Approved: April 4, 2003
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on February 21, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Allen (E)

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:
Senator David Adkins
Trista Curzydlo, Kansas Bar Association (written only)

Others attending: see attached list

SB 185 - Concerning driving under the influence; eliminating the voluntary intoxication defense
Chairman Vratil opened the hearing on **SB 185**. Senator Adkins testified in support of **SB 185** which he said provides Kansas law enforcement with another valuable tool to address drunk driving. He said that this legislation would provide for forfeiture of vehicles upon a third DUI offense with the proceeds being split between the law enforcement agency making the arrest and a DUI crime victims fund. He added that the bill would also repeal the defense of voluntary intoxication in both criminal and civil proceedings. He attached to his written testimony a series of memoranda prepared by several law students that included a legislation statutory comparison and constitutional analysis of forfeiture, and a summary of the Kansas vehicle forfeiture law. (Attachment 1)

Discussion and questions regarded some of the asset forfeiture funds possibly going to drug education and treatment programs, the use of the voluntary intoxication defense in Kansas, and proof of intent issue.

Trista Curzydlo submitted written testimony on behalf of the Kansas Bar Association in opposition to **SB 185**. Ms. Curzydlo clarified KBA's concern regarding the Kansas standard asset seizure and forfeiture act. She stated that **SB 185** requires a conviction for an individual to be sentenced, but the proposal is not clear whether a conviction is required prior to triggering seizure of the automobile or vessel. She said that the KBA is strongly opposed to any legislation that allows for seizure and forfeiture to occur without a conviction. Ms. Curzydlo also said another area of concern that needs remedied is that this bill allows for a law enforcement officer to seize an automobile or vessel "used in the commission" of the crime when the property seized may not belong to the individual charged with the crime. (Attachment 2)

Kyle Smith, Kansas Bureau of Investigation, commented briefly on the voluntary intoxication issue and the prosecution of some past cases.

After Committee discussion, the Chair closed the hearing on **SB 185**.

Final Action on:
SB 123 - Drug convictions; possession is a level D4 classification; mandatory drug treatment; border boxes on D4 replaced with probation boxes
Chairman Vratil reviewed **SB 123**, and called for discussion and consideration of proposed amendments submitted by the Kansas Sentencing Commission. (Attachment 3) He explained that the concern of the opponents who testified on this bill focused on the retroactive provisions. He talked about the example given by one of the opponents of an offender initially charged with a Level 2 drug offense, and through plea bargaining the individual pleads guilty to D4 offense. The result would be to make this person eligible for a drug treatment program even though there was evidence that the severity of the offense was greater then D4. The Chair said he believed that this information would be revealed in either the pre-sentencing report or the public safety review, and would be available to the judge in deciding whether that individual is a threat to public safety and should be eligible for the program.

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 21, 2003 in Room 123-S of the Capitol.

After considerable discussion and clarifications by Barbara Tombs of the Kansas Sentencing Commission, the Chair called for a motion on the amendments proposed by the Kansas Sentencing Commission. Senator Goodwin made a motion to amend the bill with the amendments proposed by the Kansas Sentencing Commission, seconded by Senator Haley, and the motion carried.

Chairman Vratil distributed copies of the Department of Corrections proposed amendments to **SB 123**, and asked the Committee members to review them before the next meeting. (Attachment 4)

The Chair announced the Committee would continue final action on **SB 123** at the next scheduled meeting.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 24, 2003.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE JUDICIARY COMMITTEE GUEST LIST

Pg. 1

DATE: Friday Feb. 21, 2003

NAME	REPRESENTING
[illegible] White	KCDAA
Trisha Curzydlo	KS Bar Assn.
Jeff Bottenberg	State Farm
Joseph Molina	AG office
Brent Widick	SRS
Amy Bertrand	Judicial Branch
Brenda Harmon	KSC
Barb Tombs	KSC
Ramona Doerksen	KCSL
Marilynn Ault	KCSDV
[illegible]	Stotts.
Ernie Kutzley	AARP
Diane Albert	KDOR-Vehicles
Barb Conant	KTLA

STATE OF KANSAS

8021 BELINDER ROAD
LEAWOOD, KANSAS 66206
(913) 226-9612
SenatorAdkins@aol.com

STATE CAPITOL, ROOM 503-N
TOPEKA, KANSAS 66612
(785) 296-7369
adkins@senate.state.ks.us

SENATOR DAVID ADKINS

Testimony before the Senate Committee on Judiciary
January 28, 2003
SB 185

Dear Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear in support of SB 185.

In 2001, 96 people died in alcohol-related crashes on Kansas roads, and 2,508 people were injured. The National Highway Traffic Safety Administration estimates that 17,380 people were killed in alcohol-related crashes in 2000 in the U.S.; that is 41 percent of the people killed in traffic crashes. The agency suggests that for every DUI arrest, there are 772 occurrences of drunk driving. These tragic statistics urge us to continue to be vigilant in our attempts as public policy makers to address drunk driving as a significant public safety and public health threat.

SB 185 provides Kansas law enforcement with another valuable tool to address drunk driving.

This legislation would provide for forfeiture of vehicles upon a third DUI offense with the proceeds being split between the law enforcement agency making the arrest and a DUI crime victims fund administered by the attorney general. Additionally, the bill would repeal the defense of voluntary intoxication in both criminal and civil proceedings.

Attached to this testimony is a series of memoranda prepared by the UMKC law students that includes a legislation statutory comparison, constitutional analysis of forfeiture and a summary of Kansas vehicle forfeiture.

Again, thank you for your consideration of my interest in this important issue.

Respectfully submitted,

David Adkins

Senate Judiciary
2-21-03
Attachment 1-1

Legislation Statutory Comparison

Forfeiture of vehicles is recognized in many states as a penalty for the commission of certain crimes ranging from drug convictions to vehicles used in commission of a felony. In particular, several states have provisions for forfeiture in drunken driving cases usually to punish repeat offenders. Some of the states with such statutes are New York, Wisconsin, Alaska, Minnesota, Ohio, Louisiana, Tennessee, Oklahoma, Pennsylvania, South Carolina, Nevada, and Michigan. The Kansas statute has provisions contained in part in forfeiture statutes in other jurisdictions.

The proposed Kansas statute contains the following key elements:

1. Definition of vehicle;
2. A number of convictions (three) for drunk driving before the forfeiture occurs;
3. A provision for sale of the vehicle and dispersal of funds;
4. Exemptions to forfeiture for innocent vehicle owners and perfected security interests;
5. Website posting of driving offenders;
6. Eliminating the "voluntary intoxication" defense in the State of Kansas.

The similarities and differences in these key elements in other jurisdictions are as follows:

Element 1. Definition of vehicle.

The proposed Kansas statute encompasses most every type of motorized vehicles short of wheel chairs. This is a very broad interpretation of vehicle that seems to be the

norm in forfeiture statutes. The Alaska statute for example, ALASKA STAT. § 38.35.036 (2001), is similar to Kansas in that it is also very broad in definition of vehicle. Alaska's statute allows for seizure of the same types of vehicles that Kansas allows including aircraft. The forfeiture of aircraft is unique to Kansas, Alaska and a few other jurisdictions. Inclusion of aircraft is an important point because it puts the same deterrence on flying while intoxicated as driving. Most any type of vehicle commonly used for transportation purposes is subject to seizure in the different states with forfeiture statutes. The proposed Kansas statute seems to be right on track with other jurisdictions.

As a side note, Tennessee does not allow for forfeiture of tractors. Seemingly they would be included in the Kansas Statute, and could be subject to controversy since Kansas is a primarily agricultural state. It would probably be unnecessary to include tractors, as they do not present the same dangers as an automobile operated by an intoxicated person. Nor is there as great an occurrence of intoxicated tractor operation on the roads of Kansas.

Element 2. Number of convictions before forfeiture.

The proposed Kansas statute provides for forfeiture upon the third conviction for driving under the influence within a ten-year period. The number of incidents that triggers forfeitures of vehicles varies widely between the different jurisdictions.

For example, Wisconsin has a similar provision to the proposed Kansas statute that allows forfeiture on the third conviction. WIS. STAT. § 346.65 (2001). However, Alaska allows for forfeitures after the second conviction and gives the judge the power to order forfeiture based on a public good theory. ALASKA STAT. § 28.35.036 (2001).

Michigan also allows for forfeitures upon the second conviction, however the forfeiture is not mandatory. MICH. COMP. LAWS § 257.625n (2002). Michigan also ties forfeiture to the severity of the act. Ohio allows for forfeiture after two convictions but ties the forfeiture to a certain time period. For example, if an individual is convicted two times within five years they are subject to forfeiture. OHIO REV. CODE ANN. § 4503.23.4 (Anderson 2002). The proposed Kansas statute also has a time period for convictions of ten years in this or any other jurisdiction in the United States. The proposed Kansas statute takes the middle of the road approach and balances the extremes of the different jurisdictions. It also looks at the time periods from the last conviction and the number of offenses the individual previously had.

Element 3. A provision for sale of vehicle and dispersion of funds.

The proposed Kansas statute allows for the sale of vehicles after the forfeiture and the dispersion of funds from the forfeiture. The proposed Kansas statute appropriates half of the obtained funds from the forfeiture to go to the local law enforcement agency that made the arrest and the other half to be transferred to the crime victim's compensation fund to provide for DUI educational programs and DUI victim assistance programs.

Most jurisdictions have relatively the same provision as far as the sale of vehicles. However, the appropriation of the funds varies widely. For example, Wisconsin gives half of the proceeds to pay for court costs and any remaining dollars goes to the school system. WIS. STAT. § 346.65 (2001). While the formula for where proceeds from forfeiture sales go differs widely, most all jurisdictions give some money to the court and

law enforcement agencies and the remainder of the funds goes to the victims or an assistance program.

Element 4. Exemptions to forfeiture for innocent vehicle owners and perfected security interests.

Kansas's asset, seizure and forfeiture provisions are incorporated into the proposed Kansas Statute. Therefore, Kansas's asset, seizure and forfeiture exemptions is also incorporated. KAN. STAT. ANN. § 60-4106. The exemptions to forfeiture of property, including vehicles, are primarily the same among the many jurisdictions that have the exceptions provisions in their statutes. The exemptions are in place to protect innocent car owners from losing their vehicle when they themselves did not commit or knowingly assist in the act. The exemptions also protect those with a security interest in a vehicle such as a bank or rental car agency. Many jurisdictions with forfeiture laws have subtle differences between their exemptions, however, the exemptions are primarily in place to protect the property of the innocent owners and the proposed Kansas statute achieves these same results.

Element 5. Website posting for drivers whose license has been suspended or revoked.

We have researched this idea extensively and have been unable to find another jurisdiction that uses this type of punishment. Many jurisdictions use this type of posting in the case of sex offenders and sexual predators, but not for drivers whose license has been suspended or revoked.

Element 6. Eliminating the "voluntary intoxication" defense in Kansas.

In the state of Kansas, the voluntary intoxication defense is currently recognized as a defense to the commission of a crime. KAN. STAT. ANN. § 21-3208(2) (2001); *See* State v. Papst, 44 P.3d 1230, 1236-1237 (2002). The proposed Kansas statute seeks to eliminate the voluntary intoxication defense in both criminal and civil proceeding within the state and therefore the defense would be unavailable in any possible forfeiture proceedings.

However, other jurisdictions maintain the "voluntary intoxication" defense. For example, Ohio recognizes the defense of voluntary intoxication if the defendants can establish that they were so influenced by alcohol or drugs that they could not form the purpose or have the knowledge required by the elements of the crime charged. Under this defense the defendants could not be held accountable for the crime charged. This is true even if the defendant intended to become intoxicated.

Comparable to the proposed Kansas statute that eliminated the voluntary intoxication defense, the United States Supreme Court held that a Montana law that eliminated the defense of voluntary intoxication was not unconstitutional simply because it prevented judges and juries from considering intoxication in determining whether a defendant intended to commit the crime charged. *Montana v. Egelhoff*, 518 U.S. 37, 56 (1996). In reaching that decision, Justice Scalia noted that lawmakers should be free to decide what evidence is relevant in determining whether or not a crime has been committed. *See id.* at 56.

1-6

Constitutional Analysis: Forfeiture of Vehicles Operated Under the Influence

Kansas can adopt a constitutional statute that would allow forfeiture of automobiles and watercraft used to commit the offense of driving drunk. The Fifth Amendment contains the most obvious means of attacking a forfeiture statute, and the owner of a seized vehicle may attack on the basis of the Double Jeopardy, Due Process, or Takings Clause. The Supreme Court has used different tests in evaluating the constitutionality of forfeiture statutes, depending on which of these clauses was asserted. Under the Eighth Amendment, an owner could challenge the forfeiture statute on the basis that it constitutes an excessive fine. None of these arguments should be effective.

Double Jeopardy

The double jeopardy clause protects against multiple punishments for the same offense. *U.S. v. Ursery*, 518 U.S. 267 (1996). *Ursery* involved two cases, one in which the defendants first were convicted and then faced forfeiture proceedings, and a second in which the forfeiture came first. In the second case, police discovered marijuana being grown next to and inside the defendant's house. The United States instituted civil forfeiture proceedings against the house, and the defendant ultimately paid $13,250 to settle the forfeiture claim in full. Before this settlement, the defendant was indicted, and ultimately was found guilty by a jury. In this case, the Sixth Circuit overturned his criminal conviction on the basis that it violated double jeopardy. In the other case, the Ninth Circuit reversed the forfeiture under the same rationale.

The Supreme Court held that civil in rem forfeitures were not "punishment" for purposes of the double jeopardy clause. The court distinguished in rem civil forfeitures as remedial civil actions, from potentially punitive in personam civil penalties such as fines. The difference between the two is that the latter are aimed at a person, and the former are aimed at a property.

In reaching its decision, the court utilized a two-part test from the case of *U.S. v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984)(involving forfeiture of firearms after the owner was acquitted of dealing firearms without a license). First, the court would look to whether the legislature intended the particular forfeiture statute to be a remedial civil sanction or a criminal penalty. *Ursery*, 518 U.S. at 277-78. Second, the court would look to whether the forfeiture proceeding, by the "clearest proof," would be so punitive in fact as to establish that it could not be legitimately viewed as civil in nature despite any legislative intent. *Id.* The court stated that the fact there is a connection between a criminal violation and a forfeiture, is far from meeting this "clearest proof" standard. *Id.* at 292. On applying this test, the court reversed both cases, and found that neither violated double jeopardy.

Cases such as *Ursery* and its progeny demonstrate that double jeopardy should not pose a significant obstacle to the forfeiture statute being proposed. In situations where the owner was not the driver, they could never assert double jeopardy under the proposed statute, since only the driver could have also received criminal penalties based on the same conduct. In cases where the owner is the operator, a constitutional challenge on the basis of double jeopardy should fail so long as the legislature indicates the statute is a remedial civil sanction. In order to negate the presumption of the statute's remedial civil

nature, a petitioner would have to show by the "clearest proof" that it ought to be viewed as a criminal penalty. The court in *Ursery* seems to have focused primarily on whether the forfeiture statutes reviewed served important non-punitive goals. Because forfeiture statutes can serve many purposes, and because of the high burden placed on a petitioner, this second prong should be easy to satisfy.

Due Process and Takings Clauses

In *Bennis v. Michigan*, 516 U.S. 442 (1996), the Supreme Court held that the forfeiture of a wife's interest in a car she and her husband owned jointly, and which was forfeited as a result of her husband's using it in violation of Michigan's indecency law during an encounter with a prostitute, was not a violation of the due process Clause.

Ms. Bennis argued that she was entitled to contest abatement of the car by showing that she did not know her husband would use the car to violate Michigan's indecency law. The court majority relied on a "long and unbroken line of cases" holding that an owner's interest in property my be forfeited by reason of the use to which the property was put, even though the owner did not know the property would be so used. *Id.* at 446. The court traced this line of cases back to the 1827 case of *The Palmyra*, 12 Wheat. 1, 6 L.Ed. 531 (1827), a case dealing with a privateer ship that was seized and forfeited before the owner had been convicted of privateering. This chain of cases also includes *Van Oster v. Kansas*, 272 U.S. 465 (1926). *Van Oster* involved a Kansas forfeiture law from the Prohibition-era. The law was applied against an automobile used in illegal transportation of intoxicating liquor. The court found the forfeiture did not violate due process. The *Bennis* court summarized this chain of cases as uniformly

1-9

holding that the guilt or innocence of the owner is irrelevant because of the legal fiction that it is the property itself that is guilty. *Bennis*, 516 U.S. at 446-451.

The court in *Bennis* also found that the forfeiture being reviewed did not constitute a taking of private property for public use in violation of the takings clause. Interestingly, the court reached this conclusion by reasoning that, if the forfeiture did not violate the Fourteenth Amendment and due process, the property was transferred by virtue of that proceeding from Ms. Bennis to the State, and therefore the State had no duty to compensate her since it had already lawfully obtained the property. *Id.* at 452. In other words, the forfeiture could not violate the takings clause because it did not violate the due process clause.

The *Bennis* decision has been cited and commented on in literally hundreds of cases, articles and law reviews. Much of this attention has been negative. Regardless, *Bennis* remains good law. Based on the foregoing, the forfeiture statute being proposed should survive attacks that focus on due process or the Taking Clause.

Excessive Fines

At first glance, the Eighth Amendment seems to pose the most significant threat to the type of statute at issue. In *Austin v. U.S.*, 509 U.S. 602 (1993), the United States filed an in rem action in federal district court against Austin's mobile home and auto body shop under 21 U.S.C. §§881(a)(4) and (a)(7), which provided for the forfeiture of vehicles and real property used or intended to be used to facilitate the commission of certain drug-related crimes. The Supreme Court held that the Eighth Amendment's excessive fines clause applies to in rem civil forfeiture proceedings. This means that

regardless of whether the forfeiture statute is viewed as being criminal or civil in nature, so long as it is designed at least in part to punish, it is subject to the Excessive Fines Clause. Hence, it is difficult to imagine a forfeiture statute that would not be subject to the Excessive Fines Clause. Having decided that the clause applied in *Austin*, the Court declined establishing a test for determining whether a forfeiture was constitutionally excessive, and remanded the matter. The court did not advocate a test for excessiveness until *U.S. v. Bajakajian*, 524 U.S. 321 (1998).

In *Bajakajian*, the respondent pled guilty to violating a law that required reporting if a person was transporting more than $10,000 in currency outside the United States. The respondent had been arrested transporting $357,144, and the United States sought forfeiture of the entire amount. On review, the Supreme Court had "little trouble" concluding that forfeiture of the currency constituted punishment. *Id.* at 328. The court stated that the forfeiture did not bear any of the hallmarks of a traditional civil in rem forfeiture in that: the government sought and obtained a criminal conviction instead of proceeding against the currency itself, the forfeiture served no remedial purpose, it was designed to punish offenders, and it could not be imposed upon innocent owners. *Id.* at 331-332. The forfeiture statute was only triggered by conviction of an underlying felony, and only applied to the person convicted.

Having found the forfeiture constituted a punishment and thus a "fine" within the meaning of the Excessive Fines Clause, the court had to determine whether the forfeiture was "excessive." The court found little guidance in the text and history of the Excessive Fines Clause, and so turned to other sources in order to formulate a test for excessiveness. *Id.* at 335-336. First, the court looked to its decisions in Cruel and Unusual Punishment

cases, and found the principle that legislatures have broad authority concerning the appropriate punishment for an offense. *Id.* at 336. Second, the court noted that any judicial determination regarding the gravity of a criminal offense would be inherently imprecise. *Id.* Using these principles, the court concluded that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportionate to the gravity of the defendant's offense. *Id.*

Based on this test, the court found that forfeiture of the respondent's entire $357,144 would violate the Excessive Fines Clause since it was grossly disproportionate to the offense of not reporting. The court noted several facts in support of its conclusion, among them that the violation was unrelated to any other illegal activities, the money was the proceeds of lawful activity, and that it was being transported to pay a lawful debt. The court also noted that under the Sentencing Guidelines, the maximum sentence the defendant could have faced was six months, and the maximum fine only $5,000. *Id.* at 338.

The Excessive Fines Clause will almost certainly apply to the proposed forfeiture statute. Although the proposed law arguably serves remedial purposes, it would be difficult if not impossible to argue that it did not have a punitive element as well. For instance, under the current draft proposal, a judge would not have discretion over whether to order the forfeiture. Furthermore, the law only targets vehicles that have been operated by repeat offenders. While the inclusion of an innocent owner defense is desirable, it also shows a recognition that forfeiture is a hardship for owner's to bear, and indicates an unwillingness that innocent people suffer that hardship. The question then is whether it is grossly disproportionate to have to forfeit your vehicle because you committed the

offense of operating it while under the influence or allowing it to be operated by someone under the influence.

Bennis v. Michigan is of limited use in analyzing excessiveness. *Bennis* pre-dates *Bajakajian*, and was not expressly decided on excessiveness grounds. However, an innocent spouse losing her interest in a vehicle could seem excessive, and court members may have considered this and held the forfeiture statute constitutional anyway. Even assuming this, the facts show that Ms. Bennis and her husband owned another vehicle, and had purchased the forfeited vehicle for only $600. Since the value of a vehicle can vary widely, it is not clear whether the court would have reached the same conclusion if Ms. Bennis had held a larger financial stake in the vehicle.

Nevertheless, a petitioner would face a high burden in showing that forfeiture was grossly disproportionate to the offense. Under the terms of the proposed law, the offender would not face forfeiture unless they are convicted three times in the last ten years of operating while intoxicated. The requirement of past convictions makes the owner-operator more culpable, and so lessens disproportionality between the offense and forfeiture. The requirement of past convictions also means that any owner who was not the operator is more likely to have known that the person they gave permission to operate the vehicle had a prior history. This would lessen the disproportionality between forfeiture and allowing a repeat offender to operate the vehicle. Considering the history of the offender, the high potential for harm to others, and the high burden, it seems likely that in most instances an attack on the statute based on excessiveness should fail.

Conclusion

The proposed forfeiture statute does not violate the Fifth Amendment's Double Jeopardy Clause, Due Process Clause, or Takings Clause, and does not violate the Excessive Fines Clause of the Eighth Amendment. Although the Supreme Court has yet to reach a decision regarding this precise type of statute, the case law indicates that at least under some circumstances, forfeiture of a vehicle is constitutional, even when the owner did not commit the underlying offense. The forfeiture law being proposed for Kansas deals with intoxicated drivers much less harshly than laws already in place in other states (dealt with elsewhere). Because forfeiture statutes vary so widely from state to state, a successful challenge to one would not necessarily succeed against the statute proposed here. In conclusion, the proposed forfeiture statute is constitutional. It has been drafted in such a way that, at the least, it should survive judicial scrutiny more easily than similar laws enacted by other states.

KANSAS VEHICLE FORFEITURE

The state of Kansas recorded 461 motor vehicle related deaths last year. Thirty-three percent of those 461 deaths were alcohol related. Mothers Against Drunk Driving (M.A.D.D.), an advocacy group whose influence has toughened drunk driving laws nationwide since its creation in 1980, reviews each states comprehensive DWI laws every three years. M.A.D.D.'s last report card gave Kansas a "B" grade in 2000. In its critique, M.A.D.D. noted Kansas had solid penalties for failed roadside blood-alcohol content tests, but lacked vehicle forfeiture laws and lower B.A.C. (Blood-Alcohol Content) limits for repeat offenders. In sum, the report suggested Kansas strengthen measures aimed at reducing repeat offenses.

Policy makers have explored a multitude of options in the hope of deterring drunk driving. Administrative license revocation and mandatory roadside B.A.C. tests are preventative in nature, hoping to deter people from considering drunk driving an option. A B.A.C.-interlock system is an example of a more severe method of deterrence. Administered only for repeat offenders, the interlock system prevents a car from starting unless the driver satisfactorily breathes into a mouthpiece and the corresponding analysis computer finds the driver's B.A.C. within legal limits. Aimed at lowering the recidivism rate among drunk drivers, the B.A.C. interlock system can still be defeated with the help of a willing accomplice. Vehicle impoundment has similar goals, the conventional wisdom believing a drunk driver without a car is just a drunk, not a potential killer. Like interlocks, vehicle impoundment has not been overly effective at reducing recidivism levels. License suspension has not fixed the problem either. Studies have shown suspended drivers to have dogged persistence in finding ways to keep driving after they

had lost their license. In one study, nearly 1/3 of two time offenders received a violation or crash citation during their suspension, and 61% of three-time offenders received a similar citation.

With all levels of government, non-profit, and private sector resources examining and analyzing the drunk driving problem, one (of many) recurring themes emerges, that is, drunk driving becomes habitual for many people, and despite repeated dangers to themselves and others, as well as possible criminal sanction, people continue to drive drunk. This fact calls for stronger punitive measures that provide a more permanent sanction that makes it harder for repeat offenders to have the means to drive while intoxicated. Take away someone's license, and they will still drive their car. Nearly everyone has forgotten at one time to take along their license when they drove. Installing an interlock system is a creative solution, but it simply requires a friend's assistance to defeat. Impounding a vehicle is effective, because it deprives someone of the means to drive drunk. Borrowing a car is more difficult than driving one's own without proper legal authority to do so. People do not lend cars readily, especially to someone is known to drink and drive. Impoundment is a good idea, but too temporal. Building upon the idea that depriving one of the instrumentality they use to harm people is the most effective way to avoid the harmful behavior, forfeiture of motor vehicles is the next logical step in reducing the volume of repeat offenders in Kansas. The submitted bill seeks to curb repeat offenses through the seizure and sale of repeat offender's vehicles, whether a motor vehicle or watercraft.

The bill has placed the forfeiture provisions within criminal sanctions in order to trigger the standard asset seizure and forfeiture act, pursuant to KAN. STAT. ANN. § 60-

4104, which authorizes forfeiture for "All offenses, which statutorily and specifically authorize forfeiture." This was seen as the most efficient way to provide for vehicle forfeiture because forfeiture penalties will pattern the DUI criminal sanctions. As a driver faces stiffer criminal penalties for recurring violations under KAN. STAT. ANN. § 8-1567 they will also face the loss of their vehicle as a civil penalty. At the request of Senator Adkins we have included watercraft, in our definition of vehicles that we seek to cover with the goal of reducing the operation of watercraft while under the influence of drugs or alcohol, specifically, the use of smaller personal watercraft that offer the least amount of protection to their operators.

The Division of Motor Vehicles has also been directed to create and maintain a website that discloses individuals who had their licenses revoked or suspended. The site will contain the effective dates of such disclosure, and the type of information that should be included. Public shaming can be an effective tool in deterring undesirable conduct. Humiliation is an inexpensive but highly personal form of punishment. The website should be fairly inexpensive to maintain and will hopeful yield results.

The last amendment made to a pre-existing statute involves the distribution of proceeds secured from the sale of the forfeited vehicle. The standard seizure and forfeiture act is well developed and has many pre-existing processes to distribute proceeds. A small addition was made for forfeitures arising under KAN. STAT. ANN. § 8-1567. Accordingly, the money derived from sale shall be split, with one half going to the arresting law enforcement agency, whether state or local. An arresting state agency will have the funds deposited in the state treasury, with funds credited to that agency's forfeiture fund pursuant to KAN. STAT. ANN. § 60-4117(d)(1). If a local agency made the

arrest, proceeds will be deposited in that agency's city or county agency, and credited to a special trust fund pursuant to KAN. STAT. ANN. § 60-4117(d)(2).

Eliminating voluntary intoxication as an available defense required the repeal of KAN. STAT. ANN. § 21-3208(b). An affirmative statement disallowing the defense was inserted to assure any common law involuntary intoxication defense would be abrogated, and insure it is understood to be unavailable in both criminal and civil proceedings.

Are Poisons Lurking in Human Bodies?

Did you ever wonder what toxic pollutants might be flowing through your veins?

The Centers for Disease Control and Prevention (CDC) answers this question with the release of its first "National Report on Human Exposure to Environmental Chemicals."

The new data, which provide information on concentrations of 27 toxic substances in the U.S. population (more than 100 will be tracked in the future), is part of the National Health and Nutrition Examination Survey, the nation's most comprehensive study.

"This new resource is a significant development in the field of environmental health," says Health and Human Services Secretary Tommy G. Thompson. "It will help us to better track the exposures of Americans to chemicals in the environment and to measure the effectiveness of our public health efforts."

A team of health personnel and laboratory technicians using high-tech, state-of-the-art equipment, staff the mobile examination centers.

The exposure report provides legislators, policymakers and the general public with the first accurate glimpse of the chemicals Americans are exposed to, and will be a step toward making the connection between health and the environment. This first report includes data on substances such as lead, mercury, phthalates (chemicals used in soft plastics and cosmetics), second-hand smoke and pesticides.

Knowing what chemicals Americans are exposed to will determine the hazards and help public health officials and legislators develop sound policies. This type of monitoring has already proved vital in shaping lead poisoning prevention policy.

The study was used to show that the number of Americans with high levels of lead in their blood dropped by 78 percent between 1980 and 1984, demonstrating that prevention efforts were working.

"The good news is that blood lead levels continue to decline among children overall," says Eric Sampson of CDC's Environmental Laboratory and a co-author of the report. "However, other data show that children living in environments placing them at high risk for lead exposure remain a major public health concern."

The exposure report data shows that both lead and cotinine (a marker for second-hand cigarette smoke) levels decreased significantly, documenting that no-smoking policies and lead poisoning prevention work.

The report also showed that certain portions of the population may not be adequately protected from mercury and phthalates. Mercury is found in fish, and its main source is coal-fired power plants.

Phthalates are common in cosmetics, shampoo and soaps. Although the risks posed by exposure to them are unknown, some research suggests that phthalates may be linked to developmental and reproductive disorders, such as reduced sperm counts, testicular abnormalities and early puberty.

The report can be found at: www.cdc.gov/nceh/dls/report

Too Drunk to Be Guilty

An enraged, drunken husband hits his wife. She ends up in the emergency room. An intoxicated, belligerent man barricades himself in his house and threatens police. But when taken to court, both plead that they were too intoxicated to know what they were doing.

Seem unbelievable? It's not. In several states, people ranging from drunken teens trying to burn down their school to the man barricaded in his house in an armed standoff with police have argued they were too intoxicated to know what they were doing.

Michigan legislators last May followed 14 other states to slam the door on this obscure "voluntary intoxication defense."

"We're not saying this has been a successful defense," noted Michigan prosecutor Anica Letica. "What we're saying is that the repeal is better public policy."

In fact, Arkansas legislators said they excluded voluntary intoxication as a criminal defense because it was a public emergency. Such drunkenness, said lawmakers, was detrimental to the welfare and safety of their citizens, and a law excluding the defense was seen as necessary for the preservation of public peace, health and safety.

NEVER 'TOO DRUNK' IN THESE STATES

States that now forbid voluntary intoxication as a defense are:

Arizona	Michigan
Arkansas	Mississippi
Delaware	Missouri
Florida	Montana
Georgia	Pennsylvania
Hawaii	South Carolina
Idaho	Texas
Oklahoma	

1-19

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
www.ksbar.org

February 21, 2003

TO: Chairman Vratil and Members of the Senate Judiciary Committee

FROM: Trista Beadles Curzydlo, KBA Lobbyist

RE: SB 185

Chairman Vratil and Members of the Committee:

My name is Trista Beadles Curzydlo and I am here today representing the Kansas Bar Association. The KBA is a diverse organization with more than 6,000 members, including judges, prosecutors, plaintiffs' attorneys, defense attorneys, and many others.

The Kansas Bar Association appreciates the opportunity to share our thoughts on SB 185 specifically those sections involving the Kansas standard asset seizure and forfeiture act. A seizure under the Act occurs when law enforcement officers take property, in this case an automobile or vessel, into their custody. The subsequent forfeiture occurs if a judge awards ownership of the property to the law enforcement agency. Under the Act, property may be seized under probable cause or without a seizure warrant. While SB 185 requires a conviction for an individual to be sentenced, the proposal is not clear on if conviction is required prior to triggering seizure of the automobile or vessel. The Kansas Bar Association is strongly opposed to any legislation that allows for seizure and forfeiture to occur without a conviction.

SB 185 allows for a law enforcement officer to seize an automobile or vessel "used in the commission" of the crime, this may allow for a circumstance to arise where the property seized does not belong to the individual charged with the crime. This is a situation that should be remedied.

The Kansas Bar Association understands the financial pressures that law enforcement is facing and supports the funding of law enforcement in Kansas. However, the financial need of a law enforcement agency should not be allowed as the driving force behind law enforcement conducting seizures and forfeitures. Property that has been seized and forfeited belongs to the State of Kansas and should be appropriated in a manner that does not reward overzealous use of the Kansas standard asset seizure and forfeiture act.

I thank you for your consideration of this issue and welcome any questions that you may have.

Senate Judiciary
2-21-03
Attachment 2-1

Session of 2003

SENATE BILL No. 123

By Special Committee on Judiciary

2-3

Proposed Kansas Sentencing Commission amendments
February 17, 2003

9 AN ACT concerning crimes and punishment; relating to possession of
10 drugs; mandatory treatment; amending K.S.A. 65-4160 and K.S.A.
11 2002 Supp. 21-4603d, 21-4705, 21-4714, 22-3716 and 75-5291 and
12 repealing the existing sections.
13
14 *Be it enacted by the Legislature of the State of Kansas:*
15 New Section 1. (a) There is hereby established a nonprison sanction
16 of certified drug abuse treatment programs for certain offenders. Place-
17 ment of offenders in certified drug abuse treatment programs by the court
18 shall be limited to placement of adult offenders, convicted of a felony
19 violation of K.S.A. 65-4160 or 65-4162, and amendments thereto:
20 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
21 4-I of the sentencing guidelines grid for drug crimes and such offender
22 has no [~~prior~~] felony conviction of K.S.A. 65- 4142, 65-4159, 65-4161, 65-
23 4163 or 65-4164, and amendments thereto; or
24 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
25 the sentencing guidelines grid for drug crimes and such offender has no
26 [~~prior~~] felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or
27 65-4164, and amendments thereto, if such person felonies committed by
28 the offender were severity level 8, 9 or 10 of the sentencing guidelines — or nongrid offense
29 grid for nondrug crimes and the court finds and sets forth with particu-
30 larity the reasons for finding that the safety of the members of the public
31 will not be jeopardized by such placement in a drug abuse treatment
32 program.
33 (b) (1) As a part of the presentence investigation pursuant to K.S.A.
34 21-4714, and amendments thereto, offenders who meet the requirements
35 of subsection (a) shall be subject to a drug abuse assessment.
36 (2) The drug abuse assessment shall [~~be~~] a statewide, mandatory, stan- — include
37 dardized risk assessment tool [~~or~~] instrument validated for drug abuse treat- — and an
38 ment program placements and shall include a clinical interview with a
39 mental health professional. Such assessment shall assign a high or low
40 risk status to the offender and include a recommendation concerning drug
41 abuse treatment for the offender.
42 (c) The sentencing court shall commit the offender to treatment in a
43 drug abuse treatment program until determined suitable for discharge by

Senate Judiciary
2-21-03
Attachment 3-1

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 —— treatment
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-
ices; and
(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

3-8

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

for all drug abuse assessments and

the Kansas sentencing commission from funds appropriated for such purpose. The Kansas sentencing commission shall contract for payment for such services with the supervising agency. The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state.

such

The community corrections staff and court services officers shall work with the substance abuse treatment staff to ensure effective supervision and monitoring of the offender.

(f)

For the purpose of such mandatory drug abuse treatment programs, upon such modification of the offender's sentence, the offender's sentence shall be a drug severity level 4 felony and required to fulfill the nonprison sanction pursuant to subsection (a) of section 1, and amendments thereto.

3-3

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~~ recommendation 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.
(2) In the event a hearing is requested and held, the court shall de-
termine whether the safety of the members of the public will be jeop-
41 ardized 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

3-4

3-3

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

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

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

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

(f) All sentence modifications that result in an offender being released from a state correctional facility shall be placed under the supervision of community corrections.

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

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

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

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

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

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

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

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

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

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

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

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

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

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

(12) suspend imposition of sentence in misdemeanor cases.

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

3-6

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

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

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

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

(f) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence

shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H~~,~~ *or* 3-I~~, 4-E or 4-F~~ of the sentencing guidelines grid for drug crimes, *prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 1, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 1, and amendments thereto,* or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H~~,~~ *or* 3-I~~, 4-E or 4-F~~ of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

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

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

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

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

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

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

For those offenders who are convicted on or after the effective date of this act,

SENTENCING RANGE - DRUG OFFENSES

~~Category →~~	~~A~~	~~B~~	~~C~~	~~D~~	~~E~~	~~F~~	~~G~~	~~H~~	~~I~~
~~Severity Level ↓~~	~~3 + Person Felonies~~	~~2 Person Felonies~~	~~1 Person & 1 Nonperson Felonies~~	~~1 Person Felony~~	~~3 + Nonperson Felonies~~	~~2 Nonperson Felonies~~	~~1 Nonperson Felony~~	~~2+ Misdemeanors~~	~~1 Misdemeanor No Record~~
~~I~~	~~204 194 185~~	~~196 186 176~~	~~187 178 169~~	~~179 170 161~~	~~170 162 154~~	~~167 158 150~~	~~162 154 146~~	~~161 150 142~~	~~154 146 138~~
~~II~~	~~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 30 28~~	~~26 24 23~~	~~23 22 20~~	~~19 18 17~~	~~16 15 14~~
~~IV~~	~~42 40 37~~	~~36 34 32~~	~~32 30 28~~	~~26 24 23~~	~~21 20 18~~	~~18 17 16~~	~~16 15 14~~	~~14 13 12~~	~~12 11 10~~

~~LEGEND~~
~~Presumptive Probation~~
~~Border Box~~
~~Presumptive Imprisonment~~

SENTENCING RANGE - DRUG OFFENSES

Category → / Severity Level ↓	A 3 + Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felonies	D 1 Person Felony	E 3 + Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felony	H 2+ Misdemeanors	I 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 30 28	26 24 22	23 22 20	19 18 17	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

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

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

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

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

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

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

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

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

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

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

3-13

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
the defendant shall also be attached.
(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
to subsection (d) for defendants who committed a crime prior to July 1,
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-
pended, may impose any sentence which might originally have been im-
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,

an offender whose nonprison sanction is revoked and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a "sexually violent crime" as defined by K.S.A. 22-3717, and amendments thereto, or whose nonprison sanction was revoked as a result of a conviction for a new misdemeanor or felony offense. The provisions of this subsection shall not apply to offenders who are serving or are to begin serving a sentence for any other felony offense that is not excluded from postrelease supervision by this subsection on the effective date of this subsection. The provisions of this subsection shall be applied retroactively. The department of corrections shall conduct a review of all persons who are in the custody of the department as a result of only a revocation of a nonprison sanction. On or before September 1, 2000, the department shall have discharged from postrelease supervision those offenders as required by this subsection.

(f) 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. Such nonprison sanctions shall include, but not be limited to, up to 60 days in a county jail, fines, community service, intensified treatment, house arrest and electronic monitoring.

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

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

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

~~(d)~~ It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other 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
or which might originally have been imposed in a state facility in the
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

3-20

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 con-
20 ditions 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

3-21

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.

Recommended Amendments

KDOC Comments on Specific Sections of SB 123

We addressed this

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. - We have been told by treatment providers that this will be addressed by the time the bill is enacted with the exception of long term residential, which will require the offender to go outside their jurisdiction

OK

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).

addressed is in our amendment

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). - Our intent is to leave it up to the local jurisdiction based on their specific needs the types of treatment needed -

Page 3 New Section 2

We addressed this

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.

Senate Judiciary
2-21-03
Attachment 4-1

KDOC Comments on Specific Sections of SB 123

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 statewide, 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*.