

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 26, 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:

Tom Drees, Kansas Sentencing Commission Proportionality Chair
Tom Stanton, Deputy District Attorney, Reno County
Mark Gleeson, Office of Judicial Administration
Chris Biggs, Kansas Securities Commissioner
Jennifer Roth, Kansas Association of Criminal Defense Lawyers

Others attending:

See attached list.

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

Chairperson Colloton opened the meeting by recognizing Tom Drees, Kansas Sentencing Commission Proportionality Chair, to continue his testimony from yesterday as a proponent of **HB 2332**. Mr. Drees provided more information on the proportionality proposal on the bill. (Attachment 1) He continued his testimony on the changes in the sentencing grid while taking questions from the Committee.

Chairperson Colloton asked Mr. Drees if he could find a stopping point and step aside for a few minutes to allow Chris Biggs, Kansas Securities Commissioner, to give his testimony as an opponent of the bill because he would not be available to give his testimony with the remaining opponents on tomorrow. Mr. Drees stepped aside.

Chairperson Colloton introduced Chris Biggs, Kansas Securities Commissioner, to give his testimony as an opponent of **HB 2332**. Commissioner Biggs provided written copy of his testimony. (Attachment 2) He stated he is in opposition to this bill because of the provision in section 26, page 34, relating to the reduction of punishment for securities fraud violations. In closing he urged the Committee to amend the bill to remove section 26 and leave sentencing levels for securities crimes alone.

A question and answer session followed.

Chairperson Colloton called on Mr. Drees to continue with his testimony explaining the changes in the grid. During his testimony he called the Committee's attention to an amendment relating to domestic battery he was offering on the bill. (Attachment 3) He explained the amendment.

A lengthy discussion followed regarding the grid and the amendment he was offering.

Chairperson Colloton announced the remaining opponents and neutral party would testify tomorrow and the meeting time was going to be moved up to 11:00 a.m. since it would be Friday. She adjourned the meeting at 3:00 p.m. with the next meeting scheduled for February 27, 2009 at 11:00 a.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 02-26-09

NAME	REPRESENTING
Brett Watson	Kan. Crim Code Recod Com.
JOHN W. WHITE	" " " " "
Brenda Harmon	KSC
Helen Pedigo	KSC
Chris Mehnert	GA
Erin Hoestje	Kansas Securities Comm'
God Bright	Office of the Kansas Securities Commissioner
Mark Gleason	Judicial Branch
Tim Madden	KDOC
Richard Samwiego	Kennedy & Assoc.
Carl Folsom	XXXXXXXXXX KACDL
Scott Schultz	Securities Commissioner
Rick Fleming	" "
Tom Drees	Ks Sent. Comm.
Ed Klump	KPOA KACP

HB 2332 Proportionality Proposal

Statute	Selected Crimes	No. of Sentences	Severity Level	Proposed Level
21-3439	Capital Murder	1	off-grid	
24-3401a	Murder; 1st Intentionally and premeditation	21	off-grid	
24-3401b	Murder; 1st inherently dangerous felony	21	off-grid	
21-3402a	Murder; 2nd Degree; Intentional	29	L1 p	
21-3402b	Murder; 2nd Degree; Recklessly	11	L2 p	
21-3403	Voluntary Manslaughter quarrel or in heat of passion	8	L3 p	
21-3404	Involuntary Manslaughter; Recklessly	18	L5 p	
21-3442	Involuntary Manslaughter; DUI	11	L4 p	
	Total	120		

21-3410	Aggravated Assault	213	L7 p	
21-3411	Aggravated Assault on LEO	26	L6 p	
21-3412a	Domestic Battery (Fel 3+)	31	non-grid	L7
21-3413*	Battery on State Corr Officer	14	L5 p	L9 **
	Battery on Juv Corr Office	4	L5 p	L9 **
	Battery on Juv Det Officer	1	L5 p	L9 **
	Battery on City/ Co Det Officer	27	L5 p	L9 **

* Misdemeanor if on LEO or Private Citizen

** Spec Rule- Prison

213414a	Aggravated Battery;			
(1)(A)	Int, GBH/ Disfigurement	3	L3 p	
(1)(B)	Int, BH could cause GBH/Disfigurement	234	L7 p	
(1)(C)	Int, contact, could cause GBH	67	L7 p	
(2)(A)	Reckless, GBH	67	L5 p	L6 p
(2)(B)	Reckless, BH, could cause GBH	70	L8 p	L9 p

21-3415a	Aggravated Battery LEO;			
(1)	Int, GBH/ Disfigurement	3	L3 p	
(2)	Int, BH, could cause GBH	4	L4 p	L5 p
(3)	BH, Motor Veh	0	L3 p	

21-3419	Criminal Threat	248	L9 p	
21-3419a	Agg Criminal Threat	1	L6 p	L5-10 p
21-3420	Kidnapping	19	L3 p	
21-3421	Agg Kidnapping (BH)	6	L1 p	L2 p
21-3422	Interference w/ Parental Cust	3	L10 p	
21-3422a	Agg Int w/ Parental Cust	6	L7 p	
21-3426	Robbery - force	138	L5 p	
21-3427	Agg Robbery - BH	125	L3 p	
21-3502	Rape (both adults)	35	L1 p	

Corrections and Juvenile Justice

Date: 2-26-09

Attachment # 1

Statute	Selected Crimes	No. of Sentences	Severity Level	Proposed Level
21-3503	Ind. Lib w/ Child 14/15	30	L5 p	
21-3504	Agg Ind Lib (Intercourse) 14/15	99	L3 p	
21-3510	Ind. Solicitation Child 14/15	23	L6 p	
21-3516	Sexual Exploitation of Child (Child Porn)	16	L5 p	
21-3518	Agg Sexual Battery	27	L5 p	
21-3522	Unlawful Voluntary Sexual Relations (Romeo & Juliet)	39	L8 p	
21-3605	Nonsupport of a Child	35	L10 np	
21-3608	Agg Endangering Child	18	L9 p	
21-3609	Abuse of a Child;			
	Int. torture, cruelly beat, shake GBH		L5 p	L3 p
	Inflict cruel/inhuman corporal punishment	together =23	L5 p	L6 p
21-3701	Theft (F) 1K - 25K	626	L9 np	
	Theft (F) 25K +	34	L7 np	L5-10 np
21-3705	Criminal Deprivation Car/Car theft 3+ times		L9 np	L8 np 2+ times
21-3707a	Giving worthless check <\$1000 3+ w/ 5 yr	1	L7 np	L10 np
21-3710	Forgery	690	L8 np	
21-3715a	Dwelling Burglary	293	L7 p	
21-3715b	Non-Dwelling Burglary	355	L7 np	
21-3715c	Vehicle Burglary	256	L9 np	
21-3716	Agg Burglary (person present)	77	L5 p	
21-3718	Arson	26	L7 np	
21-3720	Fel Criminal Damage <25K	90	L9 np	
21-3808	Fel Obstruction	124	L9 np	
21-3810	Agg. Escape from Custody	98	L8 np	
21-3812a	Aiding Felon to Avoid Arrest/Trial Felony	32	L8 np	
21-3812d	Aiding Person Req to Reg Ks Offender Reg Act	0	L5 p	L10 p
21-3814a	Agg Fail to Appear for Trial Felony	49	L10 np	
21-3833a	Agg Intimidation of Witness/Victim- Threat	15	L6 p	
21-4018a	Identity Theft	132	L8 np	
21-4202	Agg Weapons Violation	8	L8/L9 np	
21-4204	Crim Poss Firearm	94	L8 np	
21-4219	Crim Discharge Firearm- Occup Bld/Veh - BH	1	L5 p	
21-4219	Crim Discharge Firearm- Occup Bld/Veh	23	L7 p	
	Crim Discharge Firearm- Unoccupied dwelling	5	L8 p	
22-4903	Ks Off Reg Act- Failing to Reg.	49	L5 p	L9 p

65-4152	Fel Drug Paraphernalia	97	L4 d	L9 np
65-4159	Manufacture/Att. Manuf	148	L1 d	L3/L5 p
Statute	Selected Crimes	No. of Sentences	Severity Level	Proposed Level
65-4160	Poss Opiates/ Narcotics	1,883	L4 d	L10 np
65-4161	Poss Opiates w/ int to Sale	387	L3 d	9,7,4,3 p
65-4161	*w/in 1000 ft school/ presence of a minor	10	L2 d	8,6,3,2 p
65-4161	2nd Offense Sale	13	L2 d	9,7,4,3 p
65-4161	3rd Offense Sale	3	L1 d	9,7,4,3 p
65-4162	2nd Poss Marj/ Ecstasy/ Steroids	387	L4 d	L10 np
65-4163	Poss Marj w/intent to Sale	320 L3 d	L3 d	9,7,4,3 p
65-4163	*w/in 1000 ft school/ presence of a minor	15	L2 d	8,6,3,2 p
	2 + Sale Marj - always L3 d		L3 d	9,7,4,3 p
79-5208	Drug Tax Stamp Violation	65	L10 np	

Drug Sale / Possess w Intent to Distribute

Marijuana Street Value	Current Proposal			Friendly Amendment		
25 grams 1 oz \$150	< 25 grams	L9p	1oz - \$150	< 50 grams	L9p	2 OZ - \$300
100 grams 4 oz \$600	< 450 grams	L7p	1 lb - \$1,000	< 225 grams	L8p	8 oz, 1/2 lb - \$500
450 grams 1 lb \$1,000	< 1,000 grams	L4p	6.6 lb - \$60,000	< 450 grams	L7p	1 lb - \$1,000
1,000 grams 2.2 lb \$2,000	> 1,000 grams	L3p		< 1 kilo	L6p	2.2 lb - \$2,000
30,000 grams 6.6 lb \$60,000				< 10 kilo	L5p	22 lb - \$22,000
				< 100 kilo	L4p	66 lb - \$60,000
				> 100 kilo	L3p	

Cocaine / Methamphetamine / Crack / Ice / Crank / Heroin

Street Value	Current Proposal			Friendly Amendment		
1 grams \$100	< 3.5 grams	L9p	1/8 oz - \$300	< 2 grams	L9p	1/16 oz - \$200
3.5 grams 1/8 oz \$300	< 100 grams	L7p	4 oz - \$8,000	< 7 grams	L8p	1/4 oz - \$600
12.5 grams 1/2 oz \$1,200	< 1,000 grams	L4p	1 kilo/2.2 lb - \$64,000	< 13 grams	L7p	1/2 lb - \$1,200
25 grams 1 oz \$2,000	> 1,000 grams	L3p		< 100 grams	L6p	4 oz - \$8,000
100 grams 4 oz \$8,000				< 250 grams	L5p	1/2 lb - \$16,000
225 grams 1/2 lb \$16,000				< 1,000 grams	L4p	2.2 lb - \$64,000
450 grams 1 lb \$32,000				> 1,000 grams	L3p	



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN OPPOSITION TO HOUSE BILL 2332

House Committee on Corrections and Juvenile Justice
February 25, 2009

Chris Biggs
Securities Commissioner

Madam Chairperson and Members of the Committee,

I appear in opposition to House Bill 2332, specifically the provisions in section 26 (page 34) relating to the reduction of punishment for securities fraud violations.

This bill was prompted by the 2008 Interim Report ("Interim Report") to the Kansas Legislature submitted by the Kansas Criminal Code Recodification Committee ("KCCRC"). We oppose the portion of the bill that seeks to revise all property offenses to have a uniform severity level based on economic loss. The Securities Commissioner applauds the work of the KCCRC, which has been crucial to streamlining our almost 40 year old criminal code. However, the portion of this bill relating to the property offenses, while well-meaning, seeks to equalize nonperson crimes by decreasing the punishment for complex white collar crimes like securities fraud.

The current recommendation by the KCCRC would lump property crimes into an overall encompassing loss matrix. These proposed threshold loss requirements are:

\$100,000 +	Severity level 5 nonperson felony
\$75,000 - 99,999.99	Severity level 6 nonperson felony
\$50,000 - 74,999.99	Severity level 7 nonperson felony
\$25,000 - 49,999.99	Severity level 8 nonperson felony
\$2,000 - \$24,999.99	Severity level 9 nonperson felony
\$1,000 - \$1,999.99	Severity level 10 nonperson felony
\$500 - \$999.99	Class A nonperson misdemeanor
Up to \$499.99	Class B nonperson misdemeanor

Currently, the maximum penalty for securities fraud is a level 4 nonperson felony when the loss exceeds \$100,000. If the loss is between \$25,000 and \$100,000, securities fraud is currently a level 5 nonperson felony, and losses below \$25,000 (including fraudulent offers as opposed to sales) are severity level 7. We also have a special sentencing provision that makes the sentence presumptive

imprisonment whenever the loss in any securities crime exceeds \$25,000. As shown in Attachment A, HB 2332 would have the effect of decreasing the penalties for securities fraud and converting it from presumptive imprisonment to presumptive probation in many cases.

While the mission of the KCCRC is to streamline and seek ways to accomplish their directive of making sentences proportional, the current proposal does not take into account the following considerations as they relate the unique nature of securities violations in Kansas:

1. **Losses can be astronomical.** The recent investigation of a former chairman of the NASDAQ stock exchange, Bernard Madoff, in which he is alleged to have scammed over \$50 billion in a Ponzi scheme to defraud investors, has shocked the financial markets and left thousands of investors without the nest-eggs they saved up over the course of their lives. But you don't have to go to Wall Street to find people losing their life savings in Ponzi schemes and other types of securities fraud. While I have been Securities Commissioner, my office has prosecuted 11 criminals for securities frauds in which the losses exceeded \$100,000, including:

- James Freese of Lenexa (\$7.3 million)
- Kirk McNab of Wichita (\$1.75 million)
- Scott Kaye of Wichita (\$1.7 million)
- Donald G. Atteberry of Topeka (\$940,000)
- Stephen C. Langhofer of Wichita (\$717,000)
- Richard L. Kiger of Olathe (\$515,000)
- Carla J. Senger of Tonganoxie (\$465,000)
- Greta Ann Commerford of Manhattan (\$425,000)
- Jon L. Adam of Garden City (\$315,000)
- Eric Rabicoff of Overland Park (\$140,000)
- Martin Banuelos of Wichita (\$103,000)

These 11 cases have losses exceeding \$14 million and they provide overwhelming evidence that increased punishment is necessary to deter financial crimes. With the explosion of internet and email it is now much easier for people to steal large sums from more investors, and the average size of our cases has increased dramatically in the past few years. Consequently, now is not the time to decrease the punishment for these types of offenders.

2. **A fiduciary relationship is violated.** Securities fraud is a unique property crime. It involves a violation of a fiduciary duty, which is a statutory departure criteria for other property crimes. However, the Kansas Court of Appeals recently ruled that we could not use a violation of a fiduciary duty as a departure factor because it was inherent in the securities fraud. *State v. Bryant*, 40 Kan. App. 2d 308, ¶3, 191 P.3d 350 (2008). Therefore, securities crimes should continue to be punished more harshly than other property crimes because they involve an inherent aggravating factor that cannot always be taken into account by judges at sentencing.

3. **Victims are unique** In most property crimes involving large losses, the victims are businesses or the government. In contrast, securities fraud is typically perpetrated against individuals and the victims are often seniors who lose their entire life savings. The impact to victims is much greater in securities crimes than other types of property crimes involving large monetary losses.
4. **Offenses are multi-jurisdictional.** Unlike many of the property crimes that this proposal seeks to make uniform, securities crimes are normally committed in multiple states. As a result, our defendants are often out-of-state and great expense can be incurred by the counties to bring these bad actors back to Kansas. A reduction in our penalties will make Kansans more likely targets, and give pause to local counties considering the costs of such prosecutions and extraditions when the penalties are meager by comparison. Uniformity with other property offenses that occur solely within the state is not therefore the only consideration.
5. **The economic harm is greater than the measurable "loss."** Securities crimes not only cause the investors to often lose their entire life savings, they also can result in a chilling effect on the financial markets. Investor confidence is fundamental to economic growth and stability. Confidence in the financial professionals selling the investments and the securities markets are important to capital formation and Kansas' economic prosperity

Section 26 of HB 2332 would undermine the recent intent of the legislature in 2003 to promote Kansas investor protection by increasing the penalties for big-time, sophisticated scam artists. Attachment B is a press release issued by the office in 2003 that explained the justification for elevating the penalties for securities crimes.

We encourage this Committee to amend the bill to remove section 26 and leave sentencing levels for securities crimes alone. As an alternative, we request that the Committee restore the special sentencing rule for presumptive imprisonment when the loss in a securities crime exceeds \$25,000 and include additional levels to the property crime loss matrix so that there are additional penalties for greater losses; for example, create a level 4 felony for all property crimes with losses over \$250,000 and a level 3 felony for losses over a million dollars.

Thank you for your consideration. I would be happy to answer any questions.

Respectfully submitted,



Chris Biggs
Securities Commissioner

Summary Analysis of HB 2332 on Securities Fraud Sentences in Kansas

SECURITIES FRAUD Amount of Loss	Current Severity Level with Sentencing Range for Defendant with No Prior Convictions		HB 2332 Severity Level with Sentencing Range for Defendant with No Prior Convictions	
\$100,000 or more	*Level 4	38-43 months	Level 5	29-35 months
\$75,000-\$99,999	*Level 6	31-34 months	Level 6	22-26 months
\$50,000-\$74,999	*Level 6	17-19 months	Level 7	16-20 months
\$25,000-\$49,999	*Level 6	11-13 months	Level 8	14-17 months
\$2,000-\$24,999	Level 7	11-13 months	Level 9	12-13 months
\$1,000-\$1,999	Level 7	11-13 months	Level 10	12-13 months
\$500-\$999	Level 7	11-13 months	Class A misdemeanor	12 months
\$499 or less	Level 7	11-13 months	Class B misdemeanor	6 months

Presumptive Imprisonment

Presumptive Imprisonment Box (Border Box)

*Current law provides a special sentencing rule in which any loss \$25,000 and over is presumed imprisonment. HB 2332 eliminates this special rule.



K A N S A S

DAVID BRANT, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE SECURITIES COMMISSIONER

PRESS RELEASE

For Immediate Release:
April 25, 2003

Contact:
Rick Fleming,
General Counsel (785) 296-3307

KANSAS TO IMPOSE HARSHER PENALTIES FOR SECURITIES FRAUD

(TOPEKA) Governor Kathleen Sebelius has signed Senate Bill 110, which will lengthen the prison sentence for white-collar criminals convicted of securities fraud. The Kansas Legislature approved the harsher penalties (see attached summary) during the 2003 session.

In signing the legislation, Governor Sebelius expressed her support for the tougher sanctions, "We will now increase the penalties for financial crimes which have a devastating impact on victims, particularly when senior citizens are defrauded."

Senate Bill 110 will increase securities criminal penalties to three severity levels based on the amount of loss. Under current Kansas law, a defendant who defrauds investors out of \$1 million is treated the same as a defendant who steals \$25,000.

The legislation was proposed by Securities Commissioner David Brant and was supported by Shawnee County District Attorney Robert Hecht and Johnson County District Attorney Paul Morrison. Senator John Vratil (R-Leawood) serves as Chairman of the Senate Judiciary Committee, which introduced the bill.

"Effective enforcement and criminal punishment are the best deterrents for those who would defraud investors," emphasized Brant who noted that his agency is increasingly handling serious cases where older victims have suffered substantial losses.

At the legislative hearings on the bill, the Securities Commissioner testified about a 2002 case in which Phillip McGuckin, of Wichita, was convicted of securities fraud in Goodland, Kansas. McGuckin operated an oil and gas scheme that defrauded 51 investors out of \$1.2 million. One of McGuckin's victims, an 85 year old Navy veteran, invested \$54,800 with McGuckin to

-more-

618 S. KANSAS AVENUE, TOPEKA, KS 66603
Voice 785-296-3307 Fax 785-296-6872 Investor Services 1-800-232-9580
<http://www.securities.state.ks.us>

Kansas to Impose Harsher Penalties for Securities Fraud
Page 2

provide investment income for the care of his bed-ridden wife who suffered from Alzheimer's disease. Under current Kansas law, McGuckin received the standard prison sentence of 18 months for the securities fraud conviction. Under Senate Bill 110, which takes effect July 1, 2003, the maximum prison sentence for a defendant (with no prior criminal convictions), such as McGuckin, would be 43 months – more than double the current Kansas penalty.

Senate Bill 110 also codifies two new crimes which were modeled after similar federal provisions in the Sarbanes-Oxley Act of 2002: new section 7 prohibits influencing or misleading an appraiser or auditor in the preparation of appraisals or financial statements; and section 8 prohibits the destruction or falsifying of records and would protect whistleblowers from retaliation for providing truthful information.

The new law also increases the maximum civil fine per securities violation from \$5,000 to \$25,000. In addition, the Commissioner will now be authorized to impose an additional fine, not to exceed \$15,000, if the securities violation is committed against a senior citizen or a disabled investor.

Investigators and attorneys for the Kansas Securities Commissioner achieve an average of 11 to 14 securities convictions per year. The Securities Commissioner urges all Kansans to "Investigate Before You Invest." Call 1-800-232-9580 to check if an investment opportunity is registered and if the broker or investment adviser is licensed or visit the agency's website at www.securities.state.ks.us.

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(see attached summary)

Summary of Senate Bill 110
2003 KANSAS SECURITIES PENALTIES ACT
 proposed by the Securities Commissioner,
 approved by the Legislature, and signed by the Governor on April 21, 2003

Section

- 1 Securities Fraud: Amends K.S.A. 17-1253(f) to increase criminal penalties to severity levels 4 through 7 based upon the amount of loss rather than a single severity level 6 felony.

SECURITIES FRAUD Amount of Loss	Current Severity Level with Sentencing Range for Defendant with No Prior Convictions	SB 110 Severity Level with Sentencing Range for Defendant with No Prior Convictions
\$100,000 or more	Level 6 17-19 months	Level 4 38-43 months
\$25,000 but less than \$100,000	Level 6 17-19 months	Level 5 31-34 months
Less than \$25,000	Level 6 17-19 months (presumptive probation)	Level 7 11-13 months (presumptive probation)

- 2 Unregistered Agents: Amends K.S.A. 17-1254(f) to increase criminal penalties for offering or selling securities without being registered as a broker-dealer, agent, investment adviser or investment adviser representative to severity levels 5 through 7 based upon the amount of loss rather than a single severity level 7 felony.
- 3 Unregistered Securities: Amends K.S.A. 17-1255(b) to increase the criminal penalties for unlawfully offering or selling securities to severity levels 5 through 7 based upon amount of loss rather than a single severity level 7 felony.
- 4 False Filings: Amends K.S.A. 17-1264 to increase the criminal penalty for the filing of a false and misleading statement from severity level 10 to level 8.
- 5 Scope of Investigations: Amends K.S.A. 17-1265 to enable securities investigators to investigate other criminal acts if discovered during the course of an investigation. This type of authority is already granted to law enforcement officers with other state agencies (Revenue, Lottery, and Racing and Gaming).
- 6 Fines: Amends K.S.A. 17-1266a to increase the maximum fine from \$5,000 to \$25,000 in administrative proceedings, plus up to an additional \$15,000 if the violation is committed against a senior citizen or disabled investor.
- 7 Financial Statements and Appraisals: New crime (level 8, nonperson felony) - prohibits influencing or misleading persons in the preparation of financial statements or appraisals.
- 8 Destruction of Documents and Retaliation against Informants: New crime (level 8, nonperson felony) - prohibits the destruction or falsifying of records and protects whistleblowers from retaliation for providing truthful information.

Effective July 1, 2003

Impact of HB 2332 on Sentences for Securities Crimes

Presumptive Imprisonment

Presumptive Imprisonment Border Box

Securities fraud (17-12a501) Investment adviser fraud (17-12a502)

Amount of Loss	Current Sentence (assuming no prior convictions)	HB 2332 Sentence (assuming no prior convictions)
\$100,000 or more	Level 4 (38-43 months)	Level 5 (29-35 months)
\$75,000 - \$99,999	*Level 5 (31-34 months)	Level 6 (22-26 months)
\$50,000 - \$74,999		Level 7 (16-20 months)
\$25,000 - \$49,999		Level 8 (14-17 months)
\$2,000 - \$24,999		Level 9 (12-13 months)
\$1,000 - \$1,999	Level 7 (11-13 months)	Level 10 (12-13 months)
\$500 - \$999		Class A misdemeanor (12 mo.)
\$499 or less		Class B misdemeanor (6 mo.)

Selling unregistered securities (17-12a301)

Selling securities or advising without a license (17-12a401(a), 402(a), 403(a), 404(a))

Employing a person who is barred from the industry (17-12a401(c) & 403(c))

Employing an unlicensed person (17-12a402(d) & 403(d))

Continuing to do business after being barred from industry (17-12a404(e))

Amount of Loss	Current Sentence (assuming no prior convictions)	HB 2332 Sentence (assuming no prior convictions)
\$100,000 or more	*Level 5 (31-34 months)	Level 5 (29-35 months)
\$75,000 - \$99,999	*Level 6 (17-19 months)	Level 6 (22-26 months)
\$50,000 - \$74,999		Level 7 (16-20 months)
\$25,000 - \$49,999		Level 8 (14-17 months)
\$2,000 - \$24,999		Level 9 (12-13 months)
\$1,000 - \$1,999	Level 7 (11-13 months)	Level 10 (12-13 months)
\$500 - \$999		Class A misdemeanor (12 mo.)
\$499 or less		Class B misdemeanor (6 mo.)

Notes:

- *(1) Current law provides a special sentencing rule in which any loss of \$25,000 or more is presumed imprisonment. The threshold is raised to \$100,000 in HB 2332, making the special rule meaningless because losses of that level are presumptive imprisonment on the new sentencing grid.
- (2) Current law punishes fraud more harshly than registration violations. HB 2332 makes the penalty for fraud the same as the penalties for registration violations.
- (3) Under HB 2332, the penalty for other violations of the Securities Act, regulations, or an order of the Commissioner (including an order to cease and desist) is lowered from Level 7 to Level 9. However, the penalties remain at Level 8 for making false filings, falsifying financial statements or appraisals, obstructing investigations, retaliating against whistleblowers, and falsely stating that a person or security is registered (K.S.A. 17-12a505 & 506).

**Securities Commissioner
Proposed Amendments to HB 2332**

*If get top 3
if not
take out of
bill*

Most important

1. For violations of **securities registration and licensing provisions** (17-12a301, 401(a), 402(a), 403(a), 404(a)), follow the general property crime loss matrix but establish a floor of Level 10 for these violations.
2. For **securities fraud** (17-12a501) and investment adviser fraud (17-12a502), move up one Severity Level from the corresponding level in the general loss matrix for property crimes, but establish a floor of Level 8 for these crimes and create additional layers at the top end of the matrix so that a loss of more than \$250,000 would be a Level 3 and a loss of more than \$1 million would be a level 2.
3. **Re-establish the special sentencing rule** that creates a presumption of imprisonment whenever the loss in a securities crime is \$25,000 or more.
4. Take the following crimes out of the loss matrix and assign them the Severity Levels as indicated, regardless of the amount of loss:
 - Employing an unlicensed person (17-12a402(d) & 403(d)) – Level 8
 - Employing a person who is barred from the industry (17-12a401(c) & 403(c)) – Level 7
 - Continuing to do business after being barred from the industry (17-12a404(e)) – Level 6
5. Raise the penalty from a Level 8 to a Level 6 for making false filings, falsifying financial statements or appraisals, obstructing investigations, retaliating against whistleblowers, and falsely stating that a person or security is registered (K.S.A. 17-12a505 & 506). Similarly, raise the penalty for violating a cease and desist order from a Level 7 to a Level 6 (instead of lowering it to a Level 9 as proposed in HB 2332).
6. Lower the penalty for “other” violations of the Securities Act, regulations, and orders from a Level 7 to a Level 8 (instead of a Level 9 as proposed in HB 2332).

Effect of KSC Proposed Amendments to HB 2332

2-10

Presumptive Imprisonment
 Presumptive Imprisonment Border Box

Securities fraud (17-12a501) Investment adviser fraud (17-12a502)

Amount of Loss	Current Sentence (assuming no prior convictions)	HB 2332 Sentence (assuming no prior convictions)	KSC Proposal (assuming no prior convictions)
\$1,000,000 or more	Level 4 (38-43 months)	Level 5 (29-35 months)	Level 2 (108-132 months)
\$250,000 - \$999,999			Level 3 (54-66 months)
\$100,000 - \$249,999			Level 4 (38-46 months)
\$75,000 - \$99,999	*Level 5 (31-34 months)	Level 6 (22-26 months)	Level 5 (29-35 months)
\$50,000 - \$74,999		Level 7 (16-20 months)	*Level 6 (22-26 months)
\$25,000 - \$49,999		Level 8 (14-17 months)	*Level 7 (16-20 months)
\$2,000 - \$24,999	Level 7 (11-13 months)	Level 9 (12-13 months)	Level 8 (14-17 months)
\$1,000 - \$1,999		Level 10 (12-13 months)	
\$500 - \$999		Class A misdemeanor (12 mo.)	
\$499 or less		Class B misdemeanor (6 mo.)	

Selling unregistered securities (17-12a301) Selling securities or advising without a license (17-12a401(a), 402(a), 403(a), 404(a))

Amount of Loss	Current Sentence (assuming no prior convictions)	HB 2332 Sentence (assuming no prior convictions)	KSC Proposal (assuming no prior convictions)
\$100,000 or more	*Level 5 (31-45 months)	Level 5 (29-35 months)	Level 5 (29-35 months)
\$75,000 - \$99,999	*Level 6 (17-19 months)	Level 6 (22-26 months)	*Level 6 (22-26 months)
\$50,000 - \$74,999		Level 7 (16-20 months)	*Level 7 (16-20 months)
\$25,000 - \$49,999		Level 8 (14-17 months)	*Level 8 (14-17 months)
\$2,000 - \$24,999	Level 7 (11-13 months)	Level 9 (12-13 months)	Level 9 (12-13 months)
\$1,000 - \$1,999		Level 10 (12-13 months)	Level 10 (12-13 months)
\$500 - \$999		Class A misdemeanor (12 mo.)	
\$499 or less		Class B misdemeanor (6 mo.)	

*Assumes the preservation of the special sentencing rule in which any loss of \$25,000 or more is presumed imprisonment.

1 levels below the appropriate level for the underlying or completed crime.
2 The lowest severity level for criminal solicitation to commit a ~~non~~drug
3 felony shall be level 10. The provisions of this subsection shall not apply
4 to a violation of criminal solicitation to commit the crime of terrorism
5 pursuant to K.S.A. 21-3449, and amendments thereto, or of illegal use of
6 weapons of mass destruction pursuant to K.S.A. 21-3450, and amend-
7 ments thereto.

8 ~~(e) Criminal solicitation to commit a felony which prescribes a sen-~~
9 ~~tence on the drug grid shall reduce the prison term prescribed in the~~
10 ~~drug grid block for an underlying or completed crime by six months.~~

11 Sec. 34. K.S.A. 21-3411 is hereby amended to read as follows: 21-
12 3411. (a) Aggravated assault of a law enforcement officer is an aggravated
13 assault, as defined in K.S.A. 21-3410 and amendments thereto:

14 (1) Committed against a uniformed or properly identified state,
15 county or city law enforcement officer while such officer is engaged in
16 the performance of such officer's duty; or

17 (2) committed against a uniformed or properly identified university
18 or campus police officer while such officer is engaged in the performance
19 of such officer's duty.

20 (b) Aggravated assault of a law enforcement officer is a severity level
21 6, person felony. ~~A person convicted of aggravated assault of a law en-~~
22 ~~forcement officer shall be subject to the provisions of subsection (g) of~~
23 ~~K.S.A. 21-4704, and amendments thereto.~~

24 Sec. 35. K.S.A. 2008 Supp. 21-3412a is hereby amended to read as
25 follows: 21-3412a. (a) Domestic battery is:

26 (1) Intentionally or recklessly causing bodily harm by a family or
27 household member against a family or household member; or

28 (2) intentionally causing physical contact with a family or household
29 member by a family or household member when done in a rude, insulting
30 or angry manner.

31 (b) (1) Upon a first conviction of a violation of domestic battery, a
32 person shall be guilty of a class B person misdemeanor and sentenced to
33 not less than 48 consecutive hours nor more than six months' imprison-
34 ment and fined not less than \$200, nor more than \$500 or in the court's
35 discretion the court may enter an order which requires the person enroll
36 in and successfully complete a domestic violence prevention program.

37 (2) ~~If, within five years immediately preceding commission of the~~
38 ~~crime, a person is convicted of a violation of domestic battery a second~~
39 ~~time, such~~ Upon a second conviction of a violation of domestic battery, a
40 person shall be guilty of a class A person misdemeanor and sentenced to
41 not less than 90 days nor more than one year's imprisonment and fined
42 not less than \$500 nor more than \$1,000. The five days' imprisonment
43 mandated by this subsection may be served in a work release program

1 only after such person has served 48 consecutive hours' imprisonment,
 2 provided such work release program requires such person to return to
 3 confinement at the end of each day in the work release program. The
 4 person convicted must serve at least five consecutive days' imprisonment
 5 before the person is granted probation, suspension or reduction of sen-
 6 tence or parole or is otherwise released. As a condition of any grant of
 7 probation, suspension of sentence or parole or of any other release, the
 8 person shall be required to enter into and complete a treatment program
 9 for domestic violence prevention.

Such probation or parole shall be supervised by court services.

10 (3) ~~If, within five years immediately preceding commission of the~~
 11 ~~crime, a person is convicted of a violation of domestic battery. Upon a~~
 12 ~~third or subsequent time, such conviction of a violation of domestic bat-~~
 13 ~~tery, a person shall be guilty of a severity level 7, person felony and~~
 14 ~~sentenced to not less than 90 days nor more than one year's imprisonment~~
 15 ~~and fined not less than \$1,000 nor more than \$7,500. The person con-~~
 16 ~~victed shall not be eligible for release on probation, suspension or reduc-~~
 17 ~~tion of sentence or parole until the person has served at least 90 days'~~
 18 ~~imprisonment.~~

19 (A) *If within five years immediately preceding the commission of the*
 20 *crime, a person is convicted of domestic battery:*

21 (i) *a third time, such person shall be sentenced to not less than 30*
 22 *days imprisonment. The person convicted shall not be eligible for release*
 23 *on probation, suspension or reduction of sentence or parole until the per-*
 24 *son has served at least 30 days' imprisonment.*

25 (ii) *a fourth time, such person shall be sentenced to not less than 90*
 26 *days imprisonment. The person convicted shall not be eligible for release*
 27 *on probation, suspension or reduction of sentence or parole until the per-*
 28 *son has served at least 90 days' imprisonment.*

29 (iii) *a fifth or subsequent time, such person shall be sentenced to not*
 30 *less than one year imprisonment. The person convicted shall not be eligible*
 31 *for release on probation, suspension or reduction of sentence or parole*
 32 *until the person has served at least one year imprisonment.*

33 (c) *On a third or subsequent conviction of domestic battery, within five*
 34 *years immediately preceding the commission of the crime, the court shall*
 35 *require as a condition of parole that such person enter into and complete*
 36 *a treatment program for domestic violence. If the person does not enter*
 37 *into and complete a treatment program for domestic violence, the person*
 38 *shall serve not less than 180 days nor more than one year's imprisonment.*
 39 *The 90 days' imprisonment mandated by this subsection may be served*
 40 *in a work release program only after such person has served 48 consec-*
 41 *utive hours' imprisonment, provided such work release program requires*
 42 *such person to return to confinement at the end of each day in the work*
 43 *release program.*

and is sentenced to probation

in jail, as a condition of probation

at KDOC, as a condition of probation

probation or

behavior modification

the underlying sentence

If the offender is sentenced to probation as described in subsection (b)(3)(A), such probation shall be supervised by community corrections.

1 —(e) (d) As used in this section:
 2 (1) Family or household member means persons 18 years of age or
 3 older who are spouses, former spouses, parents or stepparents and chil-
 4 dren or stepchildren, and persons who are presently residing together or
 5 who have resided together in the past, and persons who have a child in
 6 common regardless of whether they have been married or who have lived
 7 together at any time. Family or household member also includes a man
 8 and woman if the woman is pregnant and the man is alleged to be the
 9 father, regardless of whether they have been married or have lived to-
 10 gether at any time; and
 11 (2) for the purpose of determining whether a conviction is a first,
 12 second, third or subsequent conviction in sentencing under this section:
 13 (A) "Conviction" includes being convicted of a violation of this sec-
 14 tion or entering into a diversion or deferred judgment agreement in lieu
 15 of further criminal proceedings on a complaint alleging a violation of this
 16 section;
 17 (B) "conviction" includes being convicted of a violation of a law of
 18 another state, or an ordinance of any city, or resolution of any county,
 19 which prohibits the acts that this section prohibits or entering into a di-
 20 version or deferred judgment agreement in lieu of further criminal pro-
 21 ceedings in a case alleging a violation of such law, ordinance or resolution;
 22 (C) only convictions occurring in the immediately preceding five
 23 years including prior to the effective date of this act shall be taken into
 24 account, but the court may consider other prior convictions in determin-
 25 ing the sentence to be imposed within the limits provided for a first,
 26 second, third or subsequent offender, whichever is applicable; and
 27 (D) it is irrelevant whether an offense occurred before or after con-
 28 viction for a previous offense.
 29 (E) A person may enter into a diversion agreement in lieu of further
 30 criminal proceedings for a violation of this section or an ordinance of any
 31 city or resolution of any county which prohibits the acts that this section
 32 prohibits only twice during any three-year period.
 33 ~~(e) Persons serving the mandatory sentence shall be supervised by~~
 34 ~~community correctional services upon release. Subject to availability, such~~
 35 ~~supervision shall include the offender participating in a behavior modi-~~
 36 ~~fication treatment program.~~
 37 Sec. 36. K.S.A. 21-3413 is hereby amended to read as follows: 21-
 38 3413. (a) Battery against a law enforcement officer is:
 39 (1) Battery, as defined in subsection (a)(2) of K.S.A. 21-3412, and
 40 amendments thereto, committed against: (A) A uniformed or properly
 41 identified university or campus police officer while such officer is engaged
 42 in the performance of such officer's duty; or (B) a uniformed or properly
 43 identified state, county or city law enforcement officer, other than a state