

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:35 p.m. on January 14, 2009, in Room 535-N of the Capitol.

All members were present except:

Representative Lance Kinzer- excused

Committee staff present:

Jackie Lunn, Administrative Assistant
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Christina Butler, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Sean Ostrow, Legislative Fellow, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes

Conferees appearing before the committee:

Ed Klump, Vice Chair, Kansas Criminal Code Codification Commission
Helen Pedigo, Executive Director, Kansas Sentencing Commission

Others attending:

See attached list.

Chairperson Colloton introduced Ed Klump, Vice Chair, Kansas Criminal Code Codification Commission to request a bill. Mr. Klump stated he was requesting bills for the following:

- Moving drug crimes from Chapter 65 (pharmaceutical laws) to Chapter 21 (criminal code).
- Revising sentencing for crimes except for sex crimes involving children.
- Revising sentencing for sex crimes with children

Representative Patton moved introduction of the bills. Senator Bethel seconded. Motion carried.

Chairperson Colloton turned the Committee's attention to a handout entitled *Kansas Sentencing Commission Proportionality Subcommittee Report on Proposed Improvements and Modifications To Kansas Sentencing laws. (Attachment 1)* She stated it is a great overview of the porportionality changes relating to the sex crimes as well as the others.

Chairperson Colloton introduced Helen Pedigo, Executive Director, Kansas Sentencing Commission to give an overview of drug diversion law and how it works (2003 SB 123). Director Pedigo presented written copy of her power point presentation. (Attachment 2) She opened with a review of the 2003 SB 123 program with the drug program being a community punishment and drug treatment program for offenders to get treatment up front. The desired impact is to stop the cycle of addiction and the cycle of incarceration. One of the things the SB 123 treatment program does is to restructure the whole felony drug possession and provide a sentence at severity level 4. To qualify for this program the offender must meet the following:

- Felony drug possession
- No prior manufacturing or sale convictions
- Nonperson criminal history or
- Persons criminal history with low level felonies and court finding that public safety will not be jeopardized.

It was noted there is offender reimbursement for this program and also if the offender has insurance reimbursement is collected also. The local community corrections agency collects the offender reimbursement and sends it to the Kansas Sentencing Commission. The amount of payment is determined and set by the local community corrections officer.

CONTINUATION SHEET

MINUTES OF THE House Corrections And Juvenile Justice Committee at 1:35 p.m. on January 14, 2009, in Room 535-N of the Capitol.

The Committee asked that Director Pedigo furnish a list of the local community corrections agencies and the amount of offender reimbursement they are collecting for this program because of concerns that the offender reimbursement money is not being collected.

Director Pedigo perceives this to be a successful program and has the data to back it up. They do face challenges in the less populated areas because there are fewer resources including:

- Residential services
- Transportation
- Child care
- Job issues

Some offenders choose to violate conditions because 18 months of treatment with this program is more difficult than serving the underlying prison sentence; but few treatment slots exist in prison.

There are also challenges with the case-management data base because information is ever changing and is being entered by officers, which is not actually their main job and it doesn't always match with journal entry data.

Team concept is important to the program; with case loads and relationships affecting program success.

In closing, Director Pedigo stated successful offenders remain in the community, working, providing stability for their families resulting in fewer social service needs and are paying taxes at a cost per year of \$4,000 versus \$25,000 per prison bed. Probation revocations have been reduced and there have been fewer reconvictions.

Director Pedigo addressed questions and concerns during her presentation. Due to time restraints, Chairperson Colloton asked the Committee to compile a list of questions for Director Pedigo and she could address those at another time.

The meeting was adjourned at 3:10 p.m. with the next meeting scheduled for January 20, 2009 at 1:30 p.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 01-14-09

NAME	REPRESENTING
Ed Klump	KCCRC also KACP or KPWA
Mark Gleeson	Judicial Branch
Dolores Purjade	Representative
Stacy Chamberlain	SRS/AAPS



Kansas Sentencing Commission Proportionality Subcommittee

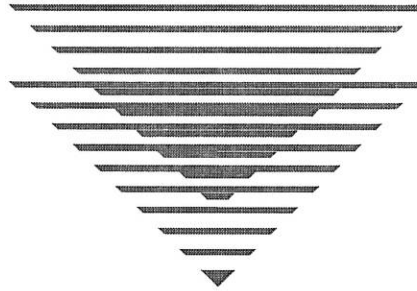
**REPORT ON PROPOSED IMPROVEMENTS
AND
MODIFICATIONS TO
KANSAS SENTENCING LAWS**

Adopted by the Kansas Sentencing Commission for Discussion Purposes

JANUARY 2008

Corrections and Juvenile Justice
Date: 1-14-09
Attachment # 1-1

Proportionality Subcommittee Members



Tom Drees
Ellis County Attorney, Chair

Paul Morrison
Attorney General

Rick Kittel
KU School of Law

Rep. Janice Pauls
House of Representatives

Pastor Junius Dotson
St Mark United Methodist Church

Patricia Biggs
Kansas Parole Board

Chris Mechler
Office of Judicial Administration

Ed Klumpp
Kansas Recodification Commission

KSC STAFF MEMBERS:

Helen Pedigo
Executive Director

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Director of Research

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Jessica Brunton
Research Analyst

KANSAS SENTENCING COMMISSION
PROPORTIONALITY SUBCOMMITTEE

REPORT ON PROPOSED IMPROVEMENTS AND
MODIFICATIONS TO KANSAS SENTENCING LAWS
ADOPTED BY THE KANSAS SENTENCING COMMISSION
JANUARY 2008

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I. INTRODUCTION

In June, 2007, the Kansas Sentencing Commission formed a subcommittee to review proportionality of sentences. This subcommittee would work in conjunction with the Kansas Recodification Commission, charged with recodifying the criminal code. The subcommittee was asked to review changes in felony sentencing law since the inception of guidelines in 1993, to review the 2004 study by the Vera Institute of Justice, and to make recommendations regarding realigning and appropriately placing felonies by severity level within various crime categories and overall.

The establishment of the subcommittee was in keeping with the enumerated duties of the Commission pursuant to K. S. A. 74-9191(a) to:

- (2) consult with and advise the legislature with reference to the implementation, management, monitoring, maintenance and operations of the sentencing guidelines system;
- (7) make recommendations relating to modification to the sentencing guidelines as provided in K.S.A. 21-4725, and amendments thereto; and
- (11) analyze problems in criminal justice, identify alternative solutions and make recommendations for improvements in criminal law, prosecution, community and correctional placement, programs, release procedures and related matters including study and recommendations concerning the statutory definition of crimes and criminal penalties and review of proposed criminal law changes.

The Kansas Sentencing Commission authorized the Proportionality Subcommittee to review and analyze all felony crimes in Kansas to ensure a system-wide overview in the comparison of offense severity for (a) presumptive prison sentences; (b) similar treatment of property, drug, and sex offenses with similar degrees of harm; (c) proportionate sentences for repeat domestic violence offenders; (d) proportionate sentences for drug and property crime offenses that minimize sentencing disparity between offenses with similar degrees of harm by utilizing threshold levels based on the quantity of drugs and the actual financial loss to the victim.

The Proportionality Subcommittee is chaired by Mr. Thomas Drees. Members of this committee include: Attorney General Paul Morrison, Mr. Rick Kittel, Representative Janice Pauls, Ms. Patricia Biggs, Ms. Chris Mechler, and Reverend Junius Dotson. Mr. Ed Klumpp, Co-chair of the Kansas Recodification Commission, was invited to be part of the group. His participation and input have been invaluable to the process.

II. BACKGROUND

In 1989, the Kansas Legislature established the Kansas Sentencing Commission, directing the Commission to develop a sentencing guidelines model based on fairness and equity in sentencing. The Commission, called upon to recommend rational and consistent sentencing standards, established sentencing dispositions which were appropriate for all felonies based on a consideration of past

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practices and the availability of criminal justice resources. Given this directive, the Commission developed sentencing guidelines that met several goals:

1. To promote public safety by incarcerating violent offenders;
2. to reduce sentence disparity to ensure the elimination of any racial, geographical or other bias that may exist;
3. to establish sentences that are proportionate to the seriousness of the offense and the degree of injury to the victim;
4. to establish a range of easy to understand presumptive sentences that will promote "truth in sentencing"; and
5. to provide state and local correctional authorities with information to assist with population management options and program coordination; and to provide policy makers information that will enhance decisions regarding resource allocations.

In its preliminary recommendations to the Legislature, the Commission stated that, "Making the punishment proportional to the crime is a key ingredient in guidelines systems. This concept involves the development of a hierarchy of harms that result from different levels of criminal activity. Once this ordering process takes place, guideline sentences ensure that the punishment fits the harm." In recommending crime severity, the Commission determined that level of harm should be the main basis for punishment and thus created sentences that punish offenses involving greater harm more severely than offenses involving lesser harm. However, the Commission also recognized that offender intent should also play a part in determining level of punishment.

Three societal interests, in order of importance, were used to determine the level of harm involved in each crime seriousness ranking:

1. Protection of individuals from physical and emotional harm;
2. protection of private and public property rights; and
3. protection and preservation of the integrity of government institutions, public peace, and public morals.

Data reviewed by the Proportionality Subcommittee shows a large number of sentencing departures. The vast majority are downward departures. The number of downward departures suggests a disconnect between the current law on the books and the law in practice; or the possibility that the current severity level is not supported by the proportionality rationale that punishment should be relational to the degree of harm inflicted by the offense. Of equal concern is the consideration that border boxes contained on the grid are presumptive imprisonment border (PIB) boxes, yet result in a probation sentence approximately 80% of the time. There appears to be a disconnect between the law and practice in sentencing cases involving PIB boxes.

Also, in certain offenses, offender culpability does not seem proportional to the injury or harm to the victim. This is especially true for repeat property, domestic battery and drug offenses. The Subcommittee recognizes that offender culpability plays a role and should be considered in sentencing for repeat offenses.

With respect to drug offenses, changes are recommended to advance uniformity, consistency and proportionality, clarifying the distinction between offenses involving personal use possession and those involving distribution, manufacturing, or cultivation.

III. RECOMMENDATIONS

A. RECOMMENDATIONS CONCERNING THE SENTENCING GRID

1. Merge the nondrug and drug sentencing grids into one Kansas Sentencing Grid.
2. Adopt crime severities based on level of harm to the victim and offender culpability (premeditation, intent, heat of passion, recklessness, and negligence).
3. While one of the goals of the Kansas Sentencing Guidelines is to treat similar defendants similarly, the Subcommittee recognizes that a "one size fits all" sentencing structure leads to disproportional sentencing. For this reason the Subcommittee recommends that aggravating and mitigating sentences within each grid box, originally set at 5% above and below the standard sentence, be adjusted to 10% above and below the standard sentence.
4. In order to promote "truth in sentencing", uniformity, proportionality, and prediction of prison bed space needs, it is important to place as many felonies on the grid as possible. Most off-grid and nongrid felonies would be placed on the grid, with the exception of first degree murder, capital murder, treason, terrorism, and furthering terrorism through weapons of mass destruction.
5. Most unclassified felonies (such as K.S.A. 75-4228, criminal and civil liability of treasurer and director of accounts and reports, and 75-4314, officer or employee receiving funds without subscribing and filing an oath) would be classified on the grid as severity level 10 nonperson felonies.
6. A name change from "border box" to "presumptive imprisonment - border box", or "PIB" box, clarifies the original purpose and provides a renewed emphasis that these sentences are presumed imprisonment, recognizing that the sentencing court has discretion to impose a nonprison sanction.
7. Information would be provided to the court and considered in determining the appropriate disposition of cases in PIB boxes. Any party requesting the nonprison sanction would be required to notify the court and opposing counsel, at least 10 days prior to sentencing, regarding the proposed placement in a treatment program and/or a behavior modification program. The notice would provide a reasonable opportunity before sentencing for the presentence investigator to confirm and verify the availability and adequacy of the proposed treatment provider(s) and plan.
8. An increase from 8 border boxes to 16 PIB boxes would provide a mechanism to address the repeat property offender, to reduce the need for special rules, and to allow the court the discretion necessary to consider PIB sentencings on a case by case basis.

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9. All sentences at severity level 5 would be presumptive imprisonment. PIB Boxes would exist at grid boxes 6-E through 6-I, 7-C through 7-F, 8-C through 8-F, and 9-C through 9-E.
10. Some special rules would be eliminated, including those associated with aggravated battery/aggravated assault of a law enforcement officer, felony driving under the influence, felony domestic battery, second or subsequent manufacture of a controlled substance, and third or subsequent forgery - See Appendix G.
11. Standard sentences would be amended according to the proposed grid – See Appendices A through C:

Severity Level	Proposed Range In Months	Current Range In Months
1	140-682	147-653
2	108-514	109-493
3	54-256	55-247
4	38-178	38-172
5	29-143	31-136
6	22-48	17-46
7	16-35	11-34
8	14-26	7-23
9	12-22	5-17
10	12-18	5-13

B. GENERAL POLICY CHANGES IN SENTENCING STATUTES

1. All felony sentences would be at least 12 months in length.
2. All class A misdemeanants would be supervised by court services.
3. The Subcommittee recommends that most crimes be placed on the grid with the exception of first degree murder, capital murder, treason, terrorism, and furthering terrorism through weapons of mass destruction. In order to predict prison bed space needs it is important to have as many felonies on the grid as possible.
4. The Subcommittee recommends that domestic battery felony offenders be supervised by community corrections.
5. K.S.A. 21-3413(a)(3)(D) Battery on a city or county corrections officer would be amended from a severity level 5 person felony to a severity level 9 person felony, with a sentencing enhancement of presumptive imprisonment.
6. K.S.A. 21-3414, Aggravated Battery would be modified as follows:

- a. intentionally, resulting in great bodily harm would remain a severity level 4 person felony;
 - b. intentionally, resulting in bodily harm would remain a severity level 7 person felony;
 - c. recklessly, resulting in great bodily harm, currently a severity level 5 person felony, would be classified as a severity level 6 person felony; and
 - d. recklessly, resulting in bodily harm, currently a severity level 8 person felony, would be classified as a severity level 9 person felony.
7. K.S.A. 21-3415, Aggravated Battery on a Law Enforcement Officer would be modified as follows:
- a. intentional, bodily harm or physical contact where great bodily harm can be inflicted, currently a severity level 4 person felony, would be classified as a severity level 5 person felony;
 - b. intentional, great bodily harm would remain a severity level 3 person felony; and
 - c. intentional, with a motor vehicle would remain a severity level 3 person felony.
8. K.S.A. 21-3523 – Electronic solicitation of a child, currently a severity level 1 person felony if the victim is less than 14 years of age, would be classified as a severity level 4 person felony, as this crime requires no actual physical contact with the child. This crime, if the victim is at least 14, but less than 16, would be amended from a severity level 3 person felony to a severity level 5 person felony.
9. K.S.A. 21-3609 –Abuse of a child; Intentionally torture, cruelly beat, or shake resulting in great bodily harm. Penalties would be amended from a severity level 5 person felony to a severity level 6 person felony if the infliction of cruel and inhuman corporal punishment is present; and a severity level 4 person felony, if torture, cruel beating, or shaking results in great bodily harm.
10. K.S.A. 21-3608a-Aggravated Endangering a Child; Intentionally cause or permit a child under 18 to be in a situation in which the child's life, body or health is injured or endangered. Currently, this violation is ranked as a severity level 9 person felony; however, the Subcommittee recommends modification to mirror K. S. A. 21-3414 aggravated battery provisions as follows:
- a. intentionally, resulting in great bodily harm would be a severity level 4 person felony;
 - b. intentionally, resulting in bodily harm or endangerment which could result in great bodily harm would be a severity level 7 person felony;
 - c. recklessly, resulting in great bodily harm would be a severity level 6 person felony; and
 - d. recklessly, resulting in bodily harm or endangerment which could result in great bodily harm would be a severity level 9 person felony.
11. K.S.A. 21-3812(d) Aiding Person Required to Register Under the Kansas Offender Registration Act. Currently, this crime is ranked as a severity level 5 person felony. Amending this felony to a severity level 10 person felony brings it in line with the amendment recommended regarding K.S.A. 22-4903, Kansas Offender Registration Act.

12. K.S.A. 22-4903-Kansas Offender Registration Act; Failure to register as required.

Currently, this crime is ranked as a severity level 5 person felony. Amending this felony to a severity level 10 person felony reflects a more proportional ranking.

K.S.A. 75-4228, 75-4314, 79-15, 137, 79-15,235(e), 79-3228(f) are all unclassified and are recommended to be moved onto the grid and classified as severity level 10 nonperson felonies.

C. RECOMMENDATIONS CONCERNING DRUG LAWS

The recommendations made in this section address, to a large degree, the concerns expressed in the Vera Study, which identified drug crimes in general as disproportionate to other felonies. Data examined by the Proportionality Subcommittee shows a large number of downward departures, suggesting a disconnect between the current law and practice; or the possibility the current severity level is not supported by the proportionality rationale that punishment should be relational to the degree of harm inflicted or threatened. The Proportionality Subcommittee makes the following recommendations based on the goals of uniformity and reductions in disparity, but which are equally calculated to ensure that sentences are proportionate to the seriousness of the offense and the degree of injury to the victim.

1. Amend language throughout from “within 1,000 feet of a school,” to “to a minor or in the presence of a minor” and increase one severity level to more clearly meet the intent to protect children regardless of their location.
2. Adopt drug quantity thresholds based on four categories of small, medium, large and super for sale, distribution, and possession with intent to distribute. K.S.A. 65-4161 and 65-4163 (Sale or distribution of opiates, opium, narcotic drugs or designated stimulants) would be categorized as follows: Small quantity, severity level 9 person felony; medium quantity, severity level 7 person felony; large quantity, severity level 4 person felony; and super quantity, severity level 3 person felony. Only the weight of drug, not purity, shall be considered.
3. The Subcommittee made no recommendation on the precise quantities which constitute small, medium, large, or super. The subcommittee recommends that the Recodification Commission continue their research and make determinations in this area - See Appendix F.
4. Personal use possession would be ranked as a severity level 10 nonperson felony. This one severity level includes K.S.A. 65-4160 (Personal use possession of opiates, opium, narcotic drugs or designated stimulants) and felony convictions of K.S.A. 65-4162 (Personal use possession of depressants, stimulants or hallucinogenic drugs other substances). Present misdemeanor penalties for first-time possession would remain unchanged.
5. Strike enhancement provisions that increase severity levels for repeat drug offenses. Because of the modification to a “person” designation, penalties for repeat offenses would move the offender to more severe penalties along the criminal history continuum.

6. The alternative sentencing substance abuse treatment program pursuant to K.S.A. 21-4729 (SB 123) would remain intact.
7. Manufacturing of Methamphetamine would be a severity level 3 person felony, while manufacturing of all other drugs would be a severity level 5 person felony.
8. Drug repackaging would be removed from the definition of "manufacturing" and included in the definition of "distribution".
9. Possession of drug paraphernalia would be a severity level 9 nonperson felony, and in addition, "to a minor or in the presence of a minor" increases the sentence one severity level. Delivery of a simulated controlled substance would be a severity level 9 nonperson felony under the identical condition.

D. RECOMMENDATIONS CONCERNING PROPERTY OFFENSES

All felony offenses resulting in loss of monetary value were reconciled. While presumptive imprisonment is generally reserved for violent offenders, the Subcommittee recognizes that repeat property offenders, especially burglars, pose a danger to society and warrant punishment through incarceration. Through modification of the Kansas sentencing grid, the number of special sentencing rules would be reduced. Property issues will be discussed and reviewed by the Recodification Commission during the first half of 2008. Property recommendations follow:

1. Adopt dollar value threshold requirements based on victim financial loss as follows:

Up to \$499.99 would be classified as a Class B nonperson misdemeanor;
\$500.00 - \$999.99 classified as a Class A nonperson misdemeanor;
\$1,000.00 - \$1,999.99 classified as a severity level 10 nonperson felony;
\$2,000.00 - \$24,999.99 classified as a severity level 9 nonperson felony;
\$25,000.00-\$49,999.99 classified as a severity level 8 nonperson felony;
\$50,000.00-\$74,999.99 classified as a severity level 7 nonperson felony;
\$75,000.00-\$99,999.99 classified as a severity level 6 nonperson felony;
\$100,000.00+ classified as a severity level 5 nonperson felony.

2. Increase the number of PIB Boxes to eliminate the need for several special rules and address repeat offenders.

E. RECOMMENDATIONS CONCERNING REPEAT DOMESTIC BATTERY OFFENSES

1. A 3rd or subsequent domestic battery would be reclassified from a nongrid felony as follows: A 3rd domestic violence would be classified as a severity level 9 person felony with a 30-day sentence served at KDOC; A 4th domestic battery would be classified as a severity level 6 person felony with a 90-day sentence served at KDOC; A 5th or subsequent domestic battery would be classified as a severity level 5 person felony with a one year sentence to be served at KDOC. Community Corrections would supervise probation upon

release from the incarceration term. Community supervision would include a behavior modification program.

2. The Legislature should assure the availability of adequate and appropriate treatment providers.
3. The Subcommittee makes no recommendation regarding criminal history decay, pending release of a report from the Governor's Task Force on Domestic Violence.

F. RECOMMENDATIONS CONCERNING SEX CRIMES

1. Preliminary sentencing data reflects a large rate of downward departures. The Subcommittee proposes returning these crimes to the sentencing grid and modifying severity levels of some felonies.
2. Offender culpability is not proportional to the injury or harm to the victim in certain offenses. A realignment of offenses in this area would bring sex crime sentences into proportion with sentences for other crimes against persons.
3. Emphasis would remain on imprisonment for offenders who commit violent person felonies.

IV. CONCLUSION

An assessment of the appropriateness of current sentences begins with an inquiry into whether current guideline sentences continue meeting the goal of proportionality, thereby ensuring that sentences are not only reasonably congruent with the seriousness of the offense, but bear some rational relationship to the degree of injury or harm to the victim as well. Of equal concern is the primary goal of sentencing, to reserve incarceration for violent and/or repeat offenders.

This report presents the findings of that analysis which include, but are not limited to, the following suggestions for modification and improvement:

1. Merge drug and nondrug grids into one, single Kansas sentencing grid;
2. return off-grid and nongrid crimes to the sentencing grid;
3. amend the severity levels of some property, drug, domestic violence and sex offenses in order to reemphasize presumptive imprisonment for violent person felonies as well as for repeat and habitual offenders;
4. adopt quantity and actual financial loss thresholds for drug and property offenses to minimize sentence disparity and ensure proportionality; and
5. general policy changes which reflect actual practice and appropriate proportional sentences.

While one of the goals of the Kansas Sentencing Guidelines is to treat similar defendants similarly, the Subcommittee recognizes that a "one size fits all" sentencing structure leads to

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disproportional sentencing. For this reason the Subcommittee recommends that aggravating and mitigating sentences within each grid box, originally set at 5% above and below the standard sentence, be increased to 10% above and below the standard sentence. An increase from 8 border boxes to 16 PIB boxes would provide a mechanism to address the repeat property offender, to reduce the need for special rules, and to allow the court the discretion necessary to consider PIB sentencings on a case by case basis.

In reviewing the proportionality of sentences under the Kansas sentencing guidelines in relation to actual sentencing practices for particular offenses, there are specific steps that the state may consider based on the findings in this report. These would include:

1. The examination of the sentencing guidelines is to emphasize that presumptive imprisonment is the appropriate and proportional sentence for both person and some nonperson felonies, especially in those cases involving repeat or habitual offenders.
2. Adopt severity rankings for drug offenses based on thresholds of drug quantity to better identify the degree of harm and distinguish personal use from distribution, manufacturing, and cultivation.
3. Severity rankings for property offenses should be based on the amount of financial loss as the best predictor of amount of harm to the victim.
4. Propose policy changes calculated to harmonize current law with actual sentencing practice, thereby addressing a large number of downward departures, as shown by sentencing data collected.

It is the Subcommittee's conclusion that adoption of the recommended changes herein will further the goal of proportional sentences, based upon the degree of harm to the victim and the seriousness of the offense, thereby ensuring public safety through appropriate sentencing. Such an approach will reserve prison for violent offenders and repeat nonviolent offenders and promote offender reformation through appropriate community sanctions.

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**House Corrections and Juvenile Justice
2003 Senate Bill 123
Overview**

Wednesday, January 14, 2009

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Who, What & Why?

- **Nonviolent felony possession offenders**
- **Community punishment**
- **Treatment – opportunity to address the problem**
- **Divert from prison (reserved for serious, violent offenders)**

Desired Impact

- **Cycle of addiction → cycle of incarceration**
 - Break the cycle of addiction
 - Break the cycle of incarceration
- **Possession increased in severity with subsequent possession convictions (Drug 4, Drug 2, Drug 1)**
 - Retain drug possession convictions on drug level 4 – not escalating in severity for subsequent offenses

SENTENCING RANGE - DRUG OFFENSES

Category —	A	B	C	D	E	F	G	H	I
Severity Level	3+ Felony Possession	2 Felony Possession	1 Felony & 1 Misdemeanor Possession	2 Felony Possession	3 Felony Possession	2 Felony Possession	1 Felony Possession	1 Felony	1st No Record
I	204 184 185	195 186 178	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	33 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	38 34 32	32 30 28	26 24 23	23 22 20	19 16 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	28 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Probation
Presumptive Imprisonment

Probation Terms are:
 36 months recommended for felons classified in Severity Levels 1-2
 18 months (up to) for felons classified in Severity Level 3
 12 months (up to) for felons classified in Severity Level 4
Postrelease Supervision Terms are:
 36 months for felons classified in Severity Levels 1-2
 24 months for felons classified in Severity Level 3
 12 months for felons classified in Severity Level 4 except for some K.S.A. 95-4160 and 95-4162 offenses on and after 10/01/03.

Postrelease for felons committed before 4/20/95 are:
 24 months for felons classified in Severity Levels 1-3
 12 months for felons classified in Severity Level 4

Eligibility

- **Felony drug possession (SL D4)**
- **No prior manufacturing or sale convictions**
- **Nonperson criminal history OR**
- **Person criminal history with low level felonies AND court finding that public safety will not be jeopardized**

Program

- **Mandatory Drug Treatment of up to 18 months in duration with community treatment provider(s)**
- **Intensive supervised probation by Community Corrections**
- **Case management is a team function between treatment provider and Community Corrections officer**
- **Partners: KSC, KDOC, 31 community corrections agencies, & 140 treatment providers**

2003 Senate Bill 123 Overview
January 14, 2009

**Number of SB 123 Certified Treatment Providers
By County As of August 4, 2005**

Cheyenne	Rawlins	Decatur	Norton 1	Phillips	Smith	Jewell	Republic	Washington	Marshall	Nemaha	Brown 1	Doniphan	3	Leavenworth								
Sherman	1	Thomas	Sheridan	Graham	Rooks	Osborne	Mitchell	Cloud	3	Clay	1	Pottawatomie	Jackson	2	Atchison	2	Wyandott					
Wallace	Logan	Gove	Trego	Ellis	2	Russell	Lincoln	Ottawa	1	Riley	1	Wabauunsee	Shawnee	7	Douglas	4	Johnson	6				
Greeley	Wichita	Scott	Lane	Ness	Rush	Barton	Ellsworth	Saline	3	Dickinson	1	McPherson	Morris	3	Osage	2	Franklin	1	Miami			
Hamilton	Kearny	Finney	Hodgeman	3	Edwards	Stafford	1	Reno	4	Harvey	1	Sedgwick	4	Greenwood	1	Coffey	Anderson	2	1	Lin	Bourbon	
Stanton	Grant	Haskell	Gray	Ford	Kiowa	Pratt	1	Kingman	21	Butler	4	Wilson	1	Neosho	1	1	1	1	1	1	1	Crawford
Morton	Stevens	1	Seward	Meade	Clark	Comanche	Barber	Harper	1	Sumner	1	Cowley	2	Chautauqua	2	Montgomery	1	Labette	1	3	Cherokee	

108 agencies are certified to deliver some form of SB 123 Treatment Services. As of June 30, 2004, there were 270 certified treatment counselors

**Number of SB 123 Certified Treatment Providers
by county as of Sept 9, 2008**

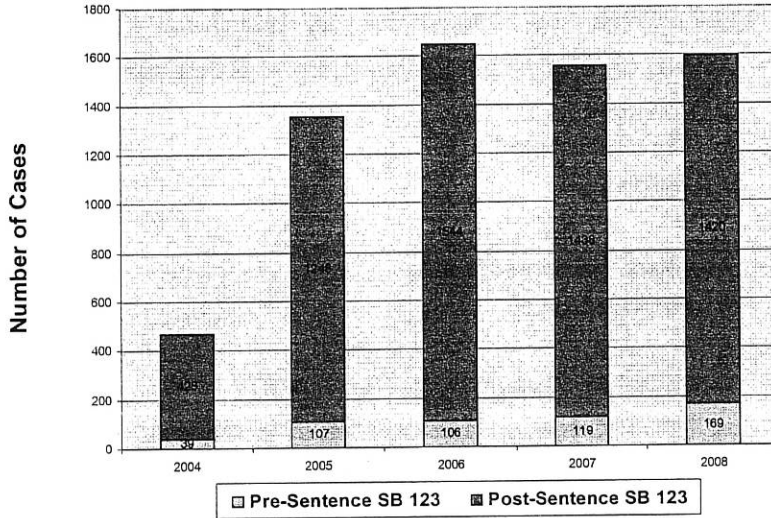
Cheyenne	Rawlins	Decatur	Norton 1	Phillips	Smith	Jewell	Republic	Washington	Marshall	Nemaha	Brown 1	Doniphan	2	Leavenworth								
Sherman	2	Thomas	Sheridan	Graham	Rooks	Osborne	Mitchell	Cloud	3	Clay	1	Pottawatomie	Jackson	2	Atchison	2	Wyandott					
Wallace	Logan	Gove	Trego	Ellis	2	Russell	Lincoln	Ottawa	8	Riley	1	Wabauunsee	Shawnee	9	Douglas	3	Johnson	8				
Greeley	Wichita	1	Scott	Lane	Ness	Rush	Barton	Ellsworth	Saline	Dickinson	1	McPherson	Morris	3	Osage	1	Franklin	2	1	1	Miami	
Hamilton	Kearny	Finney	Hodgeman	2	Edwards	Stafford	1	Reno	5	Harvey	1	Sedgwick	3	Greenwood	1	Coffey	Anderson	3	1	1	Bourbon	
Stanton	Grant	Haskell	Gray	Ford	Kiowa	Pratt	1	Kingman	26	Butler	3	Wilson	1	Neosho	1	1	1	1	1	1	1	Crawford
Morton	Stevens	2	Seward	Meade	Clark	Comanche	Barber	Harper	1	Sumner	1	Cowley	2	Chautauqua	2	Montgomery	1	Labette	1	2	Cherokee	

140 agencies (physical locations) are certified to deliver some form of SB 123 Treatment Services. As of August 31, 2008, there were 706 certified treatment counselors.

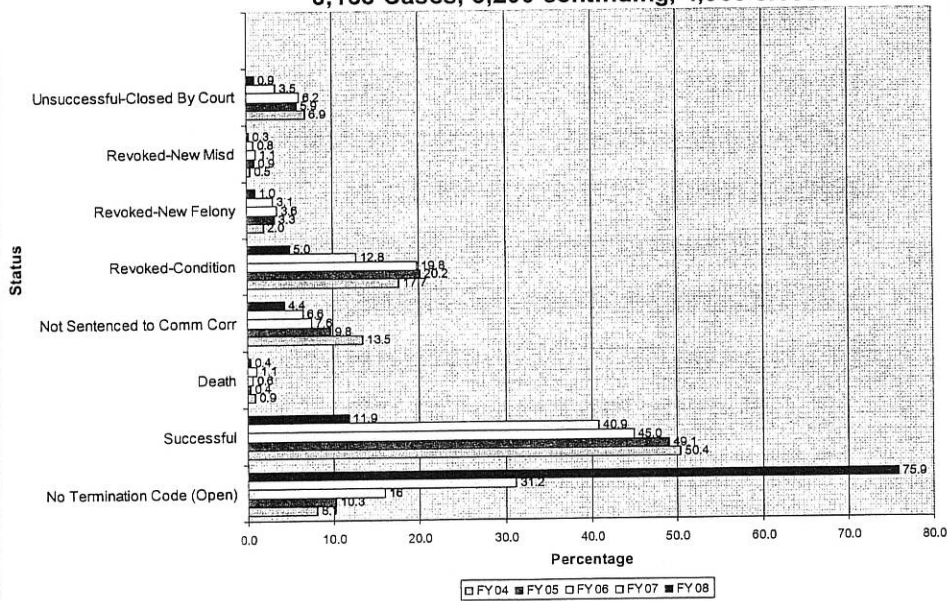
2-4

2003 Senate Bill 123 Overview
January 14, 2009

SB 123 Cases by Pre/Post Sentencing Date by Fiscal Year
Inception through June 30, 2008



Open & Closed Cases by Fiscal Year
8,163 Cases, 3,200 continuing, 4,963 closed



ASSESSMENTS

- **Assessments required by SB 123**
 - **Level of Services Inventory – Revised Pre-sentence**
 - Re-assessment
 - Discharge
 - **SB 123 Assessment**
 - Pre-Sentence
 - **Addiction Severity Index (ASI)**
 - 1st ASI within 30 days start of treatment
 - 2nd ASI at treatment discharge
 - 3rd ASI at least 6 months after discharge

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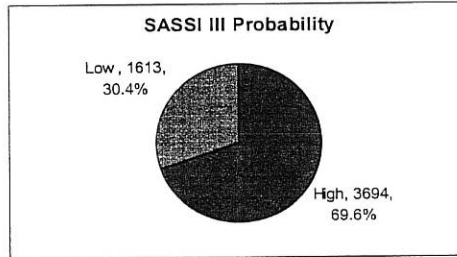
SB 123 Assessment Reports

- **As of June 30, 2008, KSC received SB 123 assessment reports of 5,590 offenders, among which,**
 - 1,422 were from FY 2005 and
 - 1,305 were from FY 2008.
- **Of the total 5,590 offenders,**
 - 5,495 (98.3%) had SB123 Assessment,
 - 2,853 (51%) had the initial ASI,
 - 1,070 (19.1%) had the second ASI and
 - 266 (4.8%) had the third ASI.

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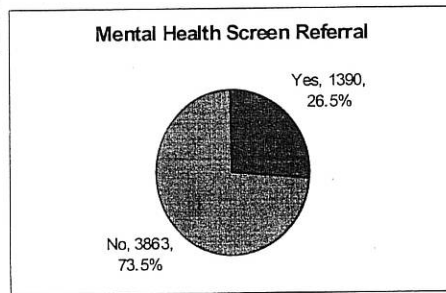
**SASSI III: Probability of Having
a Substance Dependence
Disorder**

Inception- June 30, 2008



**Substance Abuse Subtle
Screening Inventory (SASSI
III): Mental Health Screen
Referral**

Inception- June 30, 2008

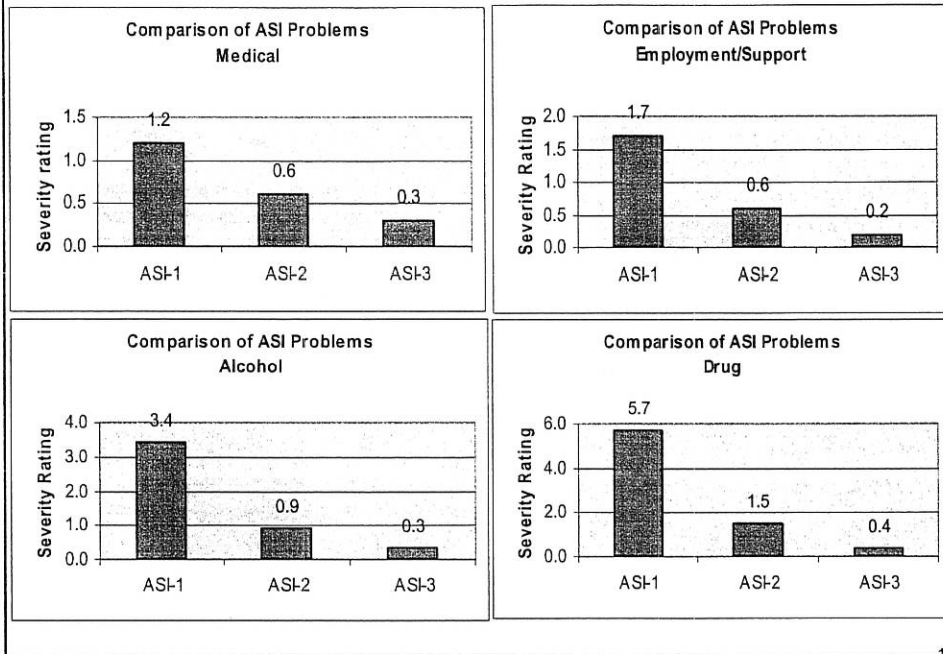


**Comparison of the Average
Severity Ratings of Three ASIs by
Problem Area**

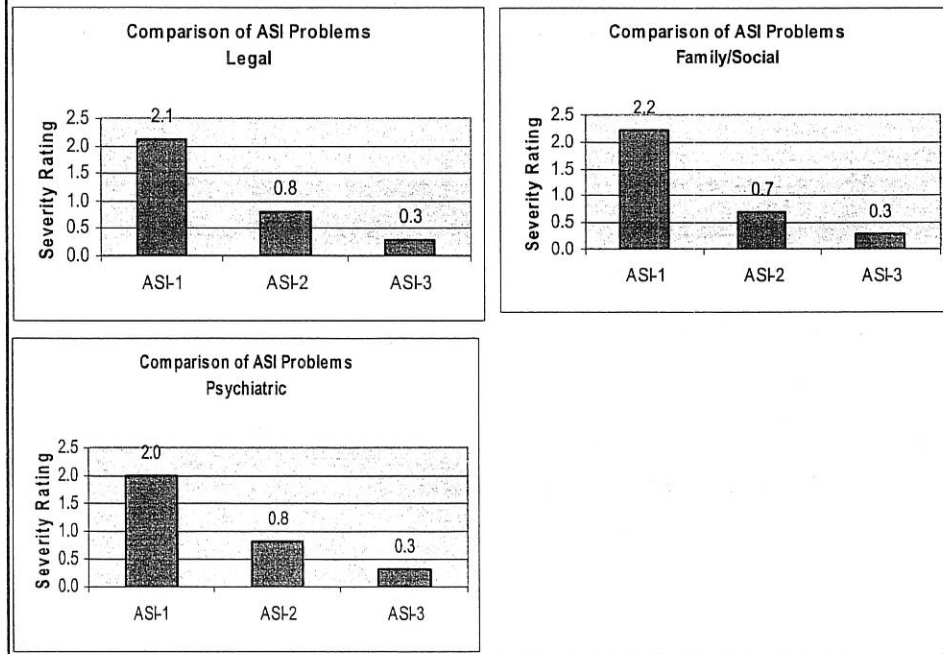
- Paired Samples T test is applied to test the average severity rating differences in each problem area.
- The tests indicate that most of the differences are statistically significant at the significance value less than 0.05.
- These results statistically support the purpose of SB 123 treatment programs.

2003 Senate Bill 123 Overview
January 14, 2009

Inception- June 30, 2008



Inception- June 30, 2008



Level of Service Inventory - Revised (LSI-R©)

Assessments Through June 30, 2008

- **Risk/Need Assessment Instrument**
- **Identifies Risk for Reoffending and Criminogenic Needs (targets for reducing risk)**

- **Administration Frequency:**
 - After conviction prior to sentencing
 - Six months after initial OR significant event
 - Prior to discharge from supervision

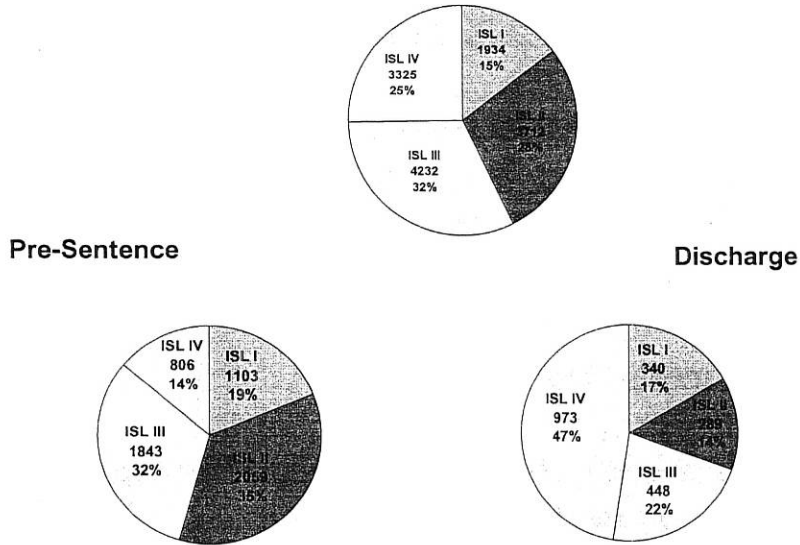
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LSI-R© Assessment

- **13,205 LSI-R's completed on SB 123 offenders since program inception through June 30, 2008**
 - **5,813 Initial; 5,342 Reassessment; 2,050 Discharge**
 - **Level of Risk → Level of Supervision**
 - 1,934 (14.6%) at ISL I (*highest*)
 - 3,712 (28.1%) at ISL II
 - 4,232 (32.0%) at ISL III
 - 3,325 (25.2%) at ISL IV (*lowest*)
- (2 unscored were removed from this analysis)**

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LSI-R: Level Of Supervision-Overall
(through June 30, 2008)



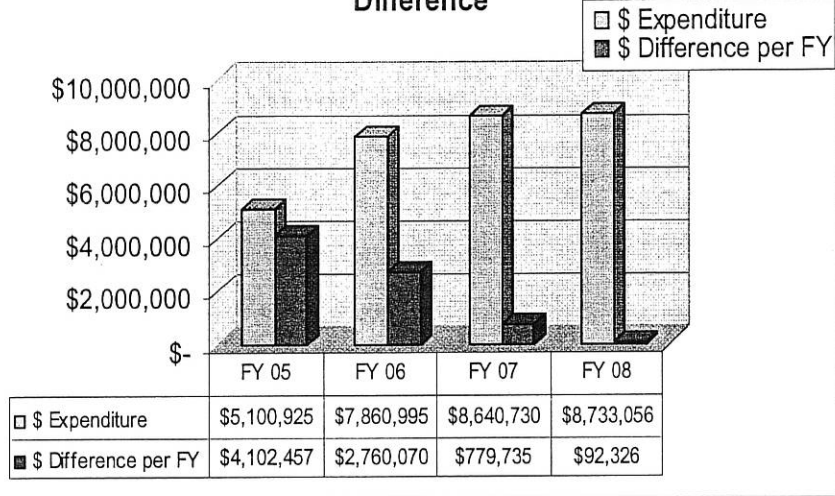
Summary Of Expenditure Data

(Payment Database, TPPS)

November 2003 through June 30, 2008

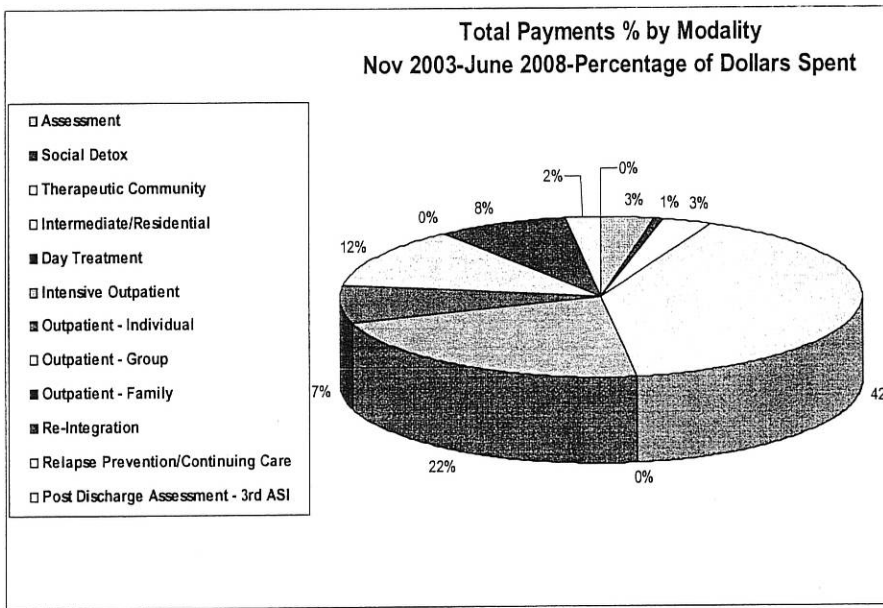
- Total Offenders (assessment & treatment) •=5,926
- Offenders with treatment expenditures •=4,908
- Avg cost per offender for assessment & treatment •=\$6,327
- Avg cost per offender for treatment only •=\$6,140
- Expenditure for assessment & treatment •=\$31,193,952
- Expenditure for treatment only •=\$30,135,347
- Total number of invoices paid •=48,740

SB 123 Expenditures per Fiscal Year And \$ Dollar Difference



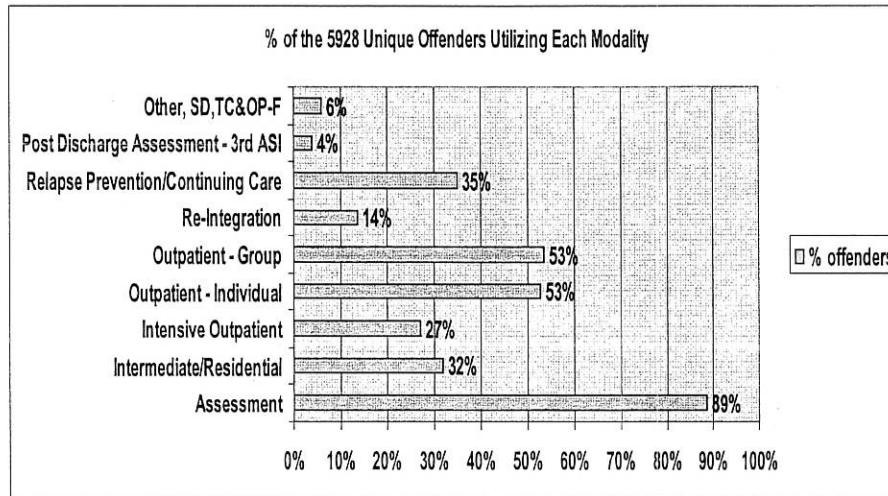
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All Years Expenditures by Interventions



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Modality Utilization for 5928 Unique Offenders



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FY 2008 Treatment Service Payments Kansas Sentencing Commission FY 2008

Interventions	Amount Paid	Units Paid	Avg Units/Offender	Invoices	Offenders	Avg Cost/Unit	Avg Cost/Offender
Assessment	\$237,475	1,266 assessments	1 1266	1,266	\$188	\$188	
Social Detox	\$57,930	321 days	5 days	82	69	\$180	\$840
Therapeutic Community	\$388,350	2,589 days	129 days	96	20	\$150	\$19,418
Intermediate/Residential	\$3,119,720	19,370 days	34 days	1,169	562	\$161	\$5,551
Day Treatment		days	days	0			
Intensive Outpatient	\$2,065,470	53,409 days	90 days	2,007	595	\$39	\$3,471
Outpatient - Individual	\$674,448	9,010 hours	7 hours	4,400	1,259	\$75	\$536
Outpatient - Group	\$1,142,826	46,095 hours	35 hours	5,024	1,324	\$25	\$863
Outpatient - Family	\$4,135	57 hours	3 hours	28	19	\$73	\$218
Re-Integration	\$690,190	18,676 days	66 days	899	283	\$37	\$2,439
Continuing Care	\$203,590	8,264 sessions	9 sessions	2,951	885	\$25	\$230
Post Discharge - 3rd ASI	\$8,700	87 days	1 days	87	87	\$100	\$100
Total Amount Paid	\$8,592,834						
Remaining Encumbrance	\$ 140,223						
Adjusted Total	\$8,733,057						
Treatment Excl Assessments	\$8,355,359						
Cost Per Offender In Treatment	\$3,636						
Plus Assessment \$187.58 Per Unit	\$3,824						
Total Offenders	2,647			Total Invoices Paid	13,616		
				Total Offenders With Treatments	2,298		

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Overall recidivism rates

Group	N	6 months	12 months	18 months
SB 123	1,494	7.1%	14.3%	21.0%
Court Services	2,097	5.0%	11.2%	16.3%
Community Corrections	1,426	11.4%	23.1%	31.6%
Prison	192	9.9%	19.3%	24.5%

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18-Month recidivism rates by type

Sentence Type	N	Any failure	Revocation	Reconviction
SB 123	1,494	21.0%	15.6%	5.4%
Court Services	2,097	16.3%	9.3%	7.0%
Community Corrections	1,426	31.6%	22.3%	9.3%
Prison	192	24.5%	17.2%	7.3%

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Prison Bed Savings Is the program worth the money?

**Kansas cost of incarceration: approx \$25,000/yr.
Drug Possession offenders LOS before Alternative
Sentencing Policy:**

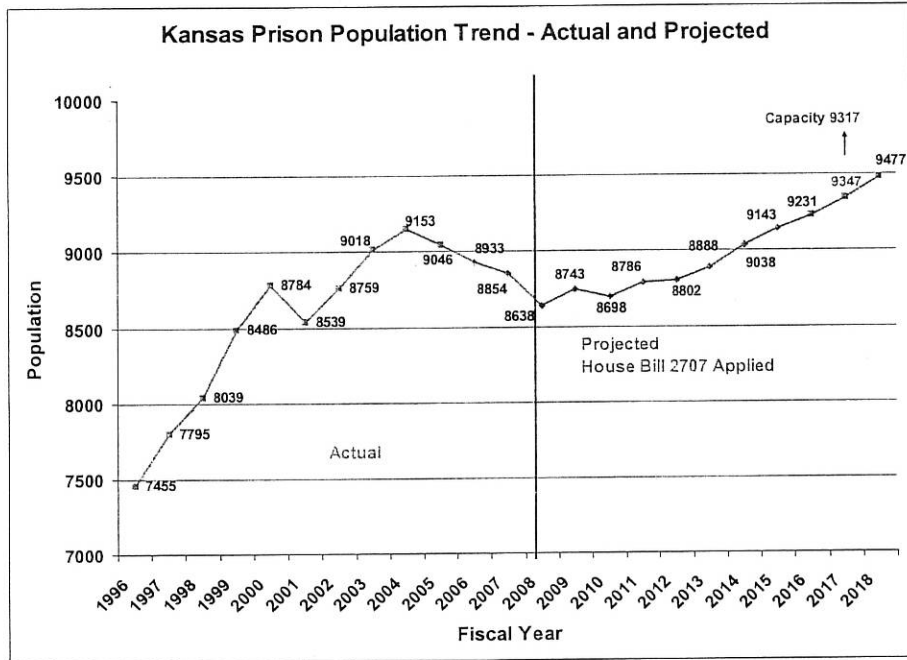
- **1st possession: Drug 4**
 - 20 months underlying prison (presumptive probation)
 - Prior Funding Availability for Community Treatment - virtually none
 - Revocation Rate: nearing 50% (\$41,667 Incar.)
- **2nd possession: Drug 2**
 - 59 months presumptive prison (\$123,000 incar.)
- **3rd + possession: Drug 1**
 - 162 months presumptive prison (\$337,000 incar.)

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Prison Beds Saved

- **Anticipated bed savings of 500 or more in 10 years**
- **The estimated prison bed savings is based the SB 123 offenders' average underlying prison sentences minus good time and jail credit. Annual cost of an inmate housed at KDOC is assumed to be \$25,000 annually**

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Revocation Reductions – New Admissions

Severity Level	FY 2004	FY 2007	FY 2008
D1	196	89	56
D2	80	26	32
D3	276	284	223
D4	505	741	622

Probation Condition Violators at D4

FY 2008: 153, or 24.6% of 622 new admissions

FY 2007: 237, or 32.0% of 741 new admissions

Beds Saved

- The table below summarizes the total prison admission reduction each fiscal year since the implementation of SB 123.

FY	SB 123		Total	
	Direct Adm. Reduction	Rev. to Pris. Red.	Adm. Red.	Beds Saved
• 2004	61	38	99	79
• 2005	173	123	296	270
• 2006	189	154	343	379
• 2007	167	144	311	387
• 2008	183	149	332	405

Estimated Beds Saved/Money Saved

Fiscal Year	Beds Saved	Money Saved
2004	79	\$1,975,000
2005	270	\$6,750,000
2006	379	\$9,475,000
2007	387	\$9,675,000
2008	405	\$10,125,000

Cost Savings of SB 123

Fiscal Year	SB 123 Expenditure	Money Collected	Actual SB123 Cost	Estimated Saving from Prison Cost	Estimated Money Saved
2004	\$998,430	\$15,948	\$982,482	\$1,975,000	-\$992,518
2005	\$5,100,925	\$150,224	\$4,950,701	\$6,750,000	-\$1,799,299
2006	\$7,860,995	\$213,589	\$7,647,406	\$9,475,000	-\$1,827,594
2007	\$8,640,330	\$202,784	\$8,437,546	\$9,675,000	-\$1,237,454
2008	\$8,733,855	\$229,649	\$8,504,206	\$10,125,000	-\$1,620,794
Total	\$31,334,535	\$812,194	\$30,522,341	\$38,000,000	-\$7,477,659

Challenges

- **Less populated areas = fewer resources**
 - Residential services
 - Transportation
 - Child care
 - Job issues

- **Some offenders choose to violate conditions because 18 months of this program is more difficult than serving the underlying prison sentence; but few treatment slots exist in prison.**

Challenges

- **Case-management data base**
 - Information is ever changing
 - Entered by officers
 - Doesn't always match with journal entry data
- **Team concept is important to the program - case loads, relationships affect program success**

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Success!

- **Successful offenders remain in the community, working, providing stability for their families (resulting in fewer social service needs), and paying taxes at a cost per year of \$4,000 vs. \$25,000 per year per prison bed**
- **Reduced probation revocations**
- **Fewer reconvictions**

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