

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:30 p.m. on February 25, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the committee:

Professor Tom Stacy, KU, Chairman Recodification Committee,
Tom Drees, KSC Propornality Chair,
Tom Stanton, Deputy District Attorney, Reno County & President KCDA, A,
Mark Gleeson, Office of Judicial Administration,

Others attending:

See attached list.

HB 2332 - Recodification of certain drug crimes; quantities of drugs; proportionality of sentencing.

Chairperson Colloton opened the meeting by introducing Jill Wolters, Revisors Office to explain **HB 2332**. Ms. Wolters provided written copy. (Attachment 1) She reviewed the bill while taking clarification questions from the Committee. She stated the bill is the work product of the Recodifications Commission concerning the drug code. During her explanation she stated there is nothing in the bill that changes the DUI laws. She also stated this bill would not go into effect until the year 2010.

Questions and answers followed.

Upon the completion of the questions and answer session, Chairperson Colloton opened the hearing on **HB2332** and introduced Professor Tom Stacy to give a brief introduction to the bill. Professor Stacy provided written copy of a **HB 2332** comparison chart (Attachment 2) as a proponent of the bill. He provided a little history of the Recodification Commission and the way they derived at their recommendations. During his introduction he took questions form the Committee.

Next, Chairperson Colloton recognized Tom Drees, Kansas Sentencing Commission Propornality Chair, to give his testimony as a proponent of the bill. Mr. Drees provided written copy. (Attachment 3) Mr. Drees recognized the members of the Recodification Commission. He referred the Committee to a handout of the grid. (Attachment 4)

He reviewed the changes in the grid while taking questions from the Committee; which resulted in lengthy discussions. He explained why they combined everything on the same grid stating the bill merges sentencing into one grid resulting in sentences that can be compared and ranked in terms of level of harm. Mr. Drees' testimony was very lengthly due to all the questions taken during his review.

Chairperson Colloton stated the Committee would continue the hearing on **HB 2332** and adjourned the meeting at 3:00 p.m. with the next meeting scheduled for February 26, 2009 at 1:30 p.m. in room 535 N.


CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 02-25-09

NAME	REPRESENTING
Tim Meadon	KDOC
Rick Fleming	Office of the Securities Commissioner
Chris Biggs	" " " " "
Berend Koops	Hein Law Firm
Richard Simarijo	Kemuph ASSOC.
TOM STANTON	KCDAA
Gordon Lansford	KCJIS
Tom Drees	KSC
Chris Mehlur	OJA
Gail Bright	Office of the Securities Commissioner
Enn Hestje	Office of the Securities Commissioner
Brenda Harmon	KSC
Helen Pedigo	KSC
Ed Klumpp	KACB KPOA KCCRC
JOHN W. WHITE	KCCRC
Tom Stacy	KCCRC
Mark Gleason	Judicial Branch
Carl Folsom	KACDL

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MEMORANDUM

To: Chairperson Colloton and members of the House Corrections and Juvenile Justice Committee
From: Jill Ann Wolters, Senior Assistant Revisor 
Date: February 25, 2009
Subject: HB 2332, drug code recodification and Kansas Sentencing Commission (KSC) proportionality study

House Bill No. 2332 contains the work product of the Recodification Commission concerning the drug code. The bill implements the Commission's request to move drug offenses from chapter 65 into chapter 21, as well as policy recommendations regarding the drug code. Further, the bill includes the KSC's recommendations concerning the proportionality of the Kansas sentencing guidelines. The bill would be effective on July 1, 2010.

Sections 1 through 17 are the Recodification Commission revisions concerning the drug code. The sections are identical to the provisions of HB 2236, with the following exceptions:

1. Definition of "manufacture" amended. Section 1 (i). page 4, line 26
2. Definition of "minor" and "presence of a minor" added. Section 1 (k) and (r). page 5, line 11 and page 6, line 4. Deleted definition of "school property."
3. Manufacturing a controlled substance or controlled substance analog amended into two penalties: manufacturing methamphetamine, severity level 3, person felony, all other manufacturing, severity level 5, person felony. Section 3. page 6, line 23.
4. Quantities of drugs established for different levels of penalties for unlawfully distributing/possess with the intent to distribute. Section 5. page 7, line 5
5. Redrafting of unlawful possession of ephedrine. Section 9. page 11, line 34.
6. Changes throughout sections 1 through 17 to reflect the policy recommendation to have the penalty enhancement be based on "to a minor or in the presence of a minor" not within 1,000 feet of school property. For an example, see page 8, line 32.
7. Severity levels amended to reflect the policy change recommended by the KSC to combine the grids.
8. Distributing or possessing with the intent to distribute any substance which is not a controlled substance, may also be prosecuted, convicted and punished for theft by deception. Section 14 (d). page 16, lines 30 and 31
9. The unlawfully receiving proceeds penalty is amended to be based on the dollar amounts of the value of the proceeds, to be uniform with the KSC proportionality recommendations. Section 16. page 16, line 40

Corrections and Juvenile Justice
Date: 2-25-09
Attachment # 1-1

The KSC proportionality study made several recommendations.

1. Combining the nondrug grid and the drug grid. Creating a new grid with new presumed imprisonment border boxes, K.S.A. 21-4704. page 106

2. Adopting new levels of severity involving loss of money, productivity, value of resources if the violation is in an amount of:

- (A) \$100,000 or more is a severity level 5, nonperson felony.
- (B) At least \$75,000 but less than \$100,000 is a severity level 6, nonperson felony.
- (C) At least \$50,000 but less than \$75,000 is a severity level 7, nonperson felony.
- (D) At least \$25,000 but less than \$50,000 is a severity level 8, nonperson felony.
- (E) At least \$2,000 but less than \$25,000 is a severity level 9, nonperson felony.
- (F) At least \$1,000 but less than \$2,000 is a severity level 10, nonperson felony.
- (G) At least \$500 but less than \$1,000 is a class A nonperson misdemeanor.
- (H) Less than \$500 is a class B nonperson misdemeanor.

Amendments implementing this policy are as follows:

- K.S.A. 9-2012, bank embezzlement. page 29, line 24
- K.S.A. 16-305, misappropriating funds in violation of a funeral and cemetery merchandise agreement. page 33, line 32
- 17-12a508, intentional violation of the Kansas uniform securities act. page 34, line 15
- 17-1311a, misuse of a permanent maintenance fund. page 36, line 10
- 19-3519, fraudulent claim from a water district. page 36, line 32
- 21-3419a, aggravated criminal threat, loss of productivity. page 49, line 21
- 21-3437, mistreatment of a dependent adult. page 51, line 43
- 21-3701, theft. page 56, line 3
- 21-3704, theft of services. page 57, line 1
- 21-3707, giving a worthless check. page 58, line 43
- 21-3720, criminal damage to property. page 62, line 15
- 21-3729, criminal use of a financial card. page 63, line 4
- 21-3734, impairing a security interest. page 64, line 7
- 21-3761, damaging railroad property. page 65, line 12
- 21-3763, counterfeiting. page 66, line 8
- 21-3846, making a false claim to the medicaid program. page 69, line 17
- 21-3902, official misconduct. page 71, line 17
- 21-3904, presenting a false claim. page 72, line 39
- 21-3905, permitting a false claim. page 73, line 20
- 21-3910, misuse of public funds. page 74, line 6
- 21-4018, identity theft. page 74, line 42
- 21-4111, criminal desecration. page 76, line 1
- 39-717, illegally selling or acquiring social welfare assistance. page 174, line 42
- 39-720, fraudulently obtaining social welfare assistance. page 175, line 39
- 40-2,118, fraudulent insurance act. page 176, line 26
- 40-247, insurance agent or broker fraud. page 178, line 18
- 40-5013, viatical settlement contract fraud. page 179, line 15
- 44-5,125, workers compensation benefits fraud. page 181, line 22
- 44-719, making a false statement to obtain or increase benefit under employment security

law. page 195, line 19

- 47-1827, intentionally damaging an animal facility. page 199, line 23
- 65-4167, trafficking in counterfeit drugs. page 213, line 12

3. Implementing proportionality of sentences.

- Violation of the Kansas mortgage business act, K.S.A. 9-2203. Penalty decreased from a severity level 7, to a severity level 8, nonperson felony. page 30, line 17
- Domestic battery, K.S.A. 21-3412a. Currently, the crime is a person felony, nongrid, for third or subsequent convictions within five years. The amendment would place the crime on grid for a third or subsequent conviction, severity level 7, person felony, but still retains special sentencing rules if such crimes occur within five years. The mandatory sentences within the five year time frame are to be served in county jail unless because of the offender's criminal history, such offender would be sentenced to presumptive imprisonment. Offenders serving the mandatory sentence would be supervised by community corrections upon release. Subject to availability, such supervision shall include the offender participating in a behavior modification treatment program. page 44, line 24
- Battery against a law enforcement officer (battery committed against a DOC/juvenile correctional facility/juvenile detention facility/city or county correctional employee), K.S.A. 21-3413(a)(3). Penalty decreased from a severity level 5, to a severity level 9, person felony. The sentence shall be presumed imprisonment. page 46, line 37
- Aggravated battery, K.S.A. 21-3414 (a)(2)(A) and (a)(2)(B). For recklessly causing great bodily harm or disfigurement to another, penalty decreased from a severity level 5, to a severity level 6, person felony. For recklessly causing bodily harm to another with a deadly weapon or in any manner whereby great bodily harm, disfigurement or death can be inflicted, penalty decreased from a severity level 8, to a severity level 9, person felony. page 48, line 12
- Aggravated battery against a law enforcement officer, K.S.A. 21-3415. Penalty decreased from a severity level 4, to a severity level 5, person felony. [Also, eliminated special sentencing rule] page 48, line 36
- Aggravated kidnapping, K.S.A. 21-3421. Penalty decreased from a severity level 1, to a severity level 2, person felony. page 49, line 43
- Infecting with a life threatening communicable disease, K.S.A. 21-3435. Penalty increased from a severity level 7, to a severity level 6, person felony. page 50, line 5
- Aggravated trafficking, victim is 14 or older, K.S.A. 21-3447. Penalty decreased from a severity level 1, to a severity level 2, person felony. page 53, line 29
- Intentionally receiving property for the purpose of committing terrorism or illegal use of weapons of mass destruction, K.S.A. 21-3451. Penalty increased from a severity level 1, to an offgrid person felony. page 54, line 6
- Aggravated endangering a child, K.S.A. 21-3608a. Deleting the term "injured or" and penalty increased from a severity level 9, to a severity level 7, person felony. page 55, line 8
- Abuse of a child, K.S.A. 21-3609. Amending the crime into 2 severity levels: for intentionally torturing, cruelly beating or shaking which results in great bodily harm, severity level 3, person felony; for intentionally inflicting cruel and inhuman corporal punishment, severity level 6, person felony. Under current law, both crimes are a severity level 5, person felony. page 55, line 37

- Criminal deprivation of property, K.S.A. 21-3705. Second conviction, increased from a class A nonperson misdemeanor, to a severity level 8, nonperson felony. Third or subsequent conviction, increased from a severity level 9, to a severity level 8, nonperson felony. page 58, line 15
- Aiding an escape by an employee or volunteer of DOC, K.S.A. 21-3811. Penalty decreased from a severity level 4, to a severity level 5, nonperson felony. page 67, line 24
- Aiding a person required to register under the offender registration act, K.S.A. 21-3812. Penalty decreased from a severity level 5, to a severity level 10, person felony. page 68, line 8
- Incitement to riot, K.S.A. 21-4105. Penalty increased from a severity level 8, to a severity level 6, person felony. page 75, line 38
- Criminal possession of a firearm, by a person mentally ill or with alcohol/substance abuse problems subject to involuntary commitment, K.S.A. 21-4204. Penalty decreased from a severity level 8, to a severity level 9, nonperson felony. page 77, line 34
- Unlawfully tampering with electronic monitoring equipment, K.S.A. 21-4232. Penalty decreased from a severity level 6, to a severity level 8, nonperson felony. page 81, line 15
- Cruelty to animals, K.S.A. 21-4310. The amendment would place the crime on grid, severity level 10, nonperson felony, but still retain the special sentencing rule. The mandatory sentences are to be served in county jail unless because of the offender's criminal history, such offender would be sentenced to presumptive imprisonment. Offenders serving the mandatory sentence would be supervised by community corrections upon release. page 81, line 29
- Inflicting harm/disability/death on law enforcement dog, K.S.A. 21-4318. The amendment would place the crime on grid, severity level 9, nonperson felony, but still retain the special sentencing rule. The mandatory sentences are to be served in county jail unless because of the offender's criminal history, such offender would be sentenced to presumptive imprisonment. Offenders serving the mandatory sentence would be supervised by community corrections upon release. page 83, line 25
- Sentencing and fine provisions, K.S.A. 21-4603d. Offenders who are convicted of a class A misdemeanor would be supervised by a court services officer. page 86, line 22
- Sentencing grid, K.S.A. 21-4704. If criminal history and current crime place offender in a presumptive imprisonment border box, the amendment would allow the court to impose an optional nonprison sentence to an appropriate behavior modification program, upon making certain findings on the record. Currently, the court may sentence such offenders to an appropriate treatment program. Further, the amendment would require any party requesting the nonprison sentence be served by attending and successfully completing a treatment or behavioral modification program to notify the court and opposing counsel 20 days prior to sentencing of the proposed program. The presentence investigation report by the court services officer shall verify the availability of the program and the adequacy of the provider of such program and the treatment or behavioral modification plan. page 104, line 26
- Escape from custody while in state pursuant to a detainer, K.S.A. 22-4405. Currently an unranked felony, the amendment would place the crime on grid, at a severity level 10, nonperson felony. page 152, line 25
- Any person required to register under the offender registration act who violates the act, K.S.A. 22-4903. Penalty decreased from a severity level 5, to a severity level 9, person felony. [Also, the presumptive imprisonment penalty is eliminated.] page 156, line 12

- Alcoholic liquor in a bonded warehouse, K.S.A. 41-405. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 181, line 2
- Labor law violations, K.S.A. 44-619. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 183, line 21
- Employment security law violation, K.S.A. 44-719. Current law generally states a violation shall be fined by \$20 to \$200, or imprisoned for not more than 60 days, or both. The amendment would make the crime a class C nonperson misdemeanor. page 195, line 19
- Illegal branding of livestock, K.S.A. 47-421. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 199, line 11
- Willfully violating the uniform land sales practices act, K.S.A. 58-3315. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 201, line 13
- Filing a false diploma or qualifications with the board of healing arts, K.S.A. 65-2859. Current law states the crime is a forgery and a severity level 8, nonperson felony. The amendment clarifies that the penalty would be that of forgery. page 212, line 35
- Buying or selling a body part for transplant, K.S.A. 65-3235. Penalty decreased from a severity level 5, to a severity level 8, nonperson felony. page 212, line 42
- For financial gain, intentionally falsifying or concealing an anatomical gift document, K.S.A. 65-3236. Penalty increased from a severity level 10, to a severity level 8, nonperson felony. page 213, line 7
- Violation of the emergency planning and community right-to-know act, (hazardous chemical information) K.S.A. 65-5709. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 213, line 39
- Adulterated or misbranded meat, locker plant violations, K.S.A. 65-6a40. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 214, line 3
- State treasury violations by the treasurer or the director of accounts and reports, K.S.A. 75-4228. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 227, line 32
- Public officer or employee who knowingly receives and converts funds without filing an oath, K.S.A. 75-4314. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 228, line 7
- Failing to pay any tax, failure to make any return or intentionally signing a fraudulent return by a personal representative, K.S.A. 79-15,235. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 230, line 35
- Willfully signing a fraudulent return, K.S.A. 79-3228. Current penalty is an unclassified felony. The amendment would place the crime on grid at a severity level 10, nonperson felony. page 231, line 39

4. Eliminating special sentencing rules.

- Aggravated assault of a law enforcement officer, K.S.A. 21-3411, and aggravated battery

against a law enforcement officer, K.S.A. 21-3415 [Also, decreased severity level.]
page 44, line 11

- Forgery, K.S.A. 21-3710. Third or subsequent conviction, remains at a severity level 8, nonperson felony, but sentenced on grid, not 45 days county jail. page 60, line 39
- Sentencing grid, K.S.A. 21-4704. Eliminates the presumptive imprisonment penalty for K.S.A. 21-3812, aiding a person required to register under the offender registration act, [also, penalty decreased from a severity level 5, to a severity level 10, person felony] and K.S.A. 22-4903, violating the provisions of the offender registration act [also, penalty decreased from a severity level 5, to a severity level 9, person felony] . page 104, line 26

(Corrected)

Session of 2009

HOUSE BILL No. 2332

By Committee on Federal and State Affairs

2-12

9 AN ACT concerning crimes, punishment and criminal procedure;
10 amending K.S.A. 9-2012, 12-4419, 12-4509, 16-305, 17-12a508, 17-
11 1311a, 19-3519, 21-2501, 21-2511, 21-3301, 21-3302, 21-3303, 21-
12 3411, 21-3413, 21-3414, 21-3415, 21-3421, 21-3435, 21-3436, 21-3437,
13 ~~21-3447~~, 21-3451, 21-3608a, 21-3609, 21-3701, 21-3704, 21-3707, 21-
14 3710, 21-3718, 21-3720, 21-3729, 21-3734, 21-3761, 21-3763, 21-3812,
15 21-3826, 21-3846, 21-3902, 21-3904, 21-3905, 21-3910, 21-4018, 21-
16 4105, 21-4111, 21-4203, 21-4204, 21-4226, 21-4232, 21-4318, 21-4502,
17 21-4503a, 21-4603d, 21-4611, 21-4638, 21-4643, 21-4703, 21-4706, 21-
18 4707, 21-4709, 21-4710, 21-4711, 21-4713, 21-4717, 21-4720, 21-4722,
19 21-4729, 22-2512, 22-2515, 22-2802, 22-2908, 22-2909, 22-3303, 22-
20 3412, 22-3604, 22-3901, 22-4405, 22-4903, 22-4906, 36-601, 36-604,
21 39-720, 41-405, 47-421, 58-3315, 60-427, 65-2859, 65-4102, 65-4127c,
22 65-4139, 65-5709, 75-4228, 75-4314 and 79-5201 and K.S.A. 2008
23 Supp. 8-2,128, 8-1567, 9-2203, 12-4104, 21-3412a, ~~21-3419a~~, 21-3705,
24 21-3811, 21-4310, 21-4619, 21-4704, 21-4714, 22-3716, ~~22-3717~~, 22-
25 4902, 38-2255, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376, 38-2377,
26 39-717, 40-247, 40-2,118, 40-5013, 44-5,125, 44-619, 44-706, 44-719,
27 47-1827, 59-2132, 59-29b46, 60-4104, 65-516, 65-3235, 65-3236, 65-
28 4167, 72-1397, 72-5445, 72-89c01 74-9101, 75-7c04, 75-5291, 75-
29 52,144, 76-11a13, 79-15,235 and 79-3228 and repealing the existing
30 sections; also repealing K.S.A. 21-4214, 21-4215, 21-4708, 21-4724,
31 65-4105a, 65-4127d, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164 and
32 65-4165 and K.S.A. 2008 Supp. 21-4705, 65-4150, 65-4151, 65-4152,
33 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-
34 4166, 65-4168, 65-4168a and 65-7006.

35

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

37 New Section 1. As used in sections 1 through 17, and amendments
38 thereto:

39 (a) "Controlled substance" means any drug, substance or immediate
40 precursor included in any of the schedules designated in K.S.A. 65-4105,
41 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

42 (b) (1) "Controlled substance analog" means a substance that is in-
43 tended for human consumption, and:

1 (2) an aggravated battery, as defined in subsection (a)(1)(B) or
 2 (a)(1)(C) of K.S.A. 21-3414, and amendments thereto, committed against:
 3 (A) A uniformed or properly identified state, county or city law enforce-
 4 ment officer while the officer is engaged in the performance of the offi-
 5 cer's duty; or (B) a uniformed or properly identified university or campus
 6 police officer while such officer is engaged in the performance of such
 7 officer's duty; or

8 (3) intentionally causing, with a motor vehicle, bodily harm to: (A) A
 9 uniformed or properly identified state, county or city law enforcement
 10 officer while the officer is engaged in the performance of the officer's
 11 duty; or (B) a uniformed or properly identified university or campus po-
 12 lice officer while such officer is engaged in the performance of such of-
 13 ficer's duty.

14 (b) (1) Aggravated battery against a law enforcement officer as de-
 15 scribed in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

16 (2) Aggravated battery against a law enforcement officer as described
 17 in subsection (a)(2) is a severity level 4 5, person felony.

18 ~~(3) A person convicted of aggravated battery against a law enforce-~~
 19 ~~ment officer shall be subject to the provisions of subsection (g) of K.S.A.~~
 20 ~~21-4704, and amendments thereto.~~

21 ~~Sec. 39. K.S.A. 2008 Supp. 21-3419a is hereby amended to read as~~
 22 ~~follows: 21-3419a. (a) Aggravated criminal threat is the commission of~~
 23 ~~one or more crimes of criminal threat, as defined in K.S.A. 21-3419 and~~
 24 ~~amendments thereto, when a public, commercial or industrial building,~~
 25 ~~place of assembly or facility of transportation is evacuated as a result of~~
 26 ~~the threat or threats.~~

STRIKE FROM BILL

27 (b) Aggravated criminal threat ~~is a severity level 5, person felony,~~
 28 ~~when the value of the loss of productivity is in an amount of:~~

29 (1) \$100,000 or more, is a severity level 5, nonperson felony.

30 (2) At least \$75,000 but less than \$100,000, is a severity level 6, non-
 31 person felony.

32 (3) At least \$50,000 but less than \$75,000, is a severity level 7, non-
 33 person felony.

34 (4) At least \$25,000 but less than \$50,000, is a severity level 8, non-
 35 person felony.

36 (5) At least \$2,000 but less than \$25,000, is a severity level 9, non-
 37 person felony.

38 (6) At least \$1,000 but less than \$2,000, is a severity level 10, non-
 39 person felony.

40 (7) At least \$500 but less than \$1,000, is a class A nonperson
 41 misdemeanor.

42 ~~(8) Less than \$500 is a class B nonperson misdemeanor.~~

43 Sec. 40. K.S.A. 21-3421 is hereby amended to read as follows: 21-

1 ~~—(4) Mistreatment of a dependent adult as defined in subsection (a)(2)~~
2 ~~is a severity level 9, person felony if the aggregate amount of the value~~
3 ~~of the resources is at least \$1,000 but less than \$25,000.~~

4 ~~—(5) Mistreatment of a dependent adult as defined in subsection (a)(2)~~
5 ~~is a class A person misdemeanor if the aggregate amount of the value of~~
6 ~~the resources is less than \$1,000, if the aggregate amount of the value of~~
7 ~~the resources is:~~

- 8 (A) \$100,000 or more is a severity level 5, nonperson felony.
- 9 (B) At least \$75,000 but less than \$100,000 is a severity level 6, non-
- 10 person felony.
- 11 (C) At least \$50,000 but less than \$75,000 is a severity level 7, non-
- 12 person felony.
- 13 (D) At least \$25,000 but less than \$50,000 is a severity level 8, non-
- 14 person felony.
- 15 (E) At least \$2,000 but less than \$25,000 is a severity level 9, non-
- 16 person felony.
- 17 (F) At least \$1,000 but less than \$2,000 is a severity level 10, non-
- 18 person felony.
- 19 (G) At least \$500 but less than \$1,000 is a class A nonperson
- 20 misdemeanor.
- 21 (H) Less than \$500 is a class B nonperson misdemeanor.

22 ~~(6) (3) Mistreatment of a dependent adult as defined in subsection~~
23 ~~(a)(3) is a class A person misdemeanor.~~

24 ~~(7) (4) Mistreatment of a dependent adult as defined in subsection~~
25 ~~(a)(2) is a severity level 9, person felony if the aggregate amount of the~~
26 ~~value of the resources is less than \$1,000 and committed by a person who~~
27 ~~has, within five years immediately preceding commission of the crime,~~
28 ~~been convicted of mistreatment of a dependent adult two or more times.~~

29 ~~Sec. 44. K.S.A. 21-3447 is hereby amended to read as follows: 21-~~
30 ~~3447. (a) Aggravated trafficking is:~~

31 ~~(1) Trafficking, as defined in K.S.A. 21-3446, and amendments~~
32 ~~thereto:~~

33 ~~(A) Involving the commission or attempted commission of kidnap-~~
34 ~~ping, as defined in K.S.A 21-3420, and amendments thereto;~~

35 ~~(B) committed in whole or in part for the purpose of the sexual grat-~~
36 ~~ification of the defendant or another, or~~

37 ~~(C) resulting in a death; or~~

38 ~~(2) recruiting, harboring, transporting, providing or obtaining, by any~~
39 ~~means, a person under 18 years of age knowing that the person, with or~~
40 ~~without force, fraud, threat or coercion, will be used to engage in forced~~
41 ~~labor, involuntary servitude or sexual gratification of the defendant or~~
42 ~~another.~~

43 ~~(b) Except as provided further, aggravated trafficking is a severity~~

STRIKE FROM BILL

1 ~~level 1-2, person felony. When the offender is 18 years of age or older,~~
2 ~~aggravated trafficking, if the victim is less than 14 years of age, is an off-~~
3 ~~grid person felony.~~

4 (c) ~~This section shall be part of and supplemental to the Kansas crim-~~
5 ~~inal code.~~

6 Sec. 45. K.S.A. 21-3451 is hereby amended to read as follows: 21-
7 3451. (a) It is unlawful for any person knowingly or intentionally to receive
8 or acquire property, or engage in transactions involving property, for the
9 purpose of committing or furthering the commission of any violation of
10 K.S.A. 21-3449 or 21-3450, and amendments thereto. The provisions of
11 this subsection do not apply to any transaction between an individual and
12 that individual's counsel necessary to preserve that individual's right to
13 representation, as guaranteed by section 10 of the bill of rights of the
14 constitution of the state of Kansas and by the sixth amendment to the
15 United States constitution. This exception does not create any presump-
16 tion against or prohibition of the right of the state to seek and obtain
17 forfeiture of any proceeds derived from a violation of K.S.A. 21-3449 or
18 21-3450, and amendments thereto.

19 (b) It is unlawful for any person knowingly or intentionally to give,
20 sell, transfer, trade, invest, conceal, transport or maintain an interest in
21 or otherwise make available any property which that person knows is
22 intended to be used for the purpose of committing or furthering the
23 commission of any violation of K.S.A. 21-3449 or 21-3450, and amend-
24 ments thereto.

25 (c) It is unlawful for any person knowingly or intentionally to direct,
26 plan, organize, initiate, finance, manage, supervise or facilitate the trans-
27 portation or transfer of property known to be for the purpose of com-
28 mitting or furthering the commission of K.S.A. 21-3449 or 21-3450, and
29 amendments thereto.

30 (d) It is unlawful for any person knowingly or intentionally to conduct
31 a financial transaction involving property for the purpose of committing
32 or furthering the commission of any violation of K.S.A. 21-3449 or 21-
33 3450, and amendments thereto, when the transaction is designed in whole
34 or in part to conceal or disguise the nature, location, source, ownership
35 or control of the property known to be for the purpose of committing or
36 furthering the commission of any violation of K.S.A. 21-3449 or 21-3450,
37 and amendments thereto, or to avoid a transaction reporting requirement
38 under state or federal law.

39 (e) A person who violates this section is guilty of a severity level 1,
40 *an off-grid* person felony.

41 (f) As used in this section:

42 (1) "Property" means anything of value, and includes any interest in
43 property, including any benefit, privilege, claim or right with respect to

1 in K.S.A. 21-4729, and amendments thereto, to participate in a certified
 2 drug abuse treatment program, as provided in K.S.A. 2008 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 (o) ~~All offenders who are convicted of a class A misdemeanor shall be~~
 16 ~~under the supervision of a court services officer. In releasing a defendant~~
 17 ~~on probation, the court shall direct that the defendant be under the su-~~
 18 ~~per vision of a court services officer.~~

If an offender, who is convicted of a class A misdemeanor, is placed

should

19 Sec. 79. K.S.A. 21-4611 is hereby amended to read as follows: 21-
 20 4611. (a) The period of suspension of sentence, probation or assignment
 21 to community corrections fixed by the court shall not exceed five years
 22 in felony cases involving crimes committed prior to July 1, 1993, or two
 23 years in misdemeanor cases, subject to renewal and extension for addi-
 24 tional fixed periods not exceeding five years in such felony cases, nor two
 25 years in misdemeanor cases. In no event shall the total period of proba-
 26 tion, suspension of sentence or assignment to community corrections for
 27 a felony committed prior to July 1, 1993, exceed the greatest maximum
 28 term provided by law for the crime, except that where the defendant is
 29 convicted of nonsupport of a child, the period may be continued as long
 30 as the responsibility for support continues. Probation, suspension of sen-
 31 tence or assignment to community corrections may be terminated by the
 32 court at any time and upon such termination or upon termination by
 33 expiration of the term of probation, suspension of sentence or assignment
 34 to community corrections, an order to this effect shall be entered by the
 35 court. The provisions of K.S.A. 75-5291, and amendments thereto, shall
 36 be applicable to any assignment to a community correctional services
 37 program pursuant to this section.

38 (b) The district court having jurisdiction of the offender may parole
 39 any misdemeanant sentenced to confinement in the county jail. The pe-
 40 riod of such parole shall be fixed by the court and shall not exceed two
 41 years and shall be terminated in the manner provided for termination of
 42 suspended sentence and probation.

43 (c) For all crimes committed on or after July 1, 1993, the duration of

1 time; or
2 (3) (iii) the nonprison sanction will serve community safety interests
3 by promoting offender reformation.

4 (B) Any party requesting the nonprison sentence be served by at-
5 tending and successfully completing a treatment or behavioral modifica-
6 tion program shall notify the court and opposing counsel 20 days prior
7 to sentencing of the proposed program. The presentence investigation re-
8 port by the court services officer shall verify the availability of the pro-
9 gram and the adequacy of the provider of such program and the treatment
10 or behavioral modification plan.

11 (C) Any decision made by the court regarding the imposition of an
12 optional nonprison sentence if the offense is classified in grid block ~~5-~~
13 ~~H, 5-I or 6-C~~ shall not be considered a departure and shall not be subject
14 to appeal.

15 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
16 ments thereto, aggravated battery against a law enforcement officer com-
17 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
18 aggravated assault against a law enforcement officer, which places the
19 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
20 onment. The court may impose an optional nonprison sentence upon
21 making a finding on the record that the nonprison sanction will serve
22 community safety interests by promoting offender reformation. Any de-
23 cision made by the court regarding the imposition of the optional non-
24 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
25 not be considered a departure and shall not be subject to appeal.

26 (h) When a firearm is used to commit any person felony, the of-
27 fender's sentence shall be presumed imprisonment. The court may im-
28 pose an optional nonprison sentence upon making a finding on the record
29 that the nonprison sanction will serve community safety interests by pro-
30 moting offender reformation. Any decision made by the court regarding
31 the imposition of the optional nonprison sentence shall not be considered
32 a departure and shall not be subject to appeal.

33 (i) (h) The sentence for the violation of the felony provision of K.S.A.
34 8-1567, subsection (b)(3) of K.S.A. 21-3412a, ~~subsections (b)(3) and sub-~~
35 ~~section~~ (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and
36 amendments thereto, shall be as provided by the specific mandatory sen-
37 tencing requirements of that section and shall not be subject to the pro-
38 visions of this section or K.S.A. 21-4707, and amendments thereto. If
39 because of the offender's criminal history classification the offender is
40 subject to presumptive imprisonment or if the judge departs from a pre-
41 sumptive probation sentence and the offender is subject to imprisonment,
42 the provisions of this section and K.S.A. 21-4707, and amendments
43 thereto, shall apply and the offender shall not be subject to the mandatory

6-E, 6-F, 6-G, 6-H, 6-I, 7-C, 7-
D, 7-E, 7-F, 8-C, 8-D, 8-E, 8-F,
9-C, 9-D or 9-E,

1-12

1 the failure to do any act required by or under the provision of this act
 2 shall prohibit such nonresident from being awarded any contract for con-
 3 struction, reconstruction or maintenance or for the sale of materials and
 4 supplies to the state of Kansas or any political subdivision thereof until
 5 such time as such nonresident has fully complied with this act.

6 Sec. 159. K.S.A. 79-5201 is hereby amended to read as follows: 79-
 7 5201. As used in this act:

8 (a) "Marijuana" means any marijuana, whether real or counterfeit, as
 9 defined by ~~subsection (c) of K.S.A. 65-4101 section 1,~~ and amendments
 10 thereto, which is held, possessed, transported, transferred, sold or offered
 11 to be sold in violation of the laws of Kansas;

12 (b) "controlled substance" means any drug or substance, whether real
 13 or counterfeit, as defined by ~~subsection (c) of K.S.A. 65-4101 section 1,~~
 14 and amendments thereto, which is held, possessed, transported, trans-
 15 ferred, sold or offered to be sold in violation of the laws of Kansas. Such
 16 term shall not include marijuana;

17 (c) "dealer" means any person who, in violation of Kansas law, man-
 18 ufactures, produces, ships, transports or imports into Kansas or in any
 19 manner acquires or possesses more than 28 grams of marijuana, or more
 20 than one gram of any controlled substance, or 10 or more dosage units
 21 of any controlled substance which is not sold by weight;

22 (d) "domestic marijuana plant" means any cannabis plant at any level
 23 of growth which is harvested or tended, manicured, irrigated, fertilized
 24 or where there is other evidence that it has been treated in any other way
 25 in an effort to enhance growth.

26 Sec. 160. K.S.A. 9-2012, 12-4104, 12-4419, 12-4509, 16-305, 17-
 27 12a508, 17-1311a, 19-3519, 21-2501, 21-2511, 21-3301, 21-3302, 21-
 28 3303, 21-3411, 21-3413, 21-3414, 21-3415, 21-3421, 21-3435, 21-3436,
 29 21-3437, ~~21-3447~~, 21-3451, 21-3608a, 21-3609, 21-3701, 21-3704, 21-
 30 3707, 21-3710, 21-3718, 21-3720, 21-3729, 21-3734, 21-3761, 21-3763,
 31 21-3812, 21-3826, 21-3846, 21-3902, 21-3904, 21-3905, 21-3910, 21-
 32 4018, 21-4105, 21-4111, 21-4203, 21-4204, 21-4214, 21-4215, 21-4226,
 33 21-4232, 21-4318, 21-4502, 21-4503a, 21-4603d, 21-4611, 21-4638, 21-
 34 4643, 21-4703, 21-4706, 21-4707, 21-4708, 21-4709, 21-4710, 21-4711,
 35 21-4713, 21-4717, 21-4720, 21-4722, 21-4724, 21-4729, 22-2512, 22-
 36 2515, 22-2802, 22-2908, 22-2909, 22-3303, 22-3412, 22-3604, 22-3901,
 37 22-4405, 22-4903, 22-4906, 36-601, 36-604, 39-720, 41-405, 47-421, 58-
 38 3315, 60-427, 65-2859, 65-4102, 65-4105a, 65-4127c, 65-4127d, 65-4139,
 39 65-4141, 65-4142, 65-4155, 65-4158, 65-4164, 65-4165, 65-5709, 65-6a40,
 40 72-1397, 75-4228, 75-4314 and 79-5201 and K.S.A. 2008 Supp. 8-2,128,
 41 8-1567, 9-2203, 21-3412a, ~~21-3419a~~, 21-3705, 21-3811, 21-4310, 21-4619,
 42 21-4704, 21-4705, 21-4714, 22-3716, 22-3717, 22-4902, 38-2255, 38-
 43 2346, 38-2347, 38-2369, 38-2374, 38-2376, 38-2377, 39-717, 40-2,118,

HB 2332 Comparison Chart

Drug Manufacturing

Under current law all drug manufacturing is subject to the same penalty. HB 2332 creates a separate penalty for methamphetamine manufacturing.

Section #	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 3	Drug manufacturing	D1	NP	185 - 204	138 - 154	5	P	117 - 143	29 - 35
Sec. 3	Drug manufacturing - meth	D1	NP	185 - 204	138 - 154	3	P	210 - 256	54 - 66

Drug Distribution

Under current law the severity of the drug distribution offense is increased based on recidivism. Under HB 2332 the severity is increased based on quantity.

Current law

Section #	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I
Sec. 5	Distribution - narcotics 1st time	D3	NP	46 - 51	14 - 16
Sec. 5	Distribution - narcotics 2nd time	D2	NP	74 - 83	46 - 51
Sec. 5	Distribution - narcotics 3rd time	D1	NP	185 - 204	138 - 154
Sec. 5	Distribution - stimulants, depressants, hallucinogenic	D3	NP	46 - 51	14 - 16

Corrections and Juvenile Justice
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 Attachment # 2-1

Distribution under HB 2332

2-2

Section #	Distribution of:	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 5	Misc. Drugs < 3.5g	9	P	18 - 22	12 - 13
Sec. 5	Misc. Drugs 3.5 - 100g	7	P	29 - 35	16 - 20
Sec. 5	Misc. Drugs 100g - 1kg	4	P	146 - 178	38 - 46
Sec. 5	Misc. Drugs > 1kg	3	P	210 - 256	54 - 66
Sec. 5	Marijuana < 25g	9	P	18 - 22	12 - 13
Sec. 5	Marijuana 25 - 450g	7	P	29 - 35	16 - 20
Sec. 5	Marijuana 450g - 30kg	4	P	146 - 178	38 - 46
Sec. 5	Marijuana > 30kg	3	P	210 - 256	54 - 66
Sec. 5	Heroin < 1g	9	P	18 - 22	12 - 13
Sec. 5	Heroin 1 - 3.5g	7	P	29 - 35	16 - 20
Sec. 5	Heroin 3.5 - 100g	4	P	146 - 178	38 - 46
Sec. 5	Heroin > 100g	3	P	210 - 256	54 - 66
Sec. 5	Dosage Units < 10	9	P	18 - 22	12 - 13
Sec. 5	Dosage Units 10 - 100	7	P	29 - 35	16 - 20
Sec. 5	Dosage Units 100 - 1000	4	P	146 - 178	38 - 46
Sec. 5	Dosage Units > 1000	3	P	210 - 256	54 - 66

Distribution of Schedule V Drugs

Distribution of a Schedule V controlled substance is a class A misdemeanor under HB 2332 and current law. Here is the difference between current law and HB 2332 when the substance is distributed to a minor:

Section #	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 5	Distribution of Schedule V to a minor	D4	NP	37 - 42	10 - 12	7	P	29 - 35	16 - 20

Under current law, distribution of a Schedule V controlled substance falls into a presumptive probation box, when the offender has little criminal history. Under HB 2332 the offense falls into a PIB Box, which allows a sentence of incarceration, in the discretion of the court.

2-3

Cultivation

Under current law, cultivation of controlled substances (mostly marijuana and mushrooms) is a D3 offense, regardless of the amount of plants. HB 2332 creates a quantity threshold for cultivation. Under current law, growing fewer than 5 plants is excluded from the definition of cultivation, HB 2332 makes no change to current law in this respect.

Section #	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 5	Cultivation of 4 - 50 plants	D3	NP	46 - 51	14 -16	7	P	29 - 35	16 - 20
Sec. 5	Cultivation of 50 - 100 plants	D3	NP	46 - 51	14 -16	4	P	146 - 178	38 - 46
Sec. 5	Cultivation of > 100 plants	D3	NP	46 - 51	14 -16	3	P	210 - 256	54 - 66

Drug Possession

Under current law, possession of narcotics or opiates is a D4 offense; possession of stimulants, depressants, hallucinogenic is a class A misdemeanor for a first offense and a D4 offense for any subsequent offense. HB 2332 maintains the same severity levels except that the D4 severity level is now a severity level 10.

Section #	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 6	Possession narcotics/opiates or 2nd time stimulants, depressants, hallucinogenic	D4	NP	37 - 42	10 - 12	10	NP	14 - 18	12 - 13

Presence of a Minor

Under current law there is a sentence enhancement for drug crimes committed within 1,000 feet of school property. HB 2332 replaces this in lieu of an enhancement based on the presence of a minor. This provision applies to the drug distribution offense and the distribution of drug paraphernalia and precursors. Whenever a minor is present, the severity of the offense is increased one level. HB 2332 does not require that the offender be aware of the presence of a minor; therefore, it is unnecessary for a minor to testify at a trial.

2-4

Possession of Paraphernalia and Precursors

Under current law it is a crime to possess drug paraphernalia or precursors for the manufacture of a controlled substance. Under HB 2332, new section 9, possession of these items is merged into the law of attempts. Rather than make such possession of separate crime, which has led to problems in the appellate courts, now possession is a sufficient act to prosecute a defendant for attempted manufacture, distribution, or possession of a controlled substance.

Domestic Battery

Domestic battery [KSA 21-3412a] has its own special sentencing regime:

- 1st offense within 5 years – Class B misdemeanor
- 2nd offense within 5 years – Class A misdemeanor
- 3rd offense within 5 years – Unclassified felony with 90 day to 1 year sentence

Under HB 2332, felony domestic battery, which is a 3rd or subsequent offense within a 5 year period of time, is a severity level 7 person offense with the following mandatory sentences:

- 30 days for a 3rd offense
- 90 days for a 4th offense
- 1 year for a 5th or subsequent offense

Property Offenses

HB 2332 creates a uniform threshold for all criminal offenses where the severity of the offense is based on a dollar amount. Here is the uniform threshold:

Dollar Amount	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
> \$100,000	5	NP	117 - 143	29 - 35
\$75,000 - \$100,000	6	NP	40 - 48	22 - 26
\$50,000 - \$75,000	7	NP	29 - 35	16 - 20
\$25,000 - \$50,000	8	NP	22 - 26	14 - 17
\$2,000 - \$25,000	9	NP	18 - 22	12 - 13
\$1,000 - \$2,000	10	NP	18 - 22	12 - 13
\$500 - \$1,000	Class A	Misdemeanor		
< \$500	Class B	Misdemeanor		

5-2

This threshold applies to the following statutes:

Bill section	Statute		Description	Bill section	Statute		Description
Sec. 20	KSA	9-2012	Embezzlement	Sec. 62	KSA	21-3846	Making a false claim to Medicaid
Sec. 25	KSA	16-305	Prearranged funeral agreements; penalty	Sec. 63	KSA	21-3902	Official misconduct
Sec. 26	KSA	17-12a508	Uniform Securities Act; penalty	Sec. 64	KSA	21-3904	Presenting a false claim
Sec. 27	KSA	17-1311a	Cemetery corporations; criminal penalty	Sec. 65	KSA	21-3905	Permitting a false claim
Sec. 28	KSA	19-3519	Water districts; criminal penalty	Sec. 66	KSA	21-3910	Misuse of public funds
Sec. 39	KSA	21-2419a	Aggravated criminal threat	Sec. 67	KSA	21-4018	Identity theft
Sec. 43	KSA	21-3437	Mistreatment of a dependent adult	Sec. 69	KSA	21-4111	Criminal desecration
Sec. 48	KSA	21-3701	Theft	Sec. 120	KSA	39-717	Illegal disposition (social welfare payments)
Sec. 49	KSA	21-3704	Theft of services	Sec. 121	KSA	39-720	Unlawfully obtaining assistance (social welfare)
Sec. 51	KSA	21-3707	Giving a worthless check	Sec. 122	KSA	40-2,118	Fraudulent Insurance Act, penalty
Sec. 54	KSA	21-3720	Criminal damage to property	Sec. 123	KSA	40-247	Insurance agent or broker failing to pay premium to company; penalty
Sec. 55	KSA	21-3729	Criminal use of a financial card	Sec. 124	KSA	40-5013	Viatical settlement contracts; criminal penalty
Sec. 56	KSA	21-3734	Impairing a security interest	Sec. 126	KSA	44-5,125	Workers compensation fraud; penalty
Sec. 57	KSA	21-3761	Trespass on railroad property	Sec. 129	KSA	44-719	Employment security law; penalty
Sec. 58	KSA	21-3763	Counterfeiting	Sec. 131	KSA	47-1827	Prohibited acts; criminal penalty [involving livestock and domestic animals]
				Sec. 144	KSA	65-4167	Trafficking in counterfeit drugs

2-6

Revised Severity Levels

HB 2332 revises the severity level for several offenses. Many of these were found the by the Kansas Sentencing Commission to be too high or too low when compared with crimes of similar harm. Many other offenses are unclassified felonies that are now placed on the sentencing grid.

Section #	KSA	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 21	9-2203	License required to conduct mortgage business	7	NP	30 - 34	11 - 13	8	NP	22 - 26	14 - 17
Sec. 36 ¹	21-3413	Battery on a city, county, state, or juvenile corrections officer	5	P	122 - 136	31 - 34	9	P	18 - 22	12 - 13
Sec. 37	21-3414	Aggravated battery; recklessly causing bodily harm	5	P	122 - 136	31 - 34	6	P	40 - 48	22 - 26
Sec. 37	21-3414	Aggravated battery; recklessly causing great bodily harm or use of a deadly weapon	8	P	19 - 23	7 - 9	9	P	18 - 22	12 - 13
Sec. 38	21-3415	Aggravated battery on a LEO	4	P	154 - 172	38 - 43	5	P	117 - 143	29 - 35
Sec. 40	21-3435	Aggravated kidnapping	1	P	592 - 653	147 - 165	2	P	420 - 514	108 - 132
Sec. 41	21-3435	Exposing another to a life threatening communicable disease	7	P	30 - 34	11 - 13	6	P	40 - 48	22 - 26
Sec. 44	21-3447	Aggravated trafficking	1	P	592 - 653	147 - 165	2	P	420 - 514	108 - 132
Sec. 45	21-3451	Furtherance of terrorism or illegal use of weapons of mass destruction	1	P	592 - 653	147 - 165	off grid	P	n/a	n/a

¹ Although the severity level of this offense is reduced, HB 2332 also contains a provision that makes any sentence presumptive imprisonment.

6-9

Section #	KSA	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 46 ²	21-3608a	Aggravated endangering a child	7	P	30 - 34	11 - 13	9	P	18 - 22	12 - 13
Sec. 47 ³	21-3609	Abuse of a child; beating or shaking resulting in great bodily harm	5	P	122 - 136	31 - 34	3	P	210 - 256	54 - 66
Sec. 47	21-3609	Abuse of a child; cruel corporal punishment	5	P	122 - 136	31 - 34	6	P	40 - 48	22 - 26
Sec. 50 ⁴	21-3705	Criminal deprivation of property	9	NP	15 - 17	5 - 7	8	NP	22 - 26	14 - 17
Sec. 59	21-3811	Aiding escape	4	NP	154 - 172	38 - 43	5	NP	117 - 143	29 - 35
Sec. 60 ⁵	21-3812	Aiding a person required to register under KORA	5	P	122 - 136	31 - 34	10	P	14 - 18	12 - 13
Sec. 68	21-4105	Incitement to riot	8	P	19 - 23	7 - 9	6	P	40 - 48	22 - 26
Sec. 71	21-4204	Criminal possession of a firearm by a mentally ill person subject to involuntary confinement	8	NP	19 - 23	7 - 9	9	NP	18 - 22	12 - 13
Sec. 73	21-4243	Tampering with electronic monitoring equipment	6	NP	40 - 46	17 - 19	8	NP	22 - 26	14 - 17
Sec. 74	21-4310	Cruelty to animals; intentionally killing, injuring, maiming, torturing, burning, or mutilating	unclassified	NP	n/a	n/a	10	NP	14 - 18	12 - 13
Sec. 74	21-4310	Cruelty to animals	unclassified	NP	n/a	n/a	10	NP	14 - 18	12 - 13

² This statute is revised to be a pure endangerment statute. The offender need not actually injure the child. When a child is actually injured, the offender may be charged under another statute.

³ This offense is split into two sections. The first penalizes abusing a child by shaking or beating. The second penalizes cruel corporal punishment.

⁴ The first offense is a Class A misdemeanor; the second and subsequent offense is a felony.

⁵ The severity level of this offense was revised by the Legislature to avoid a presumptive probationary sentence. Under the revised grid, an offender with some criminal history would fall into a Presumptive Imprisonment Border Box and could be sentenced to incarceration, at the court's discretion.

8-2

Section #	KSA	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 75 ⁶	21-4318	<u>Harming or killing certain dogs</u>	unclassified	NP	n/a	n/a	9	NP	18 - 22	12 - 13
Sec. 107	22-4405	Escape from custody	special rule	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 109 ⁷	22-4903	Failing to register under KORA	5	P	122 - 136	31 - 34	9	P	18 - 22	12 - 13
Sec. 125	41-405	<u>Enforcement of warehouse provisions</u>	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 127	44-619	<u>Inducing violation of [labor and industry] act or orders; penalty</u>	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 130	47-421	<u>Unlawful branding or defacing of brands; penalty</u>	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 132	58-3315	<u>Uniform Land Sales Practices Act; penalty</u>	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 143	65-3236	Fraud involving a document of gift	10	NP	11 - 13	5 - 7	8	NP	22 - 26	14 - 17
Sec. 145	65-5709	Violation of Kansas emergency planning and community right-to-know act; penalty	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 153	75-4228	<u>Criminal and civil liability of treasurer and director of accounts and reports</u>	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13

⁶ This offense also requires a mandatory 30 day sentence.

⁷ As with section 60, the severity level of this offense was revised by the Legislature to avoid a presumptive probationary sentence. Under the revised grid, an offender with a prior person felony would fall into a Presumptive Imprisonment Border Box and could be sentenced to incarceration, at the court's discretion.

6-9

Section #	KSA	Name	Severity Level	Person - nonperson	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Severity Level	Revised Person - nonperson	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I
Sec. 154	75-4314	Officer or employee receiving funds without subscribing and filing oath; penalty	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 157	79-15, 235	Signing a fraudulent return (death tax)	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13
Sec. 158	79-3228	Signing a fraudulent return (income tax)	unclassified	n/a	n/a	n/a	10	NP	18 - 22	12 - 13

01-2

Appendix A
PROPOSED MERGED SENTENCING GRID

Category	A	B	C	D	E	F	G	H	I
Severity level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor or No Record
I	682 620 558	645 586 527	299 272 245	278 253 228	257 234 211	235 214 193	215 195 176	193 175 158	172 156 140
II	514 467 420	482 438 394	231 210 189	215 195 176	198 180 162	182 165 149	165 150 135	149 135 122	132 120 108
III	256 233 210	238 216 194	114 104 94	107 97 87	99 90 81	91 83 75	83 75 68	74 67 60	66 60 54
IV	178 162 146	129 117 105	79 72 65	74 67 60	68 62 56	63 57 51	57 52 47	52 47 42	46 42 38
V	143 130 117	103 94 85	63 57 51	59 54 49	55 50 45	51 46 41	46 42 38	40 36 32	35 32 29
VI	48 44 40	45 41 37	42 38 34	39 35 32	35 32 29	33 30 27	31 28 25	29 26 23	26 24 22
VII	35 32 29	33 30 27	31 28 25	29 26 23	26 24 22	24 22 20	22 20 18	21 19 17	20 18 16
VIII	26 24 22	24 22 20	22 20 18	22 20 18	20 18 16	20 18 16	18 16 14	18 16 14	17 15 14
IX	22 20 18	20 18 16	18 16 14	18 16 14	17 15 14	17 15 14	15 14 13	14 13 12	13 12 12
X	18 16 14	15 14 13	14 13 12	14 13 12	14 13 12	13 12 12	13 12 12	13 12 12	13 12 12

Probation Terms

36 mon. recommended for felonies SL 1-5
18 mon. (up to) for felonies SL 8

Postrelease Terms

36 mon. for felonies SL 1-4
24 mon. for felonies SL 5-6
12 mon. for felonies SL 7-10

24 mon. recommended for felonies SL 6-7
12 mon. (up to) for felonies SL 9-10

Postrelease for felonies before 4/20/95:

24 mon. for felonies SL 1-6
12 mon. for felonies SL 7-10

*Probation and Postrelease terms reflect current law. The Sentencing Commission expects to present recommendations regarding these community supervision terms.

LEGEND
Presumptive Imprisonment
Presumptive Imprisonment (Border Box)
Presumptive Probation

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	Misdemeanor 2+	Misdemeanor 1 No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1-5
- 24 months recommended for felonies classified in Severity Levels 6-7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

- 36 months for felonies classified in Severity Levels 1-4
- 24 months for felonies classified in Severity Level 5-6
- 12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

- 24 months for felonies classified in Severity Levels 1-6
- 12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

SENTENCING RANGE – DRUG OFFENSES

2-12

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1-2
- 18 months (up to) for felonies classified in Severity Level 3
- 12 months (up to) for felonies classified in Severity Level 4

Postrelease Supervision Terms are:

- 36 months for felonies classified in Severity Levels 1-2
- 24 months for felonies classified in Severity Level 3
- 12 months for felonies classified in Severity Level 4 except for some K.S.A. 65-4160 and 65-4162 offenses on and after 11/01/03.

Postrelease for felonies committed before 4/20/95 are:

- 24 months for felonies classified in Severity Levels 1-3
- 12 months for felonies classified in Severity Level 4



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
The Honorable Pat Colloton, Chair

TESTIMONY ON HOUSE BILL 2332
Proportionality
Tom Drees, KSC Proportionality Chair
Wednesday, February 25, 2009

Madam Chair and committee members, thank you for the opportunity to testify in support of HB 2332. This bill is the culmination of effort by the Kansas Sentencing Commission and the Kansas Criminal Code Recodification Commission over a course of the last two years. This project has utilized the experience of seasoned practitioners, including legislators, to craft rational legislation to further the goal of achieving proportional sentences. Such sentences are based upon the degree of harm to the victim and to the public, and reserve prison for violent offenders and repeat offenders.

A summary and proposed amendments are attached. The summary outlines the main points of the bill. It should be noted that no sex crime amendments are included in the bill. While the Commission anticipates bringing forth recommendations regarding sex crimes, those initiatives will not be available during the current Legislative session.

Recommendations Contained in the Bill

The bill merges sentencing into one sentencing grid, resulting in sentences that can be compared and ranked in terms of level of harm. This was not possible with both a drug and a nondrug grid. Sentence durations are at least 12 months in length, providing incarceration terms commensurate with felonies. Border boxes have increased from 8 to 16 and are renamed presumptive imprisonment border boxes, or PIB boxes. These boxes have been added as a means to address repeat property offenders and allow the court latitude to order prison for repeat property offenders. Increased drug sale and distribution sentences would be based upon quantity, and would be designated as person felonies, allowing movement to presumptive imprisonment areas upon multiple convictions. Amendments to drug manufacturing and domestic battery sentences are recommended, as well as penalties based upon consistent valuation for property crimes. In summation, the recommendations contained in this bill are a package of sentencing adjustments that address many of the concerns expressed by the public.

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Corrections and Juvenile Justice

Date: 2-25-09

Attachment # 3-1

In the Presence of a Minor

The bill strikes provisions enhancing penalties for sales within 1,000 feet of school property in favor of those crimes committed within the presence of a minor. The Recodification Commission heard concerns that that the 1,000 feet of school property provision is so sweeping that it does not provide special protection for children. Most populated areas in Kansas communities fall within 1,000 feet of some kind of school property. To clarify, a misconception, the provision does not rely on the definition of presence from the robbery statute. The bill includes a specific definition of "presence of a minor" which says:

"(1) a minor is within close physical proximity to the illegal activity; (2) the illegal activity is conducted in a place where minors can reasonably be expected to be present; or (3) the minor's dwelling. Nothing in this section shall be construed to require that (1) a defendant actually be aware of the presence of a minor or (2) a minor actually be aware of the illegal activity."

For example, a crack house located across the street from a school house would fall under this definition by being "within close physical proximity to the illegal activity," and/or "in a place where minors can reasonably be expected to be present." This "presence of a minor" definition does not require the immediate presence or closeness that robbery requires.

Drug Quantities

The bill differentiates between small, medium, large, and super large quantities to target those kinds of distribution operations. The small quantity is meant to prosecute the smallest dealers, including those people who may share a joint at a party or a hit of ecstasy. The medium and large thresholds target more serious, larger scale operations. The super threshold covers the most serious distributors who would likely be in the federal system, but may be deferred to the state system if the Federal government declines prosecution of such a case.

Quantities were set by conferring with chemists and law enforcement officers, and were set based on common quantities usually distributed by small, medium, large and super large dealers. Law enforcement officers agreed that the distribution quantities for cocaine and methamphetamine are roughly the same; therefore, they are in the same generic category. The Drug Enforcement Agency indicated that heroin cases, although relatively small in number, have been increasing in Kansas. Because the dosage unit of heroin is different from methamphetamine or cocaine, the distribution unit is also smaller, so a separate threshold was created for it.

Crack Versus Powder Cocaine Quantities

Both the Recodification Commission and the Sentencing Commission considered whether to make a distinction between crack and powder cocaine. There were several reasons why this approach was rejected by both Commissions:

- The national trend in the Federal Sentencing Guidelines is to reduce the distinction between these two forms of cocaine. The distinction has been seen as overly harsh on crack dealers, who are generally minorities.

- Most states do not have any distinction between the two forms of cocaine. Only 12 out of 50 states make such a distinction. Among Kansas' four border states, Colorado and Nebraska do not make such a distinction; Missouri and Oklahoma do.
- K.S.A. 21-4705(c)(1) says that a sentencing court shall not make any distinction between crack and powder cocaine when sentencing within a grid box. Legislators on the Recodification Commission indicated that the crack/powder distinction came up in the context of this legislation. As it appeared that the Legislature adopted the policy of not making a distinction between crack and powder cocaine, the Recodification Commission decided that it would not disturb this policy.

The Recodification Commission determined that crack should be considered under the weight threshold and not the dosage unit threshold. This same issue has been raised in the context of the Drug Tax Stamp offense, K.S.A. 79-5204. Under that statute, there is tax liability for dealing in certain weights or numbers of dosage units. Defendants have argued that their crack should be considered in dosage units and the appellate courts have disagreed when there is evidence at trial that says crack is distributed by weight. Recodification contacts within law enforcement lead to the belief that crack is distributed by weight.

Rebuttable Presumption Regarding Intent to Distribute is Based on Weight

This section was added to aid prosecutors by allowing them to argue that a large quantity, alone, is sufficient to infer intent to distribute. The Recodification Commission assumed that such a provision would be helpful because case law does not allow an inference of such intent based only on the quantity. This provision is based on similar provisions in other states.

The rebuttable presumption does not prejudice the defense or the prosecution. As it is a rebuttable presumption, the defense may argue that the defendant did not have the intent to distribute. The prosecution may argue that a defendant had the intent to distribute any lesser amount. Nothing in this section is mandatory or binding.

Bed Impact

Based on FY 2008 data, implementation of all recommendations would result in utilization of 265 – 458 additional prison beds in the first year of implementation, with a need for 430 to 719 additional prison beds in 10 years. Kansas prison capacity is roughly at 9,300 with approximately 8,500 beds currently filled (an approximate 800 bed surplus). However, approximately 450 prison beds have been taken off-line in FY 2009 with the potential of another 1,300 beds during FY 2010. While this is a concern, the bill is not effective until 2010, so it is possible that bed space may be available at that time.

Conclusion

Passage of this proposal would further the goals of proportional sentences, based upon the degree of harm to the victim and to the public, reserve prison for violent offenders and repeat non-violent offenders, and promote offender reformation through appropriate community sanctions.

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3-3

**SUMMARY OF PROPORTIONALITY RECOMMENDATIONS
KANSAS SENTENCING AND RECODIFICATION COMMISSIONS
(Updated February 23, 2009)**

ISSUE	RATIONALE OR RESULT
SEX CRIMES	NO CHANGES TO ARTICLE 35 WILL BE CONSIDERED DURING THE 2009 LEGISLATIVE SESSION AS PART OF THIS PROPOSAL.
SENTENCING GRIDS	
Merge the non-drug and drug sentencing grids into one Kansas Sentencing Grid.	Reflects sentencing patterns and special rules adopted by the Kansas Legislature since guideline sentencing went into effect on July 1, 1993.
Increase presumptive imprisonment border boxes from 3 to 16. Decrease the presumptive probation boxes from 30 to 17.	Of the 90 grid boxes, 57 remain presumptive imprisonment. This incorporates the effects of special rules and allows for reduction in number of special rules.
Increase aggravated/mitigated sentences from 5% to 10%.	Give the Court more latitude in sentencing.
Minimum felony sentence is 12 months in length	Avoids situation where a Kansas felony is declared a non-felony in Federal sentencing system or other states.
SENTENCING STATUTES	
Sentencing statutes amended to place as many felonies on the grid as possible (FY 2007 felony sentences: 57% guidelines, 43% off-grid/non-grid).	<ol style="list-style-type: none"> 1. Allows Legislature to better compare potential changes in felony sentences. 2. Helps maintain proportional sentences. 3. Promotes accuracy in population projections.
Recommendation to designate several crimes "person".	Allows incarceration of repeat offenders to be imprisoned for an amount of time proportional to the crime committed.
Court Services should supervise all class A misdemeanors who are not sentenced to jail.	It's important that offenders be supervised while on probation. Class A offenses are often enhanced from class B offenses or are serious offenses. Supervision may prevent further enhancement to a felony.
DRUG LAWS	
Manufacturing methamphetamine would be a level 3 person felony. Manufacturing all other drugs would be a level 5 person felony.	This recommendation is made because of the potential danger and resulting harm meth manufacturing has on the community. Level 3 makes this crime comparable to aggravated arson, also a level 3 felony.
Sale, distribution, and possession with intent to distribute are set at 4 levels based on quantity of drugs possessed to be sold or actually sold (FY2007 sentencing data shows departure rates of 88% on current level 1 drug grid, 66% on current level 2 drug grid. 80% of current level 3 drug sentences (border box) are placed on probation.	<ol style="list-style-type: none"> 1. Small quantity, level 9 person felony; 2. medium quantity, level 7 person felony; 3. large quantity, level 4 person felony; and 4. super quantity, level 3 person felony. <p>Differentiates the act of selling one joint or one gram of methamphetamine from the act of selling larger quantities for wholesale distribution and to better reflect levels of harm to the community.</p>

Proportionality Recommendations
 Thomas Drees, Ellis County Attorney
 Proportionality Chair, Kansas Sentencing Commission

DRUG LAWS (continued)	
Sale designated as person felony.	Reflects the degree of harm inflicted on the community and on the purchasers of said drugs.
Weight to be determined by the product as packaged for distribution.	Drug purity would not be considered.
Mandatory treatment program for personal use possession (Senate Bill 123) remains intact pending further review of data.	
PROPERTY OFFENSES	
A large number of special sentencing rules for property offenders are reduced or eliminated.	This allows the court to sentence repeat offenders to prison while maintaining a proportional sentence.
Standardization of all theft statutes so that theft, no matter how it is committed, has a uniform and proportional punishment.	Up to \$499.99, a class B nonperson misdemeanor; up to \$999.99, a class A nonperson misdemeanor; up to \$1,999.99, a level 10 nonperson felony; up to \$24,999.99, a level 9 nonperson felony; up to \$49,999.99, a level 8 nonperson felony; up to \$74,999.99, a level 7 nonperson felony; up to \$99,999.99, a level 6 nonperson felony; and \$100,000 and higher, a level 5 nonperson felony.
DOMESTIC BATTERY	
The 1 st domestic battery is a class B person misdemeanor.	
A 2 nd domestic battery is a class A person misdemeanor.	Court Services would supervise these offenders.
a 3 rd + Domestic Battery is add level 7 person felony with mandatory jail sanctions as a condition of probation (3 rd violation, 30 days jail; 4 th violation, 90 days jail; 5 th + violation, 1 year incarceration w/KDOC).	Community Corrections would supervise felony offenders. Domestic violence often leads to more serious crime, including homicide.

CONCLUSION

Based on FY 2008 data, implementation of all recommendations would result in utilization of 265 – 458 additional prison beds in the first year of implementation, with a need for 430 to 719 additional prison beds in 10 years. Kansas prison capacity is roughly at 9,300 with approximately 8,500 beds currently filled (an approximate 800 bed surplus). However, approximately 300 prison beds have been taken off-line in FY 2009 with the potential of another 1,300 beds during FY 2010. Passage of this proposal would further the goals of proportional sentences, based upon the degree of harm to the victim and to the public, reserve prison for violent offenders and repeat non-violent offenders, and promote offender reformation through appropriate community sanctions.

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Appendix A
PROPOSED MERGED SENTENCING GRID

Category	A	B	C	D	E	F	G	H	I
Severity level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor or No Record
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II	514 467 420	482 438 394	231 210 189	215 195 176	198 180 162	182 165 149	165 150 135	149 135 122	132 120 108
III	256 233 210	238 216 194	114 104 94	107 97 87	99 90 81	91 83 75	83 75 68	74 67 60	66 60 54
IV	178 162 146	129 117 105	79 72 65	74 67 60	68 62 56	63 57 51	57 52 47	52 47 42	46 42 38
V	143 130 117	103 94 85	63 57 51	59 54 49	55 50 45	51 46 41	46 42 38	40 36 32	35 32 29
VI	48 44 40	45 41 37	42 38 34	39 35 32	35 32 29	33 30 27	31 28 25	29 26 23	26 24 22
VII	35 32 29	33 30 27	31 28 25	29 26 23	26 24 22	24 22 20	22 20 18	21 19 17	20 18 16
VIII	26 24 22	24 22 20	22 20 18	22 20 18	20 18 16	20 18 16	18 16 14	18 16 14	17 15 14
IX	22 20 18	20 18 16	18 16 14	18 16 14	17 15 14	17 15 14	15 14 13	14 13 12	13 12 12
X	18 16 14	15 14 13	14 13 12	14 13 12	14 13 12	13 12 12	13 12 12	13 12 12	13 12 12

Probation Terms

36 mon. recommended for felonies SL 1-5
18 mon. (up to) for felonies SL 8

Postrelease Terms

36 mon. for felonies SL 1-4
24 mon. for felonies SL 5-6
12 mon. for felonies SL 7-10

24 mon. recommended for felonies SL 6-7
12 mon. (up to) for felonies SL 9-10

Postrelease for felonies before 4/20/95:

24 mon. for felonies SL 1-6
12 mon. for felonies SL 7-10

*Probation and Postrelease terms reflect current law. The Sentencing Commission expects to present recommendations regarding these community supervision terms.

LEGEND
Presumptive Imprisonment
Presumptive Imprisonment (Border Box)
Presumptive Probation

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1-5
- 24 months recommended for felonies classified in Severity Levels 6-7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

- 36 months for felonies classified in Severity Levels 1-4
- 24 months for felonies classified in Severity Level 5-6
- 12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

- 24 months for felonies classified in Severity Levels 1-6
- 12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

SENTENCING RANGE – DRUG OFFENSES

43

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1-2
- 18 months (up to) for felonies classified in Severity Level 3
- 12 months (up to) for felonies classified in Severity Level 4

Postrelease Supervision Terms are:

- 36 months for felonies classified in Severity Levels 1-2
- 24 months for felonies classified in Severity Level 3
- 12 months for felonies classified in Severity Level 4 except for some K.S.A. 65-4160 and 65-4162 offenses on and after 11/01/03.

Postrelease for felonies committed before 4/20/95 are:

- 24 months for felonies classified in Severity Levels 1-3
- 12 months for felonies classified in Severity Level 4