

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on February 16, 2006, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused  
Kay O'Connor- excused  
Dwayne Umbarger arrived, 9:37 a.m.  
David Haley arrived, 9:38 a.m.  
Phil Journey arrived, 9:43 a.m.  
Derek Schmidt arrived, 9:51 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Helen Pedigo, Office of Revisor of Statutes  
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Senator Greta Goodwin  
Representative Bill McCreary  
Peter Ninemire, Kansas Families Against Mandatory Minimums  
Representative Ward Loyd  
Representative Pat George  
Kevin A. Graham, Assistant Attorney General, Director of Legislative Affairs  
Patricia Biggs, Executive Director, Kansas Sentencing Commission  
Christopher L. Schneider, Wyandotte County Assistant District Attorney  
Paul L. Morrison, Johnson County District Attorney

Others attending:

See attached list.

The hearing on **SB 507--Jury fee** was opened.

Senator Goodwin spoke in support and provided information regarding the successful use of jury fees in Oklahoma (Attachment 1). The Senator also provided a balloon amendment to clarify that the fee applies only when a jury is requested for a civil case.

Written testimony in opposition was submitted by:

James W. Clark, Kansas Bar Association (Attachment 2)  
Callie Jill Denton, Kansas Trial Lawyers Association (Attachment 3)

There being no further conferees, the hearing on **SB 507** was closed.

The hearing on **HB 2231--Defendant may petition the court to modify certain drug offense prison sentences to certified drug abuse treatment programs** was opened.

Representative Bill McCreary appeared in support and provided background on the bill (Attachment 4). Rep. McCreary also provided a balloon amendment which would return the bill to the standards of **SB 123**. He indicated that funding for both bills will be recouped in savings by prison avoidance.

Peter Ninemire spoke in favor relating his personal experience with substance abuse and his road to recovery (Attachment 5). His research indicates that prison does not work for substance abusers and the treatments proposed in **HB 2231** is an effective way to treat offenders.

Representative Loyd appeared as a proponent indicating **HB 2231** contained provisions by which prosecutors can object to any application for treatment qualification (Attachment 6). Rep. Loyd indicated that **HB 2231** is about mandated rehabilitation and that such programs have high success rates.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on February 16, 2006, in Room 123-S of the Capitol.

Representative George spoke in support relating his personal story regarding substance abuse and how substance abuse treatment helped him successfully overcome the disease ([Attachment 7](#)). Included with his testimony is a letter from Michael Dukakis who has been a champion of this type of program.

Kevin Graham appeared in opposition due to the proposed retroactive provisions in the bill ([Attachment 8](#)). Mr. Graham indicated that in many cases the convictions are a result of plea bargaining. Enactment of this legislation may allow release of offenders that had non-drug related offenses dismissed as part of their plea agreement.

Patricia Biggs spoke in opposition due to several unaddressed and unresolved issues ([Attachment 9](#)). Concerns include:

- Offenders may benefit from the retroactive provisions and could be threats to the community,
- Increased burden on the courts due to requested hearings by affected offenders,
- Increased burden of prosecutors to prove offenders should receive sentence modification,
- Increased burden on treatment providers,
- Need for increased funding,
- Increased resource requirements,
- Possible constitutionality issues, and
- Questions regarding offenders eligibility.

Christopher Schneider appeared in opposition regarding sentence modification on offenders currently in custody ([Attachment 10](#)). He stated that plea agreements were fashioned to protect citizens and benefit both the offender and the State of Kansas. Retroactive changes will frustrate the intent of these agreements as well as create unnecessary litigation resulting in more work for prosecutors and public defenders, more expense, and increased case loads for the courts. Mr. Schneider also questioned the lack of provisions to deal with parole violators and persons convicted of level I and II felonies prior to November 1, 2003.

Paul Morrison spoke in opposition because of the potential legal problems associated with the bill and the possibility of releasing offenders that do not deserve it ([Attachment 11](#)).

Written testimony in support of **HB 2231** was submitted by:  
Senator Donald Betts, Jr. ([Attachment 12](#))  
Representative Oletha Faust-Goudeau ([Attachment 13](#))  
Paul Goseland ([Attachment 14](#))  
Bernard L. Smith ([Attachment 15](#))

There being no further conferees, the hearing on **HB 2231** was closed.

The meeting was adjourned at 10:33 a.m. The next scheduled meeting is February 17, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/16/06

NAME	REPRESENTING
Tom Tunwell	SELF
Kelly Tunwell	Kings
Rhonda Ashby-Helm	Kings Treatment Centers
Leida Patton	Second Story
Jessica Casterline	Rep. George
Margaret McIntire	KCDAA - 18 <sup>th</sup> Judicial District
Christopher Schneider	KCDAA - 29 <sup>th</sup> Judicial District
Michael White	KCDAA
Art Maly	LCR
Jeff Bottenberg	KS Sheriff's Ass'n
Peter Ninemine	FAMM
Jessica Schultz	Kings treatment center
Jennifer Barnes	Kings Treatment Center
Patricia Gallardo	Kings treatment center - Winfield
Heath W. Becker	KING'S TREATMENT CENTER - COVINGTON
JIM CLARK	KDA
Jon Josselyn	Self
KEVIN GRAHAM	A.C.

Attorney  
of Atty

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 02-16-06

NAME	REPRESENTING
Patricia Biggs	KS Sent. Comm
Brenda Harmon	KS Sent Comm
Natalie Gibson	KS Sent Comm
William Hull	Visitor
JOHN J. FRANCIS	Washburn Law Clinic
BRIAN MALONE	Washburn Law Clinic
Steve Himes	Intern
Kerry Porter	Judicial Branch
ERNEST L. JOHNSON	KS SENTENCING COMM. KS DISTRICT JUDGES' ASSN.
Cwyn Belanger	Valeo Recovery Center
Emily Mueller	KCCI
Charmae Kemberling	Proponent on SB <sup>2231</sup> <del>2231</del> amendment
Laura A. Green	Drug Policy Forum of Kansas
Bin Roe	KSSOS

GRETA H. GOODWIN  
 SENATOR, 32ND DISTRICT  
 COWLEY, SUMNER AND  
 PORTION SEDGWICK COUNTIES  
 STATE CAPITOL BUILDING  
 ROOM 403-N  
 TOPEKA, KANSAS 66612-1504  
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 WINFIELD, KANSAS 67156  
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 e-mail: ggoodwin@ink.org



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
 STANDING COMMITTEES:  
 JUDICIARY, RANKING MINORITY MEMBER  
 EDUCATION  
 ASSESSMENT AND TAXATION  
 CONFIRMATION OVERSIGHT  
 JOINT COMMITTEES:  
 CORRECTIONS AND JUVENILE JUSTICE  
 OVERSIGHT, RANKING MINORITY MEMBER  
 STATE BUILDING CONSTRUCTION  
 LEGISLATIVE APPOINTMENTS:  
 KANSAS SENTENCING COMMITTEE  
 SUPREME COURT APPOINTMENTS:  
 ADVISORY COMMITTEES:  
 JUDICIAL COUNCIL PROBATE LAW  
 JUDICIAL COUNCIL JUVENILE OFFENDER/  
 CHILD IN NEED OF CARE  
 CHILD SUPPORT GUIDELINES

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE  
 S.B. 507  
 FEBRUARY 16, 2005

I want to thank the Chair for allowing S.B. 507 to come before you this morning for a hearing. You will find attached to my testimony, a letter from Michael Smith, Chief Judge, for the 19<sup>th</sup> Judicial District. Judge Smith asked me to bring this issue before this committee this session.

I would like to give you additional information on the imposition of a jury fee in a civil case. Oklahoma imposed the same jury fee in 2004. Thereafter, a class action lawsuit challenging the constitutionality of the \$349.00 jury fee imposed was filed. The trial court determined that the statute was constitutional. Thereafter, an appeal was filed in the Oklahoma Supreme Court. Three issues were presented on appeal.

1. Whether the imposition of a jury fee violates the Constitution, which provides that the right to jury trial shall be and remain inviolate, or the guarantee of access to courts.
2. If the collection of jury fees, which may be charged as a prerequisite to accepting the first motion to enter for filing and docketing in a pending action, is constitutional.
3. Whether the \$349.00 jury fee imposed is refundable if no jury is called.

The Court found:

1. The Constitution was never intended to guarantee the right to litigate entirely without expense to the litigants, nor to impose upon the public the entire burden of the expense of the maintenance of the courts. The minimum average costs of providing six and twelve-person juries are \$480.00 and \$840.00 respectively.
2. The \$349.00 fee imposed is clearly inadequate to cover all the expenditures necessary in empanelling a jury. The court held that the fee imposed is reasonable and not excessive nor does it limit the access to justice guaranteed.
3. The highest courts in three states have addressed the issue of whether jury fees must be returned where jury service is not ultimately required. The other opinions hold in favor of retention and are well-reasoned. The Court determined that the \$349.00 jury fee imposed is not subject to refund if jury services are not utilized.

Senate Judiciary

2-16-06

Attachment 1



State of Kansas  
Nineteenth Judicial District  
District Court of Cowley County, Kansas  
Cowley County Courthouse  
Winfield, Kansas 67156

J. MICHAEL SMITH  
District Judge  
Division Three

P. O. BOX 472  
620-221-5470  
FAX 620-221-1097

February 13, 2006

Senator Greta Goodwin  
32<sup>nd</sup> District  
Senate Chambers-State Capitol  
Topeka, Kansas, 66612

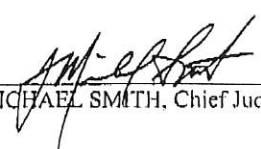
Senator Goodwin:

I note, with interest, Senate Bill 507 and provisions in that bill for a specific deposit of \$349 when a request for a jury trial is made. I write to support that provision. I speak only for myself and not for other judges or judicial organizations

The expense of a jury trial is paid from County funds - the funds budgeted to District Court. It is the obligation of County government to provide facilities for such trials and it is the duty of our citizens to assist in this important function by serving as jurors. Like many other things however, the cost of doing that business continues to go up. From the Court budget we pay the daily fees - mileage - meals. The number of persons we need to summon seems to increase each year. It seems to be only fair that the people who request a jury trial to decide their lawsuit should participate more in the cost of meeting that request. Civil cases are disputes between individuals - private and personal issues as opposed to criminal cases where a public interest is at stake. As it now stands, litigants are able to fund the costs of preparing their case for trial - but local taxpayers are having to pay the expense of the trial itself. It would seem there is little justification for that result. The provisions of SB 507 would more equitably place at least part of the cost of the request on the parties rather than entirely on the taxpayers.

There is one item that perhaps might be discussed when this bill is brought up. The provisions of (e) do not specify that it would be for a civil case only. I respectfully submit that it might be more appropriate to have that subsection start: "*Request for a jury. When a jury is requested in a civil case, .....*". My thinking on this point is that since there are references in the criminal code to provisions in Chapter 60, this addition would, hopefully, avoid any confusion. This is only a suggestion and does not affect my support of the bill and it's result, which would be to provide help with financing jury trials from those requesting them instead of having to fully fund them from taxes.

Thanks for hearing me out on this and for any help you can give this bill to ease the burden on our taxpayers in the funding of civil litigation.

  
J. MICHAEL SMITH, Chief Judge, 19<sup>th</sup> Judicial District



1 (c) *Disposition of fees.* The docket fees and the fees for service of  
2 process shall be the only costs assessed in each case for services of the  
3 clerk of the district court and the sheriff. For every person to be served  
4 by the sheriff, the persons requesting service of process shall provide  
5 proper payment to the clerk and the clerk of the district court shall for-  
6 ward the service of process fee to the sheriff in accordance with K.S.A.  
7 28-110, and amendments thereto. The service of process fee, if paid by  
8 check or money order, shall be made payable to the sheriff. Such service  
9 of process fee shall be submitted by the sheriff at least monthly to the  
10 county treasurer for deposit in the county treasury and credited to the  
11 county general fund. The docket fee shall be disbursed in accordance  
12 with K.S.A. 20-362 and amendments thereto.

13 (d) *Additional court costs.* Except as provided in subsection (e), other  
14 fees and expenses to be assessed as additional court costs shall be ap-  
15 proved by the court, unless specifically fixed by statute. Other fees shall  
16 include, but not be limited to, witness fees, appraiser fees, fees for service  
17 of process, fees for depositions, alternative dispute resolution fees, tran-  
18 scripts and publication, attorney fees, court costs from other courts and  
19 any other fees and expenses required by statute. All additional court costs  
20 shall be taxed and billed against the parties as directed by the court. No  
21 sheriff in this state shall charge any mileage for serving any papers or  
22 process.

23 (e) *Request for a jury.* When a jury is requested, ~~a nonrefundable jury~~ *in a civil case,*  
24 fee in the amount of \$349 shall be paid to the clerk of the district court.  
25 Such jury fee is due and payable when the jury trial request is made  
26 pursuant to K.S.A. 60-247, and amendments thereto. Such jury fee shall  
27 be submitted by the clerk of the district court for deposit in the county  
28 treasury and credited to the county jury fee fund. Disbursements from  
29 the county jury fee fund may only be made to pay jurors' fees pursuant  
30 to K.S.A. 43-171, and amendments thereto.

31 Sec. 2. K.S.A. 60-2001 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its  
33 publication in the statute book.



KANSAS BAR  
ASSOCIATION

Testimony in Opposition to

**SENATE BILL NO. 507**

Senate Judiciary Committee  
February 16, 2006

The Kansas Bar Association is opposed to **SB 507**, which imposes an additional fee of \$349 for requesting a jury trial. The Kansas Bar Association has long supported a uniform docket fee. **SB 507** is a radical departure from such a fee, and opens the door to all sorts of add-on fees that make it difficult to calculate the cost of litigation. The bill is a welcome relief to many proposed docket fee increases in that it appears to apply equally to plaintiffs as well as defendants, whereas docket fees are currently imposed only on plaintiffs.

In addition to its departure from the uniform docket fee concept, the bill is also problematic:

- It appears to contradict the "inviolable" right to jury trial in K.S.A. 60-238, and appears to penalize the requesting party, even though that party may prevail in the litigation.
- It appears to make no allowance for reimbursement in cases that are later settled or a jury trial is subsequently waived.
- It discriminates against Chapter 60 cases when other types of cases, i.e. Chapter 59 and Chapter 61, incur the same expenses where jury trials are permitted.

For the reasons stated above, the Kansas Bar Association is opposed to **SB 507**.

James W. Clark  
KBA Legislative Counsel  
785-234-5696

\* \* \*

Senate Judiciary

2-16-06

Attachment 2





KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

To: Senator John Vratil, Chairman  
Members of the Senate Judiciary Committee

From: Callie Jill Denton  
Kansas Trial Lawyers Association

Date: February 16, 2006

RE: SB 507 Jury Fees

I am submitting testimony on behalf of the Kansas Trial Lawyers Association, a statewide nonprofit organization of attorneys who represent consumers and advocate for the safety of families and the preservation of Kansas' civil justice system. I appreciate the opportunity to provide the Committee with comments on SB 507.

KTLA testified previously on SB 407 which increased juror fees. Our support of SB 407 was also an endorsement of the current funding mechanism for juror fees, which is through county government funds. SB 507, while providing funds for increased juror fees, moves Kansas towards a "user fee" system because it requires that a jury fee be paid only by those who request civil jury trials. KTLA believes that the judicial branch is an essential part of government and funding its operations should be part of state, county, and local operating budgets instead of being borne solely by those who must exercise their right to trial by jury. Therefore, we cannot support funding increased juror fees through the mechanism established in SB 507.

SB 507 also appears to place responsibility for funding juries for criminal trials on individuals who are resolving disputes in the civil court system. SB 507 does not limit the use of jury fee funds to jurors for civil trials yet only those requesting a civil jury trial are required to pay the jury fee. We note that according to the 2005 Annual Statistics of the Kansas Courts that there were 159 jury trials under Chapter 60 (civil actions) and 52 trials pursuant to Chapter 61 (civil; limited actions). Yet, during the same time there were significantly more criminal jury trials: 87 traffic, 99 misdemeanor, and 497 felony trials; overall, criminal trials made of 76% of the total jury trials in Kansas in 2005. Given the dominance of criminal trials in our courts, KTLA believes that requiring civil litigants to subsidize the cost of criminal jury trials is burdensome and without a reasonable basis.

Finally, SB 507 places a burden on the right to trial by jury because the jury fee applies only if a civil litigant requests a jury trial. The effect of SB 507 appears to be to discourage civil litigants from requesting a jury trial because the jury fee is 70% higher than the docket fee, and is nonrefundable even if the controversy is settled and is never tried by a jury. We see similarities between SB 507 and poll taxes in which certain voters were required to pay a fee to exercise

*Terry Humphrey, Executive Director*

their right to vote, and we question whether the funding scheme established in SB 507 would pass constitutional muster.

KTLA continues to believe that one of the most important features of our justice system is the jury, and we support increasing juror fees so that Kansas communities have an adequate pool of qualified jurors. However, we cannot support the funding mechanism established in SB 507 and we therefore ask your opposition to the bill.

Thank you for the opportunity to provide you with our comments.



TOPEKA

HOUSE OF  
REPRESENTATIVES

**BILL MCCREARY**  
 REPRESENTATIVE, 80TH DISTRICT  
 1423 NORTH "C" STREET  
 WELLINGTON, KANSAS 67152  
 620-326-8518

STATE CAPITOL, ROOM 182-W  
 TOPEKA, KANSAS 66612-1504  
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LEGISLATIVE HOTLINE  
 1-800-432-3924

COMMITTEE ASSIGNMENTS  
 CHAIRMAN: REVENUE, JUDICIAL,  
 TRANSPORTATION AND  
 RETIREMENT BUDGET

MEMBER HOUSE COMMITTEES  
 APPROPRIATIONS  
 INSURANCE  
 LEGISLATIVE POST AUDIT

Mr. Chairman and Committee: I am Rep. Bill McCreary and I wish to thank you for holding a hearing on HB 2231, a bill that I have promoted since SB 123 was enacted. I have thought that a fairness issue exists because we now have people in prison for the same crimes that people are being sent to SB 123 facilities. Also, I have been interested in saving the taxpayers of Kansas money.

It is my belief that the total savings is not just the difference between what it cost to incarcerate and the cost of rehabilitation, which is substantial (\$6178.65) to rehabilitate compared with \$22,000 or more to incarcerate), but the long term benefit to the State of Kansas is pointing inmates to responsible lifestyles so that they become taxpayers instead of tax users. I have not been able to get a cost figure on how much the state pays for family assistance for the inmates, but I'm sure that that amount is also substantial.

Last session, HB2231 passed the House, but due to time restraints we were unable to have a hearing in the Senate. During the hearing in the House Fed and State Committee, the bill was amended to allow only those in prison for use and possession to be eligible. This took the original population of inmates that qualified under the original bill from about 500 down to 156 and out of that group it was estimated that only 112 would apply because of the length of time left on their sentences.

Senate Judiciary

2-16-06  
 Attachment 4

Of the 156, ninety-five of them were back in prison because of probation violations. This shows the revolving door effect of a system that is not working.

If the Chairman would allow, I have taken the liberty of having a balloon drafted that will take HB 2231 back to SB 123 standards. According to the Sentencing Commission, this amendment will allow us ~~inmates~~ to have 176 *INMATES* who would qualify for this program. If we do not amend the bill, only 80 inmates would qualify.

I have talked with some people who have some concerns. Money is a concern because of the additional funding requirement to SB123. The cost related to HB 2231 after the balloon amendment is projected to be \$1,157,092.60. The money for both programs will save the state many times the expenditure by prison avoidance and by making these people more responsible citizens.

Prosecutors have expressed that they might feel better about the bill if it had provisions for post release supervision.

Some have expressed concerns that the bill may have constitutionality problems.

Some of these concerns may be real but I challenge all of the opponents of this bill to have an open mind and to work with me to make this bill even better. I know that it is common sense and a proven fact that giving drug addicts treatment is the right thing to do not only for them but for the people of Kansas.

Some people are beginning to realize with the passage of the sexual predator act, we must do something to free up bed space or we will spend more money to build more prison space. Passage of HB 2231 will free 176 beds at a fraction of the cost to build prison space to house 176 new inmates. It will prove also that legislators who profess to be "tough on crime" can also be "smart on crime" Thank you, Mr. Chairman and Committee.

H-H

HOUSE BILL No. 2231

By Representative McCreary

1-31

10 AN ACT concerning crimes, punishment and criminal procedure; relat-  
11 ing to the nonprison sanction of a certified drug abuse treatment pro-  
12 gram; amending K.S.A. ~~2004~~ Supp. 21-4603d and 21-4729 and re- 2005  
13 pealing the existing sections.  
14

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

16 New Section L. (a) ~~Persons who were convicted of a felony violation~~  
17 ~~of K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, but sentenced~~  
18 ~~prior to November 1, 2003, and who meet the requirements of K.S.A.~~  
19 ~~2004 Supp. 21-4729, and amendments thereto, may have such person's~~  
20 ~~sentences modified according to the provisions of this section. A person~~  
21 ~~convicted of a felony violation of K.S.A. 65-4160 or 65-4162, on or~~  
22 ~~after July 1, 1993, and sentenced therefor prior to November 1,~~  
23 ~~2003, may have such person's sentences modified according to the~~  
24 ~~provisions of this section if:~~

and who meets the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto,

25 ~~(1) The person's sole crime of which convicted and for which~~  
26 ~~incarcerated is such violation of K.S.A. 65-4160 or 65-4162; and~~

27 ~~(2) such person meets the requirements of K.S.A. 2004 Supp.~~  
28 ~~21-4729, and amendments thereto.~~

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

34 (2) The department of corrections shall complete and submit to the  
35 appropriate parties the report on all imprisoned inmates who were con-  
36 victed of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July  
37 1, 1993 but sentenced prior to November 1, 2003, and who have greater  
38 than 180 days to serve on such inmates' sentence prior to such inmates'  
39 initial release date. The department of corrections shall review inmates  
40 based on such inmate's custody or security classification in the following  
41 order: Minimum, within 60 days of the effective date of this act; medium,  
42 within 90 days of the effective date of this act; and maximum, within 120  
43 days of the effective date of this act.

1 (c) The reports on those inmates who would be eligible for modifi-  
2 cation of sentence as determined by the department of corrections shall  
3 be deemed to be correct unless objection thereto is filed by either the  
4 person or the prosecution officer within the 60-day period provided to  
5 request a hearing. If an objection is filed, the sentencing court shall de-  
6 termine if the person is eligible for a modification of sentence. The bur-  
7 den of proof shall be on the prosecution officer to prove that the person  
8 is not eligible for such modification of sentence.

9 (d) (1) Within 60 days of the issuance of such report, the inmate shall  
10 have the right to request a hearing by filing a motion with the sentencing  
11 court, regarding the modification of the sentence under this section to  
12 be held in the jurisdiction where the original criminal case was filed. The  
13 secretary of corrections shall be provided written notice of any request  
14 for a hearing. If a request for a hearing is not filed within 60 days of the  
15 issuance of the report, the person is not eligible for such modification of  
16 sentence.

17 (2) In the event a hearing is requested, and the court deems the  
18 hearing is necessary, the court shall schedule and hold the hearing within  
19 60 days after it was requested and shall rule on the issues raised by the  
20 parties within 30 days after the hearing.

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

23 (4) Nothing contained in this section shall be construed as requiring  
24 the appearance in person of the offender or creating such a right of ap-  
25 pearance in person of the offender at the hearing provided in this section  
26 regarding the modification of a sentence under this section.

27 (5) In the event a hearing is requested and held, the court shall  
28 determine whether the safety of the members of the public will be jeop-  
29 arded by such modification of sentence.

30 (6) If the court determines that the safety of the members of the  
31 public will not be jeopardized by such modification of sentence, the court  
32 shall enter an order regarding the person's modification of sentence and  
33 forward that order to the secretary of corrections who shall administer  
34 the modification of sentence. The court shall commit the person to treat-  
35 ment in a drug abuse treatment program pursuant to K.S.A. 2004 Supp.  
36 21-4729, and amendments thereto.

37 (7) If the court determines that the safety of the members of the  
38 public will be jeopardized by such modification of sentence, the court  
39 shall enter an order denying the person's modification of sentence and  
40 the person shall remain in the custody of the department of corrections.

41 (f) All sentence modifications that result in an offender being re-  
42 leased from a state correctional facility shall require that the offender be  
43 placed under the supervision of community corrections.

1 (g) An offender shall not be credited for service on the modified  
2 sentence for the amount of time spent in prison on the original prison  
3 sentence.

4 ~~Sec. 2. K.S.A. 2004 Supp. 21-4603d is hereby amended to read as~~  
5 follows: 21-4603d. (a) Whenever any person has been found guilty of a  
6 crime, the court may adjudge any of the following;

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

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

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

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

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

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

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

37 (8) order the defendant to repay the amount of any reward paid by  
38 any crime stoppers chapter, individual, corporation or public entity which  
39 materially aided in the apprehension or conviction of the defendant; repay  
40 the amount of any costs and expenses incurred by any law enforcement  
41 agency in the apprehension of the defendant, if one of the current crimes  
42 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
43 3909 and amendments thereto or aggravated escape, as defined in K.S.A.

Insert Sec. 2 K.S.A. 2005 Supp. 21-4603d [see attached]  
Strike all on pages 4 through 7.



Sec. 2. K.S.A. 2005 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 program 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; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under K.S.A. 21-3718 or 21-3719, and amendments thereto, if the defendant is convicted of such crime; 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; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company 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 county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 2005 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. 2005 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.

(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. 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, conditional release or postrelease 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 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 K.S.A. 2005 Supp. 21-4729, 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 K.S.A. 2005 Supp. 21-4729, 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 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 secretary 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, 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 of the sentencing guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district

attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

(n) (1) Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2005 Supp. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2005 Supp. 75-52,144, and amendments thereto, including but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 21-4705, and amendments thereto. ~~For those offenders who are convicted on or after the effective date of this act,~~ Upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(2) If a defendant's sentence is modified pursuant to section 1, and amendments thereto, and such defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established prior to the modification. Upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

1 ~~2004 Supp. 21-4729, and amendments thereto, to participate in a certified~~  
 2 ~~drug abuse treatment program, as provided in K.S.A. 2004 Supp. 75-~~  
 3 ~~52,144, and amendments thereto, including but not limited to, an ap-~~  
 4 ~~proved after-care plan. If the defendant fails to participate in or has a~~  
 5 ~~pattern of intentional conduct that demonstrates the offender's refusal to~~  
 6 ~~comply with or participate in the treatment program, as established by~~  
 7 ~~judicial finding, the defendant shall be subject to revocation of probation~~  
 8 ~~and the defendant shall serve the underlying prison sentence as estab-~~  
 9 ~~lished in K.S.A. 21-4705, and amendments thereto. For those offenders~~  
 10 ~~who are convicted on or after the effective date of this act, Upon com-~~  
 11 ~~pletion of the underlying prison sentence, the defendant shall not be~~  
 12 ~~subject to a period of postrelease supervision. The amount of time spent~~  
 13 ~~participating in such program shall not be credited as service on the un-~~  
 14 ~~derlying prison sentence.~~

15 *(2) If a defendant's sentence is modified pursuant to section 1, and*  
 16 *amendments thereto, and such defendant fails to participate in or has a*  
 17 *pattern of intentional conduct that demonstrates the offender's refusal to*  
 18 *comply with or participate in the treatment program, as established by*  
 19 *judicial finding the defendant shall be subject to revocation of probation*  
 20 *and the defendant shall serve the underlying prison sentence as estab-*  
 21 *lished prior to the modification. Upon completion of the underlying prison*  
 22 *sentence, the defendant shall not be subject to a period of postrelease*  
 23 *supervision. The amount of time spent participating in such program shall*  
 24 *not be credited as service on the underlying prison sentence.*

25 Sec. 3. K.S.A. ~~2004~~ Supp. 21-4729 is hereby amended to read as ~~2005~~  
 26 follows: 21-4729. On and after November 1, 2003: (a) There is hereby  
 27 established a nonprison sanction of certified drug abuse treatment pro-  
 28 grams for certain offenders who are sentenced on or after November 1,  
 29 2003. Placement of offenders in certified drug abuse treatment programs  
 30 by the court shall be limited to placement of adult offenders, convicted  
 31 of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments  
 32 thereto:

33 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or  
 34 4-I of the sentencing guidelines grid for drug crimes and such offender  
 35 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163  
 36 or 65-4164, and amendments thereto or any substantially similar offense  
 37 from another jurisdiction; or

38 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of  
 39 the sentencing guidelines grid for drug crimes and such offender has no  
 40 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-  
 41 4164, and amendments thereto, or any substantially similar offense from  
 42 another jurisdiction, if such person felonies committed by the offender  
 43 were severity level 8, 9 or 10 or nongrid offenses of the sentencing guide-

1 lines grid for nondrug crimes and the court finds and sets forth with  
2 particularity the reasons for finding that the safety of the members of the  
3 public will not be jeopardized by such placement in a drug abuse treat-  
4 ment program.

5 (b) (1) As a part of the presentence investigation pursuant to K.S.A.  
6 21-4714, and amendments thereto, offenders who meet the requirements  
7 of subsection (a) shall be subject to a drug abuse assessment.

8 (2) The drug abuse assessment shall include a statewide, mandatory,  
9 standardized risk assessment tool and an instrument validated for drug  
10 abuse treatment program placements and shall include a clinical interview  
11 with a mental health professional. Such assessment shall assign a high or  
12 low risk status to the offender and include a recommendation concerning  
13 drug abuse treatment for the offender.

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

17 (d) Offenders shall be supervised by community correctional services.

18 (e) Placement of offenders under subsection (a)(2) shall be subject  
19 to the departure sentencing statutes of the Kansas sentencing guidelines  
20 act.

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

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

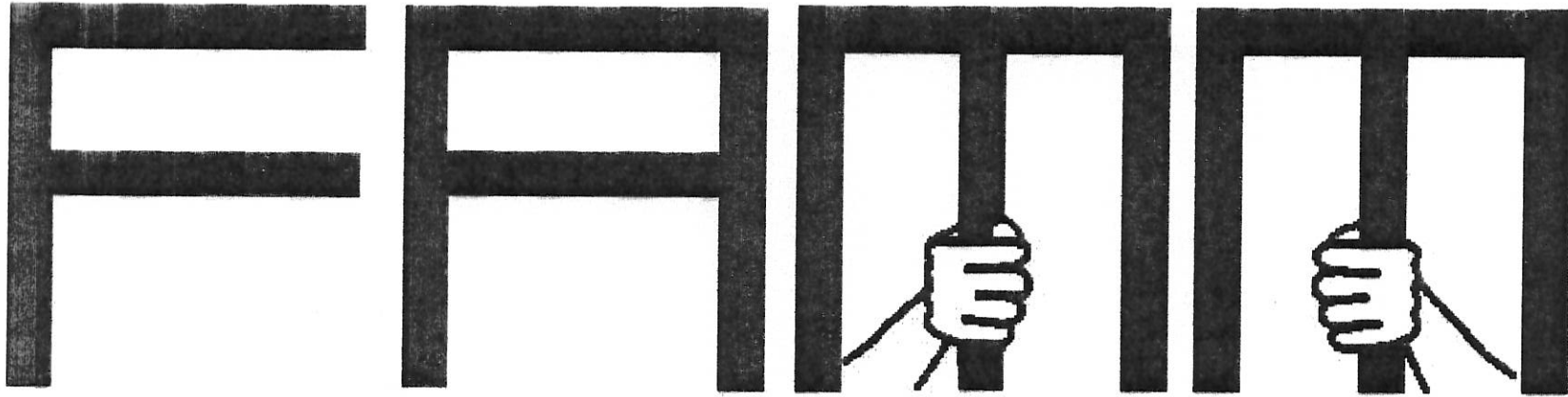
25 (B) has a pattern of intentional conduct that demonstrates the of-  
26 fender's refusal to comply with or participate in the treatment program,  
27 as established by judicial finding.

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

31 (g) As used in this section, "mental health professional" includes li-  
32 censed social workers, licensed psychiatrists, licensed psychologists, li-  
33 censed professional counselors or registered alcohol and other drug abuse  
34 counselors licensed or certified as addiction counselors who have been  
35 certified by the secretary of corrections to treat offenders pursuant to  
36 K.S.A. ~~2004~~ Supp. 75-52, 144, and amendments thereto.

37 Sec. 4. K.S.A. ~~2004~~ Supp. 21-4603d and 21-4729 are hereby —2005  
38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its  
40 publication in the Kansas register.



**Families Against Mandatory Minimums**

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**HB 2231: a smart on crime initiative**

February 16, 2006

Honorable members of this Committee:

My name is Peter Ninemire. First of all I am proud to say that I am a Kansans. I grew up on a farm in Northwestern Kansas and became a rebellious defiant youth. I started using marijuana at age 14 which began to define my road from childhood to prison. In 1990 I was sentenced to a 27 year federal mandatory minimum sentence for cultivation of marijuana. I experienced a personal transformation during the early years of the 10 years I served in federal prison before the greatest day of my life, January 20, 2001, when former President Bill Clinton commuted the remaining 15 years left on my sentence. I would like to add that a little more than five years later, the other 20 non-violent drug offenders who also had their sentences commuted, in large part due to Families Against Mandatory Minimums, the organization I am representing today, have all successfully completed parole and are contributing members of society.

Today, I am living the dream I was afraid to dream in prison. I began attending college in January of 2002, received my Kansas drug and alcohol certification later that same year and eventually became supervisor for an adolescent drug and alcohol program in Wichita. I graduated with my bachelors degree in Social Work from Wichita State last spring and am currently working on my Masters in Social Work, which I expect to have this Spring. My practicum experience has led me to a very interesting job as a substance abuse counselor at the Wichita Day Reporting Center, and also a statewide research project on Kansans attitudes toward Drug Treatment Alternatives to Prison. I am working on making this study an independent study to coincide growing body of evidence that strongly suggests that not only does prison not work for this population, but that we are spending up to 5 times as much money to get reverse outcomes.

So while my presentation is certainly somewhat subjective, it is mostly based on a meta-analysis of studies. What I find is that we are long on opinion and anecdotal information, which does not even make it on the research pyramid. But while on the subject of anecdotal, in speaking at a variety of venues across the state from the Wichita Crime Commission and Sedgwick County Democratic luncheons, the one consistent finding is that Kansans want fair and effective laws, fair and effective laws, and responsible management of our prison population.

I am going to fly through this power pont presentation pointing out just a few of the key points that you may not be aware of, and after others present their testimony, along with Rep. McCreary, I would be honored to stand for questions as time permits.

Unlike last year when some of the members of the federal state and affairs committee were more concerned about my commutation than the merits or legitimate concerns of this very important legislation you are considering today. With an open mind, I am asking you all to take a look at this from a totally different paradigm, I want us to look at how we can make this happen for Kansas, instead of letting our political fears get in the way and only look at the reasons for not doing this as we have done in past years. I think when I am finished in a couple of minutes you will have a much better understanding of why 72 % of Kansans are in favor of this legislation, and want you to enact this "tough", but yet "Smart on Crime" legislation.

*Peter J. Ninemire*

5-2





## HB 2231: a smart on crime initiative

### CHRONOLOGICAL HISTORY OF REFORMS

- Provisions allowing eligible incarcerated individuals to enter drug treatment under the provisions of SB 123 were eliminated prior to the bill's passage in 2003, to remove political barriers to enactment.
- In 2004, Rep. McCreary introduced a measure to apply SB 123 to incarcerated individuals, but then withheld the proposal to allow more time to establish reliable data about outcomes of SB 123.
- In 2005, Rep McCreary introduced the legislation as HB 2231 (see facts below).
- The House Federal and State Affairs Committee heard testimony on HB 2231 on March 14, 2005. Committee members then amended the bill to read, "sole crime for which convicted and incarcerated is "drug possession."
- This amendment reduced the bed space impact of the bill, which now would affect just 112 of the 516 individuals with drug use offenses originally estimated by the Kansas Sentencing Commission to be eligible to petition their courts for release into drug treatment would be eligible under the this amendment. (*Impact Statement Feb. 7, 2005*)
- The amended version of HB 2231 passed the House of Representatives by a 71 – 51 margin on March 21, 2005.
- Due to time constraints, Rep. McCreary was unable to obtain a Senate committee hearing on HB 2231, and amended SB 72 on the House floor by inserting the HB 2231 language. This amendment was later removed in a Judiciary Conference Committee.
- 2005-2006: those individuals convicted of drug use offenses who would have been eligible for drug treatment under SB 72 (112 people) or HB 2231 (516 people) will not receive drug treatment before they are released from Kansas prisons in the next 12 – 16 months, vastly increasing the probability they will return to prison.
- Many others will continue to serve their time for these low-level drug offenses past the point of diminishing returns. Research now clearly demonstrates (see below) that long prison sentences and inappropriate sanctions for these types of offenders actually increases their chances of returning to prison once they are released, and cost considerably more than drug treatment.

## HB 2231 FACTS

- HB 2231 allowed incarcerated individuals convicted of drug use offenses with no violence in their criminal histories to petition their sentencing courts for release into a 12 to 18 month drug treatment program for the remainder of their sentences.
- HB 2231 required long-term supervision over each individual's compliance with the mandatory treatment program requirements. Community Corrections would determine both the appropriate level of treatment and supervision. Those who failed drug treatment would return to prison without receiving any credit for time served in treatment.
- HB 2231 allowed a judge the discretion to impose a split sentence. It **was not** a provision to re-sentence individuals under the terms of SB 123.
- The Kansas Sentencing Commission estimated administrative, personnel, treatment and complete implementation costs for 176-HB2231 clients at approximately \$1,157,000. (*Impact Statement Feb. 8, 2006*). The KDOC estimated approximately the same proportionate costs for assessment and supervision of this same population. Once the initial implementation costs are met, the state should realize approximately \$1.5 million dollars return on their investment in the first 18 months. This would increase annually in proportion to the incarceration costs for those who would have otherwise remained in prison, minus administrative costs to maintain and operate the program. .

## FISCAL IMPACT

- Those in prison for drug use offenses can receive treatment for one-quarter to one-tenth the annual cost of their incarceration under this bill, while greatly enhancing their chance for success, thus reducing recidivism. **This increases public safety.**
- Kansas now spends millions on incarcerating these low-level, nonviolent drug offenders, while investing little, if any, in drug treatment to reduce recidivism and enhance public safety. This uses expensive prison bed space for the lowest level, nonviolent drug offenders.
- *The Washington State Institute for Public Policy* estimated that community-based substance abuse treatment generated \$3.30 of benefit for every dollar spent, while drug courts yielded \$2.83 for every dollar spent, as measured for taxpayers by program costs, and for victims by lower crime rates, and less recidivism.
- *Economic Benefits of Drug Treatment: A Critical Review of the Evidence for Policy Makers (2005)* reviewed data from 109 studies on the cost effectiveness and cost benefit of drug treatment from 1990 to November 2004. Overall, the study concluded that it was clear from research on the economic impact of substance abuse and addiction on health, crime, social stability, and community well-being, that the cost to society of **not** treating persons with substance abuse treatment is quite substantial. (See next page...)

## **SOCIETAL COSTS**

- Researchers at Kaiser Permanente found that Medicaid patients who received addiction treatment in a managed behavioral-healthcare program experienced a 30-percent decrease in their overall medical costs. This Robert Wood Johnson Foundation funded study published in 2005 also found that Medicaid patients with addiction problems had medical costs that were 60 percent higher than non-Medicaid patients prior to entering outpatient treatment.
- A recent UCLA study found that society saves \$7 for every \$1 invested in addiction treatment by comparing the costs of treatment to the declining use of medical care and mental health services, as well as the costs of criminal activity, increased personal earnings, and the costs of government programs like unemployment and public aid.
- Children who have parents in prison are five times more likely to be incarcerated themselves. Giving low-level drug offenders with drug addictions longer prison stays without receiving treatment is perpetuating the cycle of incarceration and reducing public safety. It also unnecessarily places heavy fiscal and social and burdens on the state and family members, often grandparents, left to care for the children.
- 2.4 million American children have a mom or dad in jail. Three in every hundred American children have a parent behind bars. The number of incarcerated women (many of them mothers) increased more than sevenfold between 1980 and the end of 2003, from 13,400 to over 100,000, according to the General Accounting Office.

## **PUBLIC SAFETY**

- The bill makes public safety a priority. Prosecutors can raise issues of concern, such as whether the current sentence was imposed after a plea to a lesser drug use offense. The bill permits judges to consider a person's prior record when deciding whether to grant a hearing.
- The Kansas Department of Corrections would retain jurisdiction and control over the individual and would determine level of supervision and treatment modality.
- Drug treatment for drug offenders is an investment in public safety. A study in New Jersey revealed that 8% of those who graduated from drug court were re-arrested within one year compared to 55% who were simply released from prison.
- A 2003 (McCollister and French) review of eleven studies concluded that 98 percent of the average net benefit per client receiving drug treatment was derived from reduced crime. Treatment is a smart investment in public safety that keeps on paying!

## **TREATMENT**

- The Kansas Department of Corrections has invested tremendous fiscal and human resources training over 300 drug and alcohol counselors in the SB 123 drug treatment program. There are numerous slots available for SB 123 clients that could serve those eligible under HB 2231

- SB 123 works! Kansas Sentencing Commission records show that, of the 735 SB 123 clients in treatment through Dec. 31, 2004, only seven were revoked and sent back to prison. Since then, both Community Corrections and SB123 drug treatment providers report that recidivism rates remain steady at around ten percent.
- Research shows that people who receive drug treatment as a condition of release have much better outcomes. (*Bureau of Prison Residential Treatment, 2000 & Drug Treatment Alternative to Prison, 2003*) BOP participants were 44% less likely to use within the first six months. DTAP participants were 66 percent less likely to return to prison than the control group. These results were achieved at about half the costs of their ongoing annual incarceration.
- Former UPI correspondent, Kelly Hearn explains DTAP as a deferred sentencing program in New York, for predicate felons, people with multiple serious priors and a drug problem who would have otherwise been serving long sentences. They sentence them, but defer it and send them to drug rehabilitation and job training. Part of that involves family visits and counseling and requires people to get better, to learn a trade and come to terms with the damage done to families. \*\*

### **PUBLIC PERCEPTION**

- According to a statewide survey conducted by the Kansas Sentencing Commission in 2003, 72 percent of Kansans believe that we should empty 400-600 prison beds by using community punishment that includes drug addiction treatment instead of incarceration for drug possession convictions, if that would not reduce public safety.
- A recent poll sponsored by the National Council on Crime and Delinquency and conducted by the Field Research Corporation, reveals that 73 percent of Californian voters would now vote for Proposition 36 (which SB123 was modeled after), up from 61 percent of voters who passed the initiative in 2000.
- In 2003, Michigan authorized early parole eligibility for up to 1200 prisoners serving long mandatory minimums for more serious controlled substance offenses without negative political repercussions. The press estimated savings in the first year alone of this and other early parole provisions in the package at \$41 million. The measure passed with overwhelming bi-partisan and public support.
- Eagleton Center for Public Interest Polling in New Jersey found that an overwhelming majority, - fully 4-in-5- (80% to 14%) – support mandatory treatment and community service sentences for low-level, non-violent drug offenders, if such sentences would reduce the amount of money New Jersey spends on corrections.
- A 2002 national poll conducted by Peter D. Hart Research Associates showed favorable public attitudes toward the criminal justice system with 65% in favor of treating the root cause instead of the symptoms of drug abuse and crime.
- *See slides from “a changed perspective, preferred approach, view of rehabilitation, drug abuse, state budget politics, and summary of findings on power point handout.*

## “WHAT DOES NOT WORK”

Please see power point slides under this heading. In addition,

- A meta-analysis of studies, including Hanley (2003) and Bonta, Wallace-Carpenter and Rooney (2000), found that intensive supervision reduced recidivism for higher-risk offenders but actually increases the recidivism rates for lower-risk offenders. For example, a program that reduced recidivism for high-risk offenders by 29% increased it for low-risk offenders by 7%. In this case we are spending more money to get worse outcomes.
- A two-year study conducted by Lowenkamp and Latessa (2002) in Ohio on 13,221 offenders placed in community based correctional treatment facilities with outcomes based on new arrests and incarceration comparing groups with residential placement against those that just received supervision. The outcomes for low-risk offenders in the 25 of 37 programs studied showed a significant increase in recidivism up to 36% with positive numbers of up to only 9% reduction in recidivism for the other 12 programs.
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- Please see related graph in this area on power point handout.

## “WHAT WORKS”

- A comprehensive review of correctional **research demonstrates that cognitive behavioral and social learning approaches have answered the questions “What Works?” to change offender behavior.** This is a term used nationally by correctional agencies in reference to research principles and practices common to effective public safety and offender programming. “What works” research has also identified the offender attributes “Criminogenic Risks and Needs” that successful correctional programs must target. (Gendreau, P. & Andrews, D.A. 1990)
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- Drug treatment in prison yields a benefit of between \$1.91 - \$2.69 for every dollar spent
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- Drug courts yielded \$2.83 for every dollar spent
- Treatment oriented intensive supervision programs (day reporting centers) yielded \$2.45 for every dollar spent and were far more cost-effective than simple supervision alone without treatment. *(Initial discussions about possible DRC involvement with KDOC this morning.)*

### RISK FACTORS

Who are the People HB 2231 would let out of prison?

Some folks in law enforcement and corrections will tell you these are not low-risk offenders. Most of the prosecutors will tell you that these people had other chances and did not get it, and that their drug use conviction is often a result of a plea bargain down to that. While that may be true in a good many of these cases, I would ask you to look at the DTAP outcomes with more serious offenders, as well as research (see above), which suggests that we are spending more money to insure worse outcomes. I would offer that most of them have reached the "Point of Diminishing Returns", regardless of their plea bargains.

Public Safety and Levels of Offenders. - The National Center on Alcoholism and Substance Abuse (CASA) at Columbia University observed in its March 2003 report "Drug involved offenders typically develop chronic dependence on the drug economy for subsistence. Reconnecting ex-offenders to the world of legitimate employment is crucial to maintaining recovery and reducing future criminal behavior". Treatment must be defined more broadly to cover the full continuum of care, including vital prevention programs: basic literacy training, job skill development, life skills training, mental health assessment and treatment"

### CONCLUSIONS & OVERALL FINDINGS

Thoughtful policymakers that are accountable to the sea change in public opinion are obliged to find the most effective ways to get offenders onto the straight and narrow path, to keep them from re-offending and to get them to become solid, contributing members of society. **Such programs and services do not mean the state is 'coddling criminals' or being soft on crime; rather, the state is protecting the general public by using the most effective means available to prevent criminal activity, drug abuse, and recidivism.** Toward this end, the Justice Policy Institute offers the following recommendations through which drug treatment alternatives, and sentencing reform, could be effectuated:

1. Abolish mandatory sentences for drug offenders and return discretion to judges to determine whether incarceration or treatment is a more effective sentence in individual cases.
2. Divert non-violent drug offenders from prison into treatment and substantially reduce probation and parole violations for drug use. (DRC takes this approach with MRT)

3. Use the savings from the previous two recommendations to fund a continuum of programs aimed at reducing substance abuse, including expansion of proven programs like COP, Breaking the Cycle, and a variety of evaluated and proven effective treatment programs funded by the ADAA.

Barney Frank (D-MA) was quoted a number of years ago as saying that there is no greater chasm in public policy in this country, than the one between drug policy and public opinion. Perhaps this is because according a recent poll by Faces & Voices of Recovery, (May 14, 2004,) found that drug and alcohol addiction impacted the lives of 63 % of American families.”

Public Opinion Overall – In a recent interview about her book, “all alone in the world”, on the children of the incarcerated, in relation to overall public opinion, Neal Bernstein responded that she does not think that most people think that way anymore in terms of America’s preference for retribution over rehabilitation. She says, “What’s really interesting is that recent polls have showed people turning toward rehabilitation. That wasn’t true 10 years ago when there was a real “lock-m-up” attitude.” The politics hasn’t caught up though. One problem is that people don’t know who’s in prison. People assume if you go to prison you are dangerous and you should be in prison. They don’t realize that a large percent of prisoners are people who committed nonviolent crimes. She related that politicians tell her they can oppose a tough-on-crime law when it is being voted on, but once it is enacted it is immovable. Polls in the last 10 years have shown a huge shift in public opinion on this issue. Our hope is that it will filter into politics.

*Letter to Judge from child of soon to be incarcerated mother from Bernstein’s book.*

Dear Judge, I need my mom. Would you help my mom? I have no dad and my grandmom have cancer I don’t have anyone to take care of me and my sisters and my niece and nephew and my birthdays coming up in October the 25 and I need my mom to be here on the 25 and for the rest of my life. I will cut your grass and wash your car everyday just don’t send my mom off. Please! Please! Please don’t!!!!” -- Phillip (from Nell Bernstein's *All Alone in the World*).

## **Q&A: concerns about HB 2231**

- Not enough data, or time to establish reliable outcomes.
  - Even though long-term data on SB 123 is not in yet, the initial data is very strong. It is stronger than both Arizona and Californian where 12% voters today said they would vote for proposition 36 than did in 2000.
- HB 2231 could lead to a rollback of current SB 123 legislation
  - Rollback of SB 123 appears highly unlikely, based on its current success.
- Constitutionality and litigation issues surrounding resentencing to split sentences have not been sufficiently addressed.
  - According to legal experts, the constitutional issues have been addressed in Kansas legal precedents. We are not aware of any recent case law or statutes to prohibit this option.

- There was not enough money to fund the initiative.
  - Research demonstrates that fully funded drug treatment returns \$7 for every dollar invested. This would appear to be even higher with the DTAP model and considering the costs of prison. Drug treatment is proven to increase public safety at a fraction of the costs of incarceration, and restores lives and communities.
- There are not enough treatment beds in the state.
  - Research is currently underway on bed capacity in state. SB 123 allows for substantial flexibility in the supervision levels and types of treatment.
- Politicians fear being perceived as “soft on crime.”
  - This is not “soft on crime.” It is a “smart on crime” measure that 72 percent of Kansans supported in 2003. “Politicians should not underestimate Kansans’ sense of fairness. Voters want tough laws, but they also expect cost-effective laws.” (Editorial, Wichita Eagle Beacon, Feb. 9, 2006)

### **The big question:**

*Are people convicted of low-level nonviolent drug use offenses going home in better condition than they came in – in other words, with or without their addictions addressed?*

*For more information contact Peter Ninemire, Organizer, Kansas FAMM, via email at [pninemire@famm.org](mailto:pninemire@famm.org), or call (316)651-5852*

### **References**

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**Families Against Mandatory Minimums**

## **HB 2231: a smart on crime initiative**

### **CHRONOLOGICAL HISTORY OF REFORMS**

- Provisions allowing eligible incarcerated individuals to enter drug treatment under the provisions of SB 123 were eliminated prior to the bill's passage in 2003, to remove political barriers to enactment.
- In 2004, Rep. McCreary introduced a measure to apply SB 123 to incarcerated individuals, but then withheld the proposal to allow more time to establish reliable data about outcomes of SB 123.
- In 2005, Rep McCreary introduced the legislation as HB 2231 (see facts below).
- The House Federal and State Affairs Committee heard testimony on HB 2231 on March 14, 2005. Committee members then amended the bill to read, "sole crime for which convicted and incarcerated is "drug possession."

### **CHRONOLOGICAL HISTORY OF REFORMS**

- This amendment reduced the bed space impact of the bill, which now would affect just 112 of the 516 individuals with drug use offenses originally estimated by the Kansas Sentencing Commission to be eligible to petition their courts for release into drug treatment would be eligible under the this amendment. (*Impact Statement Feb. 7, 2005*)
- The amended version of HB 2231 passed the House of Representatives by a 71 – 51 margin on March 21, 2005.
- Due to time constraints, Rep. McCreary was unable to obtain a Senate committee hearing on HB 2231, and amended SB 72 on the House floor by inserting the HB 2231 language. This amendment was later removed in a Judiciary Conference Committee.

### **CHRONOLOGICAL HISTORY OF REFORMS**

- 2005-2006: those individuals convicted of drug use offenses who would have been eligible for drug treatment under SB 72 (112 people) or HB 2231 (516 people) will not receive drug treatment before they are released from Kansas prisons in the next 12 – 16 months, vastly increasing the probability they will return to prison.
- Many others will continue to serve their time for these low-level drug offenses past the point of diminishing returns. Research now clearly demonstrates (see below) that long prison sentences and inappropriate sanctions for these types of offenders actually increases their chances of returning to prison once they are released, and cost considerably more than drug treatment.

### **HB 2231 FACTS**

- HB 2231 allowed incarcerated individuals convicted of drug use offenses with no violence in their criminal histories to petition their sentencing courts for release into a 12 to 18 month drug treatment program for the remainder of their sentences.
- HB 2231 required long-term supervision over each individual's compliance with the mandatory treatment program requirements. Community Corrections would determine both the appropriate level of treatment and supervision. Those who failed drug treatment would return to prison without receiving any credit for time served in treatment. This includes relapse for any drug use.
- HB 2231 allowed a judge the discretion to impose a split sentence. It was not a provision to re-sentence individuals under the terms of SB 123.

### **HB 2231 FACTS**

- The Kansas Sentencing Commission estimates administrative, personnel, treatment and complete implementation costs for 176-HB2231 clients at approximately \$1,157,000. (*Impact Statement Feb. 8, 2006*) The KDOC estimated proportionate costs for assessment and supervision of this population in 2005. Once the initial implementation costs are met, the state should realize approximately \$1.5 million dollars return on their investment in the first 18 months. This would increase annually in proportion to the incarceration costs for those who would have otherwise remained in prison, minus administrative costs to maintain and operate the program.

## FISCAL IMPACT

- Those in prison for drug use offenses can receive treatment for one-quarter to one-tenth the annual cost of their incarceration under this bill, while greatly enhancing their chance for success, reducing recidivism and increasing public safety.
- Kansas now spends millions on incarcerating these low-level, nonviolent drug offenders, while investing little, if any, in drug treatment to reduce recidivism and enhance public safety. This uses expensive prison bed space for the lowest level, nonviolent drug offenders.
- The Washington State Institute for Public Policy estimated that community-based substance abuse treatment generated \$3.30 of benefit for every dollar spent, while drug courts yielded \$2.83 for every dollar spent, as measured for taxpayers by program costs, and for victims by lower crime rates, and less recidivism.

## FISCAL IMPACT

- *Economic Benefits of Drug Treatment: A Critical Review of the Evidence for Policy Makers (2005)* reviewed data from 109 studies on the cost effectiveness and cost benefit of drug treatment from 1990 to November 2004. Overall, the study concluded that it was clear from research on the economic impact of substance abuse and addiction on health, crime, social stability, and community well-being, that the cost to society of **not treating persons with substance abuse treatment is quite substantial.**

## SOCIETAL COSTS

- Researchers at Kaiser Permanente found that Medicaid patients who received addiction treatment in a managed behavioral-healthcare program experienced a 30-percent decrease in their overall medical costs. This Robert Wood Johnson Foundation funded study published in 2005 also found that Medicaid patients with addiction problems had medical costs that were 60 percent higher than non-Medicaid patients prior to entering outpatient treatment.
- A recent UCLA study found that society saves \$7 for every \$1 invested in addiction treatment by comparing the costs of treatment to the declining use of medical care and mental health services, as well as the costs of criminal activity, increased personal earnings, and the costs of government programs like unemployment and public aid.

## SOCIETAL COSTS

- Children who have parents in prison are five times more likely to be incarcerated themselves. Giving low-level drug offenders with drug addictions longer prison stays without receiving treatment is perpetuating the cycle of incarceration and reducing public safety. It also unnecessarily places heavy fiscal and social and burdens on the state and family members, often grandparents, left to care for the children.
- 2.4 million American children have a mom or dad in jail. Three in every hundred American children have a parent behind bars. The number of incarcerated women (many of them mothers) increased more than sevenfold between 1980 and the end of 2003, from 13,400 to over 100,000, according to the General Accounting Office.

## PUBLIC SAFETY

- The bill makes public safety a priority. Prosecutors can raise issues of concern, such as whether the current sentence was imposed after a plea to a lesser drug use offense. The bill permits judges to consider a person's prior record when deciding whether to grant a hearing.
- The Kansas Department of Corrections would retain jurisdiction and control over the individual and would determine level of supervision and treatment modality.
- Drug treatment for drug offenders is an investment in public safety. A study in New Jersey revealed that 8% of those who graduated from drug court were re-arrested within one year compared to 55% who were simply released from prison.
- A 2003 (McCollister and French) review of eleven studies concluded that 98 percent of the average net benefit per client receiving drug treatment was derived from reduced crime. Treatment is a smart investment in public safety that keeps on paying!

## TREATMENT

- The Kansas Department of Corrections has invested tremendous fiscal and human resources training over 300 drug and alcohol counselors in the SB 123 drug treatment program. There are numerous slots available for SB 123 clients that could serve those eligible under HB 2231
- **SB 123 works!** Kansas Sentencing Commission records show that, of the 735 SB 123 clients in treatment through Dec. 31, 2004, only seven were revoked and sent back to prison. Since then, both Community Corrections and SB123 providers report recidivism rates remain steady at around ten percent.

## TREATMENT

- Research shows that people who receive drug treatment as a condition of release have much better outcomes. (*Bureau of Prison Residential Treatment, 2000 & Drug Treatment Alternative to Prison, 2003*) BOP participants were 44% less likely to use within the first six months. DTAP participants were 66 percent less likely to return to prison than the control group. These results were achieved at about half the costs of their ongoing annual incarceration.
- Former UPI correspondent, Kelly Hearn explains DTAP as a deferred sentencing program in New York, for predicate felons, people with multiple serious priors and a drug problem who would have otherwise been serving long sentences. They sentence them, but defer it and send them to drug rehabilitation and job training. Part of that involves family visits and counseling and requires people to get better, to learn a trade and come to terms with the damage done to families. \*\*

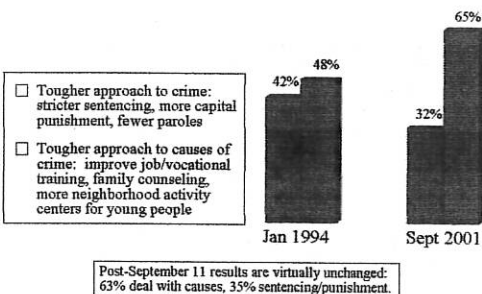
## PUBLIC PERCEPTION

- According to a statewide survey conducted by the Kansas Sentencing Commission in 2003, 72 percent of Kansans believe that we should empty 400-600 prison beds by using community punishment that includes drug addiction treatment instead of incarceration for drug possession convictions, if that would not reduce public safety.
- A recent poll sponsored by the National Council on Crime and Delinquency and conducted by the Field Research Corporation, reveals that 73 percent of Californian voters would now vote for Proposition 36 (which SB123 was modeled after), up from 61 percent of voters who passed the initiative in 2000.
- In 2003, Michigan authorized early parole eligibility for up to 1200 prisoners serving long mandatory minimums for more serious controlled substance offenses without negative political repercussions. The press estimated savings in the first year alone of this and other early parole provisions in the package at \$41 million. The measure passed with overwhelming bi-partisan and public support.

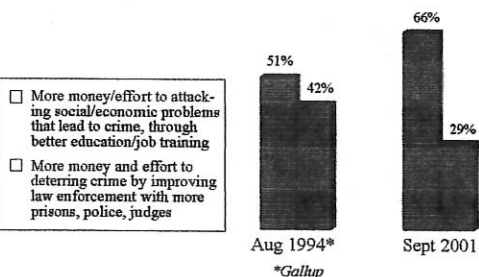
## PUBLIC PERCEPTION

- Eagleton Center for Public Interest Polling in New Jersey found that an overwhelming majority, - fully 4-in-5- (80% to 14%) – support mandatory treatment and community service sentences for low-level, non-violent drug offenders, if such sentences would reduce the amount of money New Jersey spends on corrections.
- A 2002 national poll conducted by Peter D. Hart Research Associates showed favorable public attitudes toward the criminal justice system with 65% in favor of treating the root cause instead of the symptoms of drug abuse and crime.

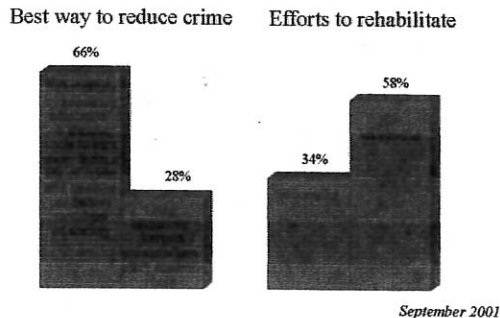
## A Changed Perspective On Approach to Crime



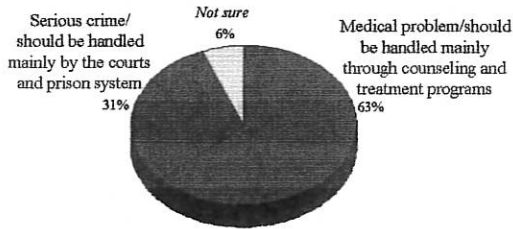
## Preferred Approach To Lowering U.S. Crime Rate



## View Of Rehabilitation



## Drug Abuse: Medical Problem, Not Crime



70% say the war on drugs has been a failure.

September 2001

## State Budget Politics

- Prison and transportation are voters' top choices for cuts if spending reductions are needed.
- Cost savings argument increases strong support for alternative sentencing by 10 points.
- 77% agree that prevention programs can save money by reducing need for prisons.
- 77% agree state government can save money by placing nonviolent drug offenders in treatment rather than prison.

December 2001

## Summary of Findings

- Americans' attitudes regarding crime have shifted dramatically in recent years, away from a focus on enforcement and imprisonment, and toward prevention and addressing the causes of crime.
- The public embraces a wide range of progressive policy initiatives in the areas of prevention, rehabilitation, and alternative sentencing, and is even rethinking mandatory minimums.
- September 11 has not eroded or reversed these progressive trends in public thinking on crime.

## WHAT DOES NOT WORK

- Talking cures
- Non-directive client-centered counseling
- Freudian approaches
- Increasing cohesiveness of delinquent/criminal groups
- Targeting non-crime producing needs
- Programs that involve intense group interactions without regard to personal responsibility
- Vague unstructured rehabilitation programs
- Good relationship with offender as primary goal
- Fostering positive self-regard (self-esteem)
- Self-actualization through self-discovery (self-help)

## ...more of what doesn't work

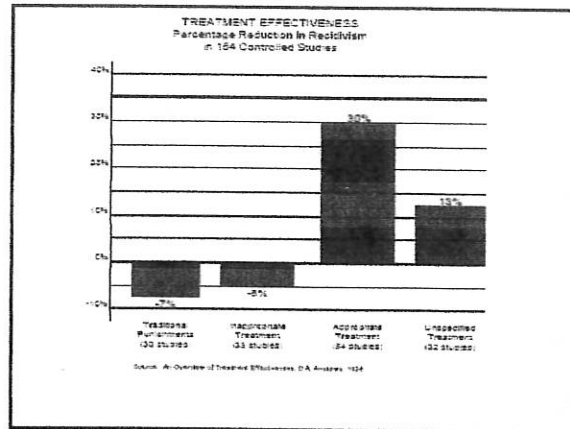
- "Medical Model" approaches
- Radical non-intervention (doing nothing)
- Targeting low risk offenders
- Chemotherapies
- Punishing smarter
- Increasing conventional ambitions in area of school & work without concrete assistance in realizing ambitions
- Increasing self-esteem (without reductions in antisocial thinking and associations)
- Focusing on vague emotional and personal complaints that have not been linked with criminal behavior
- Improving neighborhood-wide living conditions, without touching the crime producing needs of higher risk individuals & families

## ...more of what doesn't work

- A meta-analysis of studies, including Hanley (2003) and Bonta, Wallace-Carpenter and Rooney (200), found that intensive supervision reduced recidivism for higher-risk offenders but actually increases the recidivism rates for lower-risk offenders. For example, a program that reduced recidivism for high-risk offenders by 29% increased it for low-risk offenders by 7%. In this case we are spending more money to get worse outcomes.
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### Risk Level and Treatment Outcomes (% Recidivism)

Study	Risk Level	Level of Treatment	
		Minimal	Intensive
O'Donnell et al (1971)	Low	16%	22%
	High	78%	56%
Baird et al (1979)	Low	3%	10%
	High	37%	18%
Andrews & Kiessling (1980)	Low	12%	17%
	High	58%	31%
Bonta et al (2000)	Low	15%	32%
	High	51%	32%

D.A. Andrews and James Bonta. 2003. *The Psychology of Criminal Conduct* (3rd ed.). Cincinnati: Anderson Publishing, p. 280.

### Factors Correlated with Risk

Factor	Mean R	# of Studies
Lower class origins	0.06	97
Personal Distress or psychopathology	0.08	226
Personal educational & vocational achievement	0.12	129
Parental/family factors	0.18	334
Temperament/misconduct personality	0.21	621
Antisocial attitudes/associates	0.22	168

Note: Are-analysis of Gendreau, Andrews, Goggin & Chanteloupe (1992) by Andrews & Bonta (1994)

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#### Wichita Eagle, The (KS)

February 9, 2006

Section: OPINION

Edition: main

Page: 6A

Memo: Eagle Editorials

### UNFAIR MAKE DRUG-SENTENCING LAW RETROACTIVE

For those who happened to be sentenced for a nonviolent drug offense after July 1, 2003, when Kansas' new **drug-sentencing** bill went into effect, the penalty is mandatory drug treatment.

That's little comfort to the hundreds of inmates still languishing in Kansas prisons for earlier drug-related offenses.

Consider Dezerro Smith. In 2004 he was given an 11 1/2-year prison sentence for third-time cocaine possession instead of 12 to 18 months of drug treatment - all because his crime occurred several months before the 2003 **law**, Senate Bill 123, took effect.

That kind of gross sentencing disparity doesn't pass the fairness test, nor does it **make** economic sense considering the soaring costs of incarceration.

A bill proposed by Rep. Bill McCreary, R-Wellington, would provide a clearer standard of equal treatment by making the drug-treatment **law** retroactive to apply to more than 150 inmates now serving time for simple drug use or possession offenses.

A version of the bill passed the House last session. But this is an election year. And in an election year, this bill faces long odds. That's because most politicians are afraid of appearing "soft on crime" to voters.

But this isn't soft on crime - it's "smart on crime." As in the 2003 **law**, it would give addicts a chance to get what they really need - treatment - and open up prison beds that should be occupied by dangerous, violent criminals.

The bill has several built-in safeguards: Judges have discretion to turn down inmates, for whatever reason, and parolees have a built-in motivation to take the treatment seriously: If they wash out, they go back to prison, with no time earned for their drug treatment. Also keeping them focused is a one-strike-you're-out provision.

This is a tough bill that nevertheless gives qualified drug offenders a chance - and taxpayers a break.

Unfortunately, the Kansas Sentencing Commission last month voted not to support the bill, citing among other concerns higher treatment costs than expected for SB 123 programs. But treatment is still far cheaper

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5-17

incarceration.

It costs Kansas taxpayers \$22,000 annually to jail inmates. Treating addiction costs about \$4,600 per offender.

But does it work? The track record of the 2003 **law** is - so far, so good. It's performing as expected, with less than a 10 percent recidivism rate, according to state officials.

Politicians shouldn't underestimate Kansans' sense of fairness. Voters want tough **laws**, yes - but they also expect fair and cost-effective **laws**.

In that respect, keeping prisoners like Smith behind bars doesn't add up.

- For the **editorial** board, Randy Scholfield

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KSN News

## Proposed bill would release some drug offenders

by Dana Hertneky  
KSN News

Updated: Feb 14, 2006, 9:50am CST

**WICHITA, Kansas** - As part of a proposed bill that would relieve prison overcrowding, 250 Kansas prisoners could be released.

Since 2003, judges have been able to sentence low-level drug offenders to rehabilitation instead of prison time. Now some are asking for the same treatment for those who already behind bars.

Peter Ninemire became addicted to marijuana as a kid. That addiction eventually landed him in federal prison.

"I got a 24 and a half year sentence for cultivating that marijuana," said Ninemire.

But since President Clinton pardoned him, he has a job, a daughter, is currently working on his master's degree and is leading the push for others to get the same chance with House Bill 2231.

The bill, introduced by Wellington Representative Bill McCreary would allow low-level drug use inmates to petition the sentencing commission for a 12- to 18-month rehabilitation program in lieu of completing their sentence.

McCreary says the bill would open up prison beds and save the state money. Ninemire says offering rehabilitation over simple incarceration is a matter of public safety.

"Otherwise these people have untreated addictions that, someday, are going to hit the street in our communities and there's a five-time likelihood that they're going to end up back in prison as those who received drug treatment," said Ninemire.

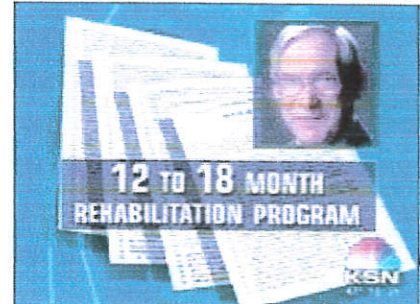
Yet the Kansas sentencing commission has gone on record against the bill and prosecutors have issues because there's no post release supervision for inmates.

McCreary said they are working on those issues. Ninemire hopes it will help others realize what he has.

"I'm just amazed that I spent that much time, money and effort trying to avoid reality when reality is the greatest thing that one could ever have. Life is beautiful."

To be clear, current law offers rehabilitation for those who are convicted today and that law has been successful. Drug treatment centers and the sentencing commission report a 90% success rate.

Story link: <http://www.ksn.com/news/stories/11345084.html>



nire

**From:** <DroegeLAW@aol.com>  
**To:** <pj9mire@sbcglobal.net>  
**Sent:** Tuesday, May 24, 2005 10:07  
**Subject:** (no subject)

Pete: Here is a copy of the statute that allowed for retroactive application of the Kansas Sentencing Guidelines. It followed a procedure similar to what is in your proposed legislation to try to determine which offenders get retroactive application of the "new" guidelines, and provided a legal process for inmates denied conversion, but felt they were eligible for retroactive application to their sentences. In a sense, many inmates were "resentenced" to the "new" guideline sentence.

## 21-4724

### Chapter 21.—CRIMES AND PUNISHMENTS PART III.—CLASSIFICATION OF CRIMES AND SENTENCING Article 47.—SENTENCING GUIDELINES

**21-4724. Sentencing; application of guidelines to persons who committed crimes prior to July 1, 1993; modification and conversion of certain sentences; review of sentences of persons in custody; department to determine criminal history classification and prepare sentencing guideline report on inmates; filing of reports; request for hearing; determination by court; crimes committed prior to July 1, 1993, but sentence imposed after such date.** (a) The sentencing grid for nondrug crimes as provided in K.S.A. 21-4704 and the sentencing grid for drug crimes as provided in K.S.A. 21-4705 shall be applied for crimes committed before July 1, 1993, as provided in this section.

(b) (1) Except as provided in subsection (d), persons who committed crimes which would be classified in a presumptive nonimprisonment grid block on either sentencing grid, in grid blocks 5-H, 5-I or 6-G of the nondrug grid or in grid blocks 3-H or 3-I of the drug grid, pursuant to the provisions of subsection (c) of K.S.A. 21-4705 and amendments thereto, if sentenced pursuant to the Kansas sentencing guidelines act, and were sentenced prior to July 1, 1993, shall have their sentences modified according to the provisions specified in the Kansas sentencing guidelines act.

(2) Except as provided in subsection (d), offenders on probation, assignment to community corrections, conditional release or parole for crimes classified in subsection (b)(1) committed prior to July 1, 1993, who have such probation, assignment to community corrections, conditional release or parole revoked shall have their sentences modified according to the provisions specified in the Kansas sentencing guidelines act.

(c) (1) Except as provided in subsection (f), the department of corrections shall conduct a review of all persons who committed crimes and were sentenced prior to July 1, 1993, and are imprisoned in the custody of the secretary of corrections as of that date. The department shall prepare a sentencing guidelines report on all such imprisoned inmates except those who have convictions for crimes which, if committed on or after July 1, 1993, would constitute a severity level 1, 2, 3 or 4 felony on the sentencing guidelines grid for nondrug crimes or a severity level 1, 2 or 3 felony on the sentencing guidelines grid for drug crimes, but, including those in grid blocks 3-H or 3-I of the drug grid, pursuant to the provisions of subsection (c) of K.S.A. 21-4705 and amendments thereto, which shall review and determine what the person's sentence as provided by the crime severity and criminal history grid matrix established by the Kansas sentencing commission guidelines act would be as if the crime were committed on or after July 1, 1993. A copy of the report shall be transmitted to the inmate, the county or district attorney for the county from which the inmate was sentenced, and the sentencing court.

(2) In determining the criminal history classification, the department of corrections shall conduct a reasonable search of the inmate's file and available presentence report, and make a reasonable inquiry of the

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ansas bureau of investigation and the federal bureau of investigation, for other records of criminal or juvenile convictions which would affect the criminal history classification.

(3) The department of corrections shall have access to any juvenile records maintained by the Kansas bureau of investigation or the department of social and rehabilitation services for use in determining the person's criminal history classification.

(4) The criminal history classification as determined by the department of corrections shall be deemed to be correct unless objection thereto is filed by either the person or the prosecution officer within the 30-day period provided to request a hearing. If an objection is filed, the sentencing court shall determine the person's criminal history classification. The burden of proof shall be on the prosecution officer regarding disputed criminal history issues.

(5) The department of corrections shall complete and submit to the appropriate parties the report on all imprisoned inmates with a controlling sentence which, if committed on and after July 1, 1993, would constitute severity level 9 or 10 felony on the sentencing guidelines grid for nondrug crimes by August 15, 1993.

(6) The department of corrections shall complete and submit to the appropriate parties the report on all imprisoned inmates with a controlling sentence which, if committed on and after July 1, 1993, would constitute severity level 7 or 8 felony on the sentencing guidelines grid for nondrug crimes by October 15, 1993.

(7) The department of corrections shall complete and submit to the appropriate parties the report on all imprisoned inmates with a controlling sentence which, if committed on and after July 1, 1993, would be classified in grid blocks 5-H, 5-I, 6-G, 6-H or 6-I of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-H or 3-I of the drug grid, pursuant to the provisions of subsection (c) of K.S.A. 21-4705 and amendments thereto, by December 1, 1993.

(d) (1) Within 30 days of the issuance of such report, the person who committed the crime and the prosecution officer shall have the right to request a hearing by filing a motion with the sentencing court, regarding conversion to a sentence under the Kansas sentencing guidelines act to be held in the jurisdiction where the original criminal case was filed. The secretary of corrections shall be provided written notice of any request for a hearing. If a request for a hearing is not filed within 30 days of the issuance of the report, the department shall convert the person's sentence to one provided for under the sentencing guidelines and provide notification of that action to the person, the prosecution officer, and the court in the jurisdiction where the original criminal case was held. The conversion by the department of corrections to the sentencing guidelines shall be to the mid-point of the range in the applicable grid box. The secretary of corrections shall be authorized to implement a converted sentence as provided in this section, if the secretary has not received written notice of a request for a hearing by the close of normal business hours on the fifth business day after expiration of the 30-day period.

(2) In the event a hearing is requested and held, the court shall determine the applicable sentence as prescribed by the Kansas sentencing guidelines act.

(3) In the event a hearing is requested, the court shall schedule and hold the hearing within 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 appointed 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 conversion to a sentence under the Kansas sentencing guidelines act.

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

(e) If a sentence is converted as provided by this section, then all the rights and privileges accorded by the Kansas sentencing guidelines act shall be applicable. A person's sentence shall not be increased in length through a conversion to one under sentencing guidelines.

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(f) In the case of any person to whom the provisions of this section shall apply, who committed a crime prior to July 1, 1993, but was sentenced after July 1, 1993, the sentencing court shall impose a sentence as provided pursuant to law as the law existed prior to July 1, 1993, and shall compute the appropriate sentence had the person been sentenced pursuant to the Kansas sentencing guidelines.

**History:** L. 1992, ch. 239, § 24; L. 1993, ch. 291, § 268; July 1.

**CASE ANNOTATIONS**

1. Whether defendant's exclusion from limited retroactivity provision of state sentencing guidelines violates equal protection examined. *Chiles v. State*, 254 K. 888, 890, 869 P.2d 707 (1994).
2. Whether court's refusal to convert defendants' sentences to guidelines sentences constitutes imposition of illegal sentence examined. *State v. Gonzales*, 255 K. 243, 244, 246, 250, 874 P.2d 612 (1994).
3. Whether defendants whose sentences are converted to guidelines remain subject to postrelease supervision upon release examined. *Phillpot v. Shelton*, 19 K.A.2d 654, 655, 660, 875 P.2d 289 (1994).
4. Whether section applies to person given suspended sentence after July 1, 1993, for crime committed prior to July 1, 1993, examined. *State v. Williams*, 19 K.A.2d 903, 904, 878 P.2d 854 (1994).
5. Whether exclusion of drug offenders from retroactive provisions of sentencing guidelines lacks rational relationship to purpose of section examined. *State v. Jones*, 19 K.A.2d 913, 914, 878 P.2d 845 (1994).
6. Whether court converting eligible inmate's sentence to guidelines may reimpose original sentence without written findings examined. *State v. Staven*, 19 K.A.2d 916, 917, 881 P.2d 573 (1994).
7. Whether sentencing attempted burglary of dwelling conviction should be classified as person felony for criminal history examined. *State v. Fifer*, 20 K.A.2d 12, 13, 881 P.2d 589 (1994).
8. Whether defendant must challenge criminal history classification in sentencing court examined; KDOC failure to transmit sentencing guideline report discussed. *Safarik v. Bruce*, 20 K.A.2d 61, 64, 883 P.2d 1211 (1994).
9. Whether court erred in converting sentencing aggravated battery sentence to severity level 4 offense examined. *State v. Houdyshell*, 20 K.A.2d 90, 95, 884 P.2d 437 (1994).
10. Whether reclassification of sentencing aggravated incest sentence as aggravated criminal sodomy violates ex post facto law prohibition examined. *State v. Colston*, 20 K.A.2d 107, 111, 883 P.2d 1231 (1994).
11. Whether court erred by converting attempt to engage in indecent liberties with a child to severity level 5 examined. *State v. Ward*, 20 K.A.2d 238, 241, 886 P.2d 890 (1994).
12. Whether allowing prosecution to amend habitual criminal act motion to substitute valid for invalid conviction is reversible error examined. *State v. Hunt*, 257 K. 388, 397, 894 P.2d 178 (1995).
13. Whether limited retroactivity of sentencing guidelines is constitutional examined. *State v. Ricks*, 257 K. 435, 442, 894 P.2d 191 (1995).
14. Whether mislabeled pro se motions for sentence conversion should be reviewed as petitions for habeas corpus examined. *State v. Randall*, 257 K. 482, 483, 893 P.2d 196 (1995).
15. Whether ineligibility for sentence conversion on any crime precludes retroactive application of sentencing guidelines examined. *State v. Lunsford*, 257 K. 508, 509, 511, 894 P.2d 200 (1995).
16. Whether defendant sentenced after KSGA (21-4701 et seq.) enactment for crimes committed before enactment is denied equal protection by preclusion of sentencing guideline retroactivity examined. *State v. Fierro*, 257 K. 639, 641, 649, 895 P.2d 186 (1995).

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17. Whether defendant committed crimes which would be in presumptive nonimprisonment grid block for retroactive sentencing guidelines conversion purposes examined. State v. Duff, 20 K.A.2d 393, 396, 888 P.2d 861 (1995).

18. Whether changing a crime's presumptive sentence from nonimprisonment to presumed imprisonment precludes retroactive sentencing guidelines conversion examined. State v. Sidders, 20 K.A.2d 405, 406, 888 P.2d 409 (1995).

19. Whether defendant who uses firearm in commission of crime is eligible for retroactive application of sentencing guidelines examined. State v. George, 20 K.A.2d 648, 651, 891 P.2d 1118 (1995).

20. Whether default judgment for defendant is appropriate remedy should district court fail to hold timely retroactive sentence conversion hearing examined. State v. Geis, 20 K.A.2d 778, 780, 894 P.2d 213 (1995).

21. Whether judge erred by failing to set forth substantial and compelling reasons for dispositional examined. State v. Rhoads, 20 K.A.2d 790, 798, 892 P.2d 918 (1995).

22. Whether subsection (d)(3) hearing deadline provisions are mandatory or directory in retroactive conversion of inmate's sentence examined. State v. Porting, 20 K.A.2d 869, 870, 892 P.2d 915 (1995).

23. Whether subsection (d)(3) is directory so that failure to comply with provisions does not divest court of jurisdiction examined. State v. Webb, 20 K.A.2d 873, 874, 893 P.2d 255 (1995).

24. Whether trial court has jurisdiction to hear challenge to KDOC offense severity classification in notice of findings examined. State v. Mejia, 20 K.A.2d 890, 891, 894 P.2d 202 (1995).

25. Whether KSGA (21-4701 et seq.) implicitly authorizes appeal of denial of motion to convert a sentence retroactively examined. State v. Austin, 20 K.A.2d 950, 952, 901 P.2d 9 (1995).

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**Law Review and Bar Journal References:**

Survey of Recent Cases, 43 K.L.R. 999 (1995).

"Criminal Procedure Review: Survey of Recent Cases," 44 K.L.R. 895 (1996).

Survey of Recent Cases, 46 K.L.R. 916, 922, 928 (1998).

"Habeas Corpus in Kansas: The Great Writ Affords Postconviction Relief at K.S.A. 60-1507," Martha J. Coffman, 67 J.K.B.A. No. 1, 16 (1998).

"Criminal Procedure Survey of Recent Cases," 50 K.L.R. 901 (2002).

**CASE ANNOTATIONS**

26. Trial court erred in failing to calculate what defendant's sentence would have been under sentencing guidelines. State v. Richmond, 258 K. 449, 463, 904 P.2d 974 (1995).

27. Conversion of defendant's sentence to imprisonment instead of probation for offenses committed on parole constitutes dispositional departure. State v. Trimble, 21 K.A.2d 32, 34, 894 P.2d 920 (1995).

28. Under facts, trial court had discretion to determine sentence should run consecutively to sentence imposed in another county. State v. Chronister, 21 K.A.2d 589, 591, 903 P.2d 1345 (1995).

29. Three-day mailing rule (60-206(e)) applies to statutory duty of the state to timely object to DOC guideline report. State v. Hunt, 21 K.A.2d 674, 906 P.2d 183 (1995).

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30. Defendant's plea for multiple offenses in separate case on same day may be used for KSGA (21-4701 et seq.) criminal history. *State v. Roderick*, 259 K. 107, 109, 911 P.2d 159 (1996).
31. KDOC use of all records available in making retroactivity determination does not violate offenders' rights to due process. *Farris v. McKune*, 259 K. 181, 182, 911 P.2d 177 (1996).
32. Limited retroactivity provision of Kansas sentencing guidelines act did not violate defendant's equal protection rights. *Jones v. Bruce*, 921 F.Supp. 708, 709 (1996).
33. Trial court did not err by converting aggravated battery against a law officer to a severity level 3 offense. *State v. Whitaker*, 260 K. 85, 90, 917 P.2d 859 (1996).
34. Method of determining eligibility for conversion of sentence discussed. *State v. Sammons*, 22 K.A.2d 311, 915 P.2d 788 (1996).
35. Section does not allow administrative KSGA (21-4701 et seq.) conversion to harsher sentence than imposed by trial court. *Blomeyer v. State*, 22 K.A.2d 382, 386, 915 P.2d 790 (1996).
36. Prosecution motion to seek departure sentence is time-barred when not filed before imposition of conversion sentence. *State v. Beall*, 22 K.A.2d 486, 920 P.2d 448 (1996).
37. Defendant sentenced after July 1, 1993, eligible for sentence conversion under subsection (b). *State v. Torrance*, 22 K.A. 2d 721, 731, 922 P.2d 1109 (1996).
38. No abuse of discretion in imposing same sentence as originally imposed; appellant not eligible for retroactive application of sentencing guidelines. *State v. Goodwin*, 261 K. 961, 962, 933 P.2d 689 (1997).
39. Retroactivity examined; statute defining length or type of criminal punishment is substantive and applies prospectively unless otherwise expressly provided. *State v. Ford*, 262 K. 206, 208, 936 P.2d 255 (1997).
40. 1996 amendments to 21-4705 concerning sentence modification are not to be applied retroactively. *State v. Roseborough*, 263 K. 378, 383, 951 P.2d 532 (1997).
41. Parole eligibility provisions of 22-3717(n) and K.A.R. 44-6-107 do not override limited retroactivity of subsection (b). *State v. Bookless*, 23 K.A.2d 730, 935 P.2d 231 (1997).
42. Untimely motion to convert under paragraph (d)(1) improperly dismissed; should have been construed as motion pursuant to 60-1507. *State v. Harlin*, 23 K.A.2d 800, 936 P.2d 292 (1997).
43. Rule that criminal statute in effect at time crime was committed is penalty imposed does not violate equal protection. *State v. Standifer*, 24 K.A.2d 441, 442, 946 P.2d 637 (1997).
44. KSGA (21-4701 et seq.) retroactivity provision does not violate separation of powers, due process, equal protection or constitute ex post facto law. *State v. Jones*, 24 K.A.2d 669, 670, 951 P.2d 1302 (1998).
45. Trial court did not err in classifying aggravated battery conviction for sentencing conversion purposes. *Gross v. State*, 24 K.A.2d 806, 807, 953 P.2d 689 (1998).
46. Trial court properly classified arson offenses for sentencing guideline conversion purposes. *State v. Maggard*, 24 K.A.2d 868, 879, 953 P.2d 1379 (1998).
47. Under facts, petitioner's voluntary manslaughter conviction was ineligible for retroactive sentence conversion. *Bradley v. State*, 25 K.A.2d 433, 435, 965 P.2d 228 (1998).

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEES

CHAIR: CORRECTIONS & JUVENILE JUSTICE

MEMBER: JUDICIARY

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2231

To: Honorable John Vratil, Chairman  
Senate Judiciary Committee

Date: February 16, 2006

Mr. Chairman and Committee Members,

Thank you for the opportunity to present testimony in support of House Bill No. 2231. The measure proposes that those persons imprisoned for having committee drug offenses be afforded an opportunity to petition the convicting court for a determination of their eligibility for treatment under SB 123, subject of course to the qualifying conditions. Admittedly, this measure could otherwise be described as making 123 retroactive. But let's say so, get past that label, and look at the real pros and cons.

As you know, the reason the so called retroactivity pieces of SB 123 were removed from the bill as originally introduced at the recommendation the Kansas Sentencing Commission—besides insuring sufficient votes for passage—was the issue raised by the local prosecutors that many of the incarcerated offenders were serving time as a result of plea bargains; had the prosecutors known that the "leniency" of mandatory treatment would be available they never would have entered into such plea bargains, and the individuals would have somehow been required to plead to or been convicted of more serious offenses.

HB 2231 contains that which the original provisions of SB 123 did not, a formal mechanism by which prosecutors can object to any application for treatment qualification, along with identified reasons justifying if not requiring a court's denial of any such application. If public safety is the concern, then prosecutors can make the case and the courts can protect the public safety by keeping the offender in prison.

Unfortunately, what not passing this bill and what keeping targeted offenders in prison both do is insure, given current resources, is that those offenders almost guaranteed to have an addiction problem will never receive treatment designed to break the bonds of addiction. Please let me emphasize a statement of Nora D. Volkow, M.D., Director, National Institute on Drug Abuse, U.S. Department HHS, during the recent (February 8, 2006) hearing before the U.S. House of Representatives Subcommittee on Crime, Terrorism and Homeland Security Committee on the Judiciary, regarding the Second Chance Act:

One old concept has been proven false, for we now know that “forced abstinence” from drug use during incarceration, if abstinence occurs, does NOT alleviate addiction. Research shows that effective treatment of addiction – a chronic, relapsing disease of the brain, characterized by compulsive behavior – requires addressing underlying issues and causes.

. . . . .

*Treatment Works!* NIDA’s research finding show unequivocally that drug treatment works and that this is true even for individuals who enter treatment under legal mandate. Interestingly, their outcomes are as favorable as those who enter treatment voluntarily.

From that same hearing, we attach for your consideration a copy of the Policy Brief: Offender Reentry published by NASADAD, the National Association of State Alcohol and Drug Abuse Directors, Inc.

What we know is that those who are currently imprisoned will most assuredly recidivate upon release. That recidivism will keep broken currently broken families, and will keep cycling the current cycle of crime among children of offenders imprisoned. Let’s put in place the legal procedure by which our courts can assess, and prosecutors present evidence regarding, an offender’s eligibility for SB 123 treatment.

This is not about treatment in lieu of incarceration. HB 2231 is about mandated rehabilitation structured on scientific principles, and restoration to societal productivity, of persons who currently are a liability and a drag on public resources that might be put to better use.





**National Association of  
State Alcohol and Drug Abuse  
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## KEY NASADAD POLICY PRIORITIES

- Strengthen State Substance Abuse Systems and the Office of the Single State Authority (SSA)
- Expand Access to Prevention and Treatment Services
- Implement an Outcome and Performance Measurement Data System
- Ensure Clinically Appropriate Care
- Promote Effective Policies Related to Co-occurring Populations

# POLICY BRIEF: OFFENDER REENTRY

## Overview

Each year over 650,000 people are leaving prison unprepared for their return to society. Many have untreated substance use disorders, lack adequate education and job skills and face homelessness. These factors help explain why, within three years, nearly two-thirds of released prisoners will be rearrested and return to prison.

## Vital Role of State Substance Abuse Directors

State substance abuse directors, also known as Single State Authorities (SSAs), have the front line responsibility for managing our nation's publicly funded substance abuse prevention and treatment system. SSAs have a long history of providing effective and efficient services with the Substance Abuse Prevention and Treatment (SAPT) Block Grant serving as the foundation of these efforts. SSAs provide leadership to improve the quality of care; improve client outcomes; increase accountability and nurture new and exciting innovations.

SSAs implement and evaluate a State-wide comprehensive system of clinically appropriate care. Every day, SSAs must work with a number of public and private stakeholders given the fact that addiction impacts everything from education, criminal justice, housing, employment and a number of other areas. As a result, Federal initiatives regarding reentry should closely interact and coordinate with SSAs given their unique role in planning, implementing and evaluating State addiction systems.

## Recidivism Rates Drop with Treatment and Aftercare Services

The Council of State Governments' (CSG) Report of the Reentry Policy Council (2005) stated, "substance abuse treatment can reduce both criminal activity and drug use, particularly when in-prison treatment is coupled with community-based aftercare." It is important that corrections administrators work with SSAs in the planning, implementing and evaluating of programs in order to achieve the highest levels of success.

*"America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life."*

*-President George W. Bush, 2004 State of the Union Address*

## State Prison Population

- **80%** report histories of drug or alcohol abuse
- **55%** report using drugs or alcohol when committing the crime that resulted in their incarceration
- **90%** have not received formal substance abuse treatment during incarceration
- **75%** recidivate when no treatment is received while incarcerated
- **27%** recidivate when treatment is received while incarcerated
- **\$1** spent on treatment yields **\$7** in future savings

## Addressing Offender Reentry

- Coordinate with Single State Authorities (SSAs) for Substance Abuse
- Expand Access to Treatment
- Strengthen Prevention Services and Infrastructure
- Support the Development of Addiction Workforce
- Continue to Support Research

### Coordination with Single State Authority (SSA)

Given the high rate of substance use disorders among offenders reentering our communities and positive effect of treatment on reducing recidivism, it is imperative that SSAs are involved in planning, implementing and evaluating any reentry strategy.

The Residential Substance Abuse Treatment (RSAT) program, housed within the Department of Justice (DOJ), acknowledges the importance of collaboration by requiring grantees to coordinate with SSAs when designing and implementing treatment programs.

*As noted by the Council of State Governments' (CSG) Report of the Reentry Policy Council, it is vital to "ensure that individualized, accessible, coordinated, and effective community based substance abuse treatment services are available."*

### Expanding Access to Treatment

The National Survey on Drug Use and Health (NSDUH) found that over 20 million Americans needed, but did not receive substance abuse treatment due, in part, to strains on capacity in the publicly funded system. Already, according to the Substance Abuse and Mental Health Services Administration (SAMHSA), the criminal justice system represents the principle source of referral for 36 percent of all substance abuse treatment admissions. With 650,000 offenders returning to our cities and towns, many in need of services, every effort must be made to expand prevention and treatment capacity.

Policies that increase access to treatment services are necessary in order for State systems to be able to absorb additional admissions. One example is a strong commitment to the SAPT Block Grant – funding directed to every State and Territory - that represents approximately 40 percent of prevention and treatment expenditures for SSAs. Other support comes out of DOJ through programs such as RSAT and the Reentry Demonstration Grants.

### Strengthen Prevention Services and Infrastructure

Any crime prevention strategy requires a sound alcohol and other drug prevention infrastructure in each State. Infrastructure is needed to provide the capacity and resources for developing effective programs to prevent and reduce alcohol and other drug related crimes. SAMHSA's Center for Substance Abuse Prevention (CSAP) has been partnering with SSAs to develop this fundamental infrastructure in a number of States through the State Prevention Framework State Incentive Grant (SPFSIG).

### Support the Development of Addiction Workforce

A key challenge for many States in enhancing prevention and treatment services is recruiting, training, and retaining qualified treatment professionals. Effective addiction counseling is a skill that must be learned and developed. Salaries for counselors average about \$30,000 per year, which is low for such skilled and emotionally challenging work.

There is a shortage of trained counselors and that shortage is likely to grow. According to the Bureau of Labor Statistics (BLS), a total of 61,000 individuals were employed as substance abuse and behavioral disorders counselors in 2000; by 2010, the Department of Labor (DOL) projects there will be a need for an additional 21,000 counselors, a 35 percent increase. A similar increase in demand is anticipated for licensed professionals who have received graduate-level educations.

To reverse this trend, initiatives to increase scholarships and offer student loan repayment to those working in the field must be considered on a State and federal level.

### Continue to Support Research

It is essential to conduct research on the impact addiction services have on offender reentry. SSAs strongly urge the National Institute of Justice (NIJ) and the Bureau of Justice Statistics (BJS) to collaborate with the National Institute on Drug Abuse (NIDA), National Institute of Alcohol Abuse and Alcoholism (NIAAA), and States as they continue studies regarding prisoner reentry efforts.



NASADAD's mission is to promote effective and efficient State substance abuse service systems.

Contact information: Robert Morrison, Director of Public Policy, at (202) 293-0090 x 106 or [rmorrison@nasadad.org](mailto:rmorrison@nasadad.org) or  
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TOPEKA

HOUSE OF  
 REPRESENTATIVES

ENVIRONMENT  
 FINANCIAL INSTITUTIONS  
 TAXATION  
 TRANSPORTATION

Testimony on HB 2231  
 Senate Judiciary Committee

February 16, 2006

Mr. Chairman, members of the Committee: I am Representative Pat George. I currently serve as Vice-Chairman of the Valley Hope Association (the largest private provider of substance abuse treatment in the U.S. I am a member of the (9) person National Policy Panel on Substance Abuse chaired by former Governor & Presidential candidate Michael Dukakis. I am also past President of the New Chance Treatment Center in Dodge City. I state these facts to show that I have more than a passing interest in substance abuse treatment.

You will have many facts supporting HB 2231 given to you today - i.e. treatment 2-3 times less expensive than incarceration. But I'm not here to give you facts, I'm here to give you a face. That face is a face of someone that was a substance abuser. Someone who was affected by the disease of addiction. A face of someone who could be still be suffering from this dreaded disease but because this "someone" was given the choice of treatment over 14 years ago he has been given a new "lease on life" similar to someone who has received heart surgery and subsequent rehabilitation to repair heart disease. This "someone" was able to establish a business that gainfully provided employment for 54 people, become a Boy Scout volunteer, President of Local FCA, a source of help for many youth who suffer from this disease of addiction, a loving husband and father of 3 beautiful children and . . . a member of the Kansas House of Representatives. That someone is me! Treatment does work.

I ask that you would pass out HB 2231, favorably, because you never know who the "someone", that you help, might be.

Senate Judiciary

2-16-06

Attachment 7

# Columnist helps pull addicts from Baltimore's drug abyss

By DeWayne Wickham

When it comes to crusading journalists, Dan Rodricks isn't likely to get a mention. And that's understandable. After all, he hasn't unmasked any political bagmen, corporate robber barons or pedophile churchmen. And he hasn't used his column in *The Sun*, Baltimore's lone daily newspaper, to reveal one of those secret acts that government officials think the rest of us shouldn't know.

Rodricks isn't that kind of crusader — but the cause he champions is no less important. This 51-year-old white guy, whose New England accent still peppers his speech three decades after he began his journalism career in Baltimore, wants to stem the murder rate in the majority-black city.

For about as long as anyone can remember, Baltimore has had one of the nation's highest murder rates, which has caused some cynics to start calling Maryland's largest city "Bodymore, Murderland." Most of the killings are thought to be linked to the illegal drug trade.

Eight months ago, Rodricks wrote a column urging Baltimore's drug dealers to take off the summer "to see what it might be like around here without all the shooting and killing." He offered to help those who heeded his plea find some honest work.

## High crime rate

Crime in Baltimore, which has turned many of its poorest neighborhoods into shooting galleries, has gotten the city a lot of national attention. Last year, Baltimore was the nation's sixth most dangerous city, according to Morgan Quitno Press, which issues an annual report on the nation's safest and most dangerous cities. It ranked 11th in 2004.

Not surprisingly, Baltimore has become a popular location for TV and cable shows in search of a true-to-life crime setting. The NBC TV show *Homicide: Life on the Street* was shot in Baltimore. HBO shot *The Corner*, a miniseries about life in one of the city's drug-infested neighborhoods. And the cable network will soon begin airing its fourth season of *The Wire*, a drama

Simon, an author and a former *Sun* reporter, has had a hand in all three shows.

Rodricks hopes to change the image of his adopted city. "I was writing to a group of people that we assumed didn't read newspapers, and I got a lot of ridicule," he says of the reaction from people outside of Baltimore's drug culture. He also got a lot of calls from the people he was trying to reach.

## Calls for help

More than 1,000 men and women "who have been addicted to drugs or sold drugs" have asked Rodricks to help them find work or entry into a drug-treatment program. The vast majority are black males, he told me.

By the end of last year, Rodricks says, he has helped about 50 callers find a job or gain admission into a drug-treatment program. "Instead of writing about them, I wrote to them," he says. "Most of the people calling me are black men between the ages of 20 and 45 who were recently incarcerated and are totally unemployed. And they want to work."

What's remarkable about all of this is not the small dent Rodricks has made in the number of people hopelessly mired in Baltimore's drug culture, though any progress made in getting people out of that deadly quagmire ought to be applauded. Rodricks has accomplished something far more significant. The response to his column is a real-life affirmation of the conclusion reached by Harvard scholar William Julius Wilson in his 1997 book, *When Work Disappears*. Wilson argued that loss of blue-collar jobs has driven many poor people into the drug culture — an abyss from which few escape.

"The phone keeps ringing, and I keep answering," Rodricks says of his efforts to reduce Baltimore's drug violence, the kind of crime that many people in this country think should be combated with more and bigger prisons.

That might be one solution. But in offering callers help in finding a steady job and treatment for their drug addiction, Rodricks might have an even better idea.



The (Baltimore) Sun

Rodricks: "I wrote to them."

Michael Dukakis  
Re: HB 2231

Let me give you a quick couple of paragraphs.

It doesn't make a lot of sense to spend thousands of dollars every year to incarcerate non-violent offenders who have violated our drug laws. These people have a problem. It is serious, and it is one that affects millions of Americans. And if they have violated the law, then they should be expected to do whatever it takes to deal with their problem under the law and under supervision.

A number of states, including California, have approved initiatives that provide for alternative sentencing to treatment. I support that approach, but it must be a carefully supervised program, preferably handled by drug courts that know what they are doing and exercise close and continuing oversight over the process and the defendant. That has not been happening in California, and the result is that fully two thirds of the defendants who are sentenced to treatment either don't show up or don't finish the program. Obviously, under those circumstances, we will not achieve the results we want, and it certainly won't help these defendants to get the kind of treatment and supervision they need.

It is clear that when the program is reauthorized in California, it will give the state's drug courts, its judges, and its probation officers a lot more authority and a lot more responsibility, and I believe under those circumstances, treatment rather than incarceration cannot only be far more effective; it can save a lot of public dollars as well. In short, alternative sentencing under the close and careful supervision of the courts and probation officials with effective treatment and random testing can both reduce the level of petty crime and dramatically improve the futures of non-violent offenders.

Respectfully your,  
Michael Dukakis



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE  
ATTORNEY GENERAL

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February 15, 2006

SENATE JUDICIARY COMMITTEE  
Testimony of Kevin A. Graham  
in support of  
House Bill No. 2231

Dear Chairman Vratil and Members of the Senate Judiciary Committee:

Thank you for allowing me to appear today on behalf of Attorney General Phill Kline in opposition to HB 2231. While Attorney General Kline certainly wishes to see individuals suffering from addiction receive effective treatment and ultimately conquer their addiction, the Attorney General can not support legislation that would undo lawful criminal sentences and provide early release into Kansas communities for offenders who pose an unknown potential for future criminal activity.

In very simplified terms, HB 2231 seeks to retroactively extend the community-drug-treatment-instead-of-incarceration provisions implemented in 2003 by Senate Bill 123 to apply to drug offenders sentenced for their crimes prior to November 1, 2003. SB 123 applied only to offenders sentenced on or after November 1, 2003. If enacted, HB 2231, as amended by the House committee, would result in allowing approximately 80 offenders to be released from the Kansas Department of Corrections before the expiration of their lawful sentences.

The supplemental note prepared by the Legislative Research Department provides a detailed synopsis of the legal provisions of HB2231, as well as background and fiscal impact information. I have attached a copy of the supplemental note as well as copies of memorandums prepared by Patricia Biggs, Executive Director of the Kansas Sentencing Commission, for the committee's consideration.\*

When considering this piece of legislation, the committee should remember that each of the individual offenders contemplated to be released from prison and admitted to treatment in a community-based drug treatment program is an offender who, at the time of conviction, received a lawful sentence under the Kansas Sentencing Guidelines Act ordering that person to imprisonment in the Kansas Department of Corrections. The committee will no doubt be told that the only offenders whom this bill would apply to would be those whose crime of conviction was solely that of felony possession of opiates or hallucinogenic drugs. The implication will be that these offenders are

\* Note: Memorandums dated February 8, 2006, and February 9, 2006, from Patricia Biggs addressed to Rep. McCreary are attached. The February 8, 2006, memo provides a bedspace impact for HB 2231, as amended by the House Committee. The February 8, 2006, memo provides a bedspace impact for a balloon amendment anticipated to be proposed by Rep. McCreary.

individuals whose only crimes were drug possession. In reality, there is a vast distinction between having been “convicted solely of a felony possession of drugs” and being a person whose “only crime was a felony possession of drugs.” It must not be forgotten that in many cases the “crime(s) of conviction” for an individual offender were the result of a plea bargain. What this means is that an offender may have been charged with numerous felony and/or misdemeanor counts, but as a result of plea negotiations with the prosecutor, an agreement was worked out where the offender plead guilty to a particular charge (or charges) and other counts were dismissed. This was often the situation in cases involving drug charges for felony possession of opiates or hallucinogenic drugs prior to the enactment of SB 123.

Prior to the enactment of SB 123, the Kansas Sentencing Guidelines drug grid provided for *presumptive imprisonment* sentences for many offenders convicted of a second possession of hallucinogenic drugs or possession of opiates. At the same time, the Kansas Sentencing Guidelines non-drug grid provided for *presumptive probation* sentences for many offenders convicted of crimes ranging from residential burglary, to theft, to even some types of aggravated battery. It is common knowledge that individuals using illegal drugs often escalate their criminal conduct to committing crimes such as theft or burglary in order to obtain funds to feed their drug habit. Thus, it is common for a prosecutor handling a criminal case where possession of an illegal drug is one charge, to also have numerous criminal counts of theft, burglary, forgery or making a false information against the same defendant. Prior to the passage of SB 123, it was therefore common for prosecutors, faced with the fact that they would be unable to obtain a prison sentence for the non-drug counts but would be able to get a prison sentence for the drug possession count to enter into a plea agreement to have the offender plead guilty to the drug charge in exchange for the dismissal of one or all of the non-drug offenses. In such cases both the State of Kansas and the defendant benefited from their bargain. The State was able to avoid the costs of a trial while still obtaining a reasonable sentence of the imprisonment given the offender’s criminal conduct. The offender benefited from the bargain by avoiding convictions for the other offenses (and thereby avoiding serving additional time incarcerated for those offenses.) Thus, as stated previously, in reality there is a difference between simply the “crimes of conviction” of a particular defendant and the “crimes of commission” of that same person.

If HB 2231 is enacted, either in its current form or in an amended form that would provide for even greater retroactive application, the bill would have the potential effect of releasing from prison individuals whose own conduct resulted in their being sentenced to prison. The bill may also have the effect of providing further “benefits” to offenders who have already received the benefit of a plea bargain. To allow this situation to occur would be inadvisable and would have the potential of giving early release to offenders who pose an unknown risk of future criminal conduct to the community.

\* Note: Memorandums dated February 8, 2006, and February 9, 2006, from Patricia Biggs addressed to Rep. McCreary are attached. The February 8, 2006, memo provides a bedspace impact for HB 2231, as amended by the House Committee. The February 8, 2006, memo provides a bedspace impact for a balloon amendment anticipated to be proposed by Rep. McCreary.

On behalf of Attorney General Phill Kline, I recommend the committee not report HB 2231 favorably and allow those offenders lawfully sentenced to imprisonment for their crimes complete their sentences.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE



Kevin A. Graham  
Assistant Attorney General  
Director of Legislative Affairs

\* Note: Memorandums dated February 8, 2006, and February 9, 2006, from Patricia Biggs addressed to Rep. McCreary are attached. The February 8, 2006, memo provides a bedspace impact for HB 2231, as amended by the House Committee. The February 8, 2006, memo provides a bedspace impact for a balloon amendment anticipated to be proposed by Rep. McCreary.



SESSION OF 2005

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2231**

As Amended by House Committee on  
Federal and State Affairs

**Brief\***

HB 2231, as amended, would establish a process by which certain adult inmates may petition the court to have the inmate's drug possession sentence modified to community corrections supervision with the condition of participation in a certified drug treatment program if the following criteria are met:

- The inmate is convicted solely of a felony possession of opiates or hallucinogenic drugs;
- The inmate's offense is classified in Category 4-E through 4-I of the drug sentencing grid and the inmate has no prior felony offense for unlawful acts involving proceeds derived from violations of the Uniform Controlled Substances Act, unlawful manufacturing or attempted manufacturing of any controlled substance, and unlawful acts relating to sale or distribution of opiates or hallucinogenic drugs within 1,000 feet of school property; and
- The inmate's offense is classified in Category 4-A through 4-D of the drug sentencing grid and the inmate has no prior felony offense for unlawful acts involving proceeds derived from violations of the Uniform Controlled Substances Act, unlawful manufacturing or attempted manufacturing of any controlled substance, and unlawful acts relating to sale or distribution of opiates or hallucinogenic drugs within 1,000 feet of school property. Additionally, the inmate's prior person felonies were a severity level 8, 9, or 10 on the non-drug sentencing grid.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

**Initial Review.** The bill would establish a process where the Department of Corrections would review all eligible inmates who have more than 180 days to serve until the inmate's initial release date. The Department would submit a report to the inmate, the prosecuting attorney, and the sentencing court of its findings on the inmate's eligibility for modification of the sentence. If there is no objection to the report, the Department of Corrections' finding would be deemed correct.

**Sentencing Court Review.** Modification of a sentence under this bill would not occur without the sentencing court's review and order. Under all circumstances, the inmate would be required to request a hearing with the sentencing court within 60 days of the issuance of the report to preserve the inmate's eligibility for modification of the sentence. The inmate or the prosecuting attorney may object to the findings in the Department of Corrections' report within 60 days and require the sentencing court to determine if the inmate is eligible for modification of the sentence. The burden of proof would be on the prosecuting attorney to prove the inmate is not eligible for modification of the sentence.

The sentencing court also would be required to determine whether the safety of the members of the public would be jeopardized by the modification of the sentence. If the sentencing court determines it would not jeopardize the safety of the members of the public, the sentencing court would be required to grant modification of sentence and forward an order to the Secretary of Corrections to parole the inmate to community corrections supervision with the condition of participation in a certified drug treatment program. Conversely, if the sentencing court determines it would jeopardize the safety of the members of the public, the sentencing court would be required to deny modification of the sentence.

Other major provisions under this review are as follows:

- The hearing would be required to occur within 60 days of the request for hearing if the sentencing court deems a hearing is necessary, and the sentencing court would be required to make a ruling on the issues presented within 30 days of the hearing;
- The inmate would be represented by counsel;

- The inmate's personal attendance at the hearing would not be required nor is it a matter of right for the inmate to be present in person at the hearing; and
- The inmate would not be given credit toward the original prison sentence for time served on the modified sentence.

**Revocation.** The bill would provide that if the offender is judicially determined to have failed to participate in or has a pattern of intentional conduct that demonstrates a refusal to comply with or participate in the certified drug treatment program, the offender would be subject to revocation of parole and would be required to serve the remainder of the underlying prison sentence. Upon completion of the sentence, the offender would not be subject to postrelease supervision.

## **Background**

Legislation enacted into law during the 2003 Session (SB 123) with various provisions taking effect on November 1, 2003. The bill established a non-prison sentence of drug abuse treatment for certain offenders convicted of possession of opiates or hallucinogenic drugs. HB 2231 extends the benefits of the 2003 Legislation retroactively to those inmates who committed a specified drug offense on or after July 1, 1993 (the enactment date of the Kansas Sentencing Guidelines Act) and sentenced before November 1, 2003.

Representative McCreary sponsored the bill and testified as a proponent. Senator Betts and Representatives Bethell, Roth, and Kelsey also testified as proponents of the bill. Representatives from the Families Against Mandatory Minimums Foundation, various alcohol and drug treatment centers, a member of the legal profession, a parole officer, and citizens testified in support of the bill. Representative Faust-Goudeau presented written testimony in support of the bill.

A representative of the Kansas County and District Attorney's Association testified in opposition of the bill.

The House Committee amended the bill to define the inmates eligible for modification of the inmate's sentence are those inmates who

were convicted solely of and incarcerated for a felony possession of opiates or hallucinogenic drugs.

The fiscal note for the bill as introduced indicates the following:

- The Kansas Sentencing Commission estimates that 516 inmates would be eligible for sentence modification and that passage of the bill would reduce the need for prison beds by 175 by the end of FY 2006, 89 beds by the end of FY 2007, and gradually decreasing to four prison beds by the end of FY 2015. A reduction in annual cost of approximately \$2,000 per inmate for marginal expenses is projected.
- The Kansas Sentencing Commission estimates that the cost of treatment for inmates eligible for modification under this bill would be approximately \$5,648 per offender. At 516 offenders, the agency would require additional expenditures of \$2,914,368 from the State General Fund.
- The Kansas Sentencing Commission also estimates it would incur additional administrative costs in FY 2006 totaling \$101,282 from the State General Fund.
- The Department of Corrections estimates that enactment of this bill would increase the number of field supervision caseloads in the Community Corrections Program and would cause an additional expenditure of \$1,526,328 from the State General Fund.
- The Department of Corrections estimates that implementation of its review of eligible inmates would cost the agency \$66,259.



# 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:** Representative McCreary  
**From:** Patricia Biggs, Executive Director  
**Date:** February 8, 2006  
**RE:** Fiscal Note on 2231 with proposed balloon amendment of Feb. 3, 2006

#### SUMMARY OF BILL:

AN ACT concerning crimes, punishment and criminal procedure; relating to the nonprison sanction of a certified drug abuse treatment program; amending K.S.A. 2005 Supp. 21-4603d and 21-4729 and repealing the existing sections.

#### **This bill may have an impact upon the Kansas Sentencing Guidelines Act (KSGA).**

Specifically, this bill will:

- Allow offenders to have their sentences modified according to the provisions of this section if the person's conviction is for a felony violation of K.S.A. 65-4160 or 65-4162 and the person meets the requirements of K.S.A. 2005 Supp. 21-4729 and amendments thereto. **Newest proposed amendment by Rep. McCreary serves to broaden the application of this section by removing the more restrictive language: *The person's sole crime of which convicted for and for which incarcerated is. . . .***
- Require offenders whose sentences are modified to the requirements of K.S.A. 2005 Supp. 21-4729 and whose probation is revoked for failure to comply with or participate in the treatment program, as established by judicial finding, serve the underlying sentence as established prior to modification. Offenders are not subject to a period of postrelease supervision upon the completion of their prison sentence.
- Apply to offenders convicted of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, and sentenced prior to November 1, 2003.
- Sets the effective date as publication in the Kansas register.

**New Section 1** (a) provides that a person convicted of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, and sentenced therefore prior to November 1, 2003, and who meets the requirements of K.S.A. 2005 Supp. 21-4729 and amendments thereto, may have such person's sentence modified according to the provisions of this section. **Newest proposed amendment by Rep. McCreary serves to broaden the application of this section by removing the more restrictive language: *The person's sole crime of which convicted for and for which incarcerated is. . . .***

(b) requires the Department of Corrections to conduct a review on persons who committed such crimes during those dates and submit the reports to the appropriate parties.

(c) through (g) are procedural requirements for the court, inmate and prosecution.

**Section 2** amends K.S.A. 2005 Supp. 21-4603d (n)(1) to remove "For those offenders who are convicted on or after the effective date of this act" and add subsection (n)(2) to require a defendant whose sentence is modified pursuant to section 1, and whose probation is revoked for refusal to comply with or participate

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February 8, 2006* *Page 2 of 8*

in a treatment program, as established by judicial finding, must serve the underlying prison sentence as established prior to modification. After completion of the underlying prison sentence, the defendant will not have postrelease supervision. The amount of time spent participating in the treatment program will not be credited to the defendant's underlying prison sentence.

**Section 3** amends K.S.A. **2005** Supp. 21-4729 to remove "On and after November 1, 2003" and "who are sentenced on or after November 1, 2003" from the eligibility requirements for sentencing under this statute.

**Section 4** repeals K.S.A. **2005** Supp. 21-4603d and 21-4729.

**Section 5** sets the effective date as publication in the Kansas register.

---

**IMPACT ON KANSAS SENTENCING COMMISSION:**

Based on the current duties of the Kansas Sentencing Commission, the change(s) proposed in this bill will affect the following:

- The current operation or responsibilities of the Commission
- The current budget of the Commission.
- The current staffing and operating expenditure levels of the Commission.
- The long-range fiscal estimates of the Commission.
- The change(s) proposed in this bill will not likely affect the duties of the Kansas Sentencing Commission.

- **SB 123 Treatment Population**

- The impact of this bill with the proposed balloon amendment will increase the drug treatment population by 176 offenders in the year 2007.
- Estimate of total foreseen costs associated with treatment costs and payment for treatment for this group of offenders is \$1,157,092.60 (see detail in last section of this document).

- **Workload of the Commission**

- The impact of this bill with the proposed balloon amendment will increase the workload of the Commission by 176 to 216 journal entries in the next few years.
- While this increase in journal entries *may* be handled within current staffing levels, it is likely that attempting to do so will cause delays and increase backlogs of journal entries that need to be recorded. A backlog that is left unaddressed may decrease accuracy of future impact projections and prison population projections due to unrecorded data.

---

**ANALYTIC RESULT SUMMARY:**

**IMPACT ON PRISON ADMISSIONS:**

Increase by an estimated:  
Potential to increase but cannot quantify  
Decrease by an estimated:  
Potential to decrease but cannot quantify  
Remain the same

**IMPACT ON OFFENDER POPULATION LEVELS:**

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NOTE: No analysis is performed for those offenders who meet the provisions of this bill with its proposed balloon amendment and are on post-incarceration supervision. As no analysis is conducted for this group, the implicit assumption is therefore that upon a violation of conditions of post incarceration supervision, these offenders will serve time in prison pursuant to the statute under which they were sentenced and, after serving such prison time for violation, they will continue on post incarceration supervision until such term has been completed.

Impact offender population as noted below : **Prison beds needed will be reduced by 161 by the end of FY 2007; prison beds needed will be reduced by 3 by the end of FY 2016**

Potentially impact offender population as noted below.

Minimal or no impact on offender population.

May impact offender population but cannot quantify with data available.

#### ASSUMPTIONS

- Population:
  - Target: The target population of this assessment (proposed balloon amendments) includes any person who
    - Was convicted of a felony violation of K.S.A. 65-4160 or 65-4162 on or after July 1, 1993 and sentenced therefore prior to November 1, 2003 and meets the requirements of K.S.A. 2005 Supp.21-4729, and amendments thereto.
  - Such offender may have his or her sentence modified to a drug abuse treatment program.
  - Growth Rate: Projected admissions to KDOC correctional facilities are assumed to increase by an annual average of 1.2% which is consistent with the underlying growth assumption used in the baseline forecast.
  - Impact Relation: Bed space impacts are in relation to the baseline forecast produced in September 2005 by the Kansas Sentencing Commission.
- New policy effective date is assumed to begin on **July 1, 2006.**

#### ***Assumptions regarding sentence alteration- movement to treatment:***

- It is further assumed that:
  - 75% of the above defined offenders incarcerated in KDOC on June 30, 2005, whose offense date was on or after July 1, 1993 and sentence date was prior to November 1, 2003, will meet the requirements of K.S.A. 2004 Supp.21-4729;
  - the offenders must have greater than 180 days to serve on his or her sentence prior to his or her initial release date from the above policy effective date.
- The review time of inmates is based on such inmate's custody or security classification in the following order:
  - Minimum within 60 days
  - Medium within 90 days
  - Maximum within 120 (include special management and unclassified units)

#### ***Assumptions regarding failure related to offenders achieving sentence alteration to treatment:***

*Prison Population Impact of 2006 Feb. 3 balloon amendment to 2005 HB 2231  
February 8, 2006* *Page 4 of 8*

NOTE: No analysis is performed for those offenders who meet the provisions of this bill with its proposed balloon amendment and are on post-incarceration supervision. As no analysis is conducted for this group, the implicit assumption is therefore that upon a violation of conditions of post incarceration supervision, these offenders will serve time in prison pursuant to the statute under which they were sentenced and, after serving such prison time for violation, they will continue on post incarceration supervision until such term has been completed.

- The refusal and failure rate of a drug abuse treatment program is assumed to 23% which is the same rate used in SB 123 projections.
  - the target offender has to serve his or her underlying prison sentence as established prior to modification if he or she refuses or fails to comply with or participate in a drug abuse treatment program;
- The revocation periods are assumed to be 1/3 after 6 months, 1/3 after 12 months and 1/3 after 15 months but within the 18 month period.
  - Percentage of the sentence served in prison is assumed to be 100 percent of the underlying prison sentence as established prior to modification.
- This impact projection is based on KDOC prison population *on June 30, 2005*.

## **PRESENTATION OF ANALYSIS AND RESULTS**

### **Analysis**

- On June 30, 2005, 235 offenders were incarcerated in KDOC who
  - were convicted of the crime as described in K.S.A. 65-4160 or 65-4162 on or after July 1, 1993;
  - were sentenced prior to November 1, 2003; and
  - have a length of sentence to serve in KDOC greater than 180 days from the policy effective date (*which is assumed to be July 1, 2006 for this analysis*).
  - Of the 235 offenders,
    - 86 (36.6%) were new court commitments
    - 99 (42.1%) were probation condition violators
    - 27 (11.5%) were probation violators with new sentence
    - 17 (7.2%) were post incarceration supervision violators with new sentence
    - 6 (2.6%) were parole to detainer and returned with a new sentence
  - The severity level of these offenders are:
    - 47 (20.0%) drug level 1
    - 97 (41.3%) drug level 2
    - 91 (38.7%) drug level 4
  - The average remaining sentence less good time and jail credit is:
    - 57.5 months for drug level 1
    - 26.1 months for drug level 2
    - 20.4 months for drug level 4



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*Prison Population Impact of 2006 Feb. 3 balloon amendment to 2005 HB 2231  
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**Results**

**Current Policy:** If current policy remains unchanged,

- o by the year 2007, 235 prison beds will be needed and
- o by the year 2016, 4 prison beds will be needed.

**Impact Assessment:** If...

- 75% of the above offenders meet the requirements of K.S.A. 2004 Supp.21-4729 and the review time is based on the custody or security classification in the following order:
  - Minimum within 60 days
  - Medium within 90 days
  - Maximum within 120 days

and

- o 23% of those whose sentences are modified and released to a drug treatment program are revoked for condition violations with the following portions and time intervals:
  - 1/3 after 6 months
  - 1/3 after 12 months
  - 1/3 after 15 months but within 18 months
    - o **By the year 2007, 74 prison beds will be needed**
      - o **This is 161 fewer prison beds than are needed under current policy.**
    - o **By the year 2016, 1 prison bed will be needed.**
      - o **This is 3 fewer prison beds than are needed under current policy.**

**Bed Space Impact Assessment – HB 2231 with Proposed Balloon Amendment of 2/3/2006**

Fiscal Year	Current Policy Unchanged Beds Needed	75% to Drug Treatment with 23% Revocation Beds Needed	Reduction in Bed Needs
2007	235	74	161
2008	99	42	57
2009	51	25	26
2010	32	8	24
2011	24	6	18
2012	16	6	10
2013	12	5	7
2014	9	2	7
2015	4	1	3
2016	4	1	3

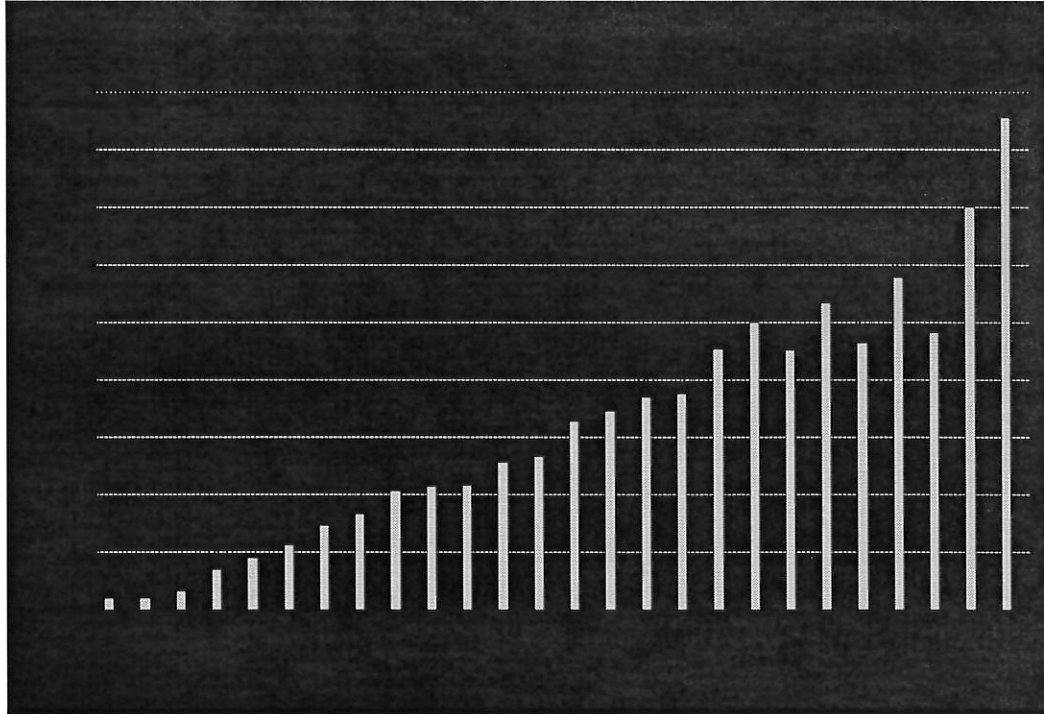
**Treatment Budget:**

The budget associated with treatment services for this population also flows through the Sentencing Commission. Therefore, increasing the number of offenders who are receiving treatment under the provisions of this bill, the dollars associated with treatment will also have to increase.

Current budget calculations for SB 123 offenders uses an estimated average cost per offender of \$4634. (This average cost is based upon the distribution of offenders pursuant to their level of risk of reoffense as measured by the initial/presentence LSI-R© conducted by Community Corrections.)

Although it seems logical to assume that the incarcerated population subject to this treatment would be of higher risk, how much higher their risk is cannot be known at this time. This population would be assumed to be of higher risk because: (a) the judge sentenced them to incarceration rather than probation and (b) more of this group had multiple possession convictions (61.3% were sentenced to drug severity level 1 or 2). Due to these factors, and the fact that about 3 in 5 of this offender group has multiple possession convictions, we would estimate that the cost for treatment for these offenders would be approximately one-third higher than the cost for the population presently under 2003-SB 123. This would result in an average cost per offender converted to be **\$6178.65**. **At 176 offenders, the treatment budget then requires an additional \$1,087,442.60** for this offender group in FY 2007.

**Payment for Treatment Services: Invoices Processed**



**Additional Staff Person – Half time Accountant; half time Researcher**

*Prison Population Impact of 2006 Feb. 3 balloon amendment to 2005 HB 2231  
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Accountant. We assume that, upon sentence conversion, this group of offenders would leave KDOC and be engaged in treatment nearly immediately. Each offender with a converted sentence would then have an assessment followed by engagement in treatment services. The assessment and treatment services may be delivered through different certified treatment providers. Thus, in the first month following release, each offender will have at least one invoice submitted to the KSC for payment and may have 2 or more invoices submitted for payment. The following analysis, however, considers the conservative case of one invoice per person per month of treatment.

Through January 31, 2006 this graphic displays the number of invoices received by the Sentencing Commission for processing and payment. Most all of these have been handled for payment by two staff members. We would anticipate that the additional invoice submissions created by this additional offender group would require an additional half-time accountant position.

Researcher. (Data Entry of Assessment Results for Evaluation.) As required by 2003-SB 123, evaluation is necessary for this program at 18, 36, and 60 months post-implementation. If there is an influx of an additional 176 offenders into this treatment program, an additional half time staff person would be required to complete the data entry of the following pieces of information:

- Results of substance abuse assessment and mental health screen
- Addiction Severity Index (done 3 times per offender – (1) at program start, (2) at treatment conclusion, and (3) 6 months post-treatment)
- SASSI III (Substance Abuse Subtle Screening Inventory)

An accountant II could be tasked with both portions of this position. Salary for an accountant II (pay grade 24) at mid-range totals \$38,500; with approximately 23% to cover fringe benefits, funding for **that staff person would require approximately \$47,355.**

Associated Costs: Computer, printer, software, desk, and office space would be required also for each of these two additional positions. Estimates indicate that the following expenses would be incurred:

	Accountant II	
Computer & Printer	\$1,850.00	
General Software	\$350.00	
SPSS (Statistical Software)	\$1,000.00	
Computer Set Up/DISC	\$300.00	
Desk, Chair, Filing, etc.	\$3,000.00	
Server expansion	\$3,000.00	
<b>ONE TIME: Subtotal</b>		<b>\$9,500.00</b>
Physical space	\$11,000.00	
<b>TOTAL</b>		<b>\$20,500.00</b>

Physical office space would also be needed. Present discussions with management of our building indicate that contiguous office space of approximately 725 square feet could be secured at between \$900 and \$950 per month. A "rounded" estimate of \$11,000 annual cost is included here.

**Total associated costs then total \$20,500 in FY 2007 plus salary and benefits of approximately \$47,355 would accommodate this additional unclassified FTE.**

Payment of Invoices: Charges for checks and for mailings: Costs are incurred for each check that is written and mailed for payment of treatment services. If each offender under the provisions of this bill is assumed to stay in treatment for an average of 15 months, each would generate a minimum of 15 monthly

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invoices (additional invoices could be submitted for payment if the offender changes treatment providers during a month, for example).

On a per person basis, charges to the Sentencing Commission for payment of treatment invoices include \$0.37 per warrant issued (\$0.06 to State Treasurer for Vendor payment + \$0.02 to State Treasurer for Warrant redemption + \$0.29 per payment drawn for either Electronic Stars or Paper Warrant fees = \$0.37 per check) and \$0.31 mail fee per warrant mailed. This adds \$0.68 per person per month of treatment. For the additional 176 offenders, this amounts to \$119.68 per month. Assuming that, on average, these 176 offenders stay in treatment 15 months (sentence is "up to 18 months"), this totals an additional **\$1,795.20 needed by the agency to draw checks and mail them** to the treatment providers (note: these items were not covered in the budget for the agency when 2003-SB 123 was put in place).

Treatment	176 offenders	\$6,178.65	Avg. cost per offender	\$1,087,442.40
Administrative Costs				
Additional position: 1/2 time Accountant, 1/2 time Research (per year incl. benefits = \$47,355;				\$47,355.00
Cost for additional office space				\$11,000.00
Costs for warrant drawing and mailing				\$1,795.20
One-time costs - office & computer				\$9,500.00
<b>TOTAL</b>				<b>\$1,157,092.60</b>

**Estimate of total foreseen costs associated with treatment costs and payment for treatment for this group of offenders, then, is \$1,157,092.60.**

**CONCLUSION: IMPACT OF HB 2231 with proposed balloon amendment of 02/03/06:**

Prison Admissions: The impact of this bill will result in no change in prison admissions (will result in increased prison releases).

Prison Beds: The impact of this bill will result in the need for 161 fewer prison bed space needs by FY 2007 and 3 fewer prison bed space needs by the end of FY 2016.

Additional costs associated with treatment & payment for treatment: \$1,157,092.60



# 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:** Representative McCreary  
**From:** Patricia Biggs, Executive Director  
**Date:** February 9, 2006  
**RE:** Fiscal Note on 2231 as amended through 2005 House

#### SUMMARY OF BILL:

AN ACT concerning crimes, punishment and criminal procedure; relating to the nonprison sanction of a certified drug abuse treatment program; amending K.S.A. 2004 Supp. 21-4603d and 21-4729 and repealing the existing sections.

#### **This bill may have an impact upon the Kansas Sentencing Guidelines Act (KSGA).**

Specifically, this bill will:

- Allow offenders to have their sentences modified according to the provisions of this section if the person's **only crime of conviction** (no other felony or misdemeanor convictions) **and the crime for which the person is incarcerated** (the person is not in prison for any other felony or misdemeanor convictions) **is a violation of K.S.A. 65-4160 or 65-4162 and the person meets the requirements of K.S.A. 2004 Supp. 21-4729 and amendments thereto.**
- Require offenders whose sentences are modified to the requirements of K.S.A. 2004 Supp. 21-4729 and whose probation is revoked for failure to comply with or participate in the treatment program, as established by judicial finding, serve the underlying sentence as established prior to modification. Offenders are not subject to a period of postrelease supervision upon the completion of their prison sentence.
- Apply to offenders convicted of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, and sentenced prior to November 1, 2003.
- Sets the effective date as publication in the Kansas register.

**New Section 1** (a) allows offenders to have their sentences modified according to the provisions of this section if the person's **only crime of conviction and the crime the person is incarcerated** for is a violation of K.S.A. 65-4160 or 65-4162 and the person meets the requirements of K.S.A. 2004 Supp. 21-4729 and amendments thereto.

(b) requires the Department of Corrections to conduct a review on persons who committed such crimes during those dates and submit the reports to the appropriate parties.

(c) through (g) are procedural requirements for the court, inmate and prosecution.

**Section 2** amends K.S.A. 2004 Supp. 21-4603d (n)(1) to remove "For those offenders who are convicted on or after the effective date of this act" and add subsection (n)(2) to require a defendant whose sentence is modified pursuant to section 1, and whose probation is revoked for refusal to comply with or participate in a treatment program, as established by judicial finding, must serve the underlying prison sentence as established prior to modification. After completion of the underlying prison sentence, the defendant will not have postrelease supervision. The amount of time spent participating in the treatment program will not be credited to the defendant's underlying prison sentence.

700 SW Jackson Street, Suite 501, Topeka, KS 66603 -3714

Voice 785-296-0923 Fax 785-296-0927 <http://www.kansas.gov/ksc/>

*Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
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**Section 3** amends K.S.A. 2004 Supp. 21-4729 to remove "On and after November 1, 2003" and "who are sentenced on or after November 1, 2003" from the eligibility requirements for sentencing under this statute.

**Section 4** repeals K.S.A. 2004 Supp. 21-4603d and 21-4729.

**Section 5** sets the effective date as publication in the Kansas register.

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**IMPACT ON KANSAS SENTENCING COMMISSION:**

Based on the current duties of the Kansas Sentencing Commission, the change(s) proposed in this bill will affect the following:

- The current operation or responsibilities of the Commission
- The current budget of the Commission.
- The current staffing and operating expenditure levels of the Commission.
- The long-range fiscal estimates of the Commission.
- The change(s) proposed in this bill will not likely affect the duties of the Kansas Sentencing Commission.

**Drug Treatment Population and Budget**

- The impact of this **amended** bill will increase the drug treatment population by 80 offenders in the year 2007. (see below for detail in budget development)
- **Estimate of total foreseen costs associated with treatment costs and payment for treatment for this group of 80 offenders totals \$539,287.**

**Workload of Commission staff-Journal Entries**

- The impact of this **amended** bill will increase the workload of the Commission by 80 to 98 journal entries in the next few years.
  - This likely can be absorbed within current budget and staffing levels although it may result in increased lag times in recording Journal Entries received.

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**ANALYTIC RESULT SUMMARY:**

**IMPACT ON PRISON ADMISSIONS:**

- Increase by an estimated:
- Potential to increase but cannot quantify
- Decrease by an estimated:
- Potential to decrease but cannot quantify
- Remain the same

**IMPACT ON OFFENDER POPULATION LEVELS:**

- Impact offender population as noted below : **29 fewer prison beds needed by the end of FY 2007; no change in prison bed space needs by the end of FY 2016**
- Potentially impact offender population as noted below.
- Minimal or no impact on offender population.
- May impact offender population but cannot quantify with data available.

**ASSUMPTIONS**

- Population:

*Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
February 9, 2006 Page 3 of 8*

- Target: The target population for this **amended** bill includes any person convicted of a felony violation of K.S.A. 65-4160 or 65-4162 on or after July 1, 1993 and sentenced therefore prior to November 1, 2003.
    - The target offender may have his or her sentence modified to a drug abuse treatment program if:
      - ***The person's sole crime of which convicted and for which incarcerated is such violation of K.S.A.65-4160 or 65-4162; and***
      - ***Such person meets the requirements of K.S.A. 2004 Supp.21-4729, and amendments thereto.***
    - It is assumed that the offender must have greater than 180 days to serve on his or her sentence prior to his or her initial release date from the policy effective date.
    - The review time of inmates is based on such inmate's custody or security classification in the following order:
      - Minimum within 60 days
      - Medium within 90 days
      - Maximum within 120 (include special management and unclassified units)
  - Growth Rate: Projected admissions to KDOC correctional facilities are assumed to increase by an annual average of 1.2% which is consistent with the underlying growth assumption used in the baseline forecast.
  - Impact Relation: Bed space impacts are in relation to the baseline forecast produced in September 2005 by the Kansas Sentencing Commission.
- It is assumed that 75% of the above defined offenders incarcerated in KDOC on December 31, 2004, whose **sole** offense was under K.S.A.65-4160 or K.S.A. 65-4162, whose offense date was on or after July 1, 1993 and sentence date was prior to November 1, 2003, will meet the requirements of K.S.A. 2004 Supp.21-4729.
  - The refusal and failure rate of a drug abuse treatment program is assumed to 20-23% which is the same rate used in SB 123 projections.
    - The revocation periods are assumed to be 1/3 after 6 months, 1/3 after 12 months and 1/3 after 15 months but within the 18 month period.
      - It is assumed that the target offender has to serve his or her underlying prison sentence as established prior to modification if he or she refuses or fails to comply with or participate in a drug abuse treatment program.
      - Percentage of the sentence served in prison is assumed to be 100 percent of the underlying prison sentence as established prior to modification.
  - The impact projection is based on KDOC prison population **on June 30, 2005**.
  - Projected new policy effective date is on **July 1, 2006**.
-



*Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
February 9, 2006 Page 4 of 8*

## PRESENTATION OF ANALYSIS AND RESULTS:

### Analysis

- On June 30, 2005, 106 drug possession offenders were incarcerated in KDOC with:
  - a **sole** conviction of K.S.A. 65-4160 or 65-4162 ("drug possession") convicted of on or after July 1, 1993;
  - a sentence date prior to November 1, 2003; and
  - a length of sentence to serve in KDOC greater than 180 days from July 1, 2005.
- Of the 106 offenders,
  - 36 (34%) were new court commitments and
  - 70 (66%) were probation condition violators.
- The severity level of these offenders are:
  - 12 (11.3%) were on drug level 1
  - 38 (35.9%) were on drug level 2
  - 56 (52.8%) were on drug level 4
  - The average remaining sentence less good time and jail credit is:
    - 43.2 months for drug level 1
    - 18.2 months for drug level 2
    - 11.4 months for drug level 4

### Results

- **Current Policy:** If current policy remains unchanged, by the year 2007, 54 prison beds will be needed and by the year 2016, no prison bed will be needed.
- **Impact Projection:**
  - If 75% of the above offenders meet the requirements of K.S.A. 2004 Supp.21-4729 and the review time is based on the custody or security classification in the following order:
    - Minimum within 60 days
    - Medium within 90 days
    - Maximum within 120 days
  - *And* If 23% of the 75% offenders whose sentences are modified and release to a drug treatment program revoke their conditions with the following portion and time interval:
    - 1/3 after 6 months
    - 1/3 after 12 months
    - 1/3 after 15 months but within 18 months
  - By the year 2007, 25 prison beds will be needed and by the year 2016, no prison beds space will be needed for this group.
- The impact of this **amended** (updated based on June 30, 2005 DOC data) bill will:
  - **Result in no change in the number of prison admissions.**
    - (Will result in an increase in prison releases)
  - **By FY 2007, reduce the number of prison beds needed by 29**
  - **By FY 2016, result in no change in the number of prison beds needed.**

*Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
February 9 , 2006 Page 5 of 8*

**Bed Space Impact Assessment – HB 2231 as amended through 2005 House**

<b>Fiscal Year</b>	<b>Current Policy Unchanged Beds Needed</b>	<b>75% to Drug Treatment with 23% Revocation Beds Needed</b>	<b>Reduced Beds Needed</b>
2007	54	25	29
2008	19	13	6
2009	10	0	10
2010	7	0	7
2011	5	0	5
2012	4	0	4
2013	2	0	2
2014	1	0	1
2015	0	0	0
2016	0	0	0

**Treatment Budget:**

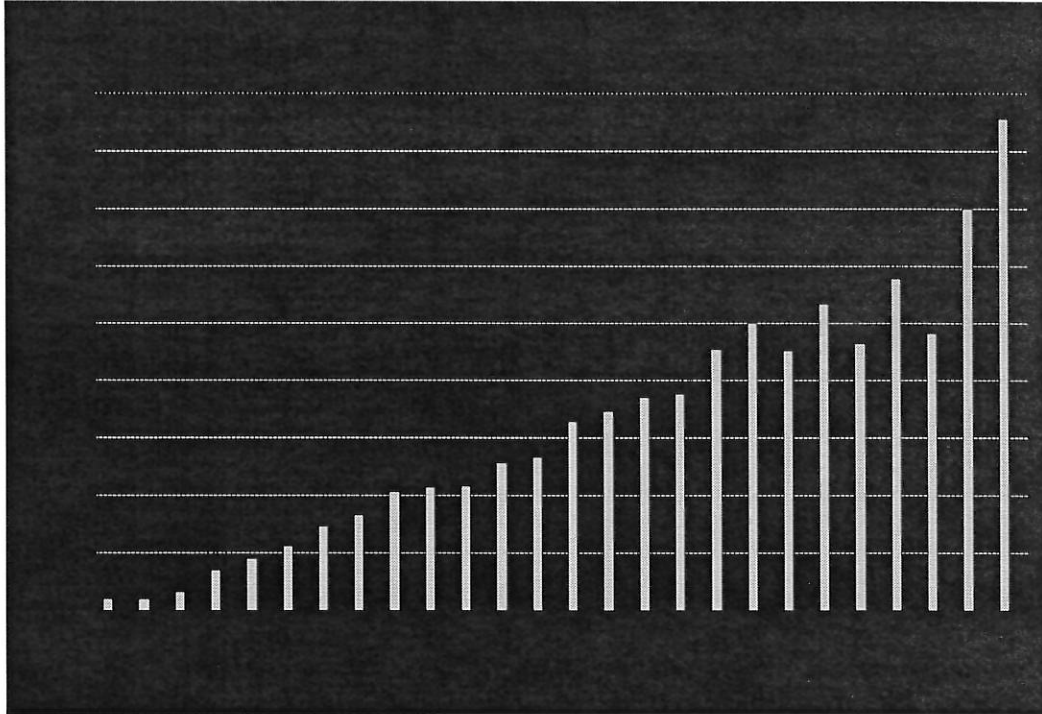
The budget associated with treatment services for this population also flows through the Sentencing Commission. Therefore, increasing the number of offenders who are receiving treatment under the provisions of this bill, the dollars associated with treatment will also have to increase.

Current budget calculations for SB 123 offenders uses an estimated average cost per offender of \$4634. (This average cost is based upon the distribution of offenders pursuant to their level of risk of reoffense as measured by the initial/presentence LSI-R© conducted by Community Corrections.)

Although it seems logical to assume that the incarcerated population subject to this treatment would be of higher risk, how much higher their risk is cannot be known at this time. This population would be assumed to be of higher risk because: (a) the judge sentenced them to incarceration rather than probation and (b) more of this group had multiple possession convictions. Due to these factors, we would estimate that the cost for treatment for these offenders would be approximately one-third higher than the cost for the population presently under 2003-SB 123. This would result in an average cost per offender converted to be **\$6178.65**. **At 80 offenders, the treatment budget then requires an additional \$494,292** for this offender group in FY 2007.

Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
February 9, 2006 Page 6 of 8

#### Payment for Treatment Services: Invoices Processed



#### Additional one-half-time Staff Person

**Accountant.** We assume that, upon sentence conversion, this group of offenders would leave KDOC and be engaged in treatment nearly immediately. Each offender with a converted sentence would then have an assessment followed by engagement in treatment services. The assessment and treatment services may be delivered through different certified treatment providers. Thus, in the first month following release, each offender will have at least one invoice submitted to the KSC for payment and may have 2 or more invoices submitted for payment. The following analysis, however, considers the conservative case of one invoice per person per month of treatment.

Through January 31, 2006 this graphic displays the number of invoices received by the Sentencing Commission for processing and payment. Most all of these have been handled for payment by two staff members. We would anticipate that the additional invoice submissions created by this additional offender group would require an additional staffing at the Commission to facilitate payments.

**Researcher.** (Data Entry of Assessment Results for Evaluation.) As required by 2003-SB 123, evaluation is necessary for this program at 18, 36, and 60 months post-implementation. If there is an influx of an additional 80 offenders into this treatment program, a portion of this additional half time staff person's duties would be associated with the data entry of the following pieces of information:

- Results of substance abuse assessment and mental health screen
- Addiction Severity Index (done 3 times per offender – (1) at program start, (2) at treatment conclusion, and (3) 6 months post-treatment)
- SASSI III (Substance Abuse Subtle Screening Inventory)

An accountant II, half-time, could be tasked with both portions of this position. Salary for an accountant II (pay grade 24) at mid-range totals \$38,500 for full time; with approximately 23% to cover fringe benefits,

*Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
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funding for that staff person would require approximately \$47,355. **At half-time, we assume that salary and benefits would total approximately \$23,667.50**

Associated Costs: Computer, printer, software, desk, and office space would be required for this half-time staff person. Estimates indicate that the following expenses would be incurred:

	Accountant II	
Computer & Printer	\$1,850.00	
General Software	\$350.00	
SPSS (Statistical Software)	\$1,000.00	
Computer Set Up/DISC	\$300.00	
Desk, Chair, Filing, etc.	\$3,000.00	
Server expansion	\$3,000.00	
<b>ONE TIME: Subtotal</b>		<b>\$9,500.00</b>
Physical space	\$11,000.00	
<b>TOTAL</b>		<b>\$20,500.00</b>

Physical office space would also be needed. Present discussions with management of our building indicate that contiguous office space of approximately 725 square feet could be secured at between \$900 and \$950 per month. A "rounded" estimate of \$11,000 annual cost is included here.

**Total associated costs then total \$20,500 in FY 2007 plus salary and benefits of approximately \$23,667.50 would accommodate this additional unclassified half-time position.**

Payment of Invoices: Charges for checks and for mailings: Costs are incurred for each check that is written and mailed for payment of treatment services. If each offender under the provisions of this bill is assumed to stay in treatment for an average of 15 months, each would generate a minimum of 15 monthly invoices (additional invoices could be submitted for payment if the offender changes treatment providers during a month, for example).

On a per person basis, charges to the Sentencing Commission for payment of treatment invoices include \$0.37 per warrant issued (\$0.06 to State Treasurer for Vendor payment + \$0.02 to State Treasurer for Warrant redemption + \$0.29 per payment drawn for either Electronic Stars or Paper Warrant fees = \$0.37 per check) and \$0.31 mail fee per warrant mailed. This adds \$0.68 per person per month of treatment. For the additional 80 offenders, this amounts to \$54.50 per month. Assuming that, on average, these 80 offenders stay in treatment 15 months (sentence is "up to 18 months"), this totals an additional **\$817.50 needed by the agency to draw checks and mail them** to the treatment providers (note: these items were not covered in the budget for the agency when 2003-SB 123 was put in place).

*Prison Population Impact of HB 2231 as amended through 2005 House ( & run on current FYs data)  
February 9, 2006 Page 8 of 8*

Treatment	80 offenders	\$6,178.65 Avg. cost per offender	\$494,292.00	
Administrative Costs				
Additional half-time accountant position: (per year incl. benefits = \$47,355 at Full time);			\$23,677.50	
Cost for additional office space			\$11,000.00	
Costs for warrant drawing and mailing			\$817.50	
One-time costs - office & computer			\$9,500.00	
<b>TOTAL</b>				<b>\$539,287.00</b>

**Estimate of total foreseen costs associated with treatment costs and payment for treatment for this group of offenders, then, is \$539,287.**

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**CONCLUSION: IMPACT OF HB 2231 as amended by 2005 House (based on 06/30/05 KDOC incarcerated population)**

Prison Admissions: The impact of this bill will result in no change in admissions.

Prison Beds: The impact of this bill will result in the need for 29 fewer prison beds by the end of FY 2007 and no change in prison bed space needs by the end of FY 2016.

Treatment Costs & Costs associated with payment for Treatment: Estimates indicate that an additional \$539,287 and ½ unclassified accountant position would be required by the Sentencing Commission.



# 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:** Chairman Vratil and Honorable Members of Senate Judiciary Committee  
**From:** Patricia Biggs, Executive Director, Kansas Sentencing Commission  
**Date:** February 16, 2006  
**RE:** Opposition to HB 2231

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On behalf of the Kansas Sentencing Commission, I present testimony in opposition to HB 2231. The Commission stands in opposition to the provisions of this bill due to several unaddressed and unresolved issues and due to resource considerations. Included in the list that follows are some of the issues of concern to members of the Sentencing Commission:

1. It is possible that offenders who may benefit from the retroactive provisions of this bill could be threats to the communities from which they come or those communities to which they may be released.
  - a. Despite the provisions contained in the bill that allow a judge to review the petition of the offender for sentence conversion, it is possible that a judge may not have sufficient information available to make a definitive determination regarding the potential threat of an offender in the community. Further, according to the provisions, the burden of proof lies with the prosecution to prove that the offender's sentence should not be modified.
2. The increased burden on the court due to hearings that will be requested by the affected offenders
  - a. New Section 1 (d) (2) in this bill states "In the event a hearing is requested, and the court deems the hearing is necessary, the court shall schedule and hold the hearing within 60 days after it was requested and shall rule on the issues raised by the parties within 30 days after the hearing."
  - b. The increased workload placed on the courts within this small time frame may be burdensome in many, if not most all, jurisdictions.
3. The increased burden on prosecutors to prove that an offender should receive sentence modification through the retroactive application of SB 123
  - a. New Section 1 (c) of the bill states "The burden of proof shall be on the prosecution officer to prove that the person is not eligible for such modification of sentence." Having to generate such proof, within the short time frames referenced within the bill, can prove an additional burden to prosecutors' offices that many times are already at or very near capacity with prosecution of cases.
4. The increased burden on the treatment providers due to the increased number of offenders eligible for SB 123 treatment
  - a. Under the provisions of this bill, it seems that offenders who are released from prison would be assessed to determine their level of drug abuse treatment need and be placed into such treatment in such a fashion that both the drug abuse assessment and the treatment placement would occur immediately after release.

Testimony of Patricia Biggs, Executive Director, Kansas Sentencing Commission  
Before Senate Judiciary Committee regarding opposition to HB 2231  
February 16, 2006

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- b. HB 2231 as stands presently Commission staff estimate that approximately 80 offenders might be released under the retroactive provisions of this bill and that such offenders would present with substance addiction problems about 1/3 more serious than the average SB 123 offender. Should these estimates prove accurate, most of the converted offenders would require in-patient treatment services.
    - i. Adding 80 additional offenders for in-patient treatment services would strain the treatment capacity available under SB 123. It is not known if this one-time influx of population could be accommodated without generating waiting lists.
  - c. HB 2231 with proposed balloon amendment: Commission staff estimate that approximately 179 offenders might be released under the retroactive provisions of this bill and that such offenders would present with substance addiction problems about 1/3 more serious than the average SB 123 offender. Should these estimates prove accurate, most of the converted offenders would require in-patient treatment services.
    - i. Adding an additional 179 offenders for in-patient treatment services would strain the treatment capacity available under SB 123 and it is not certain that this one-time influx of population could be accommodated at all.
5. The increased funding that would be required
- a. HB 2231 as stands presently: Estimates generated by the Commission staff regarding payment for treatment services and the facilitation of bill paying would require approximately \$539,287 and a half-time unclassified employee for the Commission staff under the provisions of HB 2231.
  - b. HB 2231 with proposed balloon amendment: Under the provisions of the proposed balloon amendment to HB 2231 additional costs associated with treatment & payment for treatment services come to \$1,157,092.60 and one unclassified employee for the commission staff.
  - c. Under either of these scenarios, additional costs would be generated by other involved components of the criminal justice system. Such other components include but are not limited to, the following:
    - i. Courts
    - ii. Prosecutors
    - iii. Local law enforcement agencies that may have to pay officer overtime for appearances in court regarding a potentially converted offender sentence
    - iv. Community Corrections costs of supervision
    - v. Community Corrections costs of risk/needs assessment
6. The increased resource requirements needed to make the process work. These would include but not be limited to:
- a. Availability of treatment capacity would likely need to increase.
  - b. There may have to be increases in the number of community corrections officers depending on the agency to which the offender who achieves retroactive SB 123 application releases.
  - c. Prosecutors for these cases
  - d. Courts
  - e. Court clerks would also be impacted by increases in workloads.

*Testimony of Patricia Biggs, Executive Director, Kansas Sentencing Commission  
Before Senate Judiciary Committee regarding opposition to HB 2231  
February 16, 2006*

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7. Possible constitutional issues: Constitutional issues that may surround processing of such cases in terms of a retroactive application of SB 123 could include – but not be limited to – the following:
  - a. Possibility of legal issues involved with the process of reweighing an old case that was done under old laws
  - b. Legal issues involved when Sentencing Judges or Parole Board are asked to make a finding that offender should be released or not released based on what s/he thinks they did and not based on the elements of the conviction.
  
8. Some questions still exist regarding the offenders who may petition for retroactive application of the SB 123 provisions.
  - a. Although the proposed balloon amendments does state that the offenders for whom retroactive application for SB 123 provisions would be limited to those offenders at least 180 days from an initial release, if the premise is that retroactive application of SB 123 is a matter of fairness, then why would retroactive SB 123 application be denied to those offenders presently on post-incarceration supervision?
    - i. As of June 30, 2005, there were a total of 328 offenders on some form of post-incarceration supervision who have, as a most serious offense, a drug possession conviction (i.e., a violation of K.S.A. 65-4160 or K.S.A. 65-4162).
      1. This pool of offenders is larger than the incarcerated population under either the present version of HB 2231 or HB 2231 with the proposed balloon amendment.
      2. If a drug possession offender violates conditions of post-incarceration supervision, s/he is returned to the Department of Corrections for approximately 110 days and released back to post-incarceration supervision.
        1. During the term of post-incarceration supervision, the offender may or may not receive substance abuse treatment to address addiction issues.
        2. Should the offender receive or be required to receive such treatment, it is possible that the offender has to bear the cost.
    - ii. Under the provisions of HB 2231 or the proposed balloon amendment to HB 2231, offenders who complete community based treatment and supervision or offenders who violate and are returned to prison are NOT subject to serving post-incarceration supervision time. Nevertheless, for the offenders presently on post-incarceration supervision, a violation will result in prison time followed by return to post-incarceration supervision.
  - b. If an offender served prison time for drug possession, was released to post-incarceration supervision, received a new conviction for drug possession and entered into prison as a post-release violator with a new sentence.
    - i. While it appears that such an offender may qualify under provisions of current HB 2231,
    - ii. But is such an offender on his/her "initial" release as referenced in the HB 2231 proposed balloon amendment?
      1. Again, such questions will increase the time and resources required to process these cases through the system. Further, should there be disagreement with a decision made through the process, the appeals process will be brought into play and resources required to review and consider these cases will increase once again.



Remarks of Christopher L. Schneider, Assistant Wyandotte  
County District Attorney, Concerning H.B. 2231

Before the Committee on the Judiciary of the Kansas Senate  
February 16, 2006

Mr. Chairman and members of the committee:

As a representative of the Wyandotte County District Attorney's office and the Kansas County and District Attorney's Association, I appear before the committee in opposition to H.B. 2231, which would modify the sentences of all persons currently in prison for felony possession of drug crimes and who were sentenced between July 1, 1993, and November 1, 2003.

This legislation would put career criminals back on the streets of our communities because the only criminals currently in prison for drug possession charges are those who have multiple convictions for possession under the pre-November 1, 2003, graduated severity level paradigm, those whose criminal history includes one or more prior person felonies, and those who have been given probation and had it revoked for failure to comply with the terms thereof.

H.B. 2231 is problematic in numerous ways. First, it makes no exception for those persons in prison for violating the terms of their probation. These criminals have already been given more than one chance to comport their behavior with societal norms, but cannot or will not do so. They have given the courts no choice but to send them to prison.

Second, prosecutors and judges handled the cases of those persons who were sentenced before November 1, 2003, under the law as it was then written. They applied the law to reach a just and equitable result. Plea agreements were fashioned to protect the citizens of the state as well as to provide some benefit to the person charged with a crime. To go back three or more years later would frustrate the intent of the parties in fashioning the outcomes of those cases.

Third, the bill, as written does not address those persons who committed level I and level II felonies prior to November 1, 2003, but who were sentenced after that date. The appellate courts have held that to be the effective date of the S.B. 123 amendments to K.S.A. 65-4160 and K.S.A. 65-4162.

Finally, from personal experience, I can tell the committee that every time the legislature amends the sentencing guidelines and makes the changes retroactive, it creates unintended consequences which result in a flurry of unnecessary litigation on both the district and appellate court levels, creating more work for prosecutors, more work and expense for public defenders and appointed counsel, and bogging down the courts with cases.

As a matter of public policy, the K.C.D.A.A. and the Wyandotte County District Attorney's office believe that this legislation is unwise public policy and should not be enacted.

Senate Judiciary

2-16-06

Attachment 10

**Testimony Regarding House Bill. No. 2231**

**Senate Judiciary Committee**

Paul J. Morrison, District Attorney - Tenth Judicial District  
February 16, 2006

I'm here today to oppose this bill. As you probably are aware, I was, and continue to be, a strong proponent of Senate Bill 123, which provides meaningful drug treatment for non-violent, non-dealing, drug possessors. These are very important distinctions as those of us who support SB 123 wanted to be absolutely sure that treatment in lieu of prison was reserved for those who merely use and not manufacture nor sell narcotics.

As I'm also sure you are aware, the original version of SB 123 provided for retroactivity in much the same way that this bill does. We soon became aware, however, that in many counties in this state drug manufacturers and dealers have in the past been allowed to plead to charges labeling them as mere possessors, which would allow them to be SB 123 eligible. When we discovered this past practice had happened on a sizeable scale, and due to the opposition in law enforcement, that section of the bill was deleted, making SB 123 prospective in its application.

I believe these same problems still confront us today. I understand and appreciate the efforts in this bill to allow judicial discretion in determining whether or not an individual poses a public safety risk prior to release. I am, however, very concerned about potential Constitutional problems with the attempts to do this. In short, I am opposed to this bill because of potential legal problems associated with it as well as the fact that many who could be freed from prison under this bill do not deserve to be so.

DONALD BETTS JR.

SENATOR, 29TH DISTRICT  
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## COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: • ELECTIONS & LOCAL  
GOVERNMENT

MEMBER: • WAYS &amp; MEANS

• JOINT COMMITTEE ON  
ADMINISTRATIVE RULES  
& REGULATIONS

• JUDICIARY

February 15, 2006

Sen. John Vratil  
Capitol, 522-S  
Topeka, Kansas 66612

Re: HB 2231, an Act concerning Crimes, Punishment, and Criminal Procedure

Senator Vratil, Committee Members,

Three years ago, the State Legislature agreed to take a chance on drug offenders. Instead of sending first-time offenders to jail, we would send them to drug treatment programs. That experiment was called SB 123, and it has been a very successful one. Of the 735 SB 123 clients enrolled in the program as of December 31, 2004, only seven – that's right *seven* – were revoked and sent to prison. Since that running start, however, the recidivism rates have remained steady at about 10 percent.

Think about what that means. Let's do the math, simplifying the numbers. More than 700 people who once would have been inmates at a cost of about \$20,000 were instead enrolled into a drug-treatment program at a cost of less than \$6,500. Under this scenario, the cost to incarcerate would have been \$14 million. The cost for drug treatment was \$4,550,000. (700\*\$6,500) Even when you deduct the 70 or so people who went to prison after all (70\*\$20,000 = \$1,400,000), you see a savings to the state of \$8.05 million.

700 * \$20,000	\$14,000,000
700 * \$6,500	(\$4,550,000)
70 * \$20,000	(\$1,400,000)
	-----
	\$8,050,000

And that's just in the first year. Remember, under the old rules, each of those 700 offenders would have been sentenced to multiple years in prison, in most cases at least 10 years. Compare 10 years in prison (10\*\$20,000=\$200,000) with one year of drug treatment (\$6,500) and you see an overall savings of \$193,500 for each offender.

Senate Judiciary

2-16-05

Attachment 12

So we know that drug treatment instead of incarceration works for 90% of the offenders we see each year – and that drug treatment saves the state a great deal of money.

But what about the people who were incarcerated before SB 123 became law? That is where HB 2231 comes in.

HB 2231 is a “smart-on-crime” initiative which would allow individuals convicted of drug use offenses *with no violence in their criminal histories* to petition their sentencing courts for release into a 12- to 18-month drug treatment program for the remainder of their sentences. Not all of the 500 or so inmates who would qualify to petition their courts would be considered eligible for release into a drug treatment program. And we can expect people who have been in prison with hardened criminals to have more trouble re-integrating into society.


Let’s take a far-from-rosy scenario, however, and see what savings we come up with. If only 70% of the inmates released under SB 2331 are successful, the state will save \$3,750,000 the first year.

500 * \$20,000	\$ 10,000,000
500 * \$6,500	(\$ 3,250,000)
150 * \$20,000	(\$ 3,000,000)
	-----
	\$ 3,750,000

But the savings don’t stop there. Instead of being a drain on the system, the released inmates will have jobs and contribute to society. Their children will have more positive role models and will be less likely to wind up in jail themselves. Furthermore, studies have shown that drug addicts given treatment before or at the time of their release are less likely to commit crimes. In fact, a recent UCLA study found that society saves \$7 for every \$1 invested in addiction treatment.

The release of those 735 inmates as of December 31, 2004, also had another effect. They freed up prison beds, which are in short supply in Kansas. Earlier this session, the Senate passed the bill that increased the penalties for sex offenders to 25 years for first-time offenders and a hard 40 for the second offense. A direct consequence of this bill is that Kansas will need even more prison space in the future. We already have some from SB 123. HB 2231 will give us even more, and we’ll be putting them to better use.

I strongly recommend that the committee pass this bill out favorable for passage.

Sincerely,  
  
Donald Betts Jr.  
Senator, 29<sup>th</sup> District

OLETHA FAUST-GOUDEAU

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TOPEKA

HOUSE OF  
REPRESENTATIVES

## TESTIMONY OF REPRESENTATIVE OLETHA FAUST-GOUDEAU ON BEHALF OF HB 2231 BEFORE THE JUDICIARY COMMITTEE

Good morning Mr. Chairman, Senator Vratil, and other members of the committee.

I'm submitting written testimony in strong support of HB 2231. We must stop the recidivism of non-violent drug users into our correctional facilities and then back on the streets putting a burden on the tax payers of Kansas. We must rehabilitate rather than incarcerate providing a better foundation for more productive citizens, in addition to making more space for serious offenders in our correctional facilities.

I totally support Rep. Bill McCreary in his efforts regarding this issue. I also appreciate the work of Peter Ninemire with F.A.M. I urge the passage of HB 2231.

Respectfully,  
Oletha Faust-Goudeau

Honorable Members of this Senate Judiciary Committee:

My name is Paul Goseland and I am very fortunate to be here with you today.

I was sentenced to a Mandatory Minimum Life sentence for possession of \$30 dollars worth of cocaine in 1992 as a result of my drug addiction.

At the time of my sentencing the 3rd involuntary manslaughter was 5 years for actually killing (3) people, opposed to life for possessing a drug addiction.

Nevertheless, I was incarcerated for 13 years before I was placed on parole for the rest of my life May 2nd, 2005.

In my case alone, this cost Kansas taxpayers \$455,000.00 dollars to house me in prison 13 years, for that \$30 dollars worth of cocaine.

Plus, it is still costing Kansas taxpayers to keep me on parole for the remainder of my life. Eventhough with the help of treatment, during my 1st six months of incarceration, I fully recovered from my drug addiction thirteen years ago.

Based on my experience, I believe treatment is a much more effective means to end an addiction than incarceration.

In closing, I want to appologize to each of you for my part in this misuse of your tax dollars. I pray that you do pass HB 2231 as your chance to stop the same.

Thank You

A handwritten signature in cursive script that reads "Paul Goseland".

Paul Goseland

Senator John Vratil, Committee Chair  
Kansas Senate Judiciary Committee

February 15, 2006

Dear Senator John Vratil,

I am submitting this letter to express my support of H.B. 2231. As a life-long Kansan, I have 34 years experience in teaching and educational administration. Seventeen of those years, I served as an academic education administrator at the Hutchinson Correctional Facility, followed by 3 1/2 years as the Task Force Director for the Koch Crime Commission. The remaining 13 1/2 years I have served in public/special education.

Substance use and abuse creates untold hardship for users, their families, and communities. I am convinced that drug treatment is essential for offenders to assume a responsible and productive role in our society.

Having worked within the Kansas Department of Corrections between 1977 and 1994, I am acutely aware of the impact Sentencing Guidelines have had on the expansion of prison beds. Unfortunately, those beds are not consistently used for the primary mission of the KDOC which is Public Safety. I further understand the function of Sentencing Guidelines for oversight of Corrections as a *growth industry*. The question we must consider is: "If punishment is effective in changing behavior, why do we keep building more prisons?"

As a Kansas citizen, I am hopeful the Legislature will recognize that H.B. 2231 is indeed "smart on crime" and cost-effective, while tenaciously holding drug users accountable for successful completion of drug treatment. Commitment to drug treatment is not the easy way out. Offenders will have the opportunity to repay their debt to society by becoming employable, and paying taxes rather than absorbing taxes while sitting idle in a prison cell.

Having worked with drug users, their children and their families, I do not fear the offenders who would be impacted by H.B. 2231. I would celebrate the knowledge that offenders' families and communities could be restored and preserved, without the dependence on public assistance that so often occurs during incarceration.

The Kansas Legislature is facing many critical issues, including the funding of K-12 public education. The cost savings resulting from the passage of H.B. 2231 could be re-directed to the support of public education where prevention can take place during formative learning years. Please have the courage to do right by all the citizens of Kansas who will benefit from the passage of H.B. 2231.

Respectfully,

Bernard L. Smith  
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