

## MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Vice Chairman Tim Owens at 1:30 p.m. on January 26, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Ward Loyd - Excused  
Representative Eric Carter - Absent

Committee staff present:

Jill Wolters, Revisor of Statutes Office  
Jerry Ann Donaldson, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Nicoletta Buonasera, Legislative Research Department  
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Patricia Biggs, Executive Director Ks Sentencing Commission  
Thomas Stanton, Assistant District Attorney  
Mike Jennings, Deputy District Attorney Sedgwick County

Others attending:

See Attached List.

The vice-chairperson announced a new member to the committee. Representative Oletha Foust-Goudeau was introduced and welcomed to the committee, she has been chosen as a replacement for Representative Betts who went to the Senate.

Staff provided the answers to questions presented by the committee to Secretary Roger Werholtz, at the time of his presentation on the overview on the Department of Corrections. ([Attachment 1](#))

Patricia Biggs, Executive Director, The Kansas Sentencing Commission provided an update on **SB 123** Implementation. ([Attachment 2](#))

The major highlights regarding implementation and present status of **SB 123** are organized into five sections:

1. Treatment: Training and Certifications
2. Supervision: Community Corrections Programs
3. Seminars and Training Conducted on **SB 123**
4. Implementation Manuals
5. Bill Paying

To date, KDOC conducted eleven cognitive training sessions for treatment providers throughout the state. A total of 187 treatment counselors were trained in these sessions.

Community correction plans reviewed, while the majority of plans were viewed as satisfactory, some plans required additional work and were notified. All agencies that received notification submitted updated documents.

The funds allocated to the supervision of additional offenders to Community Corrections under **SB 123**, minus the "hold back" dollars, have been disbursed to each agency to accommodate the estimated case load increases due to **SB 123**.

The presentations, seminars and training conducted were attending by individuals representing the Kansas Legislature, Judges, Community Corrections, Court Services, District Attorneys, County Attorneys, Defense Attorneys, and Substance Abuse and Mental Health treatment professionals, as well as other interested individuals.

CONTINUATION SHEET

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE at 1:30 p.m. on January 26, 2004 in Room 241-N of the Capitol.

A total of 635 **SB 123** Implementation Manuals have been printed and distributed to Community Correction and Treatment providers via US Mail. Additional manuals are being distributed to other interested individuals at their request. Implementation Manuals are also available on the Sentencing Commission's web site: [www.accesskansas.org/ksc/SiteMap.htm](http://www.accesskansas.org/ksc/SiteMap.htm)

The bill paying process has been moved to a centralized process to parallel that used by many Community Corrections Agencies in their work with the JJA. This centralized bill paying process will alleviate the need for each Community Corrections Agency to disburse funds to individual treatment providers.

All offender reimbursements ("co-pay") collected by Community Corrections, and Insurance monies collected by Treatment providers, will be forwarded to the Kansas Sentencing Commission for deposit. No reimbursements have been received to date by the Sentencing Commission.

The Director will get back with the committee on some issues with more information.

Tom Stanton, Hutchinson Assistant District Attorney, appeared before the committee to outline several issues that the implementation of the bill that require immediate correction. (Attachment 3)

The first of those problems involves the fact that the bill does not address the issue of dealing with defendants from out-of-state who are arrested in Kansas, but will require treatment in their home jurisdiction. The second problem the bill does not address those defendants who may obtain treatment at their own expense prior to conviction and at a facility not approved by the DOC, resulting in a requirement that they repeat the treatment, possibly at taxpayers expense, at an approved facility after being convicted. There are other issues that need immediate correction, that the legislation failed to contemplate the crimes of attempted possession, conspiracy to possess or solicitation to possess a controlled substance. Some of the issues could be cleaned up adding or correcting language. There is concerns that there is not sufficient funding for the implementation for **SB 123**, the law as contemplated by the legislature does not address the treatment needs of drug offenders at the earliest stages possible.

Mike Jennings, Deputy District Attorney Sedgwick County appeared before the committee to bring to their attention some of his experience with implementing **SB 123**. He felt there is continuing likelihood that situations will arise in which the purposes of the statute can be fulfilled without complying with the letter of the statute. It might be advisable to give the sentencing judge discretion to find that a given probation/treatment plan does fulfill the goals of the legislation and substantially complies with its requirement. (Attachment 4)

The committee meeting adjourned at 2:40 PM. The next meeting was scheduled for January 27, 2004.

**HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE**  
**GUEST LIST**

DATE 1-26-04

NAME	REPRESENTING
Tom Stanton	KODAA
Mike Jennings	"
JEREMY S BARCLAY	KDOC
Roger Werholtz	KDOC
D. M. Spencer	OSA
Stuart Little	Ks Community Corrections Assoc
Michael L. White	KCDAA
Cristel Carrell	Intern for Rep. Ward
Barry Billings	JACO/2 <sup>nd</sup> Dist. Comm CORRECTIONS
Sandi Fry	KDOC
Kristi Bilyew	KDOC
Peter Goss	Intern for Rep Huntington
Dan Heime S	DCCCA, Inc.



KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Memorandum

Date: January 21, 2004

To: Members of the Corrections and Juvenile Justice Committee  
Members of the Public Safety Budget Committee

From: Roger Werholtz, Secretary

Subject: Data from the Federal Bureau of Justice Statistics

During the overview provided on Tuesday, January 20, 2004, Representative Carter presented a question on the trend data provided by the Federal Bureau of Justice Statistics with regard to the number of property crimes. This data provides the number of property crimes per 1,000 households. This statistic is a measure of crime incidents, not of households experiencing crime. For example, if a particular household experiences two crimes, they would both be included. In other words, there is almost one crime for every two households in the west, but since some households could experience more than one crime, one could not say that almost half of the households were victims of property crime.

If you need further information, please contact Jeremy S Barclay, Special Assistant to the Secretary, at (785) 296-4541.

Sincerely,

Roger Werholtz  
Secretary

c: file



# KANSAS

KANSAS SENTENCING COMMISSION  
Honorable Ernest L. Johnson, Chairman  
District Attorney Paul Morrison, Vice Chairman  
Patricia Ann Biggs, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

## MEMORANDUM

**TO: House Committee on Corrections and Juvenile Justice**

**FROM: Patricia Biggs, Executive Director**

**RE: Update on SB 123 Implementation**

**DATE: January 26, 2004**

### Update on SB 123 Implementation: January 2004

H Sub for SB 123 was signed into law by the Governor this past April and sets mandatory treatment for a target population of offenders convicted of the offense of drug possession. The alternative sentencing structure requires changes to the state's current sentencing policy as well as the development and implementation of policies and procedures to enact SB 123 by the designated date of November 1, 2003.

The Sentencing Commission and the Department of Corrections continue working closely in carrying out the implementation of the requirements set forth in this legislation. Through out the process, input from various stakeholders has been solicited (for example, from treatment providers, mental health professionals, and community corrections programs) and models of other agencies' similar sub-processes have been considered (for example, Juvenile Justice Administration's bill paying process).

The major highlights regarding implementation and present status of SB 123 are presented below and are organized into five sections:

- A. Treatment: Trainings and Certifications
- B. Supervision: Community Corrections Programs
- C. Seminars and Trainings Conducted on SB 123
- D. Implementation Manuals
- E. Bill Paying

**A. Treatment: Trainings and Certifications**

- To date, KDOC conducted eleven Cognitive (*Thinking for a Change*) training sessions for treatment providers throughout the state.
- A total of 187 treatment counselors were trained in these sessions.

Completed Cognitive Behavioral Skills Training Sessions

<u>Dates</u>	<u>Location</u>	<u>Dates</u>	<u>Location</u>
16-19 June	Topeka	22-26 September	Dodge City
7-11 July	Wichita	22-26 September	Lawrence
21-25 July	Lawrence	3-7 November	Wichita
15-19 September	Wichita	17-21 November	Topeka
15-19 September	Salina	1- 5 December	Lansing
		12-16 January	Great Bend

Scheduled Upcoming Cognitive Behavioral Skills Training Sessions

<u>Dates</u>	<u>Location</u>
15-19 March	Salina
12-16 April	Topeka
3-7 May	Hutchinson
7-11 June	Wichita

**Training: Level of Services Inventory – Revised Training (Risk-Needs Instrument)**

- KDOC has also conducted six separate LSI-R training sessions for Community Corrections staff.
- A total of 114 Community Corrections' staff has been trained in the administration of this risk-needs assessment instrument.
- A total of 15 Community Corrections' staff have completed training and are in the process of completing the additional work required prior to achieving certification.
- Three additional LSI-R training sessions for Community Corrections staff are scheduled presently.

<u>Dates</u>	<u>Location</u>	<u>Number Scheduled</u>
February 3-5	Wichita	25
March 30-April 1	Wichita	22
April 6-8	Kansas City	29

**Training: Addiction Severity Index (ASI) and Substance Abuse Subtle Screening Inventory (SASSI)**

- KDOC worked with nationally recognized, certified trainers to organize supplemental training for treatment providers in the ASI (Addiction Severity Index) and in the SASSI (Substance Abuse Subtle Screening Inventory).
- Both the ASI and the SASSI are required "tests" to be administered to offenders under SB 123.
  - The ASI is required multiple times:
    - The Psychiatric Subscale of the ASI serves as the Mental Health Screen at the Assessment Phase
    - Within 30 days of treatment initiation, the full ASI is administered to obtain a "pre-treatment" score.
    - At the conclusion of the treatment phase, a second ASI is administered to obtain a "post-treatment" score.
    - Six months following the conclusion of treatment, a third administration of the ASI is required to rate the longer term impact of treatment.
  - The SASSI is required once at the Assessment phase.

**2003 Senate Bill 123 Update**

Testimony before House Committee on Corrections and Juvenile Justice  
Patricia Biggs, Executive Director, Kansas Sentencing Commission      January 26, 2004

**Certifications: Treatment Type and Location within the State**

As of January 9, 2004, Kansas Department of Corrections certified a total of 89 substance abuse treatment agencies to deliver one or more treatment modalities under the provisions and requirements stemming from Senate Bill 123. The following table lists the total number of certified agencies by individual treatment modality.

<b>Treatment Modality</b>	<b>Number of Certified Agencies</b>
Assessments	80
Social Detoxification	7
Therapeutic Community	1
Intermediate Residential	17
Reintegration/Halfway House	12
Day Treatment	16
Intensive Outpatient	38
Outpatient Individual	75
Outpatient Group	73
Outpatient Family	58
Relapse Prevention/Aftercare	61
Drug/Alcohol Education	56

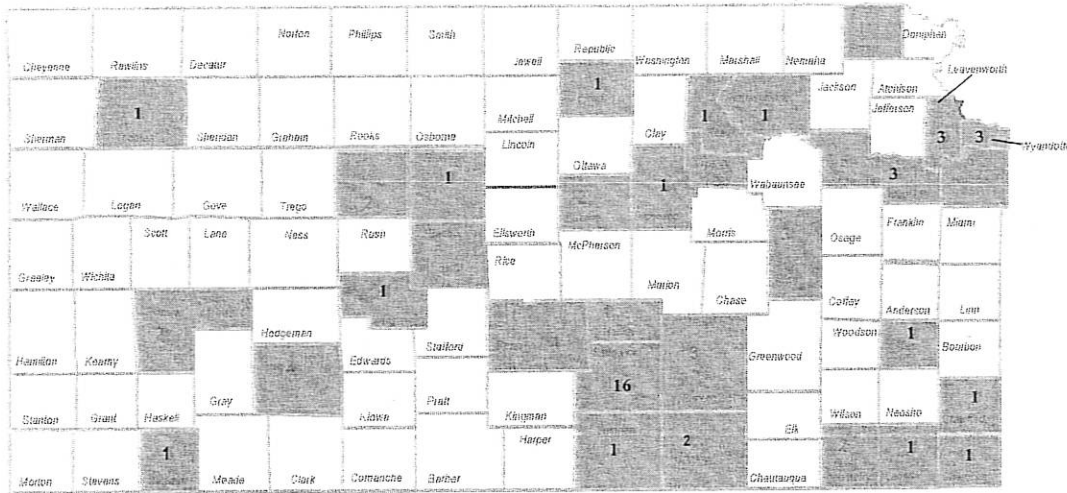
The Senate Bill 123 training team at the Department of Corrections has certified 187 individual counselors in Thinking for a Change, the cognitive-based intervention curriculum required prior to achieving certification.

In the following pages, the treatment modalities listed above are grouped into five categories: (1) Assessment, (2) Social Detoxification, (3) In-Patient Treatment, (4) Out-Patient Treatment, and (5) Drug Abuse Education. For each category of treatment, a map is presented indicating which counties across the state have treatment providers certified to deliver one or more of the services contained within the category.

**2003 Senate Bill 123 Update**

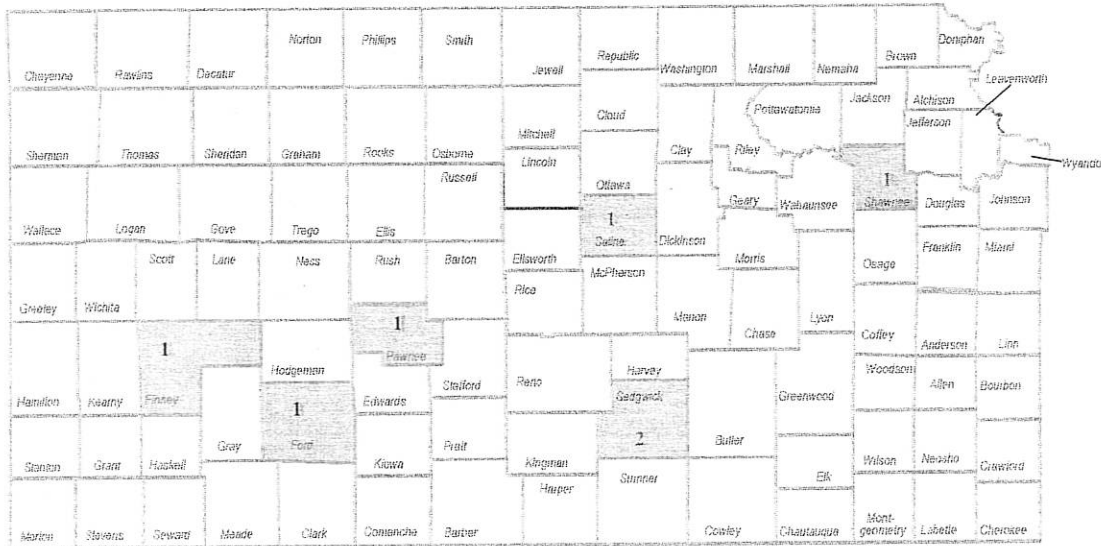
Testimony before House Committee on Corrections and Juvenile Justice  
 Patricia Biggs, Executive Director, Kansas Sentencing Commission January 26, 2004

**Number of SB 123 Certified Assessment Providers  
 By County  
 As of January 9, 2004**



80 treatment agencies are certified to perform substance abuse assessments.

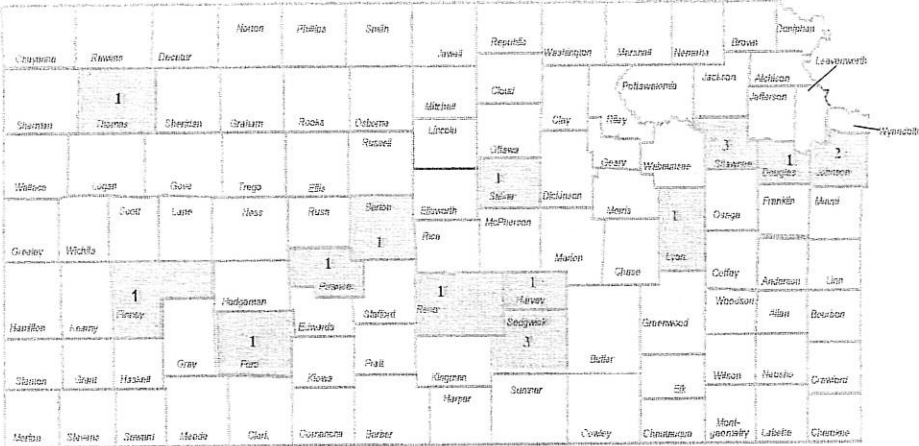
**Number of SB 123 Certified Social Detox Treatment Providers  
 By County  
 As of January 9, 2004**



7 agencies are certified to deliver social detox treatment services.

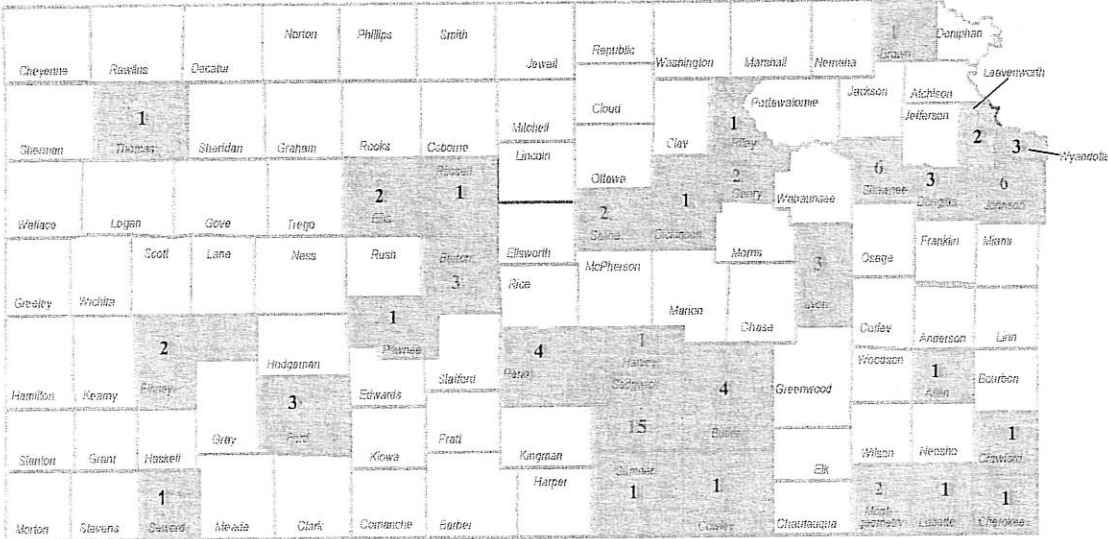


**Number of SB 123 Certified In-Patient Treatment Providers  
 By County  
 As of January 9, 2004**



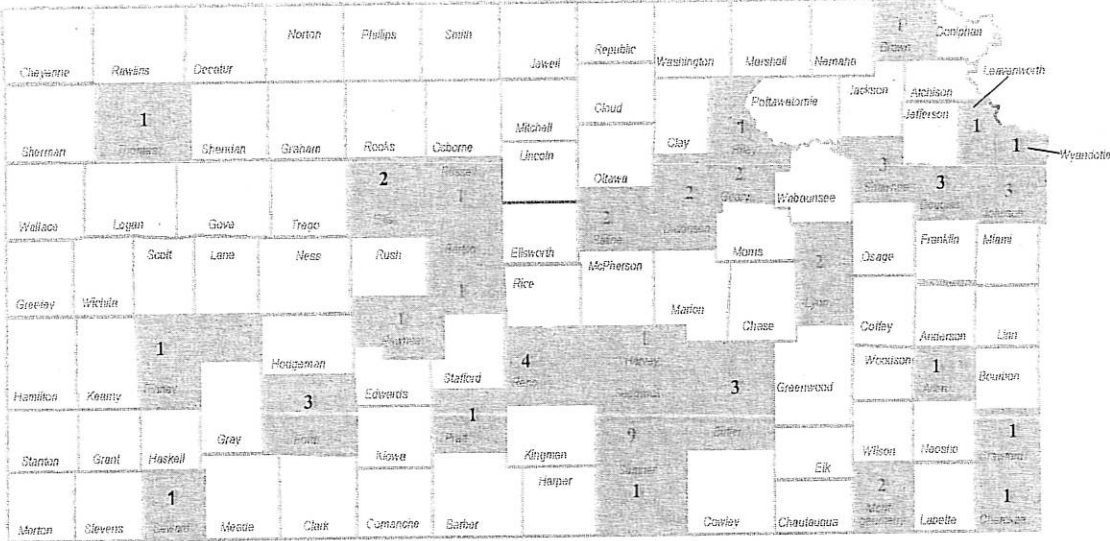
18 agencies are certified to deliver in-patient treatment services.  
 In-Patient treatment services include: Therapeutic Community, Residential In-Patient, and Re-integration/Halfway House modalities.

**Number of SB 123 Certified Out-Patient Treatment Providers  
 By County  
 As of January 9, 2004**



76 agencies are certified to deliver out-patient treatment services.  
 Out-patient treatment includes: Day Treatment, Intensive outpatient, Individual Outpatient treatment, Group Outpatient treatment, Family Outpatient treatment, and Relapse Prevention treatment modalities.

## Number of SB 123 Certified Drug Abuse Education Providers By County As of January 9, 2004



56 agencies offer Drug Abuse Education.

**B. Supervision: Community Corrections Programs**

**Community Corrections Plans Reviewed**

A subcommittee of the Kansas Sentencing Commission reviewed the supervision and treatment plans received from Community Corrections Agencies. While the majority of plans were viewed as satisfactory, some plans required additional work. No plans were assessed as completely inadequate.

The agencies for whom additional work was required on their supervision and/or treatment budgets received an explanatory telephone call and a letter specifying the work needed. All agencies who received such notification submitted updated documents.

**Supervision Funds Disbursed**

The funds allocated to the supervision of additional offenders to Community Corrections under SB 123, minus the "hold back" dollars, have been disbursed to each agency to accommodate the estimated case load increases due to SB 123. The "hold back" dollars are scheduled for disbursement after a mid-point review assessing the number of SB 123 offenders assigned to each jurisdiction compared to the estimated number of SB 123 cases per jurisdiction.

**Offenders under Community Corrections' Senate Bill 123 Supervision:  
 as of January 14, 2004**

Through January 14, 2004, there were a total of 149 offenders referred to Community Corrections for substance abuse treatment assessments. These 149 offenders represent 150 individual SB 123 cases (one offender has two pending SB 123 cases). Of these cases, 46 were referred to Community Corrections in November (30.7%), 69 were referred to Community Corrections in December (46.0%), and 35 were referred in January through January 14<sup>th</sup> (23.3%).

**2003 Senate Bill 123 Update**

Testimony before House Committee on Corrections and Juvenile Justice  
 Patricia Biggs, Executive Director, Kansas Sentencing Commission January 26, 2004

**Court Cases**

Number of Offenders with 123 Court Cases	149
Number of SB123 Court Cases	150

\* One offender has two pending SB123 cases

**Referrals by Month**

November	46 cases	30.7% of referrals
December	69 cases	46.0% of referrals
January (thru 01/14)	35 cases	23.3% of referrals

Total thru 01/14/04 150 cases

Of the 150 cases referred to Community Corrections, 139 of those are open cases presently; 11 cases have closed. Of the cases which have closed, 10 were not sentenced to Community Corrections and one offender deceased.

**Court Case Status**

Open	139
Closed	11
Total	150

**Court Case Closure Reasons**

Not Sentenced to Community Corrections	10
Death	1
Total Closed	11

On January 14, 2004, there were a total of 128 offenders in an "active" Community Corrections status due to the provisions of SB 123. Of these, 94 (73.4%) were at the pre-sentence/evaluation stage; 34 (26.6%) were post-sentence SB 123 offenders. By gender, 90 of these offenders (70%) are male and 38 (30%) are female.

**SB 123 Population under Community Corrections on January 14, 2004**

Status	Male	Female	Total
Adult ISP	25	8	33
Residential	1	0	1
SB123 Pre-Sentence	64	30	94
<b>Total</b>	<b>90</b>	<b>38</b>	<b>128</b>

\*The offender population reflects only active statuses. Offenders in jail, on abscond status or other inactive statuses are not reflected in the counts.

As of January 14, 2003, 117 LSI-R ("Level of Service Inventory-Revised" – the risk/needs assessment) assessments have been completed on offenders referred to Community Corrections under SB123 provisions.

**C. Seminars and Trainings Conducted**

The following table describes the SB 123 presentations completed to date. These presentations were attended by individuals representing the Kansas Legislature, Judges, Community Corrections, Court Services, District Attorneys, County Attorneys, Defense Attorneys, and Substance Abuse and Mental Health treatment professionals, as well as other interested individuals.

The 4 "Kick Off" seminars, conducted between October 7 and October 9, had a total of 334 participants signed-in (89 in Salina, 50 plus 85 in Topeka, 110 in Wichita). The PowerPoint presentations used at these seminars is available on the Sentencing Commission's web site (<http://www.accesskansas.org/ksc/SiteMap.htm>).

We estimate a total of 750 individuals attended one or more of the seminars listed below.

<p><u>September 30 (Tuesday)</u>                  KCA – Kansas Correctional Association meeting                  Topeka – Capitol Plaza                  3:30 – 5:00</p>	<p><u>October 9, 2003 (Thursday)</u>                  SB 123 – Alternative Sentencing Policy for Drug Offenders - Implementation Seminar: "Kick off" - South                  Wichita State University – Sudermann Commons                  1:00 – 3:00</p>
<p><u>October 2 (Thursday)</u>                  KADSPA – Kansas Alcohol and Drug Service Professional Association                  Topeka, Ramada Inn                  10:30 – 2:30</p>	<p><u>October 15, 2003 (Wednesday)</u>                  WY County Bar Association                  Kansas City                  4:00-6:30</p>
<p><u>October 7, 2003 (Tuesday)</u>                  SB 123 – Alternative Sentencing Policy for Drug Offenders - Implementation Seminar: "Kick off" - Central                  Kansas Highway Patrol Training Academy, Salina                  1:00 – 3:00</p>	<p><u>October 21, 2003 (Tuesday)</u>                  KS County/District Attorney Association Fall Conference                  With Paul Morrison, Johnson County DA                  Kansas City                  8:30 – 10:30</p>
<p><u>October 8, 2003 (Wednesday)</u>                  SB 123 – Alternative Sentencing Policy for Drug Offenders - Implementation Seminar: "Kick off" - East                  Jayhawk Towers, Florentine Room, Topeka                  9:00 – 11:00</p>	<p><u>October 21, 2003 (Tuesday)</u>                  3<sup>rd</sup> Judicial District Criminal Bar Association                  Jayhawk Towers, Senate Room, Topeka                  12:00 – 2:00</p>
<p><u>October 8, 2003 (Wednesday)</u>                  SB 123 – Alternative Sentencing Policy for Drug Offenders - Implementation Seminar: "Kick off" - East                  Jayhawk Towers, Florentine Room                  1:30 – 3:30</p>	<p><u>October 21, 2003 (Tuesday)</u>                  Fall Judge's Conference                  Judge Johnson &amp; Judge Rosen</p>

**D. Implementation Manuals**

A total of 635 SB 123 Implementation Manuals have been printed. Manuals were distributed to Community Corrections and Treatment providers via US Mail. Additional manuals are being distributed to other interested individuals at their request. Implementation Manuals are also available on the Sentencing Commission's web site (<http://www.accesskansas.org/ksc/SiteMap.htm>).

## E. Bill Paying

### Centralized Process

The bill paying process has been moved to a centralized process to parallel that used by many Community Corrections Agencies in their work with the Juvenile Justice Administration. This centralized bill paying process will alleviate the need for each Community Corrections Agency to disburse funds to individual treatment providers. Instead, billings will be verified by the supervising Community Corrections Agency and forwarded to the Kansas Sentencing Commission for payment. Supervision funds have been used to fund the additional temporary commission staff person for this administrative process.

### Offender Reimbursements ("co-pays")

All offender reimbursements ("co-pays") collected by Community Corrections, and Insurance monies collected by Treatment providers, will be forwarded to the Kansas Sentencing Commission for deposit. No reimbursements have been received to date by the Sentencing Commission.

### Bills Paid

Through January 22, 2004, a total of \$14,155 has been disbursed by the Kansas Sentencing Commission in response to invoices received from certified SB 123 treatment providers and verified by the supervising Community Corrections agency.

Expenditures of SB 123 treatment funds lag delivered treatment episodes by approximately six to seven weeks. This lag-time can be attributed to the following factors: (a) the monthly billing cycle/invoice completion by treatment providers, (b) the incremental additional time for the Community Corrections' supervising officer and director to receive and verify the treatment invoice from the provider, (c) the time it takes to track each treatment invoice received by the Sentencing Commission, request and receive a check (warrant) from the State Accounts and Reports system, and (d) to mail that check to the treatment provider.

To date, the majority of expenditures so far have been for assessment for which there is one episode cost-capped at \$200. By contrast, other treatment modalities have more continuous occurrences spanning longer durations thus, even though the cost per hour of another treatment modality may be less than the cost for a single unit of assessment (e.g., outpatient-group services are capped at \$25 per hour), the total treatment cost per individual is expected to exceed greatly the cost of the one-time assessment (e.g., the \$25/hour outpatient-group treatment can be 1-8 hours per week for 8-12 weeks indicating a total maximum of \$2,400 per person for this single modality).

Given then the lag in bill submissions coupled with the lower modality cost associated with assessments, we would not expect, nor have we experienced, a reflective average cost basis yet.

Of the \$14,155 disbursed through January 22, 2004:

- 58 Assessments have been paid for a total of \$10,575
  - average cost per assessment: \$182.33
  - maximum per assessment: \$200
  - minimum per assessment: \$150
    - Payment cap: \$200 each
- 2 Intermediate/Residential treatment episodes have been paid for a total of \$2,400
  - average cost per Intermediate/Residential treatment: \$120/day
  - average length of Intermediate/Residential treatment: 10 days
    - Payment cap: \$180 per day; 7-40 days
  - number of offenders: 2

**2003 Senate Bill 123 Update**

Testimony before House Committee on Corrections and Juvenile Justice  
Patricia Biggs, Executive Director, Kansas Sentencing Commission January 26, 2004

- number of treatment programs providing this service: 1
- 6 offenders' engagement in Outpatient-Group treatment services have been paid for a total of \$620
  - These six offenders engaged in a total of 32 hours of outpatient-group treatment.
    - The average length of outpatient-group treatment paid to date is 5.3 hours per person.
  - Average charge per hour of treatment is \$19.38
    - Payment cap: \$25/hour; 1-8 hours per week; 8-12 weeks
  - Two agencies have billed for outpatient-group treatment.
- 6 offenders' engagement in Outpatient-Individual treatment services have been paid for a total of \$560
  - These six offenders engaged in a total of 9 hours of outpatient-individual treatment.
    - The average length of outpatient-individual treatment paid to date is 1.5 hours per person.
  - Average charge per hour of treatment is \$68.33
    - Payment cap: \$80/hour; 1-3 hours per week; up to 18 months
  - Three agencies have been paid for outpatient-individual treatment.

DISTRICT ATTORNEY

Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY

Thomas R. Stanton

ASSISTANT DISTRICT ATTORNEYS

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Faith A. J. Maughan

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Juvenile: (620) 694-2760

January 26, 2004

Honorable Representatives and  
Senators of the State of Kansas:

**TESTIMONY BEFORE THE HOUSE**  
**CORRECTIONS AND JUVENILE JUSTICE COMMITTEE**

January 26, 2004

I wish to thank you for the opportunity to testify before you today. I have previously submitted to the membership of this body a letter outlining two specific problems with the implementation of Senate Bill 123. The first of those problems involves the fact that the bill does not address the issue of dealing with defendants from out-of-state who are arrested in Kansas, but will require treatment in their home jurisdiction. The second problem I have expressed in that letter concerns the fact that the bill does not address those defendants who may obtain treatment at their own expense prior to conviction and at a facility not approved by the Department of Corrections, resulting in a requirement that they repeat their treatment, possibly at taxpayers expense, at an approved facility after being convicted. I have attached a copy of that letter as part of my testimony here today, and will be pleased to answer any questions about those issues.

Today I also wanted to bring up several other issues that have come to light through the implementation of the bill that are in need of immediate correction. The first of those issues is the fact that the legislation failed to contemplate the crimes of attempted possession, conspiracy to possess or solicitation to possess a controlled substance. Kansas case law has long determined that those crimes are Article 33 crimes rather than Article 65 crimes. Because of that fact, these crimes fall outside the scope of Senate Bill 123. This could result in the unintended consequence of persons convicted of those crimes falling outside Senate Bill 123 and never receiving the treatment that is contemplated by the bill. This problem could be corrected by adding language covering attempts, conspiracies and solicitations to the first paragraph of the bill and to any portion of the bill that states when the bill will be applicable. I would note that this problem has been noted by Judge Ernest Johnson of Wyandotte County who is also the Chairman of the Sentencing Commission.

House Corr + JJ  
Attachment 3  
1-26-04

The second issue that has arisen is the ambiguity in the application of the law. Most courts have interpreted the law to apply to those cases where the crime was committed after July 1, 2003, and sentenced after November 1, 2003. It would be helpful if plain language to that effect could be added to the law to make it clear that the statute does not apply retroactively. I understand that there may be a move to apply the statute retroactively, but that would cause a severe problem for supervision services and communities across Kansas. I believe that if you studied the issue of the population in prison for drug possession crimes closely, you would find that, in a vast majority of the cases, those persons have already been given multiple opportunities for treatment. Many persons convicted for possession crimes have prior convictions for which they were placed on probation and given the opportunity for treatment. Treatment failed in their initial possession cases, and it failed again when they were rearrested on new charges. I know that in Reno County persons have never been placed in prison without being given several opportunities to complete treatment. These persons have, unfortunately, already failed several times in treatment, and placing them back in the community and offering them further treatment options will not serve the purposes envisioned by the legislature in implementing this legislation. It would be more desirable to resurrect the treatment programs within the prisons to address the problems of these offenders because placing them back in the communities often results in an increase in property crimes and will clearly overburden the system contemplated by Senate Bill 123.

I have heard concerns from Community Corrections officials there is a real concern that there is not sufficient funding for the implementation for Senate Bill 123. Many of the defendants that will be subject to this legislation will require multiple treatment settings before the law will allow a court to consider revocation. It is my understanding that even subsequent arrests and convictions for possession of controlled substances are not sufficient to result in a revocation of probation. This law is designed to give persons multiple opportunities for treatment, and it is feared that the legislature has miscalculated the amount of funding that will be required to deal with this problem.

I am concerned because the law as contemplated by the legislature does not address the treatment needs of drug offenders at the earliest stages possible. It has been my experience that persons convicted of a misdemeanor charge of possession of marijuana often receive a fine and a minimum jail sentence and are not required to seek treatment. In my experience as a drug prosecutor, many of these persons later return charged with possession of methamphetamine, cocaine or other "hard" drugs. Regardless of the debate over whether marijuana is a gateway drug, the fact is that many persons who start using marijuana end up with methamphetamine problems. This legislature should consider requiring persons convicted of possession of marijuana to obtain drug treatment. I am not suggesting that this court add misdemeanor possession of marijuana to its list of crimes for which Senate Bill 123 is applied, but certainly legislation requiring drug treatment for those arrested and convicted for possession of marijuana should be contemplated. This legislature would never consider not dealing with the person arrested and convicted of driving under the influence of alcohol by requiring treatment, and it has always been curious in my mind why the legislature does not



Testimony  
Page 3

consider possession of marijuana to be a serious enough crime to require that persons convicted of that crime receive treatment.

I again thank you for giving me the opportunity to address these issues that have presented themselves regarding the implementation of Senate Bill 123.

Respectfully submitted,



---

Thomas R. Stanton, SC #14568  
Deputy Reno County District Attorney  
Reno County District Attorney's Office  
210 West First Avenue  
Hutchinson, KS 67501  
620/694-2715

DISTRICT ATTORNEY

Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY

Thomas R. Stanton

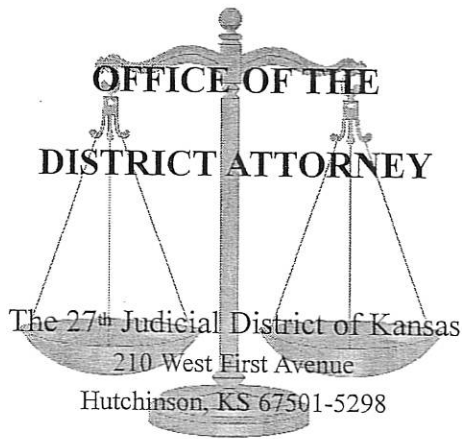
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January 9, 2004

COPY

Honorable Representatives and  
Senators of the State of Kansas:

This letter is to inform you of two issues that have arisen regarding Senate Bill 123 of which you should be aware. We have discovered while trying to implement this legislation issues that have no resolution under the provisions of the bill. The first issue I wish to bring to your attention is the situation that occurs when a person who is not a resident of the State of Kansas is arrested for a drug crime here. Reno County currently has a case in which the defendant is a resident of Iowa. The defendant was operating a commercial vehicle when the defendant was arrested and charged with possession of methamphetamine. The defendant subsequently entered a plea of guilty to the charge of possession of methamphetamine, and the timing of the offense and sentencing falls under the provisions of Senate Bill 123. However, Senate Bill 123 cannot be applied to this defendant. There are treatment centers available where the defendant resides, but none of those treatment centers can be utilized under Senate Bill 123 because they have not been approved by the Kansas Department of Corrections. Under the provisions of the Act, the defendant would have to obtain any treatment in Kansas by a Department of Corrections approved facility. This would require the defendant to move to Kansas in order to complete treatment and community corrections under Senate Bill 123. Obviously, this is not a situation contemplated by the legislation.

The Kansas Department of Corrections has indicated that the only treatment options that will satisfy Senate Bill 123 are those that have been approved by S.R.S. and the Department of Corrections. The only options suggested by Kansas Department of Corrections for situations such as described above are that we require a defendant to move to the State of Kansas until his or her sanctioned treatment has been completed, or that we apply for some sort of departure from the requirements of Senate Bill 123 at the time of sentencing. I see no statutory authorization for such a departure, and I do not believe that it would be within the inherent power of the Court to grant a departure from the provisions of Senate Bill 123 to allow a defendant convicted of a drug possession crime to essentially "opt out" of the programs required by the senate bill. This situation will have state-wide implications because of the number of persons charged with drug possession crimes within this State that do not reside in Kansas. I believe it is imperative that the legislature address this issue during the 2004 legislative session.

The second situation that I would like to present to the legislature is also based on facts in a case arising

in Reno County. In that case, a defendant was arrested after attempting to forge a \$3,000.00 check in order to purchase drugs. When arrested, the defendant was found to be in possession of methamphetamine. After being arrested, the defendant apparently determined that methamphetamine had created too many adverse effects in the defendant's life and the defendant chose to seek treatment. The treatment was obtained using the defendant's own financial resources. However, the treatment was obtained at a facility that, while recognized as a legitimate rehabilitation center by the general public, has not been approved as one of the small number of programs approved by the Kansas Department of Corrections. This creates a situation, therefore, where the defendant will obtain treatment at the expense of the defendant that will not be recognized as sufficient for the defendant's placement pursuant to Senate Bill 123. The defendant will, therefore, have to seek additional treatment at a Kansas Department of Corrections recognized facility in order to complete the requirements of Senate Bill 123.

It has been my experience that a person with a financial stake in the treatment process has a tendency to take the process more seriously, and the chances of success are greater because of the financial stake a person has in successful completion of a program. While the provisions of Senate Bill 123 anticipate the possibility of some reimbursement by a defendant to the State for treatment services, this reimbursement is based on either a defendant having an insurance program that will pay for treatment or having a defendant who is in the position to pay the treatment bill. I am sure that the research conducted by the legislature prior to enacting Senate Bill 123 indicated the fact that the highest percentage of persons addicted to methamphetamine have neither insurance nor the ability to pay for treatment themselves. This results in a situation where the persons in treatment have no financial stake in the outcome of treatment and the financial incentive to successfully complete treatment has been removed.

The chance that a defendant would re-offend by using drugs while on probation substantially increases if the persons in the same treatment program generally have little or no incentive to successfully complete their program. It has been my experience that the influence of persons who are not geared to succeed in their programs on other participants in rehab programs can be very negative, often leading to both persons re-offending by using drugs. It should also be noted that this situation results in the bad public policy of ignoring treatment programs paid for by defendants and requiring them to attend programs mandated by the State and paid by the taxpayers. The fact that the legislation presumes that the defendants will pay for the treatment ignores reality. I believe that this issue should also be addressed at the earliest possible opportunity. Thank you for your time and consideration in reviewing my concerns.

Sincerely,



Thomas R. Stanton  
Deputy Reno County District Attorney

TRS:dw

cc: Keith Schroeder  
Reno County District Attorney

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

From: Mike Jennings, Deputy District Attorney Sedgwick County, and KCDAAs Legislative Chair

RE: Early experience under S.B. 123 calling for legislative correction

DATE: January 26, 2004

Thank you for this opportunity to bring to the Committee's attention some of our experience with implementing S.B. 123. As my colleague, Deputy District Attorney Tom Stanton, has substantiated, there is a continuing likelihood that situations will arise in which the purposes of the statute can be fulfilled without complying with the letter of the statute.

To provide for these situations, it might be advisable to give the sentencing judge discretion to find that a given probation/treatment plan does fulfill the goals of the legislation and substantially complies with its requirements.

House Corr & JJ  
Attachment 2  
1-26-04