testimony an outline of concerns regarding the language in **SB 123**. (Attachment 11)

Brenda Jordan, Assistant Riley County Attorney, appeared before the Committee in opposition of **SB 123**. She said that passage of this bill would in effect eliminate the existence of consequences for continuing to use drugs, and eliminate the incentive for successful treatment. She explained that the people being sent to prison for convictions of 65-4160 and 65-4162 are those that have failed at treatment already, and that the retroactivity provision of the bill would have the effect of releasing those who have failed at the treatment ordered by the Court. She asked that the severity level be left alone. (Attachment 12)

Doug Murphy submitted written testimony in opposition to **SB 123** on behalf of the Kansas Peace Officers Association and the Quad County Drug Task Force. (Attachment 13)

Kyle Smith testified in opposition to **SB 123** on behalf of the Kansas Bureau of Investigation and the Kansas Peace Officer's Association. Mr. Smith's main point was lack of funding for this proposed legislation which would amount to dumping hundreds of drug abusers and drug traffickers out of the prisons and into the local communities while providing no additional community service workers, probation officers, community corrections officers, treatment professionals or law enforcement officers to deal with this criminal flood. He attached an outline of concerns law enforcement have with this bill. (Attachment 14)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 12, 2003 in Room 123-S of the Capitol.

After Committee questions and discussion, the Chair closed the hearing on **SB 123**.

The meeting adjourned at 10:38 a.m. The next schedule meeting is February 13, 2003.

## SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds., Feb. 12, 2003

NAME	REPRESENTING
Robert Hinshaw	Sedgwick Co Sheriff Dept
DOUG MURPHY	KPOA & QUAD Co. TASK FORCE
ROGER HADEN	KDOC
Tim Madden	KDOC
Roger Werholtz	KDOC
STEF KEANEY	KSCOD & DA ASSN
JD Johannes	KSA6
Deborah Stidham	SRS/AAPS
Thomas J. Prees	Ellis Co. Attorney
Brenda Jordan	Riley County Attorney
Chris Tymeson	KDWP
Lynna South	JJA
Stuart Little	Ks Community Correction Assoc.
Jeff Bottenberg	Ks Sheriffs Ass'n
Chris Mechler	OJA
Diana Collins	KACSO
Chana Martinez	KACSO
Danae Richards	KCDIA
Brenda Harmon	KSC



# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1. Weds. Feb 12, 2003

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NAME	REPRESENTING
Carrie Krusor	KSC
Lora Moisen	KSC
ERIC ROSEN	KSC
Cornie Johnson	KSC
Maymy	KSC
Cecile Stang	Sedgwick Co Dept of Corrections
Tex Gouge	Cowley Co. Comm. Corr.
Debra Kriebelholz	Day Dept D/A Services Cowley Co. Comm. Corrections
Mike Melina	4 <sup>th</sup> DISTRICT COMMUNITY CORRECTIONS
Dan Hermes	KADSPA
Julie Helm	Helm Law Firm
Kathryn Porter	Judicial Branch
Sandy Jacquot	LKM
Mark Gleeson	Judicial Branch

To: The Senate Judiciary Committee  
From: Judge Ernest L. Johnson, Chairperson, Kansas Sentencing Commission  
Re: SB 123  
Date: February 12, 2003

When prisons are full, and they basically are, it doesn't take a commission to suggest the obvious to the governor and the legislature: build more prisons or change the laws. The Kansas Sentencing Commission cannot, by statute, recommend the former. The KSC's legislative charge is to evaluate and suggest options to reduce prison admissions or adjust sentence lengths, and assess the impact the options would have on prison population size, public safety, and costs [(K.S.A. 74-9103(b)(15)]. Over the last two years a KSC subcommittee chaired by Johnson County District Attorney Paul Morrison developed an option that would drastically change the way drug possession offenders are dealt with in the criminal system. The KSC has adopted the recommendations of the subcommittee, which, as you know, are incorporated into the KSC's annual Report to the Legislature. Senate Bill 123 would implement the drug treatment plan described in the Report.

You are acquainted with the plan from your review of the Report. Greatly summarized, the proposition is this: the legislature could free up prison beds by requiring drug treatment for the drug possession offender rather than incarceration. The expectation is that the tax dollars saved on prison beds would exceed the State's cost in providing the mandatory treatment. The statistical support for this expectation is in the Report. The public safety would be protected by leaving in the court the power to revoke the possessor into prison in specified but, compared to current law, limited circumstances. SB 123's retroactivity provisions also involve a public safety determination before the release of an incarcerated possessor into treatment.

The KSC considered other options for "reducing the number of prison admissions" and "adjusting sentence lengths for specific offenders." Those options were at best stop-gap and relatively insignificant when viewed in the light of the prison population trend statistics. The threat of imprisonment does not seem to deter drug use. Drug possessors who are otherwise non-violent, the target population in the Bill, will be taking up a greater and greater number of beds under the existing laws. Requiring and providing treatment appears to be a fiscally sound option to adding cellblocks. The Report acknowledges that treatment would also require substantial government expenditures. But sometimes, in order to save money, one must spend some.

Because of the budget situation there is a concern that the legislature might adopt just parts of the plan (those that free-up prison beds) but not fund the treatment. Again, treatment is the linchpin of the proposal. KSC members are unanimous that the KSC could not support any modification to the Bill that compromises the treatment requirement. The treatment component is so crucial to the plan that, if such a proposal does get some favorable legislative response, the KSC would, with regret, ask that its bill be withdrawn.

Respectfully submitted,

  
Ernest L. Johnson  
Chairperson, KSC

Senate Judiciary

2-12-03  
Attachment 1-1



State of Kansas

**KANSAS SENTENCING COMMISSION**

Honorable Ernest L. Johnson, Chairman  
District Attorney Paul Morrison, Vice Chairman  
Barbara S. Tombs, Executive Director

**MEMORANDUM**

**TO:** Senate Judiciary Committee

**FROM:** Barbara Tombs, Executive Director *BT*

**RE:** SB 123

**DATE:** February 12, 2003

Pursuant to K.S.A. 74-9101(b) (15), the Kansas Sentencing Commission is directed to identify and analyze the impact of specific options to reduce prison population, when the prison population projections indicate that the state's prison population will exceed capacity within two years. The FY 2003 Prison Population Projections released by the Sentencing Commission in September 2002, forecast the state's prison population to reach 9,044 by June 30, 2003, with a slight decline in the prison population to 9,003 indicated for FY 2004. However, from FY 2005 through FY 2012, the state's prison population demonstrates a continual and consistent growth from 9,112 to 10,572 inmates (Attachment A). This projected growth pattern means the state will have 1,183 more inmates housed in state correctional facilities at the end of FY 2012 than at the end of FY 2002, if current policies remain unchanged.

Prison population growth is directly correlated with two primary variables – admissions (who enters prison) and lengths of stay (how long a prison bed is occupied). Although there are numerous additional variables that have some indirect impact, such as good time earnings, jail time credits, revocation rates, these variables will impact either admissions or the length of stay (LOS). In analyzing areas of growth in the prison population in relation to either admissions or lengths of stay, specific trends can be identified. The Nondrug Grid demonstrates either a decline in the number of offenders admitted to prison or a lower average sentence imposed for every severity level except Severity Level 6. However, when the Drug Grid is examined the same pattern is not present. All four severity levels indicate a growth in admissions and/or lengths of sentence imposed over the past five years (Attachment B). The Drug Grid new commitments represented about 31% of the total new commitments to prison in FY 2002. The greatest impact on prison population growth is present when there is growth in both admissions and length of stay as indicated on Drug Level 4, which represents the lowest level of the Drug Grid and contains sentences for drug possession only. Although Drug Severity Level 4 contains a number of non-prison and border box cells, the number of condition violators admitted to prison has had a significant impact on prison population.

In considering various options to reduce prison population to present to the Legislature, the Sentencing Commission is faced with the complex task of balancing public safety needs with sentence proportionality



issues and adherence to the underlying goal of the Sentencing Guidelines, in that incarceration should be reserved for the most serious and violent offenders. The Sentencing Commission has devoted the past two years to the development of a comprehensive Alternative Sentencing Policy for Drug Offenders that has dual approaches. The first is to more effectively address the increasing number of non-violent offenders with substance abuse problems who are recycled through our state court and correctional systems by holding the offender accountable for his/her criminal behavior while simultaneously providing meaningful and necessary treatment to address the underlying substance abuse problem. The second approach is to ensure that the state is utilizing its correctional facilities for the serious and violent offenders who pose a significant threat to public safety. The Commission projects that proper implementation and required funding for this SB 123 would result in 438 to 455 fewer offenders admitted to prison yearly and a reduction in the number of prison beds currently required of between 383 to 571 over the same ten year forecast period. Outlined below is an overview of the provisions contained in SB 123.

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

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

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

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

- All drug possession convictions would be sentenced on Severity Level 4 of the Drug Grid instead of the current practice that enhances the severity level to severity level 1 and 2 for second, third and subsequent possession convictions
- Border Boxes on Severity Level 4 of the Drug Grid would be replaced with presumptive non-prison boxes
- Offenders sentenced under this policy would be subject to a mandatory drug treatment program of up to 18 months



- Possession of marijuana – First conviction for this offense is classified as a misdemeanor and second and subsequent are classified as a felony. The misdemeanor classification will remain in effect for the first conviction but all subsequent simple possession of marijuana convictions would be sentenced as a drug severity level 4 felony offense
- Upon successful completion of the substance abuse treatment program, the offender would be discharged and not subject to a period of postrelease supervision.

#### **Offender Accountability**

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

#### **Retroactivity Provision**

- Applicable to Felony Drug Convictions under the Sentencing Guidelines Act only
- The Bill will become effective upon publication in the Kansas Register
- Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of minimum custody will be converted within 60 days of the Bill becoming effective
- Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of medium custody will be converted within 90 days of the Bill becoming effective
- Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody

classification of maximum custody will be converted within 120 days of the Bill becoming effective

- All reviews for placement in the mandatory treatment program will be completed within 180 days from the enactment of the bill.
- Upon the effective date of the Bill, all sentencing for new drug possession cases and condition revocations for drug possession, which fit the designated target population, will be subject to the mandatory treatment criteria contained in the Bill
- All possession sentence conversions that result in an offender being eligible for release from a state correctional facility and sentenced to a mandatory treatment program will be subject to review under a “public safety provision” prior to release. The state will have 60 days to bring forth the public safety concern before the District Court and burden will be on the state to prove the public safety issue at hand
- All possession sentence conversions that result in an offender being released from a state correctional facility will be placed under the supervision of Community Corrections while participating in mandatory substance abuse treatment.

### **Sentencing Conversion**

For offenders whose current sentence is for a second, third and subsequent drug possession offense and fall within the target population defined and are determined eligible to have that sentence converted under this proposed policy, the following procedure will be followed:

- First, the offender will be screened under the public safety provision prior to determining release from prison. The offender will then be released to the custody of Community Corrections for placement in the appropriate drug treatment program
- If the offender voluntarily quits the drug treatment program or is unsuccessfully discharged from the treatment program, the offender will be returned to prison to serve the entire remainder of the “original” sentence imposed, with no credit for time served in the treatment program
- Upon completion of the original sentence imposed, the offender will not be subject to a period of postrelease incarceration but be discharged.

### **Offender Assessment**

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

### **Treatment Structure**

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

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

### **Treatment Providers**

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

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

## Impact of Proposed Sentencing Policy

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

Prison admissions during the calendar year 2002 indicate 472 offenders were admitted for drug possession offenses that meet the target population criteria.<sup>1</sup> Of the total number of drug possession offenders admitted to prison 108 offenders were direct court commitments, 239 offenders were condition probation violators and 125 offenders were condition postrelease violators. The distribution of target population calendar year 2002 admissions by severity level<sup>2</sup>, criminal history classification, gender and average length of stay in prison is presented below:

**Target Population Prison Admissions by Drug Severity Levels**

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

**Target Population Prison Admissions by Criminal History Category**

Criminal History Category	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
E	46	34	49	129
F	20	18	27	65
G	20	49	25	94
H	11	55	18	84
I	11	83	6	100
<b>Total</b>	<b>108</b>	<b>239</b>	<b>125</b>	<b>472</b>

<sup>1</sup> The number of offenders sentenced for drug possession offenses will not equal the number of offenders admitted to prison for drug possession offenses for the same time period due to the lag time between sentencing and actual admission to a state correctional facility.

<sup>2</sup> There are no drug possession offenses classified as Drug Severity Level 3



**Target Population Prison Admissions by Gender**

Gender	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
Male	92	185	105	382
Female	16	54	20	90
<b>Total</b>	<b>108</b>	<b>239</b>	<b>125</b>	<b>472</b>

**Target Population Admissions - Average Length Stay**

Admission Type	Minimum	Mean	Maximum
Direct Court Commit	5 months	35 months	308 months
Probation Violator	3 months	17 months	150 months
Postrelease Violators		92 days	

In calculating the project prison beds savings, certain assumptions were applied in order to ensure that the impact of the policy did not over state the number of anticipated prison beds saved. An 8% public safety detainment in prison rate was applied to second, third and subsequent possession convictions currently serving prison sentences. A 24% failure rate was applied to successful completion of the drug treatment program and return to prison, with 33% failing after 6 months in the program, 33% failing after 12 months in the program and another 33% failing after 15 months in the program. It is assumed that upon admission to prison, the average length of sentence served will be 15 months. In addition, within 120 days of the implementation of the proposed policy, condition postrelease violators are factored out of the projections. The table below presents the projected prison bed savings if the alternative drug sentencing policy is implemented as proposed.

**Total Prison Bed Impact Assessment**

June of Each Year	If Current Policy Unchanged, Beds Required	If Current Policy Changed, Beds Required	Total Beds Saved
2004	432	49	383
2005	508	96	412
2006	540	87	453
2007	547	93	454
2008	589	93	496
2009	628	97	531
2010	658	87	571
2011	629	88	541
2012	655	98	557
2013	670	99	571

## Projected Substance Abuse Treatment Program Needs

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

On December 31, 2002, we had 317 offenders incarcerated in a state correctional facility who would be eligible for potential re-sentencing under the proposed drug policy. The distribution of 317 offenders indicates that 139 were incarcerated as direct court commitments; 151 were condition probation violators and 27 were condition parole violators. Again, violators accounted for 57% of the incarcerated drug possession population on that date, demonstrating the need for treatment.

The Commission projects that the total population for treatment will total 1,439 offenders per year. This figure includes a 5% error rate as to minimize the possibility of under estimating the treatment population. It should be noted that approximately 77% of this total number of offenders have non-prison sentences now and are either in some level of treatment or on a waiting list to enter treatment. Thus, the policy itself does not create a significant increase in the demand for treatment, but rather attempts to ensure that an appropriate level and volume of treatment services are available to meet the current demands and needs of this population.

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

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

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

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

Projected Treatment Costs			
Level of Treatment Assessed	Full Range Of Treatment Options	Medium Range Of Treatment Options	Minimal Range Of Treatment Options
Extremely High – 20% 288 Offenders	\$4,406,400	\$2,937,600	\$1,872,000
High – 20% 288 Offenders	\$1,555,200	\$1,324,800	\$1,008,000
Medium – 30% 432 Offenders	\$1,944,000	\$1,512,000	\$ 864,000
Low – 30% 432 Offenders	\$ 972,200	\$ 648,000	\$ 518,400
Relapse Prevention – 100% 1,432 Offenders	\$ 518,040	\$ 518,040	\$ 518,040
Less Current Treatment Costs 358 Offenders	\$ (179,000)	\$ (179,000)	\$ (179,000)
<b>Projected Total Cost 1,432 Offenders</b>	<b>\$9,216,840</b>	<b>\$6,761,440</b>	<b>\$4,601,440</b>
Annual Cost Per Offender	\$ 6,436	\$ 4,722	\$ 3,213

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

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

#### Cost Benefit to the State

The projected prison bed savings from the enactment of this proposed sentencing policy is between 381 to 571 prison beds. The initial projected costs for substance abuse treatment, depending on the level of treatment provided, range from \$4.6 million to \$9.2 million annually or \$3,213 to \$6,436 dollars per offender. The Department of Corrections has indicated that construction of a cell house at the El Dorado correction facility that would house between 128 to 256 offenders depending on custody classification of the offenders would cost an estimated \$7.1 million dollars; the construction of two cell houses at that same facility would house between 256 to 512 offenders would cost an estimated \$14.4 million dollars. In addition, annual operating costs (minus the one-time start-up costs) would be as follows:

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

The Department of Corrections projects the average cost per inmate, without consideration of the \$7.2 to \$14.4 million dollar construction costs, would range from \$14,100 to \$25,000. When compared to the projected average treatment costs per offender of \$3,213 to \$6,436 that involve approximately the same number of prison beds, the direct cost savings to the state is notable. Even if a 25% increase in the cost of treatment per offender is added to cover expansion and administrative expenses, the cost per offender of treatment only becomes \$3,994 to \$8,045 per offender depending of the level of treatment provided. Again, without consideration of the construction and one-time start-up costs, the average cost to incarcerate per inmate ranges between \$14,100 and \$25,000 per year, whereas to place the same number of offenders in treatment would range between \$3,994 and \$8,045 dollars.

In addition, there would be indirect cost savings to the state, such as child support paid, continued employment and taxes paid, less usage of aid to dependant families, less demand on our health care system and more families remaining intact and contributing to their communities. Given the strong correlation that research has shown between drug usage and criminal activity, there is a strong potential to experience a decrease in many property and financial crimes that are closely linked to drug addiction. Will every offender that participates in a drug treatment program be successful? The answer is no. The proposed alternative drug sentencing policy contains provisions and sanctions for those offenders who choose to drop out or are expelled from program. The policy provides for meaningful treatment and the potential for offenders to overcome their substance abuse problems, become productive citizens, while reserving our limited prison beds for serious, violent offenders.

Several approaches could be taken to fund the projected costs of treatment including: accessing federal grant funds for treatment activities, such as Drug Court Grants, Residential Substance Abuse Grants and Byrne Grants which all support treatment related programs. Probation fees could be increased by \$5 to \$10 dollars to address the expansion of treatment programs and a half cent tax increase in the state's alcohol tax could be designated to fund treatment programs. Although some state general dollars will be required to leverage federal funds, funding for treatment programs can be drawn from multiple sources. What is imperative to the success of the proposed policy is that adequate funding be available on an ongoing basis for the level and types of treatment required to appropriately address the escalating substance abuse problem. If sufficient funding

<sup>3</sup> Table contained in the Department of Corrections "Committee Overview" to House Committee on Corrections and Juvenile Justice.



isn't identified and dedicated for substance abuse treatment, then the impact of the policy is negated and the criminal justice system will revert back to its current process of re-cycling drug offenders and utilizing expensive prison beds to house non-violent offenders.

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

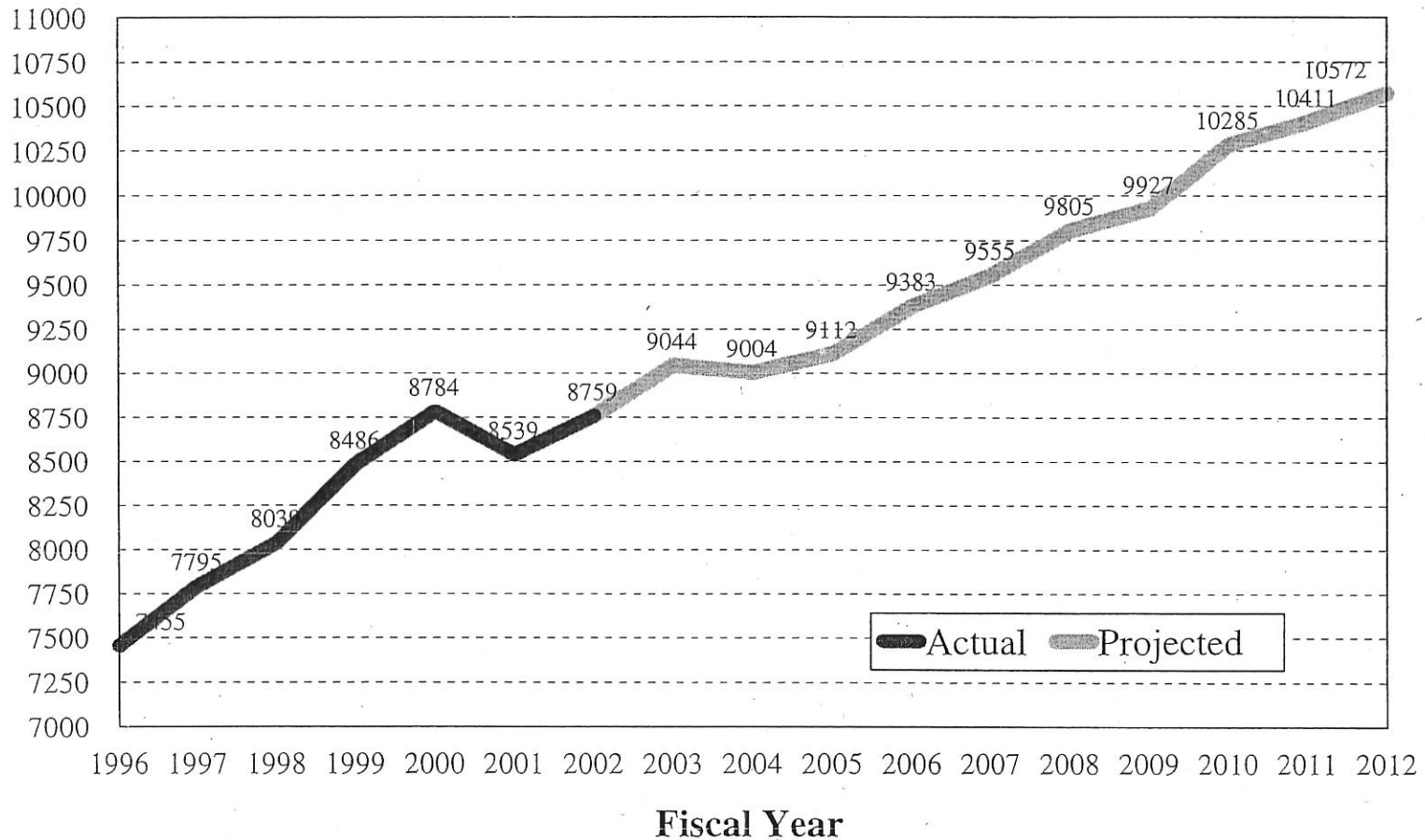
Although the Sentencing Commission is required by statutory mandate to bring forth recommendations to the legislature on ways to reduce prison population, the two year process that Commission went through in developing this proposal was enlightening and educational for its members. Given the backgrounds of the various members, the discussions on this topic were often frank and intense. As priorities were identified, criteria established and implementation issues worked through, a heightened sense of awareness was reached by members that this proposed alternative sentencing policy was the right thing to do independent of the economic situation faced by the state given the governing goals of the Sentencing Guidelines. Sentencing Guidelines are effective; the state of Kansas now has more violent offenders incarcerated serving longer sentences than before Sentencing Guidelines were enacted. However, for this specific target population of non-violent drug offenders, alternative sentencing options need to be available that include meaningful treatment. President Bush acknowledged the power of addiction in his recent State of the Union speech when he stated that "Addiction crowds out friendship, ambition, moral conviction and reduces the richness of life to a single destructive desire."

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

25-12

# KANSAS PRISON POPULATION TRENDS

## Actual and Projected Population



**COMPARISON OF GUIDELINE NEW COMMITMENTS  
ADMISSIONS AND AVERAGE LENGTH OF SENTENCE (LOS)  
FY 1998 THROUGH FY 2002 BY SEVERITY LEVEL**

Severity Level	FY 1998		FY 1999		FY 2000		FY 2001		FY2002	
	Admission Number	LOS In Month	Admission Number	LOS In Month	Admission Number	LOS In Month	Admission Number	LOS In Month	Admission Number	LOS In Month
D1	5	124.2	10	104.9	26	95.8	101	91.6	209	91.1
D2	67	53.3	84	53.8	97	52.3	83	56.2	110	53.1
D3	263	25.0	277	25.7	255	27.1	258	28.1	265	26.8
D4	366	16.6	397	21.0	398	17.8	440	19.5	451	20.0
N1	17	308.5	48	391.1	52	299.0	77	335.0	61	245.7
N2	65	268.1	42	186.8	48	193.4	37	180.1	37	178.8
N3	187	90.2	190	78.8	204	89.8	211	99.4	239	91.2
N4	64	69.1	56	70.0	55	68.0	57	67.8	74	66.5
N5	224	50.1	236	53.6	226	54.0	276	55.7	287	51.6
N6	62	34.6	72	32.9	71	29.9	61	31.2	69	35.0
N7	427	23.7	448	27.5	439	26.4	515	25.5	550	24.0
N8	269	15.7	289	16.5	295	15.5	261	16.3	261	16.0
N9	576	11.5	623	12.2	568	10.5	553	11.2	547	11.1
N10	129	7.7	141	9.1	125	7.0	135	7.8	166	7.4
<b>Total</b>	<b>2721</b>		<b>2913</b>		<b>2859</b>		<b>3065</b>		<b>3326</b>	

Source: DOC admission files.

Note: Guideline new commitment admissions include new court commitments, probation condition violators and probation violators with new sentence.

Senate Judiciary Committee

Testimony in Support of Senate Bill 123

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

February 12, 2003

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

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

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

Senate Judiciary

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any other type of criminal offense. Senate Bill 123 would effect this narrow class of drug offenders.

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

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

# PUBLIC SOLUTIONS

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## LEGISLATIVE TESTIMONY

TO: Chairman John Vratil and Members of the Senate Judiciary Committee

DATE: February 12, 2003

SUBJECT: SB 123

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Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent KADSPA, the Program Administrators' Section of the Kansas Association of Addiction Professionals. In addition, I represent several organizations that provide substance abuse services to the offender population.

I appear today in support of the recommended Alternative Sentencing Policy for drug offenders. The addiction professional field would also like to thank the Sentencing Commission for including treatment providers in the process of outlining an effective structure for the treatment process.

As you have heard much from the earlier conferees on the contents of SB 123, I will only highlight several of the essential elements from the treatment provider perspective.

1. An effective program must be adequately financed

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

2. An effective program must be clearly structured.

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

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3. Training needs to be available for treatment providers

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

4. Residential treatment programs need to be expanded

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

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

Mr. C.E. "Sonny" Scroggins  
Kansas National Action Network  
901 SW Tyler  
Topeka, KS. 66612  
Telephone: (785) 357-8853  
E-Mail: [biasbustersokansas@yahoo.com](mailto:biasbustersokansas@yahoo.com)

Prepared for Delivery to the Honorable Special Committee on Judiciary, Kansas Body  
Politics. (11 Feb. 2003)

Distinguished Members of the Special Committee on Judiciary

Good Morning to you all. As a member of the National Action Network under the Leadership of the Rev. Al Sharpton on this the 3<sup>rd</sup> Anniversary of the Official Newsletter of the National Action Network, that I am pleased to extend you my greetings of the day and support of Senate Bill, No. 123, Treatment Measures for nonviolent drug offenders.

The National Action Network endorse the Kansas Sentencing Commissions recommendations for treating rather than incarcerating drug offenders, and encourage Lawmakers to have political courage to vote it into law!!!!

Treatment programs cost far less than incarceration. Some of the money now being used for imprisonment could be used for our Seniors, People with Disabilities, the Homeless, People with Aids, etc. We have gone down the wrong road long enough, draining resources from other programs and services.

Thomas Huxley has said that "the great end of life is not knowledge but action." But we need some knowledge, do we not, in order to distinguish between appropriate and inappropriate, faithful and unfaithful action, political courage, and the lack of it.

The Kansas State Budget is in a rapid state of emergency, to turn it around is going to take a alternate way of life that is rooted in courage, alternatives are available that would help cut crimes, save money, unite families, rebuild individuals lives and communities. It is unimaginable that lawmakers would shirk for an instance their responsibility to provide rehabilitation for drug possession offenders with no history of crimes against other people. (More information can be obtained from Mr. Woody Henderson, President NY Chapter NAN., [whopro@aol.com](mailto:whopro@aol.com).)

It cannot be reasonably argued that the relatively small cost of the proposed treatment programs, rather than prison compares to the human and dollar cost of not addressing rehabilitation and treatment.

In Thanking You for Your Kind Attention to my remarks, I particularly want each of you to know, that you may expect the National Action Network to be a Champion in favor of Senate Bill No. 123 in the State of Kansas.

Senate Judiciary

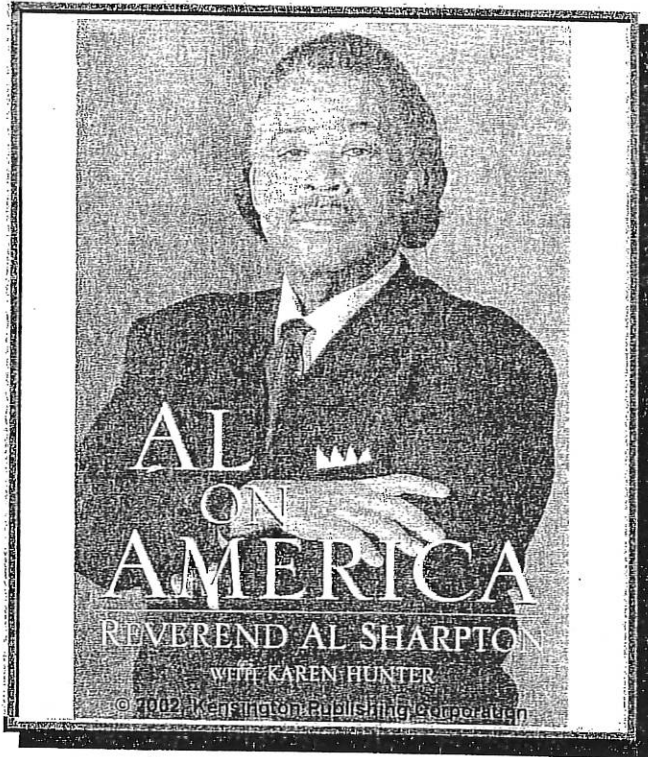
2-12-03  
Attachment 5-1

I would also hope, the State Body Politics would commit itself, with a greater commitment to rehabilitation and mercy. Penalties that apply without regard to the circumstance of the offense or the character or background is relevant!!!!!!!!!!

It is then, in the spirit of the Jewish oriented "come let us reason together" maxim, that I thank you for the opportunity to share!

Cc The Honorable Kelvin Alexander, Field Director , National Action Network.





## HEALTH INSURER DRAWS PROTESTERS FROM NAN KANSAS

The Associated Press

The article below appeared in the January 21, 2003 edition of *The Capital-Journal*.

A few activists marked Monday's holiday for Dr. Martin Luther King, Jr. by picketing the headquarters of Blue Cross and Blue Shield of Kansas because the company was open for business.

The four protesters were members of Bias Busters, a Topeka civil rights group, and the local chapter of National Action Network, a group led by the Rev. Al Sharpton, a New York activist.

Organizer Sonny Scroggins said Blue Cross and Blue Shield, the state's largest health insurer, is sending the wrong message by not giving all of its employees the King holiday off.

Protester Ronald Lassiter said, "It's a gentle nudge to try to encourage them to get in line with the rest of the nation."

Company spokesman Graham Bailey said Blue Cross and Blue Shield gives its employees "rolling" days off for holidays like the King observance, Lincoln's and Washington's birthdays and Veterans Day, allowing the employee to pick one, two or three to take off, depending on seniority.

But he said the company doesn't shut down its operations completely because it processes 190,000 health insurance claims a day and would inconvenience doctors, hospitals, other providers and policy holders by doing so.

"We try to be as flexible as we can," he said.

## NAN Welcomes Tacoma, Washington Chapter

By Kelvin Alexander, National Field Director

The dream of having an Organization, which spans the entire United States was recently realized when Tacoma, Washington complied with the membership requirements of the National Action Network and qualified for full Chapter status. With the establishment of as solid presence in the great North West, NAN is now able to boast of Chapters in most of the major cities on both the East and West Coasts of the country.

The President of this new Chapter, Mr. Abdullah Mustafa, is young, able and eager to continue the National Action Network's tradition of justice-making and struggling for racial equality throughout the Northwest corridors of America.

On behalf of Reverend Dr. Al Sharpton, our members, supporters and staff, we gladly welcome the members of the Tacoma, Washington Chapter to our NAN family.

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**STUART J. LITTLE, Ph.D.**  
Government Relations Consultant

February 12, 2003

**Testimony before Senate Judiciary Committee**  
**Senate Bill 123**

Dear Chairman Vratil and Members of the Senate Judiciary Committee,

I appear before you today on behalf of the Kansas Community Corrections Association in support of Senate Bill 123. Community Corrections programs provide cost-effective community-based supervision for adult and juvenile offenders with lower severity level offenses (although the offenders are increasingly more high-risk). The courts determine whether an offender is assigned to regular probation (through the courts) or intensive supervised probation in a community corrections program.

KCCA supports enhanced drug treatment for substance abusing offenders defined within SB 123. Our concern is that adequate funding for treatment and the supervision of these new offenders follows them to drug treatment programs and supervision agencies (community corrections and court services). These funding issues will be a matter of action in the appropriations process and we anticipate a favorable vote on SB 123 will have to be matched with a favorable vote in the appropriations process to fund treatment and supervision.

Senate Judiciary

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Attachment 6-1

# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Memorandum

To: Senate Judiciary Committee

From: Roger Werholtz, Secretary of Corrections

Subject: Senate Bill 123

Date: February 12, 2003



### SUMMARY OF SB 123

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

Under the bill's provisions:

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

comply or participate in the program. Offenders who are discharged are subject to revocation.

- Offenders who are revoked and admitted to prison would not be subject to postrelease supervision upon release.
- The Secretary of Corrections is required to certify programs authorized to provide drug abuse treatment services to offenders.
- The Secretary of Corrections is required to modify the sentences of eligible offenders who have more than 180 days to serve until their scheduled release date, and to apply the bill's sentencing provisions retroactively. Sentence modifications are to be phased, based on custody level. All offenders released pursuant to sentence modifications by the Secretary would be supervised by community corrections.

The effective date of the bill is upon publication in the *Kansas Register*.

### IMPACT ON KDOC

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

Impact on the Inmate Population. The Sentencing Commission estimates that the bill would reduce admissions to prison by 438-455 annually during the period FY 2004 – FY 2013. As a result, the commission estimates that the bill would reduce the growth in KDOC's capacity requirements by 383-571 beds as compared to what would otherwise be required. The table below summarizes the bill's impact on the total inmate population, and the impact on the male inmate population, which is the more pressing concern regarding future capacity requirements. (Note: the commission's projections of the bill's impact run through FY 2013, but the baseline projections are through FY 2012. Therefore, the table below only shows the impact comparisons through FY 2012.)

FY	Total # of Inmates		Total # of Male Inmates	
	Current Law	With SB 123	Current Law	With SB 123
2004	9,003	8,620	8,474	8,166
2005	9,112	8,700	8,577	8,253
2006	9,383	8,930	8,832	8,480
2007	9,555	9,101	8,991	8,640
2008	9,805	9,309	9,223	8,834
2009	9,927	9,396	9,339	8,930
2010	10,285	9,714	9,674	9,225
2011	10,411	9,870	9,796	9,363
2012	10,572	10,015	9,951	9,490

The department's current capacity is 9,114 for the entire inmate population, and 8,482 for the male inmate population. The shaded areas in the table indicate population levels that exceed existing capacity. The bill's impact is evident throughout the projection period. However, while SB 123 would delay and reduce the need for future capacity expansion, the projected male inmate population would still exceed capacity through most years in the FY 2004 – FY 2012 period.

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

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

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

#### Certification of Drug Treatment Programs

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

To manage the certification provisions of the bill will require implementation of at least three processes:

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



- Development and delivery of education and training for treatment providers in the use of the risk and need assessment instrument<sup>1</sup>, and in the principles of effective interventions and case management techniques for criminal justice clients; and
- Conducting routine quality assurance and compliance monitoring of the certified drug abuse treatment programs.

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

There are several issues relating to the treatment program provisions of the bill that we believe need to be addressed.

Effective Date of the Bill. It is not realistic to expect that the certification process can be developed and implemented so that certified providers would be ready and in place to accept referrals at the time the bill is published in the *Kansas Register*. A more feasible implementation date needs to be determined.

Funding Resources for Treatment. The Sentencing Commission has projected that the range of treatment costs would average from \$3,213-\$6,436 annually per offender, depending on the level of treatment required. Statewide, the commission's total estimated cost for treating offenders under the program ranges from \$4.6-\$9.2 million annually.

New Section 2(d) of the bill places financial responsibility for the cost of treatment on the person receiving treatment, i.e. the offender. New Section 2(b) authorizes the Secretary to establish "fee reimbursement procedures" and "delivery of services to clients unable to pay." However, no revenue source is identified in the bill to support these provisions. With no provision for financial support for the cost of treatment for those offenders who may be unable to pay some or all of that cost, there may be significant program failure from both the perspective of the offenders and the treatment providers. Many offenders, especially those who require higher intensity residential services, will not have the financial resources to meet the cost of such treatment. They may opt to not incur such cost and fail to attend treatment or abscond from supervision. In addition, treatment providers may be reluctant to accept many clients into treatment programs without some assurance that their costs will be met. In our view, some provision needs to be made for assuring adequate resources for the treatment to be provided.

Presentence Drug Abuse Assessment. The bill requires a presentence drug abuse assessment to be conducted which includes a statewide standardized risk assessment

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

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

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

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

#### Sentence Modifications

The provisions of SB 123 are to be applied retroactively for eligible inmates in the KDOC inmate population who meet the criteria established for the target population and who have more than 180 days to serve until their scheduled release date. Sentence modifications for these inmates are to be reviewed and completed on a phased basis according to the custody level of the inmate, as follows: minimum custody, within 60 days of the effective date; medium custody, within 90 days; and maximum custody, within 120 days. Following the modification, there is provision for a 60-day period within which either the offender or the prosecutor may request a hearing before the sentencing court.

As of December 31, 2002, there were 317 inmates in the KDOC population who met the bill's target population criteria. Under the bill, most of these inmates would be released earlier than would be the case under existing law. The other primary operational impact of this provision is on the workload of the department's classification and data processing staff. We estimate that approximately 1,000 hours would be spent on SB 123 implementation by classification, records and

sentence computation staff. Another 160 hours would be spent by information technology staff in making the necessary programming changes.

Community Corrections

This bill would increase the caseloads of community corrections agencies, where the current basic grant award averages approximately \$2,906 per ADP. Although the bill is currently silent regarding resources for provision of treatment (other than that paid by the offender), if a state-level mechanism is established to cover these costs, community corrections and court services would be the two logical groups through which to administer these funds. If KDOC were given the responsibility of administering treatment grants to community corrections agencies, some additional staffing may be required to provide oversight and monitoring of the expenditures of those funds.

## KDOC Comments on Specific Sections of SB 123

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- Page 1  
New Section 1  
and Page 2  
New Section 2
- Suggest amending the provisions relating to the statewide drug abuse assessment to provide that the risk-needs instrument be administered by court services as part of the presentence investigation and that the clinical drug abuse assessment be performed by the certified drug abuse treatment program following assignment of the offender to either court services or community corrections.
- Pages 1-2  
New Section 1
- It is not clear what the bill's intent is regarding sentencing dispositions for offenders who meet the eligibility criteria but who live in an area of the state where there are no available placements in a certified drug abuse treatment program. This question also arises with KDOC inmates who receive sentence modifications under New Section 3.
- Page 1  
New Section 1
- In lines 22 and 26, delete "prior".
  - In line 28, insert "or non-grid offense" after "10".
  - Also need to clarify that offenders with current as well as prior convictions for person felonies are not eligible, unless the convictions are for severity level 8-10 crimes and the judge makes the determination outlined in subsection (a)(2).
- Page 2  
New Section 2
- In line 30, "supervision and monitoring" should be amended to clarify that court services or community corrections supervise the offender rather than the drug abuse treatment program.
- Page 2  
New Section 2
- In lines 35-37, it is not clear whether every certified treatment program must offer each of the services listed in subsection (a)(3).
- Page 3  
New Section 2
- In lines 27-30, responsibility for payment of the cost of the treatment program is placed upon the person receiving the service, i.e. the offender. In our view, there will be many instances in which the offender will not be able to pay all or even a significant portion of program costs. Some provision needs to be made for payment of costs, and designation of the agency or agencies responsible for administering any funds appropriated for this purpose. Also, it is not clear what is meant in line 30 by "further action on the offender's sentence" if the offender cannot make payment.

## KDOC Comments on Specific Sections of SB 123

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- Pages 3-5  
New Section 3
- Amend 3 (c) to provide that KDOC shall conduct a public safety evaluation and include that evaluation in the report made to the sentencing court.
- Page 10  
Section 4
- In line 23, because the treatment program is a nonprison disposition and the offender is not on postrelease supervision, amend language to “revocation of the nonprison disposition.....”
  - In line 22, change “shall” to “may be subject to”. Otherwise, this subsection conflicts with the provisions of New Section 1 (f)(2) and Section 4(n), which provide for revocation under certain circumstances.
- Page 18  
Section 7
- The provisions of SB 123 require offenders participating in a drug treatment program to abide by the conditions of the treatment program. References to the grounds for the revocation of that nonprison sanction are limited to a failure to participate or engaging in a pattern of intentional conduct that demonstrates a refusal to comply with the conditions of the program, or conviction for a new felony other than for violation of KSA 65-4160 or 65-4162. However, SB 123 is not clear in whether violations of other conditions imposed as part of supervision by court service or community corrections officials can result in the revocation of this nonprison disposition. As an example, it is not clear what kind of response is envisioned by the bill if an offender is found to be carrying a weapon. *The department recommends that SB 123 provide that offenders may have other supervision conditions imposed and violations of those conditions can result in the revocation of the nonprison sanction. Additionally, the department recommends that section 7(f) at page 18 line 22 be amended to provided that additional nonprison sanctions may be imposed by the court.*
- Page 19  
Section 9
- The amendment of K.S.A. 75-5291 by SB 123 at section 9 regarding the offenders eligible for supervision by community corrections officers does not include: (1) those offenders who are sentenced for violations of K.S.A. 65-4160 or 65-4162 having a presumptive nonprison disposition criminal history classification and a high risk drug abuse assessment; or those offenders who are released from prison under New Section 3 of the bill. Therefore *the department recommends that SB 123 section 9 (a)(2)(E) be amended to include a high risk assessment as determined by the state-wide, mandatory, standardized risk assessment tool or instrument validated for drug abuse treatment program placement as provided for by New Section 1(d), as well as offenders released from prison under the provisions of New Section 3.*
- Page 21  
Section 11
- We do not believe it is feasible for this bill to be effectively implemented upon publication in the *Kansas Register*.



# KANSAS

DIVISION OF THE BUDGET  
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

February 12, 2003

The Honorable John Vratil, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 255-E  
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 123 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 123 is respectfully submitted to your committee.

SB 123 would change the state's sentencing guidelines for certain offenders convicted of drug possession. The bill would apply to the following offenders: those who have a current conviction of drug possession only; those who have criminal history classifications of I to E on the sentencing grid with no prior person felony convictions; or those who have no prior convictions for drug trafficking, manufacturing, or possession with the intent to sell. Offenders with prior conviction for drug possession are eligible, as are offenders with prior convictions for personal felonies in severity levels 8 through 10 of the sentencing grid if the court makes a finding that the offender does not pose a significant threat to public safety. The bill would provide the following:

1. Offenders eligible under the bill would receive a mandatory non-prison sentencing disposition of certified drug abuse treatment of up to 18 months.
2. The presentence investigation would include standardized risk assessment of the offender eligible for drug abuse treatment program placements.
3. Offenders assessed as "high risk" would be supervised by community corrections agencies; those assessed as low risk would be supervised by court services.
4. Offenders who violate treatment program conditions are subject to additional non-prison sanctions, including up to 60 days in the county jail.
5. Offenders convicted of a new felony, other than drug possession, would be discharged from the program, as well as offenders who demonstrate refusal to comply or participate

Senate Judiciary

- in the program. Offenders discharged from the program would be subject to revocation to prison.
6. Offenders who are revoked and admitted to prison would not be subject to postrelease supervision upon release.
  7. The Secretary of Corrections would be required to certify programs authorized to provide drug abuse treatment services to offenders.
  8. The Secretary of Corrections would be required to modify the sentences of eligible offenders who have more than 180 days to serve until their scheduled release date and apply the bill's sentencing provisions retroactively. All offenders who have sentences modified by the Secretary would be supervised by community corrections.
  9. The bill would designate the "Level of Service Inventory—Revised" (LSI—R) as the statewide assessment tool for all felony presentence investigations.
  10. The effective date of the bill would be upon publication in the *Kansas Register*.

According to the Sentencing Commission, passage of SB 123 would have the following effect on the inmate population:

Fiscal Year	Total Number of Inmates			Total Number of Male Inmates		
	Current Law	SB 123	Change	Current Law	SB 123	Change
2004	9,003	8,620	(383)	8,474	8,166	(308)
2005	9,112	8,700	(412)	8,577	8,253	(324)
2006	9,383	8,930	(453)	8,832	8,480	(352)
2007	9,555	9,101	(454)	8,991	8,640	(351)
2008	9,805	9,309	(496)	9,223	8,834	(389)
2009	9,927	9,396	(531)	9,339	8,930	(409)
2010	10,285	9,714	(571)	9,674	9,225	(449)
2011	10,411	9,870	(541)	9,796	9,363	(433)
2012	10,572	10,015	(557)	9,951	9,490	(461)

The Department's current inmate capacity is 9,114 for the entire inmate population and 8,842 for the male population. The shaded areas of the table indicate population levels that exceed existing capacity. While SB 123 would delay and reduce the need for future capacity expansion, the projected male inmate population would exceed capacity through most of the forecast years. The bill would also reduce the size of the post-incarceration supervision population, as offenders affected by the bill would not be required to serve a period of postrelease supervision. However, the Department does not provide a fiscal effect for this postrelease part of the process.

Because the bill would reduce the average daily population (ADP) in the state's correctional facilities compared to the ADP that was included in *The FY 2004 Governor's Budget Report*, the systemwide budget of the Department would be reduced. The ADP recommended by the Governor is 9,010 for FY 2004. If SB 123 is passed and if the projected reduction in the inmate population is spread evenly over the entire fiscal year, the resulting ADP

for FY 2004 would be 8,832, or a reduction of 178 inmates. Applying the estimated marginal cost rate of \$2,000 per ADP, the resulting savings is estimated at \$356,000, all from the State General Fund.

SB 123 would not eliminate the need for future capacity expansion, but would result in delay of both construction costs and annual operating costs for the 383 to 571 beds projected to be saved as compared to current law. The Department reports that renovating existing buildings at Winfield and Osawatomie would cost between \$7,585 to \$9,948 per bed. Constructing new minimum security units at Hutchinson, El Dorado, or Lansing would cost between \$16,409 and \$20,144 per bed. Constructing new medium or maximum units at El Dorado would cost between \$28,000 and \$56,000, depending on the custody level of inmates housed. Annual operating costs are estimated at \$18,803 per bed for minimum security facilities, and between \$14,100 and \$25,000 for medium and maximum beds, depending on the configuration of the cellhouses.

The Department estimates that 3.0 FTE Program Specialists would be required for the certification of the drug treatment programs at a cost of \$178,000 from the State General Fund for FY 2004. This estimate includes annual costs of \$162,400 and start-up costs of \$15,600. The annual costs include \$138,900 for salaries and wages and \$13,500 for other operating expenditures. The start-up costs include office and computer equipment.

The Department also notes that all inmates receiving sentence modifications would be transferred to community corrections agencies for supervision. These agencies would also receive all new offenders that are considered a "high risk." Although the agency does not have estimates of community corrections and court services caseload increases, using a comparable number of inmates that would be transferred from the correctional facilities would result in a caseload increase of approximately 317 inmates. Based on this number, grants to community corrections agencies would need to increase by \$920,000 each year.

Although the bill does not address how treatment program costs would be financed if the costs cannot be recovered by the offender receiving the service, the Department believes that some state level funding would be needed to make the program successful. The Sentencing Commission has estimated that the total cost of treatment would range from \$3,213 to \$6,436 per offender per year, depending on the type and intensity of services required. However, it is not known how much state funding would be needed.

According to the Sentencing Commission, SB 123 would require changes in the sentencing database and the projection software model to allow for the new sentencing rules outlined in the bill. It would also require modification to the sentencing journal entry form to indicate the proposed sentencing procedure. Although these changes would take significant staff time to complete initially, the changes would result in fewer probation revocation journal entries and postrelease revocations to be processed. As a result, the bill may reduce the total staff hours required for data entry over time.

The Honorable John Vratil, Chairperson  
February 12, 2003  
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The Office of Judicial Administration indicates that passage of the bill would require additional expenditures of \$1,235,324. This estimate includes the following: an additional 8.0 court service officers for supervision of "low risk" offenders at a cost of \$326,664; an additional 20.0 court service officers to prepare presentence reports and administer the LSI—R assessment at a cost of \$816,660; training expenditures in the amount of \$32,000 for 50.0 court service officers to learn to administer the assessment; and \$60,000 each year for the cost of the LSI—R forms to be used for all presentence investigations, as these forms are proprietary and are purchased in bulk at an estimated cost of \$2 each.

Any fiscal effect resulting from the passage of SB 123 is not included in *The FY 2004 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Jerry Sloan/Amy Hyten, Judiciary  
Jan Johnson, DOC  
Barbara Tombs, Sentencing Commission



TESTIMONY TO THE SENATE JUDICIARY COMMITTEE  
DIANA COLLINS, PRESIDENT  
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS  
ON 2003 SENATE BILL 123  
FEBRUARY 12, 2003

Senator Vratil and Members of the Committee:

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

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

I know that this committee is not the Ways and Means Committee, and would fully expect that, if SB 123 is enacted, the Senate Ways and Means Committee will consider this issue and will have the opportunity to add funding for court services and community corrections officers. However, I think that the need for adequate community supervision for those drug offenders who would

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remain in the community under SB 123 is something the Legislature needs to be considering at all times in conjunction with the merits of this bill.

Kansas Association of Court Services Officers members are also concerned about the funding of appropriate treatment programs. In the first round of budget cuts for FY 2002 the Kansas Department of Corrections eliminated drug treatment programs within their agency, deeming those programs "non-essential services." Court Services Officers throughout the state are currently experiencing difficulties in getting offenders into the appropriate treatment programs. The offender often goes through three to four treatment episodes before revocation occurs. With the influx of offenders being placed on probation by this bill, numerous treatment programs would need to be available statewide.

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

The most pressing concern in the implementation of Senate Bill 123 is funding. In a year when we are all facing budget cuts, shortfalls, and bleak projections of future budgets, it is questionable

whether there are adequate financial resources to develop effective and appropriate treatment resources along with funding additional Court Services Officers to provide effective supervision of these drug offenders and ensure the public safety of our communities.

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



## SEDGWICK COUNTY, KANSAS

SHERIFF'S DEPARTMENT

141 WEST ELM \* WICHITA, KANSAS 67203 \* TELEPHONE: (316) 383-7264 \* FAX: (316) 383-7758

### **TESTIMONY SB 123 Before The Senate Judiciary Hearing February 12, 2003**

Honorable Chairman Vratil and members of the committee, I appreciate the opportunity to testify in regards to SB 123. I am Captain Robert Hinshaw with the Sedgwick County Sheriff's Department. I have served in several capacities within the department for the past twenty-four years. Today I am appearing on behalf of the Sheriff of Sedgwick County in opposition to this legislation.

SB 123 amends several statutes relating to possession of drugs and mandatory treatments. The section I wish to address is the proposed amendment to K.S.A. 23-3716. The new section (f) provides that offenders who violate a condition of the drug and alcohol abuse treatment program shall be subject to an additional nonprison sanction. Specifically the sanction stating that the offender may be confined in a county jail for up to 60 days.

The issue of concern is one that may affect many counties to a greater or lesser degree. These are the combined factors of inmate population and cost of inmate housing. In Sedgwick County, plans are already underway to expand the existing jail. This is the result of studies and historical data that shows that the inmate population is growing by approximately 100 inmates a year in Sedgwick County. The current facility was designed to hold 1,048 inmates. As of last night our population was 1,134 and we were paying other counties to house 132 inmates that have been remanded to our custody. By 2009, estimates of inmate population are 2,184. This proposed nonprison sanction holds the promise of overwhelming a local jail's ability to house inmates in a safe and efficient manner. The same study indicated that there were only 1,004 jail beds available statewide.

Related to the factor of inmate population is that of cost. Even if the Kansas Department of Corrections were to pay the cost of inmate maintenance, their per capita daily rate is \$51.68. The per capita daily operating cost for Sedgwick County is \$60.24. However, this provision designates the incarceration as nonprison—making the offender a county prisoner, instead of a state prisoner. I would submit that warehousing felons who have violated the conditions of their sentence in a county jail is not a viable solution. In a jail there are limited or non-existent programs to address the problems that resulted in the conviction and sentence to begin with. Such incarceration places an added burden to the citizens of Sedgwick County and does nothing to solve the root issue—addressing appropriate remedies to drug offenders. For the above reasons, the Sedgwick County Sheriff's Department opposes SB 123.

<http://www.sedgwick.ks.us/sheriff/>

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## Ellis County Attorney

Tom Scott  
Asst. County Attorney

Thomas J. Drees  
Ellis County Attorney

Andria L. Cooper  
Asst. County Attorney

Monnie R. Schmitt  
Office Manager  
Victim/Witness Coordinator

David J. Basgall  
Asst. County Attorney

February 11, 2003

Senate Judiciary Committee

RE: Senate Bill No. 123

Prison overcrowding is a great concern to the Kansas Legislature, as is protecting the safety and well-being of Kansas citizens. It is extremely difficult when one has to look at ways to cut funds in the prison system and to decide an appropriate strategy in which to do so. Senate Bill No. 123 is not an appropriate strategy. The idea of providing treatment for those who possess controlled substances rather than imprisoning them is appealing. However, if you look at the individuals that are proposed to be returned back to treatment and probation or community corrections under this Bill, I believe you will find most either having reached a plea agreement from which a more serious charge was reduced to second time possession or first time possession so as to garner the appropriate prison time believed necessary by the State and the criminal defendant.

There are numerous difficulties with the language contained in the Act that results in an unyielding group of statutes that do not accomplish the goal of the legislature. Before taking the leap of faith onto the treatment bandwagon, please ensure that treatment facilities are available, as is appropriate funding for said facilities. Please strongly consider the need for finality within the legal system. The retroactive provisions would again wreak havoc on the state-wide judicial system, as did a similar measure that was 2000 Senate Bill No. 323. I strongly encourage you to reject Senate Bill No. 123 and re-work it, eliminating the retroactive provisions the legal system finds so troubling.

Sincerely,



THOMAS J. DREES  
Ellis County Attorney

TJD/gp

Senate Judiciary

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TESTIMONY CONCERNING 2003 SENATE BILL No. 123:  
SUPPORTING TREATMENT FOR POSSESSION OFFENSES;  
GENERAL CONCERNS REGARDING LANGUAGE; and  
OPPOSITION TO RETROACTIVE APPLICATION UNDER NEW SECTION 3;

Testimony by Thomas J. Drees\*

- I. Prison overcrowding is forcing the legislature to consider prison beds for drug possession offenses as a last resort, rather than a first option.
  - A. Treatment in a residential facility followed by community based probation will provide greater chance for rehabilitation than prison.
  - B. Treatment followed by probation is cheaper to taxpayers in long run.
- II. The language of Senate Bill No. 123 will pose problems for Judges, Prosecutors and Defense Lawyers.
  - A. Does new section 1(a)(2) create a border-box for Drug Level 4 History A through D?
    1. Subsection (c) states "shall" commit offender to treatment.
    2. Subsection (e) still requires the Court to make departure findings.
    3. Is the Court's ruling appealable by either party? If so, under what standard of review (beyond reasonable doubt, substantial and compelling, or sufficient evidence)?
  - B. New section 1(c) requires the Court to commit offender to treatment program until the Court determines the defendant is suitable for discharge (not to exceed 18 months).
    1. What standard of review should the Court use to determine if treatment has been completed?
    2. Is an evidentiary hearing needed?
    3. If so, must defendant be present for hearing (Sixth Amendment right to confront accusers on fact issues)?
    4. Will treatment providers need to be present to testify at said hearing?



5. Can defendant file a Motion asking Court to determine if defendant has received sufficient treatment for return to probation/community corrections?
- C. New section 1(f)(B) Defendant to be discharged from treatment if “intentional conduct demonstrates refusal to comply with or participate in treatment” as determined by judicial finding.
1. What standard of review should the Court apply?
  2. Is an evidentiary hearing required?
  3. If so, must defendant be present for hearing (Sixth Amendment right to confront accuser on fact issue)?
  4. Will treatment facility officials need to be present to testify?
- D. New section 1(f)(2) Offenders discharged from treatment program subject to revocation provisions of K.S.A. 21-4603d(n).
1. (n) States “defendant shall serve underlying prison sentence and not be subject to period of post-release supervision. However, Section 7 [ K.S.A. 22-3716, the revocation statute], at subsection (f) states that offenders who violate treatment order “shall be subject to an additional non-prison sanction, which shall include, but shall not be limited to: up to sixty (60) days in the County Jail, fines, community service, intensified treatment (beyond inpatient?), house arrest and electronic monitoring.
  2. Direct conflict between the two statutes needs to be reconciled.
  3. No post-release supervision, therefore, treatment not accomplished.
- E. K.S.A. 21-4603d(n) states that upon revocation of probation, time spent participating in treatment programs shall not be credited towards underlying prison sentence.
1. K.S.A. 21-4614a(a) [not amended by Bill] requires residential treatment facility time to count toward jail credit.
  2. State v. Theis, 262 Kan. 4 (1997) and State v. Taylor, 27 K.A.2d 539 (2000) both require residential treatment time to count toward jail time credit.

- F. New Section 2(a)(3) requires treatment programs to include a continuum of services for recovery including: detoxification, rehabilitation, continuing care and aftercare, and relapse prevention.
1. All court ordered residential treatment must count toward jail credit. What happens when jail credit equals sentence. Has defendant maxed out his time, thus entitling him to discharge from probation?
  2. Must every treatment facility provide all of the continuum of services?
- G. New Section 2(d) Cost of treatment to be paid by defendant. If cannot pay, Court to take "further action on defendant's sentence".
1. Is Court required to or authorized to revoke probation for non-payment of treatment?
  2. Is this a violation of equal protection under Fourteenth Amendment (pay to play or go to jail)?
- H. New Section 3(a) retroactive application to persons affected by statute.
1. Section requires all Level 4 Sentences "shall" be modified. How many defendant's does this entail?
  2. Are a sufficient number of treatment beds available?
  3. How long can defendant be held on probation/community corrections until treatment bed available?
  4. Conflict in time: Level 4 probation period 12 months; act authorizes treatment up to 18 months.
- I. New Section 3(b)(2) Retroactive review of K.S.A. 60-4160 Level 1 and 2 Felony convictions.
1. Department of Correction to determine if public safety will be jeopardized by release of prisoners. What information can DOC use and what is their standard of review?
  2. Prosecutor can object within 60 days. Court to hold hearing within 60 days and issue ruling within 30 days. Can continuance be granted if Court unable to schedule hearing within 60 days?

3. Is the State allowed to present factual evidence? Or just legal argument? Must defendant be present (Sixth Amendment right to confront accuser)?
  4. Court to rule on safety of public question. What standard of review needs to be applied?
- J. New Section 3(e)(4) Defendant to be represented by Kansas Board of Indigent Defense Services Lawyer (BIDS).
1. Does defendant have to qualify financially? Statute says "shall" be represented by BIDS Attorney.
  2. BIDS is currently out of money, mailed notices to Attorneys that they are out of money and hope to make payments starting in May. Who is going to pay BIDS?
  3. What if BIDS Lawyer not available for hearing within sixty days due to not being paid? Can hearing be continued? Is it a due process violation?
- K. New Section 3(e)(5) Defendant not required/has no right to appear at hearing.
1. Statute contemplates evidentiary/fact hearing on public safety; so defendant has Sixth Amendment right to confront accuser.
  2. If Sheriff unable to transport for hearing or defendant unavailable within sixty days, can continuance of hearing be granted?
- L. Under Section 4, K.S.A. 21-4603d(f), History 4-E and 4-F who do not qualify for 18 months treatment under Act are sent to Labette Conservation Camp for six months, followed by six months supervision with Community Corrections.
1. Defendant completes time in twelve months with no treatment.
  2. Can defendant forego treatment and request Labette as more stringent punishment?
- M. Section 6 - K.S.A. 21-4714(b)(9), CSO Pre-Sentence to include drug and alcohol evaluation on all Level 4 drug convictions.
1. Under what time frame must CSO complete evaluation?
  2. Who pays for the evaluation?

N. Under Section 8, K.S.A. 65-4160 no longer enhances drug possession above Level 4 Felony.

1. How many “required treatment programs” must state pay for on repeat offenders?
2. Can Court stay treatment for defendant with numerous prior convictions and numerous prior treatments?

III. Retroactive application provides numerous problems. (Have we learned nothing from Senate Bill 323?)

1. At “public safety” hearing, can State introduce evidence of Alford plea to Level 2 under K.S.A. 60-4160, which was reduced from Level 1 Manufacture of Methamphetamine?
2. Does statutory change granting probation from a presumptive imprisonment plea agreement and sentencing allow State to withdraw from the plea agreement and reinstate the original charges?
3. Retroactive application of act will generate additional trial work at the District Court level and an avalanche of Appellate pleadings seeking answers to these many question proposed.
4. If Court denies sentence modification due to “public safety”, does defendant have a K.S.A.60-1507 Habeas Corpus appeal right?

#### CONCLUSION

If the retroactive provisions are removed from act, and conflicting statutes remedied, Senate Bill No. 123 could meet its objective of providing treatment for possession convictions rather than incarceration. If the retroactive provision remains in act, the legislature will condemn the Court system to re-live the chaos that followed Senate Bill 323, and the flood of litigation that will follow.

---

\* Thomas J. Drees - Biographical Information:

Kansas County and District Attorneys Association Board of Directors - 1999 to present;  
Northwest Kansas Community Corrections governing board - 1996 to present;  
Ellis County Attorney - 1997 to present;  
Trego County Attorney - 1997 to 2000;  
Assistant Ellis County Attorney - 1989 to 1996;  
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February 11, 2003

Chairman Vratil  
Senate Judiciary Committee

Dear Chairman Vratil and members of the Committee:

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

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

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

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

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Brenda M. Jordan  
Assistant County Attorney

Valerie L. Peterson  
Assistant County Attorney

Terry D. Holdren  
Assistant County Attorney

Kathryn S. Gonzales  
Assistant County Attorney

Karla Hagemester  
Victim/Witness Coordinator  
785-537-6383

- **Treatment without consequences:** Believe it or not, the status of the law is not a secret to the offenders. When SB 323 was passed, we were told by probation officers that they were receiving phone calls from probationers, asking if their time would be cut short due to the bill. Passage of this bill, which in effect eliminates the existence of consequences for continuing to use drugs, eliminates the incentive for successful treatment. Remember these are people who do not accept that drug usage is a bad thing, thus, treatment and the benefits of a drug free life style will not be enough of an incentive.
- **Provisions of the bill itself:** Treatment is currently being ordered by the Sentencing Courts. The persons that are being sent to prison for convictions of 65-4160 and 65-4162 are those that have failed at treatment already. Thus, the retroactivity provision of the bill will be releasing those who have failed at the treatment that was ordered by the Court.
  - Treatment program discharge occurs for new conviction, but not if convicted of possession of drug again? Again, where is the incentive to stop using drugs?
  - Retroactivity provisions: DOC is to review the records and determine if the safety of the public will be jeopardized? Are they going to come into the local counties and look at all the reports, documents, statements that are not part of the DOC records.
 

Are they going to look at what treatment options and programs have been tried and failed before the sentencing court sent the person to the prison? If not, once again, where is the incentive to stay drug free when they are released?
  - Quantify/define: safety of the public, only those who commit violent person crimes or subject to punishment, or are those who commit property crimes going to be held accountable for the safety of the public?
  - The work and the costs are being trickled down to the local jurisdictions who are in the same budget situation as the State, if not worse due to lack of financial transfers from the state.

Prosecutors, law enforcement and probation supervisors have increasingly taken a harder stance against drug offenses in the last few years. We are sending cases to the federal prosecution level to increase penalties, especially for large quantities and repeat offenders. Law enforcement, narcotics divisions, are cracking down on drugs and distribution, trying to make it bad to be involved as a distributor and user. Prosecutors are building the history on the dealers to establish that they need to be punished. This is a matter of economics for the drug culture. With the drug culture comes violence, and related crimes, property crimes, etc., all of which hurt the citizens of our communities.

Currently, the sentencing courts are ordering treatment for users of drugs. The sentencing courts and thus, the probation officers are trying to get the offenders to treatment. Our courts have even given ISO's the authority to search the offenders and homes for substances used to mask the drug tests. However, the offenders know that there is a

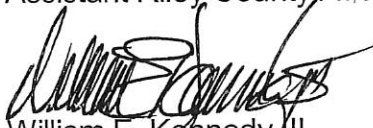
punishment if they do not comply. If this bill is passed that possibility for punishment will be removed and thus, the incentive to comply is gone.

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

Sincerely,



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



William E. Kennedy III  
Riley County Attorney

## Testimony in Opposition to SB 123

Before the House Corrections and Juvenile Justice Committee

Douglas S. Murphy

On behalf of

**Kansas Peace Officers Association**

And

**Quad County Drug task Force**

February 12, 2003

Chairman Lloyd and Members of the Committee,

I appreciate the opportunity to appear before this committee today on behalf of the Kansas Peace Officers Association and the Quad County Drug Task Force to express opposition regarding SB 123 which would release "nonviolent drug offenders" from Kansas prisons, thereby providing a temporary easing of the overcrowding being experienced in our prisons.

First, I would ask the Committee to recognize that very few of the drug offenders currently in prison are there for simply using or possessing controlled substances. The sentencing guidelines are set in such a way that these offenders receive probation and are not in prison unless they have continuously violated the conditions of their probation or have committed further violations of Kansas law. Additionally, most of these offenders are normally ordered into some type of treatment program as a condition of their probation. Those few who may be in prison for an underlying conviction of simply possessing drugs have demonstrated through their own actions and conduct that probation and/or treatment does not work for them.

The truth is that most persons currently incarcerated for simple possession of controlled substances - the ones who would be affected by the benefits of SB 123 - were, in fact, arrested for the more serious crimes of drug trafficking or drug manufacturing and received a lower crime of record through plea negotiations.

Proponents of SB 123 hold that these "low-level" drug offenders are nonviolent and, therefore, do not represent a danger to our state or our communities. Nonviolent does not equate to non-dangerous. To the contrary, their crimes are inherently dangerous to our society. Dangerous because they continue to deal their misery to others and

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dangerous because their illicit conduct continues to expose our neighborhoods, our citizens and our children to the inherent dangers of their criminal activity.

Furthermore, they are dangerous because, without exception, every drug search warrant I have executed in my 27 plus years in law enforcement, has resulted in the seizure of firearms that these “nonviolent” offenders use to protect their enterprise, their products and their assets.

SB 123 amounts to nothing more than a blanket amnesty program and the decriminalization of drug crimes. If the consideration of who is to be released would be limited to those who were **arrested** for simply possessing drugs for personal use, then treatment might be a viable compromise – for first time offenders who simply possess or use drugs. Again, most drug offenders currently incarcerated were originally arrested for more serious drug offenses such as trafficking and manufacturing and were *convicted and sentenced* to lesser crimes through plea negotiations.

And, these people do continue to re-offend. The majority of the persons we arrest continue to engage in violations of the controlled substances act, i.e. manufacture, use and sell drugs. And, again, most of them have already been through treatment programs.

The decriminalization of drug crimes will only compound the problem in the years to come. Kansas has spent a number of years trying to combat the rising problem of methamphetamine labs and the use of methamphetamine. With the status of the Byrne grant funding in limbo and with the current budget crisis facing the state of Kansas, it is going to become increasingly more difficult for state and local law enforcement to address the problems and prevalence of drugs in our communities. Compound that with decriminalization and understand what we can expect in the future.

Studies have shown that treatment for meth-addiction is ineffective unless it's an 18 month in-patient program. Such a program would be much more costly than prison beds would ever be. And, we all know how ineffective out-patient programs have been. Out-patient programs are just stopping off places on their way to their next “fix.”

Court ordered treatment does not work. No form of treatment is going to work unless the person themselves is ready to admit there is a problem and is willing to allow treatment programs to have the desired effect on their behavior.

Court ordered treatment will continue to cost the taxpayers of Kansas. Under the provisions of SB 123, a person who is repeatedly convicted of drug offenses will be repeatedly ordered into treatment. At what point do we say “enough is enough?”

In the Quad County Task Force area, just as with all areas of the state, almost every drug offender we arrest has been through treatment or on community corrections with treatment at least once – and most of them several times. At taxpayer expense. The offenders know how to work the program and when know they are going to be tested.



Even if the offender is found in violation it only amounts to a few days in jail to "get their attention" and they are right back at their illicit activity.

Finally, we are opposed to any form of decriminalizing drug offenses. We are not opposed to treatment for those arrested for simply possessing or using drugs. We are opposed to treatment in lieu of incarceration for any person **arrested** for more serious drug offenses but who are ultimately convicted of lesser crimes. We have to look at what a person was arrested for rather than what they were convicted of.

However, we continue to be opposed to placing persons on treatment time and time again at taxpayer expense – either yours or ours.

One question to ask is - if treatment works so well, why have treatment programs been virtually eliminated in the corrections system? Is it simply the cost as some would maintain, or is it because it is a marginally effective program?

Thank you for your attention. I would be happy to answer your questions.



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Phill Kline  
*Attorney General*

**Testimony in Opposition of SB 123**  
Before the Senate Judiciary Committee  
Kyle G. Smith  
On behalf of Attorney General Phill Kline,  
the Kansas Bureau of Investigation  
and the Kansas Peace Officer's Association  
February 12, 2003

Chairman Vratil and Members of the Committee,

You have heard me appear time and time again in front of this committee urging increased sentences for various criminal activities. It might surprise you today to hear that I actually support the concept of the use of increased treatment for persons convicted of possession charges. I truly believe that solving the drug problem in this country is metaphorically a three-legged stool - enforcement, treatment and education. Without all three legs, we are doomed to fall.

From talking to colleagues in states that have active drug court programs, I have learned that rigorous supervision, coupled with well-designed and funded treatment, can have a significant and beneficial impact. Unfortunately, even in the best of times, it has been my observation that education, treatment and law enforcement have not been adequately funded, and given the current economic situation, that seems unlikely to change.

SB 123, does not, as I had hoped, mandate drug courts throughout the state or provide resources for treatment. It merely dumps hundreds of drug abusers and traffickers out of the prisons and into our local communities, while providing no additional community service workers, probation officers, community corrections officers, treatment professionals or law enforcement officers to deal with this criminal flood. It does this by simply decriminalizing all kinds of drug possession, and makes it retroactive.

SB 123 is not designed to help people with drug addictions. SB 123 is not designed to protect the public. SB 123 is designed to save the state money.

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I have attached an outline showing the concerns law enforcement has with this legislation by section. For purposes of this testimony and in the interest of time, I will merely hit on some of the low lights.

This legislation doesn't just apply to first time or second time offenders, or even tenth time offenders. Under the definition of persons eligible for this "non-prison sanction" the only sentence for persons with 5, 10 or 20 prior convictions, and a like number of failed treatments, is more treatment. SB 123 decriminalizes not all drug possession felonies; cocaine, methamphetamine, heroin, whatever. Unless the person convicted has a record of drug trafficking or multiple serious person felony convictions, the only sentence is "non-prison sanction".

Under section 1(e), departure is authorized only for those persons classified under subsection (a)(2) – persons with the prior person felony convictions. The rules of statutory construction dictate that to list one thing is to exclude all others. This is a hidden way of saying that departure is not authorized for persons in section (a)(1), regardless of the number of prior felony convictions and regardless of how poorly they have done or their attitude about future treatment.

Section 1(f)(1) makes discharge from the non-prison sanctioned program possible under only two scenarios. First, if there is a conviction of a new felony *other than additional new felony convictions for possession of controlled substances*; or second, a *pattern* of intentional conduct demonstrating the offender's refusal to participate in treatment, as established by a judicial finding. So, not only can a person who has multiple prior drug possession convictions, multiple prior failures on probation and parole and multiple prior failures on treatment, be sentenced to non-prison sanction but *after sentencing*, even committing the *exact same offense over again*, another felony possession count or even a hundred, there is no further consequence or punishment.

Imagine the deterrence factor of such a law: You can commit the crime as often as you wish and nothing more can be done to you and you will never, ever, do time.

I would also note section 1(e) would prohibit misdemeanors being considered by the court as grounds for revocation. So even if the person, after being convicted, beats his wife, gets a DUI, or commits vehicular homicide, revocation will still not be an option.

In subsection (f)(1)(B), the wording "pattern of intentional conduct," implies numerous intentional violation acts. How many times is a 'pattern'? How many times must a person fail to go to treatment or participate?

Later in the act, page 18, section 7, lines 20-25, are additional consequences, which can be imposed for a person who violates the treatment. *"Offenders who have been sentenced pursuant to section 1, and amendments thereto, and who violate a condition of the drug and alcohol abuse treatment program shall be subject to an additional nonprison sanction."*

The language does on to state this could include fines, community service, intensified treatment, house arrest and electronic monitoring or up to 60 days in a county jail, at the county's, not the state's expense. What happens if they have no money for fines, won't participate in community service, etc?

As to the 60 days in the county jail, you will note this is an unfunded mandate that you are putting on already overstrained county sheriffs and jails.

Section 3 makes this act apply retroactively to all persons who are currently incarcerated or on probation or parole for these possession charges. I mentioned earlier this will release hundreds of drug *traffickers* as well as drug possessors. It is a fact that a large number of trafficking charges are dealt down to possession charges. This is particularly true in dealing with methamphetamine manufacturers and dealers as it provides a lower but still felony plea that has a factual basis. Passage of this bill will put these drug dealers and manufacturers back out on the streets.

This bill reduces the penalty sentences available for methamphetamine. Those of you who have served on this committee for any length of time will be aware of the incredible problems that methamphetamine has caused Kansas: addiction, poisoned soil and water, burned children, burned homes, injured officers. To save money, do we really want to add to that toll?

I would note that the bill provides no additional resources. The treatment that is proposed is to be paid for by the defendants. Section 2(d). Having spent seven years in the narcotics division of the KBI, I would suggest to you that addicts are not a reliable and adequate source of funding. To say that we are moving drug addicts from prison to treatment makes good headlines. But it is a sham unless there are treatment options and resources available. Ask the treatment professionals about how many extra beds they have, and the extra time the community corrections and court service officers have.

As has been noted, most of these people do not go to prison directly from sentencing. Under current law, the presumptive sentence for a possession charge is probation, which means almost all of these individuals have already failed, while under supervision, to comply with the court's conditions of probation. So, what this bill does is dump on the cities and counties of this state hundreds of addicted felons, many of whom are in fact dealers and manufacturers, who have demonstrated their inability or unwillingness to comply with the rules of law. By providing no resources for treatment or supervision, we are dooming them to failure and dooming our citizens to suffer the predation that will result from their return to a life of crime.

On behalf of the law enforcement community, the people who will be stuck cleaning up this mess, we would urge the defeat of SB 123.

I'd be happy to stand for questions.

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. 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 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 a statewide, mandatory, standardized risk assessment tool or instrument validated for drug abuse treatment program placements and shall include a clinical interview with a mental health professional. Such assessment shall assign a high or low risk status to the offender and include a recommendation concerning drug abuse treatment for the offender.

(c) The sentencing court shall commit the offender to treatment in a drug abuse treatment program until determined suitable for discharge by

Concern: section (e) below would prohibit 'departure' sentencing for these felons, no matter how many prior convictions, no matter how badly they failed in previous treatment, no matter their attitude.

Good to have the assessment, but how fund?

14-4



1 the court but the term of treatment shall not exceed 18 months.

2 (d) Offenders who are assigned a high risk status shall be supervised  
3 by community correctional services. Offenders who are assigned a low  
4 risk status shall be supervised by court service officers.

5 (e) Placement of offenders under subsection (a)(2) shall be subject  
6 to the departure sentencing statutes of the Kansas sentencing guidelines  
7 act.

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

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

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

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

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

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

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

30 (2) supervision and monitoring of all persons who are convicted of a  
31 felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,  
32 and meet the requirements of section 1, and amendments thereto, and  
33 whose sentence requires completion of a certified drug abuse treatment  
34 program, as provided in this section;

35 (3) treatment options to address the continuum of services needed  
36 to reach recovery: Detoxification, rehabilitation, continuing care and af-  
37 tercare, and relapse prevention;

38 (4) treatment options to incorporate family and auxiliary support serv-  
39 ices; and

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

42 (b) The presentence drug abuse assessment shall be conducted by a  
43 drug abuse treatment program certified in accordance with the provisions

Do community corrections and courts services officers have the resources to absorb several hundred more clients?

ONLY reasons to revoke!

- Not even if they keep committing the same felony, over and over again.
- Not even for numerous misdemeanors, like DUI, beating their wife, etc.
- Must be 'conviction' - major policy shift and which puts major burden on local jails.
- Requires "pattern" of treatment failure, so how many violations equals a 'pattern'?

1 of this subsection to provide assessment and supervision services. A drug  
2 abuse treatment program shall be certified by the secretary of corrections.  
3 The secretary may establish qualifications for the certification of pro-  
4 grams, which may include requirements for supervision and monitoring  
5 of clients; fee reimbursement procedures; handling of conflicts of inter-  
6 est; delivery of services to clients unable to pay; and other matters relating  
7 to quality and delivery of services by the program. The certification shall  
8 be for a four-year period. Recertification of a program shall be by the  
9 secretary. To be eligible for certification under this subsection, the sec-  
10 retary shall determine that a drug abuse treatment program: (1) Meets  
11 the qualifications established by the secretary; (2) is capable of providing  
12 the assessments, supervision and monitoring required under subsection  
13 (a); (3) has employed or contracted with certified treatment providers;  
14 and (4) meets any other functions and duties specified by law.

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

27 (d) The cost of any certified drug abuse treatment programs for any  
28 person shall be paid by such person. If financial obligations are not met  
29 or cannot be met, the sentencing court shall be notified for the purpose  
30 of collection or review and further action on the offender's sentence.

31 (e) The secretary of corrections is hereby authorized to adopt rules  
32 and regulations to carry out the provisions of this section.

33 New Sec 3. (a) Persons who were convicted of a felony violation of  
34 K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, but prior to the  
35 effective date of this act, shall have their sentences modified according  
36 to the provisions of this section. Persons who meet the requirements of  
37 section 1, and amendments thereto, shall have such persons' sentence  
38 modified and be subject to the mandatory drug abuse treatment  
39 programs.

40 (b) (1) The department of corrections shall conduct a review and  
41 prepare a report on all persons who committed such crimes during such  
42 dates. A copy of the report shall be transmitted to the inmate, the county  
43 or district attorney for the county from which the inmate was sentenced

} Only funding in bill is to have convicted  
Felons with a drug addiction pay for it.

} Retroactive application.  
Would put hundreds of felons who have  
already demonstrated that they can not  
or will not abide by court orders/supervision,  
out on the streets.  
Constitutional question on interfering with  
contract by negating plea bargains.

1 and the sentencing court.

2 (2) The department of corrections shall complete and submit to the  
3 appropriate parties the report on all imprisoned inmates who were con-  
4 victed of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July  
5 1, 1993 but prior to the effective date of this act, and who have greater  
6 than 180 days to serve on such inmates' sentence prior to such inmates'  
7 initial release date. The department of corrections shall review inmates  
8 based on such inmate's custody or security classification in the following  
9 order: Minimum, within 60 days of the effective date of this act; medium,  
10 within 90 days of the effective date of this act; and maximum, within 120  
11 days of the effective date of this act.

12 (c) Prior to the modification of the sentence of offenders who were  
13 convicted of a second or subsequent violation of K.S.A. 65-4160, and  
14 amendments thereto, the department of corrections shall review such  
15 offenders' records and make a finding that the safety of the members of  
16 the public will not be jeopardized by such modification of sentence.

17 (d) The modification of sentence as determined by the department  
18 of corrections shall be deemed to be correct unless objection thereto is  
19 filed by either the person or the prosecution officer within the 60-day  
20 period provided to request a hearing. If an objection is filed, the sen-  
21 tencing court shall determine the person's modification of sentence. The  
22 burden of proof shall be on the prosecution officer to prove that the safety  
23 of the members of the public will be jeopardized by such modification of  
24 sentence.

25 (e) (1) Within 60 days of the issuance of such report, the prosecution  
26 officer shall have the right to request a hearing by filing a motion with  
27 the sentencing court, regarding the modification of the sentence under  
28 this act to be held in the jurisdiction where the original criminal case was  
29 filed. The secretary of corrections shall be provided written notice of any  
30 request for a hearing. If a request for a hearing is not filed within 60 days  
31 of the issuance of the report, the department shall modify the person's  
32 sentence to one provided for under this act and provide notification of  
33 that action to the person, the prosecution officer, and the court in the  
34 jurisdiction where the original criminal case was held. The secretary of  
35 corrections shall be authorized to implement a modified sentence as pro-  
36 vided in this act, if the secretary has not received written notice of a  
37 request for a hearing by the close of normal business hours on the fifth  
38 business day after expiration of the 60-day period.

39 (2) In the event a hearing is requested and held, the court shall de-  
40 termine whether the safety of the members of the public will be jeop-  
41 arized by such modification of sentence.

42 (3) In the event a hearing is requested, and the court deems the  
43 hearing is necessary, the court shall schedule and hold the hearing within

Possible conflict of interest in having the state agency which stands to gain financially by pushing them out the door be in charge of the decision.

Burden is on prosecution – Normally it is on party who wants to change the current law.

No right to hearing on public safety – discretionary.

1 60 days after it was requested and shall rule on the issues raised by the  
2 parties within 30 days after the hearing.

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

How pay for the court hearings, attorneys?

5 (5) Nothing contained in this section shall be construed as requiring  
6 the appearance in person of the offender or creating such a right of ap-  
7 pearance in person of the offender at the hearing provided in this section  
8 regarding the modification of a sentence under this section.

9 (6) The court shall enter an order regarding the person's modification  
10 of sentence and forward that order to the secretary of corrections who  
11 shall administer the modification of sentence.

12 (f) All sentence modifications that result in an offender being re-  
13 leased from a state correctional facility shall be placed under the super-  
14 vision of community corrections.

Again, are there resources within community corrections?

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

19 (2) In the case of any person to whom the provisions of this section  
20 shall apply, who was sentenced prior to the effective date of this act, but  
21 is in county jail waiting to be admitted into a department of corrections  
22 facility after the effective date of this act, the secretary of corrections is  
23 authorized to implement a modified sentence as provided in this act  
24 within 180 days of the effective date of this act.

25 Sec. 4. K.S.A. 2002 Supp. 21-4603d is hereby amended to read as  
26 follows: 21-4603d. (a) Whenever any person has been found guilty of a  
27 crime, the court may adjudge any of the following:

28 (1) Commit the defendant to the custody of the secretary of correc-  
29 tions if the current crime of conviction is a felony and the sentence pre-  
30 sumes imprisonment, or the sentence imposed is a dispositional departure  
31 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
32 term provided by law;

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

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

43 (4) assign the defendant to a community correctional services pro-

1 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
2 a departure for substantial and compelling reasons subject to such con-  
3 ditions as the court may deem appropriate, including orders requiring full  
4 or partial restitution;

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

10 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
11 21-4603b and amendments thereto;

12 (7) order the defendant to attend and satisfactorily complete an al-  
13cohol or drug education or training program as provided by subsection  
14 (3) of K.S.A. 21-4502 and amendments thereto;

15 (8) order the defendant to repay the amount of any reward paid by  
16 any crime stoppers chapter, individual, corporation or public entity which  
17 materially aided in the apprehension or conviction of the defendant; repay  
18 the amount of any costs and expenses incurred by any law enforcement  
19 agency in the apprehension of the defendant, if one of the current crimes  
20 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
21 3809 and amendments thereto or aggravated escape, as defined in K.S.A.  
22 21-3810 and amendments thereto; or repay the amount of any public  
23 funds utilized by a law enforcement agency to purchase controlled sub-  
24 stances from the defendant during the investigation which leads to the  
25 defendant's conviction. Such repayment of the amount of any such costs  
26 and expenses incurred by a law enforcement agency or any public funds  
27 utilized by a law enforcement agency shall be deposited and credited to  
28 the same fund from which the public funds were credited to prior to use  
29 by the law enforcement agency;

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

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

35 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
36 (7), (8), (9) and (10); or

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

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

1 (2) If the court orders restitution, the restitution shall be a judgment  
2 against the defendant which may be collected by the court by garnishment  
3 or other execution as on judgments in civil cases. If, after 60 days from  
4 the date restitution is ordered by the court, a defendant is found to be in  
5 noncompliance with the plan established by the court for payment of  
6 restitution, and the victim to whom restitution is ordered paid has not  
7 initiated proceedings in accordance with K.S.A. 2002 Supp. 60-4301 *et*  
8 *seq.* and amendments thereto, the court shall assign an agent procured  
9 by the attorney general pursuant to K.S.A. 75-719 and amendments  
10 thereto to collect the restitution on behalf of the victim. The administra-  
11 tive judge of each judicial district may assign such cases to an appropriate  
12 division of the court for the conduct of civil collection proceedings.

13 (c) In addition to or in lieu of any of the above, the court shall order  
14 the defendant to submit to and complete an alcohol and drug evaluation,  
15 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
16 4502 and amendments thereto.

17 (d) In addition to any of the above, the court shall order the defend-  
18 ant to reimburse the county general fund for all or a part of the expend-  
19 itures by the county to provide counsel and other defense services to the  
20 defendant. Any such reimbursement to the county shall be paid only after  
21 any order for restitution has been paid in full. In determining the amount  
22 and method of payment of such sum, the court shall take account of the  
23 financial resources of the defendant and the nature of the burden that  
24 payment of such sum will impose. A defendant who has been required  
25 to pay such sum and who is not willfully in default in the payment thereof  
26 may at any time petition the court which sentenced the defendant to  
27 waive payment of such sum or any unpaid portion thereof. If it appears  
28 to the satisfaction of the court that payment of the amount due will im-  
29 pose manifest hardship on the defendant or the defendant's immediate  
30 family, the court may waive payment of all or part of the amount due or  
31 modify the method of payment.

32 (e) In imposing a fine the court may authorize the payment thereof  
33 in installments. In releasing a defendant on probation, the court shall  
34 direct that the defendant be under the supervision of a court services  
35 officer. If the court commits the defendant to the custody of the secretary  
36 of corrections or to jail, the court may specify in its order the amount of  
37 restitution to be paid and the person to whom it shall be paid if restitution  
38 is later ordered as a condition of parole or, conditional release or *post-*  
39 *release supervision.*

40 (f) When a new felony is committed while the offender is incarcer-  
41 ated and serving a sentence for a felony or while the offender is on pro-  
42 bation, assignment to a community correctional services program, parole,  
43 conditional release, or postrelease supervision for a felony, a new sentence



1 shall be imposed pursuant to the consecutive sentencing requirements of  
 2 K.S.A. 21-4608, and amendments thereto, and the court may sentence  
 3 the offender to imprisonment for the new conviction, even when the new  
 4 crime of conviction otherwise presumes a nonprison sentence. In this  
 5 event, imposition of a prison sentence for the new crime does not con-  
 6 stitute a departure. When a new felony is committed while the offender  
 7 is on release for a felony pursuant to the provisions of article 28 of chapter  
 8 22 of the Kansas Statutes Annotated, a new sentence may be imposed  
 9 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608  
 10 and amendments thereto, and the court may sentence the offender to  
 11 imprisonment for the new conviction, even when the new crime of con-  
 12 viction otherwise presumes a nonprison sentence. In this event, imposi-  
 13 tion of a prison sentence for the new crime does not constitute a  
 14 departure.

15 (g) Prior to imposing a dispositional departure for a defendant whose  
 16 offense is classified in the presumptive nonprison grid block of either  
 17 sentencing guideline grid, prior to sentencing a defendant to incarceration  
 18 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
 19 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H,  
 20 or 3-I, ~~4-E or 4-F~~ of the sentencing guidelines grid for drug crimes, *prior*  
 21 *to sentencing a defendant to incarceration whose offense is classified in*  
 22 *grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes*  
 23 *and whose offense does not meet the requirements of section 1, and*  
 24 *amendments thereto, prior to revocation of a nonprison sanction of a*  
 25 *defendant whose offense is classified in grid blocks 4-E or 4-F of the*  
 26 *sentencing guideline grid for drug crimes and whose offense does not meet*  
 27 *the requirements of section 1, and amendments thereto, or prior to rev-*  
 28 *ocation of a nonprison sanction of a defendant whose offense is classified*  
 29 *in the presumptive nonprison grid block of either sentencing guideline*  
 30 *grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for*  
 31 *nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, or 3-I, ~~4-E or 4-F~~*  
 32 *of the sentencing guidelines grid for drug crimes, the court shall consider*  
 33 *placement of the defendant in the Labette correctional conservation*  
 34 *camp, conservation camps established by the secretary of corrections pur-*  
 35 *suant to K.S.A. 75-52,127, and amendment thereto or a community in-*  
 36 *termediate sanction center. Pursuant to this paragraph the defendant*  
 37 *shall not be sentenced to imprisonment if space is available in a conser-*  
 38 *vation camp or a community intermediate sanction center and the de-*  
 39 *fendant meets all of the conservation camp's or a community intermediate*  
 40 *sanction center's placement criteria unless the court states on the record*  
 41 *the reasons for not placing the defendant in a conservation camp or a*  
 42 *community intermediate sanction center.*

43 (h) The court in committing a defendant to the custody of the sec-

1 retery of corrections shall fix a term of confinement within the limits  
2 provided by law. In those cases where the law does not fix a term of  
3 confinement for the crime for which the defendant was convicted, the  
4 court shall fix the term of such confinement.

5 (i) In addition to any of the above, the court shall order the defendant  
6 to reimburse the state general fund for all or a part of the expenditures  
7 by the state board of indigents' defense services to provide counsel and  
8 other defense services to the defendant. In determining the amount and  
9 method of payment of such sum, the court shall take account of the  
10 financial resources of the defendant and the nature of the burden that  
11 payment of such sum will impose. A defendant who has been required  
12 to pay such sum and who is not willfully in default in the payment thereof  
13 may at any time petition the court which sentenced the defendant to  
14 waive payment of such sum or any unpaid portion thereof. If it appears  
15 to the satisfaction of the court that payment of the amount due will im-  
16 pose manifest hardship on the defendant or the defendant's immediate  
17 family, the court may waive payment of all or part of the amount due or  
18 modify the method of payment. The amount of attorney fees to be in-  
19 cluded in the court order for reimbursement shall be the amount claimed  
20 by appointed counsel on the payment voucher for indigents' defense serv-  
21 ices or the amount prescribed by the board of indigents' defense services  
22 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
23 thereto, whichever is less.

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

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

34 (l) The secretary of corrections is authorized to make direct place-  
35 ment to the Labette correctional conservation camp or a conservation  
36 camp established by the secretary pursuant to K.S.A. 75-52,127, and  
37 amendments thereto, of an inmate sentenced to the secretary's custody  
38 if the inmate: (1) Has been sentenced to the secretary for a probation  
39 revocation, as a departure from the presumptive nonimprisonment grid  
40 block of either sentencing grid, ~~or~~ for an offense which is classified in  
41 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug  
42 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H; ~~or 3-I, 4-E, or 4-F~~ of the  
43 sentencing guidelines grid for drug crimes, *or for an offense which is*

1 *classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for*  
2 *drug crimes and such offense does not meet the requirements of section*  
3 *1, and amendments thereto, and (2) otherwise meets admission criteria*  
4 *of the camp. If the inmate successfully completes a conservation camp*  
5 *program, the secretary of corrections shall report such completion to the*  
6 *sentencing court and the county or district attorney. The inmate shall*  
7 *then be assigned by the court to six months of follow-up supervision*  
8 *conducted by the appropriate community corrections services program.*  
9 *The court may also order that supervision continue thereafter for the*  
10 *length of time authorized by K.S.A. 21-4611 and amendments thereto.*

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

14 (n) *In addition to any of the above, for felony violations of K.S.A. 65-*  
15 *4160 or 65-4162, and amendments thereto, the court shall require the*  
16 *defendant who meets the requirements established in section 1, and*  
17 *amendments thereto, to participate in a certified drug abuse treatment*  
18 *program, as provided in section 2, and amendments thereto, including*  
19 *but not limited to, an approved after-care plan. If the defendant fails to*  
20 *participate in or has a pattern of intentional conduct that demonstrates*  
21 *the offender's refusal to comply with or participate in the treatment pro-*  
22 *gram, as established by judicial finding, the defendant shall be subject to*  
23 *revocation of postrelease supervision or probation and the defendant shall*  
24 *serve the underlying prison sentence as established in K.S.A. 21-4705, and*  
25 *amendments thereto. Upon completion of the underlying prison sentence,*  
26 *the defendant shall not be subject to a period of postrelease supervision.*  
27 *The amount of time spent participating in such program shall not be*  
28 *credited as service on the underlying prison sentence.*

29 Sec. 5. K.S.A. 2002 Supp. 21-4705 is hereby amended to read as  
30 follows: 21-4705. (a) For the purpose of sentencing, the following sen-  
31 tencing guidelines grid for drug crimes shall be applied in felony cases  
32 under the uniform controlled substances act for crimes committed on or  
33 after July 1, 1993:  
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How function? Which of the three sentences in the box?

14-13

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Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	1 Misdemeanor	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 170 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 69	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28		29 28 26		28 27 24
IV	42 40 37	36 34 31	32 30 28	26 24 22	22 20 18		16 15 14		12 11 11

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

14-14

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Category	A	B	C	D	E	F	G	H	I	
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record	
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138	
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46	
III	51 49 46	47 44 41	42 40 37	36 34 32	32 31 28					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
Border Box
Presumptive Imprisonment

14-15

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. K.S.A. 2002 Supp. 21-4714 is hereby amended to read as  
12 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-

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. K.S.A. 2002 Supp. 22-3716 is hereby amended to read as  
37 follows: 22-3716. (a) At any time during probation, assignment to a com-  
38 munity correctional services program, suspension of sentence or pursuant  
39 to subsection (d) for defendants who committed a crime prior to July 1,  
40 1993, and at any time during which a defendant is serving a nonprison  
41 sanction for a crime committed on or after July 1, 1993, or pursuant to  
42 subsection (d), the court may issue a warrant for the arrest of a defendant  
43 for violation of any of the conditions of release or assignment, a notice to

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

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.*

Treatment works when motivated –  
 Hopefully by a desire to change or at least fear of consequences.  
 Another un-funded mandate on local sheriffs and jails.  
 Constitutionally inconsistent with Section 4, p.10, lines27-28  
 regarding time not counting toward sentence.

26 Sec. 8. K.S.A. 65-4160 is hereby amended to read as follows: 65-  
 27 4160. (a) Except as authorized by the uniform controlled substances act,  
 28 it shall be unlawful for any person to possess or have under such person's  
 29 control any opiates, opium or narcotic drugs, or any stimulant designated  
 30 in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments  
 31 thereto. ~~Except as provided in subsections (b) and (c),~~ Any person who  
 32 violates this subsection shall be guilty of a drug severity level 4 felony.

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

REDUCES PENALTIES FOR METH!  
 Serious policy change with serious consequences.

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

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

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

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

7 Sec. 9. K.S.A. 2002 Supp. 75-5291 is hereby amended to read as  
8 follows: 75-5291. (a) (1) The secretary of corrections may make grants to  
9 counties for the development, implementation, operation and improve-  
10 ment of community correctional services including, but not limited to,  
11 restitution programs, victim services programs, preventive or diversionary  
12 correctional programs, community corrections centers and facilities for  
13 the detention or confinement, care or treatment of offenders as provided  
14 in this section except that no community corrections funds shall be ex-  
15 pended by the secretary for the purpose of establishing or operating a  
16 conservation camp as provided by K.S.A. 75-52,127 and amendments  
17 thereto.

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

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

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

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

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

42 (E) any offender who is determined to be "high risk or needs, or  
43 both" by the use of a statewide, mandatory, standardized risk assessment



1 tool or instrument validated for community correctional placements; or  
2 (F) placed in community correctional services programs as a condi-  
3 tion of supervision following the successful completion of a conservation  
4 camp program.

5 (3) Notwithstanding any law to the contrary and subject to the avail-  
6 ability of funding therefor, adult offenders sentenced to community su-  
7 pervision in Johnson county for felony crimes that occurred on or after  
8 July 1, 2002, but before July 1, 2004, shall be placed under court services  
9 or community corrections supervision based upon court rules issued by  
10 the chief judge of the 10th judicial district. The provisions contained in  
11 this subsection shall not apply to offenders transferred by the assigned  
12 agency to an agency located outside of Johnson county. The provisions of  
13 this section shall expire on July 1, 2004.

14 (4) Nothing in this act shall prohibit a community correctional serv-  
15 ices program from providing services to juvenile offenders upon approval  
16 by the local community corrections advisory board. Grants from com-  
17 munity corrections funds administered by the secretary of corrections  
18 shall not be expended for such services.

19 (5) The court may require an offender for whom a violation of condi-  
20 tions of release or assignment or a nonprison sanction has been estab-  
21 lished, as provided in K.S.A. 22-3716, and amendments thereto, to serve  
22 any time for the sentence imposed or which might originally have been  
23 imposed in a state facility in the custody of the secretary of corrections  
24 without a prior assignment to a community correctional services program  
25 if the court finds and sets forth with particularity the reasons for finding  
26 that the safety of the members of the public will be jeopardized or that  
27 the welfare of the inmate will not be served by such assignment to a  
28 community correctional services program.

29 (b) (1) In order to establish a mechanism for community correctional  
30 services to participate in the department of corrections annual budget  
31 planning process, the secretary of corrections shall establish a community  
32 corrections advisory committee to identify new or enhanced correctional  
33 or treatment interventions designed to divert offenders from prison.

34 (2) The secretary shall appoint one member from the southeast com-  
35 munity corrections association region, one member from the northeast  
36 community corrections association region, one member from the central  
37 community corrections association region and one member from the  
38 western community corrections association region. The deputy secretary  
39 of community corrections and field services shall designate two members  
40 from the state at large. The secretary shall have final appointment ap-  
41 proval of the members designated by the deputy secretary. The commit-  
42 tee shall reflect the diversity of community correctional services with re-  
43 spect to geographical location and average daily population of offenders

1 under supervision.

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

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

- 8 (A) Efficiencies in the delivery of field supervision services;
- 9 (B) effectiveness and enhancement of existing interventions; and
- 10 (C) identification of new interventions.

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

- 13 (A) measurable goals and objectives;
- 14 (B) projected costs;
- 15 (C) the impact on public safety; and
- 16 (D) the evaluation process.

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

22 Sec. 10. K.S.A. 65-4160 and K.S.A. 2002 Supp. 21-4603d, 21-4705,  
23 21-4714, 22-3716 and 75-5291 are hereby repealed.

24 Sec. 11. This act shall take effect and be in force from and after its  
25 publication in the Kansas register.

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