

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 March 5, 2009, in Room 535-N of the Capitol.

All members were present except:
Representative Charlie Roth

Committee staff present:
Sean Ostrow, Office of the Revisor of Statutes
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:

Others attending:
See attached list.

Chairperson Colloton opened by calling the Committee's attention to a handout entitled *Criminal Sentencing in the Land of OZ still unfair, Inequitable, Irrational*. (Attachment 1) and a handout from the Kansas Sentencing Commission entitled HB2332 Representative Kinzer Amendments Comparison Chart. (Attachment 2) She then recognized Representative Kinzer to continue with his amendments. (Attachment 3)

Representative Kinzer began with an amendment on page 7 and explained the intent. On Page 7 where he changed the severity level, person felony as follows:

Line 32-- change severity level "9" to severity level "7", person felony if the quantity is less than 3.5 grams.

Line 34--change severity level "7" to severity level "6", person felony if the quantity is 3.5 grams or more but less than 100 grams.

Line 42--change severity level "9" to severity level "7", person felony if the quantity of the material is less than 25 grams.

There was no discussion upon the conclusion of Representative Kinzer's explanation of the amendment and he moved his amendment. Motion carried.

The next Kinzer amendment is on page 10 of the bill changing the severity levels on Line 13 and Line 16 from a severity level "10" to a severity level "8".

Representative Kinzer moved his amendment. Representative Patton seconded.

A discussion followed.

Chairperson Colloton called for a vote on the Kinzer amendment on the floor. Motion carried.

Representative Kinzer called the Committee's attention to Page, 48. He is moving the battery of a law enforcement officer causing bodily harm from a level "9" person felony to a level "5".

Representative Kinzer moved his amendment. Motion carried.

Representative Kinzer called the Committee's attention to Page 49 of the bill. The amendment would strike language on Line 43 through line 4 on Page 50 striking the new language on aggravated kidnaping and under existing law aggravated kidnaping is a severity level "1".

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on March 5, 2009, in Room 535-N of the Capitol.

A lengthy discussion followed.

Chairperson Colloton called for a vote on the Kinzer amendment changing aggravated kidnaping to a severity level "1" . Motion failed.

Chairperson Colloton recognized Representative Brookens and he has concerns with the border boxes and stated he would be offering an amendment. Chairperson Colloton asked that he get with the Revisors and have them prepare an amendment.

Chairperson Colloton called on Helen Pedigo, Kansas Sentencing Commission to review the border boxes for the Committee and how they came to their decisions on the border boxes.

Chairperson Colloton called on Representative Bethell to give a report on the subcommittee he chaired regarding reimbursement for assessment and treatment costs pursuant to 2003 SB 123. Representative Bethell presented written copy of the subcommittee report. (Attachment 4) He stated the subcommittee recommends the Kansas Sentencing Commission send a letter to the judges regarding the payment requirements in the statute and requesting their cooperation in ordering reimbursement for assessment and treatment costs to be collected by Community Corrections agencies; a flat fee of a minimum of \$300.00 be assessed by the Court at sentencing, with Community Corrections would be required to collect the fee and send it to the Kansas Sentencing Commission; the probation not be extended if fees are still outstanding at the end of the probation term; the outstanding fees being turned over to a collection agency; and the collection of insurance does not waive collection of the \$300 flat fee. No legislation is necessary because its recommendations can be incorporated within the current law. In closing, Representative Bethell thanked the members of the subcommittee and the staff along with the Department of Corrections for all their hard work.

A discussion followed.

Representative Bethell made a motion to adopt the subcommittee report on offender reimbursement. Representative Pauls seconded. Motion carried.

Chairperson Colloton announced to the Committee they would go back to working **HB 2332** and if they did not finish today they would carry over until Monday. She called on Representative Kinzer to continue with the explanations of his remaining amendments one at a time.

He called the Committee's attention to Pages 67 and 68. He explained that starting with Line 24 on Page 67 through Line 7 on Page 68 regarding "aiding escape", the bill changes the severity level from a 4 to a 5, nonperson felony and he would like to strike those lines putting it back to current law.

Representative Kinzer moved his amendment and Representative Brookens seconded.

A discussion followed.

Chairperson Colloton called for a vote on the Kinzer amendment on the floor. Motion carried with one "no" vote by Representative McCray Miller.

Representative Kinzer continued with another amendment. He referred the Committee to Page 68, Line 8 through Line 29 explaining that aiding a person required to register has been reduced from a severity level 5 to a 10. He would like to strike the language in the bill and leave it as current law.

Representative Kinzer moved his amendment. Representative Patton seconded.

A discussion followed with several of the Committee members having concerns with the amendment.

Representative Kinzer moved his amendment. Motion failed.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on March 5, 2009, in Room 535-N of the Capitol.

Representative Kinzer continued with his amendments calling the Committee's attention to Page 156, Line 12 through Line 27, striking the language regarding a person that fails to register putting it back into current law.

A discussion followed.

Representative Kinzer moved his amendment. Chairperson Colloton called for a vote. Motion failed.

Representative Kinzer continued with his amendments and referred the Committee to Page 212, Line 41, 42 and 43 and Page 213 Lines 1 through 6 regarding the selling of body parts and he would like to strike the language changing it back to current language where it is a severity level 5.

Representative Kinzer moved his amendment. Representative Patton seconded.

A lengthy discussion followed.

Representative Kinzer moved his amendment. Motion carried with 1 "no" vote.

Chairperson Colloton announced to the Committee there is one more amendment to work on HB 2332 and they will carry it over and would like to finish upon this bill on Monday. She adjourned the meeting at 3:00 p.m. with the next meeting scheduled for March 9, 2006.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 03-05-09

NAME	REPRESENTING
Chris Meckler	JJA
Helen Pedigo	KSC
Brenda Harmon	KSC
Tim Madden	KDOC
Jana Waldron	KDOC
Katelyn Utzger	KGC

Criminal Sentences in the Land of Oz: *Still Unfair, Inequitable, and Irrational*©

Nathaniel W. Ellibee

Although Kansas has embraced a determinate "flat-time" sentencing matrix for all but a limited number of criminal offenses, more than 325² Kansas inmates are still serving indeterminate sentences for the same crimes that are now exclusively subject to determinate sentencing. The sole distinction between these "new law" and "old law" offenders? Millions of dollars in unjustifiable costs to Kansas taxpayers, and the date on which the offense was committed. Nothing else.

BACKGROUND

"New Law" - Determinate Sentencing

In 1989, the Kansas Legislature established the Kansas Sentencing Commission;³ its purpose was to "[d]evelop a sentencing guideline model or grid based on fairness and equity ... [to] establish rational and consistent sentencing standards which reduce sentencing disparity"⁴ On July 1, 1993, the Kansas Legislature enacted the *Kansas Sentencing Guidelines Act* ("KSGA").⁵ An offender's sentence for a felony conviction was thereafter determined by either a Drug or NonDrug "Sentencing Grid," depending on the nature of the offense; he or she is then sentenced to a definite number of months. Under certain circumstances limited by statute, the sentencing judge may impose a "departure,"⁹ sentence that either increases or decreases the sentence from the standard sentence identified in the grid box. In addition, offenders are also sentenced to a period of "postrelease" supervision set by law,¹⁰ to be served upon completion of the prison portion of their sentence. There are a variety of other dispositions,¹¹ such as fines, probation, suspended sentence, or drug treatment, which are outside the scope of this article's focus. (A more in-depth review of the KSGA can be obtained from the Kansas Sentencing Commission.¹²) No matter how atrocious their behavior may be while incarcerated, and even if they refuse to participate in rehabilitative programs, "new law" offenders are entitled to a mandatory release from prison.

"New Law" - Postrelease Violations

If a "new law" offender violates a condition¹³ of postrelease supervision,⁴ he or she cannot be returned to prison for

more than six months, is as long as no new misdemeanor or felony conviction occurred. Additionally, the conditional violator is entitled to earn 50% good time¹⁶ (3 months) with good behavior, so the conditional violator is generally entitled to a mandatory release from prison after serving three months (90 days). "New law" postrelease conditional violators are returned to prison for an average incarceration of 4.2 months¹⁷ for each subsequent conditional violation committed.

"Old Law" - Indeterminate Sentencing

Prior to July 1, 1993, Kansas had adhered to an indeterminate sentencing structure. Felony offenses were assigned an alphabetical classification of "A-E" based on their severity ("A" being the most severe and "E" being the least severe). There was then a possible penalty established for each classification of offense consisting of a term of imprisonment, and each category had a minimum and a maximum term of incarceration that the offender could be sentenced to at the discretion of the sentencing judge. (The sentencing judge also had the discretion to impose a variety of other dispositions⁹ such as a fine, probation, or suspended sentence.)

"Old law" [and also "Off-Grid"] offenders are subject to discretionary release on parole that is decided by the Kansas Parole Board.²⁰ The date of parole eligibility is determined by statute, according to the severity ranking of their offense.²¹ In Kansas, offenders subject to release by the Kansas Parole Board do not have any right or entitlement to parole;²² in fact, they have but the "mere hope,"²³ of being granted parole. Parole decisions are sometimes "[d]etermined by parole board members' reaction to the 'look in the eye' of frightened inmates who appeared for annual review" (testimony of Carla L. Stovall-Steckline); (emphasis added by author).²⁴ The Parole Board has the authority to deny subsequent parole considerations depending on the severity

controlling offense,²⁵ up to 10 years. There is, at present, legislation pending to extend the Parole Board's authority to deny a subsequent parole consideration hearing for up to 20 years.²⁶ In Fiscal Year 2007, 228 or 39%²⁷ of "old law" offenders were granted parole.²⁵ The 2008 Kansas Legislature amended the parole criteria to include a requirement for the parole board to consider the proportionality of time served on an offense by an "old law" offender compared to how much time would be served by a "new law" offender for the same offense.²⁹ However, there was no retroactive application of the requirement to those "old law" offenders already serving lengthy parole board denials.

"Old Law" - Parole Violators

If an "old law" offender violates a condition³⁰ of parole,³¹ he or she can be returned to prison for an indeterminate period of time,³² subject to the discretion of the Kansas Parole Board, possibly for the remainder of the original sentence. This is true even if there has been no new misdemeanor or felony conviction. "Old law" parole conditional violators are returned to prison for an average length of incarceration of 23.3 months³³ for each subsequent conditional violation committed.

DISCUSSION

The KSGA did not provide any relief to many of the offenders already subject to the inequitable indeterminate sentences, as the legislature extended the benefit of the KSGA only to a limited pool of "old law" offenders.³⁴ In *Chiles v. State*³⁵, the Kansas Supreme Court addressed a challenge to the retroactivity provision in the KSGA and held that a limited retroactive application of the KSGA by the legislature in the interest of public safety was legal.³⁶

The initial reason of the Kansas Legislature to deny full retroactive application of the KSGA - "public safety" - was laudable. However, the subsequent passage of time has now eroded the underlying logic of the Kansas Legislature

...ying full retroactive application of the KSGA.

Between the enactment of the KSGA on July 1, 1993 and the present, 37 offenders under the "new law" who have already been released from prison to postrelease status have committed offenses such as 2nd Degree Intentional Murder, Aggravated Rape, Attempted First Degree Murder, and Aggravated Kidnapping, all of which are Severity Level 1 offenses. These are the same offenses for which those offenders convicted under the "old law" are denied retroactive conversion of their sentences under the KSGA.

Under the original Non-Drug Sentencing Grid, 38 a first-time offender convicted of a Severity Level 1 offense could expect to receive a presumptive mid-range sentence of approximately 8 years, of which he or she would serve 6 1/2 years with earned good-time credits. 39 Even under the current version of the Non-Drug Sentencing Grid, 40 he or she could expect to receive a mid-range sentence of approximately 13 years, of which he or she would serve 11 years with earned good-time credits. 41 However, if a similarly-situated "old law" first-time offender had committed one of these same offenses prior to July 1, 1993, there is a distinct possibility that he or she is still in prison today.

Any doubts or challenges to what the author is asserting can be quickly resolved by requesting a Crystal report from the Kansas Department of Corrections, which will identify all Severity Level 1 "new law" offenders previously released under the KSGA and those "old law" offenders who remain incarcerated for the same offenses.

OFFENDER COMPARISON - "New Law"
vs. "Old Law"

Initial Incarceration

The average cost of incarceration 42 for each inmate in Kansas is \$25,568 annually, or, \$2,130 a month. 43 Following are examples of what Kansas taxpayers have paid to incarcerate "new law" and "old law" offenders convicted of the same offenses: 44

2nd Degree Intentional Murder
"New Law"

On August 8, 1995, Calvin Smith committed 2nd Degree Intentional Murder. 45

On June 28, 2005 he was released from prison, having served 9 years and 11 months (119 months), at a cost to Kansas taxpayers of \$253,470.

On August 15, 1993, David Dunn committed 2nd Degree Intentional Murder. 46 On December 5, 2003 he was released from prison, having served 10 years and 4 months (124 months), at a cost to Kansas taxpayers of \$264,120.

On March 31, 1994, Elroy Beverly committed 2nd Degree Intentional Murder. 47 On November 2, 2001 he was released from prison, having served 7 years and 7 months (91 months), at a cost to Kansas taxpayers of \$193,830.

"Old Law"

On December 8, 1988, Norman Kmac committed 2nd Degree Intentional Murder. 48 To date, he has been denied parole six times and served 20 years and 3 months (243 months). When he reaches his seventh parole eligibility date on August 1, 2010, he will have served 21 years and 8 months (260 months) at a cost to Kansas taxpayers of \$553,800.

On September 20, 1991, Nathaniel Ellibee aided and abetted 2nd Degree Intentional Murder. 49 To date, he has been denied parole twice and served 17 years and 4 months (208 months). When he reaches his third parole eligibility date on October 1, 2011, he will have served 20 years (240 months), at a cost to Kansas taxpayers of \$511,200.

On November 23, 1991, Richard Stone committed 2nd Degree Intentional Murder. 50 To date, he has been denied parole twice and served 17 years and 3 months (208 months). When he reaches his third parole eligibility date on December 11, 2011, he will have served 20 years and 1 month (241 months), at a cost to Kansas taxpayers of \$513,330.

Aggravated Robbery

"New law"

On August 16, 1993, Gary Garner committed Aggravated Robbery. 51 On June 20, 2000, he was released from prison, having served 6 years and 11

2 months (83 months), at a cost to Kansas

taxpayers of \$176,790.

On July 20, 1993, Scott Davis committed two (2) counts of Aggravated Robbery. 52 On May 1, 2001 he was released from prison, having served 7 years and 10 months (94 months), at a cost to Kansas taxpayers of \$200,200.

On August 24, 1999, Jeremy Johnson committed two (2) counts of Aggravated Robbery. 53 On September 3, 2004, he was released from prison, having served 5 years (60 months), at a cost to Kansas taxpayers of \$127,800.

"Old law"

On August 8, 1992, Mario Fisher committed Aggravated Robbery. 54 To date, he has been denied parole six times and served 16 years and 7 months (199 months). When he reaches his seventh parole eligibility date on February 1, 2011, he will have served 18 years (216 months), at a cost to Kansas taxpayers of \$460,080.

On January 12, 1993, Christopher Opyr committed Aggravated Robbery. 55 To date, he has been denied parole twice and served, 16 years and 1 month (193 months). When he reaches his third parole eligibility date on April 1, 2011, he will have served 18 years and 2 months (218 months), at a cost to Kansas taxpayers of \$464,340.

"New law" Postrelease Conditional
Violators

vs.

"Old law" Parole Conditional Violators

A "new law" Postrelease conditional violator is incarcerated for an average of 4.2 months at a cost to Kansas taxpayers of \$8,946.56. while an "old law" Parole conditional violator is incarcerated for an average of 23.3 months at a cost to Kansas taxpayers of \$49,629. 57

On June 30, 2008, there were 371 "old law" parole conditional violators incarcerated in the KDOC. 58 At an average incarceration period of 23.3 months, taxpayers will pay \$18.4 million to "punish" them for violating a condition of their parole. Under the "new law" it would have cost taxpayers only \$3.3 million to punish the same offenders for violating a condition of their parole, a cost difference of \$15 million. It appears that

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the taxpayers are the ones actually being "punished." Here are a couple of case examples:

On September 12, 1990, Johnny Griffith was initially paroled. Since that initial parole, he has been incarcerated for nine conditional violations. When he reaches his next re-parole eligibility date he will have served a total of 12 years and 3 months (147 months) solely as a conditional violator, at a cost to Kansas taxpayers of \$313,110. Had he served the same nine conditional violations under the "new law" at the average of 4.2 months each, for a total of 37.8 months, it would have cost Kansas taxpayers only \$80,514, a difference of \$232,596.

On November 7, 2006, Frederick Dale, Jr.⁶⁰ had his parole revoked for a conditional violation. He was initially directed by the Kansas Parole Board to serve approximately two years. When he reached his next re-parole eligibility date, he was denied re-parole for another five years. When he reaches his next re-parole eligibility date on February 1, 2014, he will have served 7 years and 3 months (87 months) solely as a conditional violator, at a cost to Kansas taxpayers of \$185,310. Had he served the same conditional violation under the "new law" at an average of 4.2 months it would have cost Kansas taxpayers only \$8,946, a difference of \$176,364.

On average, "old law" parole conditional violators serve 5 1/2 times the number of months, in prison for a conditional violation of their parole that "new law" Postrelease conditional violators do.

If Kansas lawmakers have determined that a six-month penalty for violating a condition of release sufficiently serves the interests of public safety for "new law" offenders, how can they reasonably justify years of penalties for "old law" offenders who committed the same conditional violations?

CONCLUSION

When we as a society choose to punish individuals for violating the law, it is our desire to hold them accountable for their actions and ensure that the offenders have a clear understanding that their conduct was unacceptable. When an offender's conduct is of a sufficiently serious or violent nature, we also seek to protect the public from any future potential harm that the offender may

inflict upon persons or property. So we put these offenders in prison. At some point, however, most Kansas offenders will be released back into the community.

With consideration of the fact that they will be released, it is in everyone's best interest to rehabilitate our errants. But how can we expect to successfully rehabilitate them to ensure against the commitment of future harmful acts, proclaiming "public safety," if we continue to subject "old law" offenders to a structure of sentencing that our legislatures have already acknowledged is inequitable, and at the same time release "new law" offenders convicted of the same offenses?

Treating old law and new law offenders differently based solely on the date on which their offenses occurred is irrational. The goal is to reintegrate offenders into a society in which men and women are supposed to be treated fairly by the government, not arbitrarily. The choice of Kansas lawmakers to continue the practice of a dual sentencing structure based on something so arbitrary as the date on which the offense occurred will only cause a further alienation of "old law" offenders.

It is not being suggested that criminals should be treated softly or in some manner be rewarded for their criminal conduct by being given a "break" on their sentences. What I am suggesting is the old adage, "*firm, fair, and consistent*." I challenge readers to identify any reasonable argument supported by evidence - that an offender's criminal act committed prior to July 1, 1993 is somehow more dangerous than the same criminal act committed on or after July 1, 1993.

Especially in this time of economic hardship, the State of Kansas must decide between who it needs to incarcerate and who it wants to incarcerate. Surely it is not irrational to release "old law" offenders that have already served far longer terms of incarceration for the same offenses that "new law" offenders have already been released for.

An amendment of K.S.A. 21-4724(b)(I) would actually cause criminal sentences in Kansas to be fair, equitable and rational, and save Kansas taxpayers

millions of dollars.

- Nathaniel W. Ellibee -

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- 1 Capital Murder, contrary to K.S.A. 21-3439(a); First Degree Murder, Contrary to K.S.A. 21-3401; Terrorism, contrary to K.S.A. 21-3449; Illegal use of Weapons of Mass Destruction, contrary to K.S.A. 21-3450(a); and various sex crimes pursuant to K.S.A. 21-4643 generally those committed by an offender 18 years or older against a victim 14 years or younger ("Jessica's Law," 2006 Kansas Senate Sub for House Bill 2576).
- 2 This is a conservative number, as the Report also identifies an additional 371 "Parole Conditional Violators," many of whom also have offenses that are now subject to determinate sentencing after July 1, 1993. The author would draw the reader's attention to the "Pre-Guideline" column of the "Prison Population Characteristics" table. Kansas Sentencing Commission: Fiscal Year 2009 Adult Inmate Prison Population Projections, p. 12, point 5 (based upon Kansas Department of Corrections fiscal year 2008 data). http://www.kansas.gov/ksc/document_s/09proi-report.pdf
- 3 K.S.A. 74-9101 (Supp. 1998). 4 K.S.A. 74-9101(b)(1).
- 5 K.S.A. 21-4701 et seq.
- 6 Drug Grid: http://www.ks.gov/ksc/2007_desk/2007%20Drug%20Grid.pdf
- 7 Non-Drug Grid: http://www.ks.gov/ksc/2007_desk/2007

8 The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool.

The grid's vertical axis is the crime severity scale, which classifies the conviction for which the offender is being sentenced (1-10 for non-drug offenses, 1 being the most severe and 10 being the least severe, and severity level 1-4 for drug offenses (1 being the most severe, 4 being the least severe). The grid's horizontal axis is the criminal history scale, which classifies the offender's criminal history from A to I ("A" being the most severe, "I" being the least severe); see K.S.A. 21-4704(c). The vertical axis and the horizontal axis then converge upon a box in the grid that identifies a determinate number of months to which the offender will be sentenced.

9 K.S.A. 21-4716; K.S.A. 21-4717.

10 K.S.A. 22-3717(d).

11 K.S.A. 21-4603d.

12 www.kansas.gov/ksc

13 Examples of some "conditions" are (1) Reporting, Travel, and residence; (2) Laws; (3) Weapons; (4) Personal Conduct; (5) Narcotics/Alcohol; (6) Associations; and (7) Employment. <http://www.dc.state.ks.us/kdoc-policies/impp/Chapter14/14137.pdf>

14 K.S.A. 22-3717(i), (m); K.S.A. 75-5217(a).

15 K.A.R. 45-500-3(a)(3); K.S.A. 75-5217(b).

16 K.A.R. 44-6-115c(a), (b); K.S.A. 75-5217(b).

17 Kansas Sentencing Commission: Fiscal Year 2009 Adult Inmate Prison Population Projections, p. 12, point 5 (based upon Kansas Department of Corrections fiscal year 2008 data). <http://www.kansas.gov/ksc/documents/09proi-report.pdf>

18 K.S.A. 21-4501.

19 K.S.A. 21-4603.

20 K.S.A. 22-3701 et seq.

21 K.S.A. 22-3717.

22 *Johnson v. Stucker*, 203 Kail. 253, 257, cert. denied 396 U.S. 904 (1969).

23 *Greenholtz v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 11 (1979).

24 EDITOR'S LETTER: Prison Conditions and Criminal Sentencing in Kansas: A Public Policy Dialogue,

William J. Rich. *Kansas Journal of Law & Public Policy*, Spring 2002, IL Kan. 1. L. & Pub. Pol'v 693, Note 53, "Hearing before the Kansas Senate Judiciary Committee (July 26, 1990) (Statement of Carla J. Stovall *) (Recollection of author [William J. Rich])." *Carla J. Stovall, now Stovall-Steckline, is a practicing attorney, a former member of the Kansas Parole Board, and former Kansas Attorney General.

25 K.S.A. 22-3717(j) [A&B - 10 years; C, D and E 3- years].

26 2009 Kansas House Bill 2040.

27 KDOC 2007 Statistical Profile. Source of Information: KDOC computer program "KPBTBL",

28 This statistic does not distinguish between the granting of an initial parole or the re-parole of a conditional violator.

29 K.S.A. 22-3717(h) (2008 Supp.) [2008 House Bill 1411].

30 *Id.*, N 13.

31 K.S.A. 22-3717(m); K.S.A. 75-5217(a).

32 K.A.R. 45-500-3(a)(I).

33 *Id.*, N 17.

34 K.S.A. 21-4724(b)(I).

35 869 P.2d 707, 718 (Kan.), cert. denied, 513 U.S. 850 (1994).

36 "In looking at the limited retroactivity provision and the sentencing grids, it is apparent that the legislature intended to give the benefits of retroactivity only to those prisoners who had been convicted of less serious offenses. The legislature's objective was to achieve the reduction of prison overcrowding by the early release of some prisoners while concomitantly promoting the public safety by limiting the early release to less serious offenders. It is reasonable to assume that the interest of the public safety of the community underlay the legislative decision to limit the scope of the retroactivity provision to less serious offenders. The limited retroactivity provision is reasonable in relation to its subject, was adopted in the interest of the community, and is not violative of due process." *Id.*

37 Fifteen years and 8 months (188 months), as of February 2009. 38 K.S.A. 21-4704 (1993 Supp.)

39 Ninety-seven months with an opportunity to earn 20% good time (19.4 months), for a possible minimum incarceration of 77.6 months. See K.S.A. 21-4706 and K.S.A. 21-4722 (1993 Supp.)

40 K.S.A. 21-4704 (2008 Supp.)

41 One hundred and fifty-five months with an opportunity to earn 15% good time (23.25 months) for a minimum possible incarceration of 131.75 months. See K.S.A. 21-4706 and K.S.A. 21-4722 (1995 Supp.)

42 Food, Medical, Programs and facility operations.

43 2008 Kansas Department of Corrections Annual Report. Average obtained from "avg \$/ Inmate ADP" of each of the eight primary facilities operated by the KDOC. EDCF, p. 108, \$25,08~; ECF, p. 113, \$22,038; HCF, p. 116, \$23,508; LCF, p. 119, \$22,434; LCMHF, p. 122, \$36,029; NCF, p. 125, \$24,866; TCF, p. 129, \$27,296; and, WCF, p. 133, \$23,290.

44 The examples proffered herein are a comparison of the offenders primary controlling offense only; offenders identified herein may also be incarcerated for lesser offenses in addition to their primary offenses.

45 Shawnee County, Kansas, Case No. 95-CR-3108. Mr. Smith 'shot his estranged wife twice at close range with a 12-gauge shotgun.

46 Sedgwick County, Kansas, Case No. 93-CR-1148. Mr. Dunn shot a man 17 times.

47 Wyandotte County, Kansas, Case No. 94-CR-810. Details unknown.

48 Geary County, Kansas, Case No. 88-CR-1005. Details unknown.

49 Geary County, Kansas, Case No. 91CR-1152. Mr. Ellibee was involved in an attempted robbery of a convenience store wherein his co-defendant (Jason L. Turner) shot and killed the store clerk.

50 Sedgwick County, Kansas, Case No. 91-CR-1943. Mr. Stone struck and killed a store employee with his vehicle when fleeing the scene after he had shoplifted cigarettes.

51 Sedgwick County, Kansas, Case No. 93-CR-1437. Details unknown.

52 Sedgwick County, Kansas, Case No. 93-CR-01280. Details unknown.

53 Sedgwick County, Kansas, Case No.

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- 99-CR-2346. Details unknown.
- 54 Sedgwick County, Kansas, Case No. 92-CR-1602. Details unknown.
- 55 Sedgwick County; Kansas, Case No. 93-CR-219; Mr. Opyr and his co-defendant Joe Gutierrez robbed and shot a man. Mr. Gutierrez is the one who shot the victim. Mr. Gutierrez was released on parole June 23, 2006 after serving 13 1/2 years.
- 56 Id., N 17 and N 43.
- 57 Id., N 34 and N 43.
- 58 The author would draw the reader's attention to the "Pre-Guideline" column of the "Prison Population Characteristics" table. Kansas Sentencing Commission: Fiscal Year 2009 Adult Inmate Prison Population Projections, p. 12, point 5 (based upon Kansas Department of Corrections fiscal year 2008 data).
<http://www.kansas.gov/ksc/documents/09proj-report.pdf>
- 59 Mr. Griffith's information can be reviewed at:
<http://165.201.143.205/kasper2/offender.asp?kdoc=42145>
- 60 Reno County, Kansas, Case No. 91-CR-830. Mr. Dale's information can be reviewed at:
<http://165.201.143.205/kasper2/offender.asp?kdoc=46807>

HB 2332 Representative Kinzer Amendments 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	Current SL	P/N	HB 2332 Revised SL	Rep. Kinzer Proposed SL	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I	Rep. Kinzer Prop. Sent Range A	Rep. Kinzer Prop. Sent Range I
Sec. 3	Drug manufacturing	D4	NP	5P	2P	185 - 204	138 - 154	117 - 143	29 - 35	420 - 514	108 - 132
Sec. 3	Drug manufacturing - meth	D4	NP	3P	1P	185 - 204	138 - 154	210 - 256	54 - 66	558 - 682	140 - 172

Comparison:

Statute	Name	Current SL
21-3402a	Murder; 2nd Degree; Intentional	1P
21-3402b	Murder; 2nd Degree; Recklessly	2P
21-3403	Voluntary Manslaughter quarrel or in heat of passion	3P
21-3719	Agg. Arson – great bodily harm	3P
21-3404	Involuntary Manslaughter; Recklessly	5P
21-3442	Involuntary Manslaughter; DUI	4P
21-3718	Arson	6P
21-3719	Agg. Arson – no substantial risk of great bodily harm	6P

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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 Crim. 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

Distribution under HB 2332

Section #	Distribution of:	HB 2332 Revised SL	Rep. Kinzer Proposed SL	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I	Rep. Kinzer Prop. Sent Range A	Rep. Kinzer Prop. Sent Range I
Sec. 5	Misc. Drugs < 3.5g	9P	7P	18 - 22	12 - 13	29 - 35	16 - 20
Sec. 5	Misc. Drugs 3.5 - 100g	7P	6P	29 - 35	16 - 20	40 - 48	22 - 26
Sec. 5	Marijuana < 25g	9P	7P	18 - 22	12 - 13	29 - 35	16 - 20
Sec. 5	Marijuana 25 - 450g	7P	6P	29 - 35	16 - 20	40 - 48	22 - 26
Sec. 5	Heroin < 1g	9P	7P	18 - 22	12 - 13	29 - 35	16 - 20
Sec. 5	Heroin 1 - 3.5g	7P	6P	29 - 35	16 - 20	40 - 48	22 - 26
Sec. 5	Dosage Units <10	9P	7P	18 - 22	12 - 13	29 - 35	16 - 20
Sec. 5	Dosage Units 10 - 100	7P	6P	29 - 35	16 - 20	40 - 48	22 - 26

Comparison:

Statute	Name	Current SL	Proposed
21-3719	Agg. Arson - no substantial risk of great bodily harm	6P	
21-3701	Theft (F) 25K +	7 N	6 - 8 N
21-3608	Agg Endangering Child	9 P	
21-3701	Theft (F) 1K to 25K	9 N	9-10 N

2-3

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	Current SL	HB 2332 Revised SL	Rep. Kinzer Proposed SL	Sentence Range Criminal History A	Sentence Range Criminal History I	Revised Sentence Range Criminal History A	Revised Sentence Range Criminal History I	Rep. Kinzer Prop. Sent Range A	Rep. Kinzer Prop. Sent Range I
Sec. 6	Possession narcotics/opiates or 2nd time stimulants, depressants, hallucinogenic	D4N	10N	8N	37 - 42	10 - 12	14 - 18	12 - 13	22 - 26	14 - 17

Comparison:

Statute	Name	Current SL
21-3710	Forgery	8 N
21-4204	Crim Poss Firearm	8 N
21-3608	Agg Endangering Child	9 P
21-3419	Criminal Threat	9 P
21-3422	Interference w/ Parental Cust	10 N
21-3814a	Agg Fail to Appear for Trial Felony	10 N

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:

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1 with knowledge of and intent to have such control or knowingly keeping
2 some item in a place where the person has some measure of access and
3 right of control.

- 4 (r) "Presence of a minor" means:
- 5 (1) A minor is within close proximity to the illegal activity;
- 6 (2) the illegal activity is conducted in a place where minors can rea-
- 7 sonably be expected to be present; or
- 8 (3) in the minor's dwelling.

9 This definition shall not be construed as requiring that a defendant
10 actually be aware of the presence of a minor or a minor actually be aware
11 of the illegal activity.

12 (s) "Simulated controlled substance" means any product which iden-
13 tifies itself by a common name or slang term associated with a controlled
14 substance and which indicates on its label or accompanying promotional
15 material that the product simulates the effect of a controlled substance.

16 New Sec. 2. (a) Prosecutions for crimes committed prior to July 1,
17 2009, shall be governed by the law in effect at the time the crime was
18 committed. For purposes of this section, a crime was committed prior to
19 July 1, 2009, if any element of the crime occurred prior thereto.

20 (b) The prohibitions of this act shall apply unless the conduct pro-
21 hibited is authorized by the pharmacy act of the state of Kansas, the
22 uniform controlled substances act or otherwise authorized by law.

23 New Sec. 3. (a) It shall be unlawful for any person to manufacture
24 any controlled substance or controlled substance analog.

25 (b) Violation or attempted violation of subsection (a) is a severity level
26 5, person felony, except that, violation of subsection (a) is a severity level
27 3, person felony if such substance being manufactured or attempted to
28 be manufactured is any methamphetamine as defined by subsection
29 (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

30 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-
31 ments thereto, shall not apply to a violation of attempting to unlawfully
32 manufacture any controlled substance pursuant to this section.

33 (d) For persons arrested and charged under this section, bail shall be
34 at least \$50,000 cash or surety, unless the court determines, on the record,
35 that the defendant is not likely to re-offend, the court imposes pretrial
36 supervision, or the defendant agrees to participate in a licensed or cer-
37 tified drug treatment program.

38 (e) The sentence of a person who violates this section shall not be
39 subject to statutory provisions for suspended sentence, community serv-
40 ice work or probation.

41 (f) The sentence of a person who violates this section or K.S.A. 65-
42 4159 prior to its repeal, shall not be reduced because these sections pro-
43 hibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163,

(s) "School property" means property upon which is located a struc-
 ture used by a unified school district or an accredited nonpublic school
 for student instruction or attendance or extracurricular activities of
 pupils enrolled in kindergarten or any of the grades one through 12. This
 definition shall not be construed as requiring that school be in session or
 that classes are actually being held at the time of the offense or that
 children must be present within the structure or on the property during
 the time of any alleged criminal act. If the structure or property meets
 the above definition, the actual use of that structure or property at the
 time alleged shall not be a defense to the crime charged or the sentence
 imposed.
 [reletter remaining subsection accordingly]

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1 prior to such sections repeal, or section 5, and amendments thereto.

2 New Sec. 4. All costs and expenses resulting from the seizure, dis-
3 position and decontamination of an unlawful manufacturing site shall be
4 assessed as costs against the defendant.

5 New Sec. 5. (a) It shall be unlawful for any person to distribute or
6 possess with the intent to distribute any of the following controlled sub-
7 stances or controlled substance analogs thereof:

8 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
9 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
10 thereto;

11 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
12 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
13 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

14 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
15 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
16 65-4109, and amendments thereto;

17 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
18 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
19 4109, and amendments thereto;

20 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
21 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
22 thereto; or

23 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
24 4109, and amendments thereto.

25 (b) It shall be unlawful for any person to distribute or possess with
26 the intent to distribute a controlled substance or a controlled substance
27 analog designated in K.S.A. 65-4113, and amendments thereto.

28 (c) It shall be unlawful for any person to cultivate any controlled
29 substance or controlled substance analog designated in subsection (a).

30 (d) Except as further provided:

31 (1) Violation of subsection (a) is a:

32 (A) Severity level ~~9~~, person felony if the quantity of the material is
33 less than 3.5 grams;

34 (B) severity level ~~7~~, person felony if the quantity of the material is
35 3.5 grams or more but less than 100 grams;

36 (C) severity level 4, person felony if the quantity of the material is
37 100 grams or more but less than 1 kilograms; or

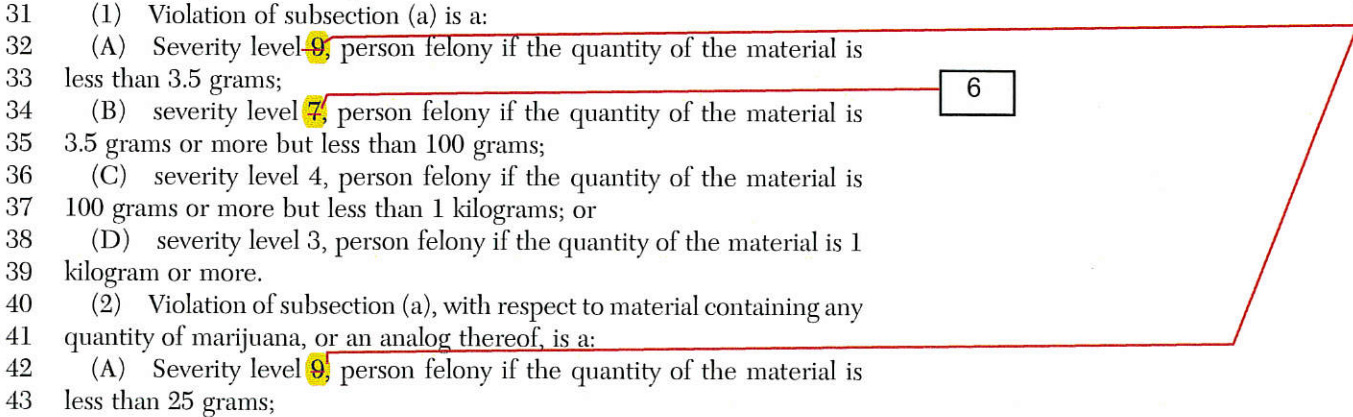
38 (D) severity level 3, person felony if the quantity of the material is 1
39 kilogram or more.

40 (2) Violation of subsection (a), with respect to material containing any
41 quantity of marijuana, or an analog thereof, is a:

42 (A) Severity level ~~9~~, person felony if the quantity of the material is
43 less than 25 grams;

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1 (B) severity level 7, person felony if the quantity of the material is 25
2 grams or more but less than 450 grams;

3 (C) severity level 4, person felony if the quantity of the material is
4 450 grams or more but less than 30 kilograms; or

5 (D) severity level 3, person felony if the quantity of the material is
6 30 kilograms or more.

7 (3) Violation of subsection (a), with respect to material containing any
8 quantity of heroin, or an analog thereof, is a:

9 (A) Severity level 9, person felony if the quantity of the material is 1
10 gram or less;

11 (B) severity level 7, person felony if the quantity of the material is
12 more than 1 gram but less than 3.5 grams;

13 (C) severity level 4, person felony if the quantity of the material is
14 3.5 grams or more but less than 100 grams; or

15 (D) severity level 3, person felony if the quantity of the material is
16 100 grams or more.

17 (4) Violation of subsection (a), with respect to material containing any
18 quantity of a controlled substance or controlled substance analog desig-
19 nated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments
20 thereto, distributed by dosage unit, is a:

21 (A) Severity level 9, person felony if the number of dosage units is
22 fewer than 10;

23 (B) severity level 7, person felony if the number of dosage units is 10
24 or more but fewer than 100;

25 (C) severity level 4, person felony if the number of dosage units is
26 100 or more but fewer than 1,000; or

27 (D) severity level 3, person felony if the number of dosage units is
28 1,000 or more.

29 (5) For any violation of subsection (a), the severity level of the offense
30 shall be increased one level if the offender is 18 or more years of age and
31 the controlled substance or controlled substance analog is distributed or
32 possessed with the intent to distribute to a minor or in the presence of a
33 minor.

34 (6) Violation of subsection (b) is a class A person misdemeanor, ex-
35 cept that violation of subsection (b) is a severity level 7, person felony if
36 the substance is distributed to or possessed with the intent to distribute
37 to a minor.

38 (7) Violation of subsection (c) is a:

39 (A) Severity level 7, person felony if the number of plants cultivated
40 is greater than 4 but fewer than 50;

41 (B) a severity level 5, person felony if the number of plants cultivated
42 is 50 or more but fewer than 100;

43 (C) a severity level 3, person felony if the number of plants cultivated

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or on or within 1,000 feet of any school property

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1 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

2 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
3 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
4 65-4109, and amendments thereto;

5 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
6 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
7 4109, and amendments thereto;

8 (4) any substance designated in subsection (g) of K.S.A. 65-4105 and
9 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
10 thereto; or

11 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
12 4109, and amendments thereto.

13 (c) (1) Violation of subsection (a) is a severity level 10, nonperson
14 felony;

15 (2) violation of subsection (b) is a class A nonperson misdemeanor,
16 except that, violation of subsection (b) is a severity level 10, nonperson
17 felony if that person has a prior conviction under such subsection, under
18 K.S.A. 65-4162 prior to its repeal, under a substantially similar offense
19 from another jurisdiction, or under any city ordinance or county resolu-
20 tion for a substantially similar offense if the substance involved was 3, 4-
21 methylenedioxyamphetamine (MDMA), marijuana or tetrahydro-
22 cannabinal as designated in subsection (d) of K.S.A. 65-4105, and
23 amendments thereto.

24 (d) It shall not be a defense to charges arising under this section that
25 the defendant was acting in an agency relationship on behalf of any other
26 party in a transaction involving a controlled substance.

27 New Sec. 7. (a) It shall be unlawful for any person to knowingly or
28 intentionally use any communication facility:

29 (1) In committing, causing, or facilitating the commission of any fel-
30 ony under section 3, 5 or 6, and amendments thereto; or

31 (2) in any attempt to commit, any conspiracy to commit, or any crim-
32 inal solicitation of any felony under section 3, 5 or 6, and amendments
33 thereto. Each separate use of a communication facility may be charged
34 as a separate offense under this subsection.

35 (b) Violation of subsection (a) is a nondrug severity level 8, nonperson
36 felony.

37 (c) As used in this section, "communication facility" means any and
38 all public and private instrumentalities used or useful in the transmission
39 of writing, signs, signals, pictures or sounds of all kinds and includes tel-
40 ephone, wire, radio, computer, computer networks, beepers, pagers and
41 all other means of communication.

42 New Sec. 8. (a) Unlawfully obtaining and distributing a prescription-
43 only drug is:

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1 tent to distribute or manufacture with intent to distribute any drug par-
2 aphanalia, knowing or under circumstances where one reasonably should
3 know, that it will be used as such in violation of sections 1 through 17,
4 and amendments thereto, except subsection (b) of section 6, and amend-
5 ments thereto.

6 (d) It shall be unlawful for any person to distribute, possess with
7 intent to distribute or manufacture with intent to distribute any drug
8 paraphernalia, knowing, or under circumstances where one reasonably
9 should know, that it will be used as such in violation of subsection (b) of
10 section 6, and amendments thereto.

11 (e) (1) Violation of subsection (a) is a severity level 6, nonperson
12 felony.

13 (2) Violation of subsection (b) is a severity level 9, nonperson felony.

14 (3) Violation of subsection (c) is a level 9, nonperson felony, except
15 that violation of subsection (c) is a severity level 8, nonperson felony if
16 that person distributes or causes drug paraphernalia to be distributed to
17 a minor or in the presence of a minor.

18 (4) Violation of subsection (d) is a class A nonperson misdemeanor,
19 except that violation of subsection (d) is a nondrug severity level 9, non-
20 person felony if that person distributes or causes drug paraphernalia to
21 be distributed to a minor or in the presence of a minor.

22 (f) For persons arrested and charged under subsection (a), bail shall
23 be at least \$50,000 cash or surety, unless the court determines, on the
24 record, that the defendant is not likely to re-offend, the court imposes
25 pretrial supervision or the defendant agrees to participate in a licensed
26 or certified drug treatment program.

27 (g) As used in this section, "or under circumstances where one rea-
28 sonably should know" that an item will be used in violation of this section,
29 shall include, but not be limited to, the following:

30 (1) Actual knowledge from prior experience or statements by
31 customers;

32 (2) inappropriate or impractical design for alleged legitimate use;

33 (3) receipt of packaging material, advertising information or other
34 manufacturer supplied information regarding the item's use as drug par-
35 aphanalia; or

36 (4) receipt of a written warning from a law enforcement or prose-
37 cutorial agency having jurisdiction that the item has been previously de-
38 termined to have been designed specifically for use as drug paraphernalia.

39 New Sec. 11. (a) In determining whether an object is drug para-
40 aphanalia, a court or other authority shall consider, in addition to all other
41 logically relevant factors, the following:

42 (1) Statements by an owner or person in control of the object con-
43 cerning its use;

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or on or within 1,000 feet of any school property

1 of the nervous system.

2 (b) Unlawful abuse of toxic vapors is a class B nonperson
3 misdemeanor.

4 (c) In addition to any sentence or fine imposed, the court shall enter
5 an order which requires that the person enroll in and successfully com-
6 plete an alcohol and drug safety action education program, treatment
7 program or both such programs as provided in K.S.A. 8-1008, and amend-
8 ments thereto.

9 (d) This section shall not apply to the inhalation of anesthesia or other
10 substances for medical or dental purposes.

11 (e) For the purposes of this section, the term "toxic vapors" means
12 vapors from the following substances or products containing such
13 substances:

14 (1) Alcohols, including methyl, isopropyl, propyl or butyl;

15 (2) aliphatic acetates, including ethyl, methyl, propyl or methyl cel-
16 losolve acetate;

17 (3) acetone;

18 (4) benzene;

19 (5) carbon tetrachloride;

20 (6) cyclohexane;

21 (7) freons, including freon 11 and freon 12;

22 (8) hexane;

23 (9) methyl ethyl ketone;

24 (10) methyl isobutyl ketone;

25 (11) naptha;

26 (12) perchlorethylene;

27 (13) toluene;

28 (14) trichloroethane; or

29 (15) xylene.

30 (f) In a prosecution for a violation of this section, evidence that a
31 container lists one or more of the substances described in subsection (e)
32 as one of its ingredients shall be prima facie evidence that the substance
33 in such container contains toxic vapors.

34 New Sec. 13. (a) It shall be unlawful for any person to distribute,
35 possess with the intent to distribute, or manufacture with the intent to
36 distribute any simulated controlled substance.

37 (b) It shall be unlawful for any person to use or possess with intent
38 to use any simulated controlled substance.

39 (c) (1) Violation of subsection (a) is a nondrug severity level 9, non-
40 person felony, except that violation of subsection (a) is a nondrug severity
41 level 7, nonperson felony if that person is 18 or more years of age and
42 the person distributes, possesses with the intent to distribute or manu-
43 factures with the intent to distribute to a minor ~~or~~ in the presence of a

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or on or within 1,000 feet of any school property

1 minor.

2 (2) Violation of subsection (b) is a class A nonperson misdemeanor.

3 New Sec. 14. (a) It shall be unlawful for any person to distribute or
4 possess with the intent to distribute any substance which is not a con-
5 trolled substance:

6 (1) Upon an express representation that the substance is a controlled
7 substance or that the substance is of such nature or appearance that the
8 recipient will be able to distribute the substance as a controlled substance;
9 or

10 (2) under circumstances which would give a reasonable person reason
11 to believe that the substance is a controlled substance.

12 (b) Violation of subsection (a) is a class A nonperson misdemeanor,
13 except that violation of subsection (a) is a nondrug severity level 9, non-
14 person felony if the distributor is 18 or more years of age, distributing to
15 a minor and at least three years older than the minor to whom the dis-
16 tribution is made.

17 (c) If any one of the following factors is established, there shall be a
18 presumption that distribution of a substance was under circumstances
19 which would give a reasonable person reason to believe that a substance
20 is a controlled substance:

21 (1) The substance was packaged in a manner normally used for the
22 illegal distribution of controlled substances;

23 (2) the distribution of the substance included an exchange of or de-
24 mand for money or other consideration for distribution of the substance
25 and the amount of the consideration was substantially in excess of the
26 reasonable value of the substance; or

27 (3) the physical appearance of the capsule or other material contain-
28 ing the substance is substantially identical to a specific controlled
29 substance.

30 (d) A person who violates the provisions of this section also may be
31 prosecuted for, convicted of and punished for theft by deception.

32 New Sec. 15. Within 10 days after the initiation of prosecution with
33 respect to a controlled substance analog by indictment, complaint or in-
34 formation, the prosecuting attorney shall notify the board of pharmacy of
35 information relevant to emergency scheduling as provided for in subsec-
36 tion (e) of K.S.A. 65-4102, and amendments thereto. After final deter-
37 mination that the controlled substance analog should not be scheduled,
38 no prosecution relating to that substance as a controlled substance analog
39 may be commenced or continued.

40 New Sec. 16. (a) It shall be unlawful for any person to receive or
41 acquire proceeds or engage in transactions involving proceeds, known to
42 be derived from a violation of sections 1 through 17, and amendments
43 thereto. The provisions of this subsection do not apply to any transaction

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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.

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 convicted~~
16 ~~shall not be eligible for release on probation, suspension or reduction~~
17 ~~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.~~

third or

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.~~

(ii)

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.*

3-10

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~~

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1 ~~correctional officer or employee, a city or county correctional officer or~~
2 ~~employee, a juvenile correctional facility officer or employee or a juvenile~~
3 ~~detention facility officer or employee, while such officer is engaged in the~~
4 ~~performance of such officer's duty; or~~

5 ~~(2) battery, as defined in subsection (a)(1) of K.S.A. 21-3412, and~~
6 ~~amendments thereto, committed against: (A) A uniformed or properly~~
7 ~~identified university or campus police officer while such officer is engaged~~
8 ~~in the performance of such officer's duty; or (B) a uniformed or properly~~
9 ~~identified state, county or city law enforcement officer, other than a state~~
10 ~~correctional officer or employee, a city or county correctional officer or~~
11 ~~employee, a juvenile correctional facility officer or employee or a juvenile~~
12 ~~detention facility officer or employee, while such officer is engaged in the~~
13 ~~performance of such officer's duty; or~~

14 ~~(3) battery, as defined in K.S.A. 21-3412, and amendments thereto,~~
15 ~~committed against: (A) A state correctional officer or employee by a per-~~
16 ~~son in custody of the secretary of corrections, while such officer or em-~~
17 ~~ployee is engaged in the performance of such officer's or employee's duty;~~

18 ~~(B) committed against a juvenile correctional facility officer or em-~~
19 ~~ployee by a person confined in such juvenile correctional facility, while~~
20 ~~such officer or employee is engaged in the performance of such officer's~~
21 ~~or employee's duty;~~

22 ~~(C) committed against a juvenile detention facility officer or em-~~
23 ~~ployee by a person confined in such juvenile detention facility, while such~~
24 ~~officer or employee is engaged in the performance of such officer's or~~
25 ~~employee's duty; or~~

26 ~~(D) committed against a city or county correctional officer or em-~~
27 ~~ployee by a person confined in a city holding facility or county jail facility,~~
28 ~~while such officer or employee is engaged in the performance of such~~
29 ~~officer's or employee's duty.~~

30 ~~(b) Battery against a law enforcement officer as defined in subsection~~
31 ~~(a)(1) is a class A person misdemeanor. Battery against a law enforcement~~
32 ~~officer as defined in subsection (a)(2) is a severity level 7, person felony.~~
33 ~~Battery against a law enforcement officer as defined in subsection (a)(3)~~
34 ~~is a severity level 5-9, person felony and such sentence shall be presumed~~
35 ~~imprisonment.~~

36 ~~(e) As used in this section:~~

37 ~~(1) "Correctional institution" means any institution or facility under~~
38 ~~the supervision and control of the secretary of corrections.~~

39 ~~(2) "State correctional officer or employee" means any officer or em-~~
40 ~~ployee of the Kansas department of corrections or any independent con-~~
41 ~~tractor, or any employee of such contractor, working at a correctional~~
42 ~~institution.~~

43 ~~(3) "Juvenile correctional facility officer or employee" means any of~~

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1 ~~ficier or employee of the juvenile justice authority or any independent~~
2 ~~contractor, or any employee of such contractor, working at a juvenile~~
3 ~~correctional facility, as defined in K.S.A. 2008 Supp. 38-2302, and amend-~~
4 ~~ments thereto.~~

5 (4) ~~“Juvenile detention facility officer or employee” means any officer~~
6 ~~or employee of a juvenile detention facility as defined in K.S.A. 2008~~
7 ~~Supp. 38-2302, and amendments thereto.~~

8 (5) ~~“City or county correctional officer or employee” means any cor-~~
9 ~~rectional officer or employee of the city or county or any independent~~
10 ~~contractor, or any employee of such contractor, working at a city holding~~
11 ~~facility or county jail facility.~~

Renumber remaining sections accordingly.

12 Sec. 37. K.S.A. 21-3414 is hereby amended to read as follows: 21-
13 3414. (a) Aggravated battery is:

14 (1) (A) Intentionally causing great bodily harm to another person or
15 disfigurement of another person; or

16 (B) intentionally causing bodily harm to another person with a deadly
17 weapon, or in any manner whereby great bodily harm, disfigurement or
18 death can be inflicted; or

19 (C) intentionally causing physical contact with another person when
20 done in a rude, insulting or angry manner with a deadly weapon, or in
21 any manner whereby great bodily harm, disfigurement or death can be
22 inflicted; or

23 (2) (A) recklessly causing great bodily harm to another person or dis-
24 figurement of another person; or

25 (B) recklessly causing bodily harm to another person with a deadly
26 weapon, or in any manner whereby great bodily harm, disfigurement or
27 death can be inflicted.

28 (b) Aggravated battery as described in subsection (a)(1)(A) is a se-
29 verity level 4, person felony. Aggravated battery as described in subsec-
30 tions (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated
31 battery as described in subsection (a)(2)(A) is a severity level ~~5~~ 6, person
32 felony. Aggravated battery as described in subsection (a)(2)(B) is a sever-
33 ity level ~~8~~ 9, person felony. A person convicted of aggravated battery shall
34 be subject to the provisions of subsection (h) of K.S.A. 21-4704, and
35 amendments thereto.

5

36 Sec. 38. K.S.A. 21-3415 is hereby amended to read as follows: 21-
37 3415. (a) Aggravated battery against a law enforcement officer is:

38 (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A.
39 21-3414, and amendments thereto, committed against: (A) A uniformed
40 or properly identified state, county or city law enforcement officer while
41 the officer is engaged in the performance of the officer’s duty; or (B) a
42 uniformed or properly identified university or campus police officer while
43 such officer is engaged in the performance of such officer’s duty;

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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.

4

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.

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-~~

3-14
E

1 ~~3421. Aggravated kidnapping is kidnapping, as defined in K.S.A. 21-3420~~
2 ~~and amendments thereto, when bodily harm is inflicted upon the person~~
3 ~~kidnapped.~~

4 ~~Aggravated kidnapping is a severity level 1-2, person felony.~~

5 Sec. 41. K.S.A. 21-3435 is hereby amended to read as follows: 21-
6 3435. (a) It is unlawful for an individual who knows oneself to be infected
7 with a life threatening communicable disease knowingly:

8 (1) To engage in sexual intercourse or sodomy with another individual
9 with the intent to expose that individual to that life threatening commu-
10 nicable disease;

11 (2) to sell or donate one's own blood, blood products, semen, tissue,
12 organs or other body fluids with the intent to expose the recipient to a
13 life threatening communicable disease;

14 (3) to share with another individual a hypodermic needle, syringe, or
15 both, for the introduction of drugs or any other substance into, or for the
16 withdrawal of blood or body fluids from, the other individual's body with
17 the intent to expose another person to a life threatening communicable
18 disease.

19 (b) As used in this section, the term "sexual intercourse" shall not
20 include penetration by any object other than the male sex organ; the term
21 "sodomy" shall not include the penetration of the anal opening by any
22 object other than the male sex organ.

23 (c) Violation of this section is a severity level 7 6, person felony.

24 Sec. 42. K.S.A. 21-3436 is hereby amended to read as follows: 21-
25 3436. (a) Any of the following felonies shall be deemed an inherently
26 dangerous felony whether or not such felony is so distinct from the homi-
27 cide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and
28 amendments thereto, as not to be an ingredient of the homicide alleged
29 to be a violation of subsection (b) of K.S.A. 21-3401, and amendments
30 thereto:

31 (1) Kidnapping, as defined in K.S.A. 21-3420, and amendments
32 thereto;

33 (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amend-
34 ments thereto;

35 (3) robbery, as defined in K.S.A. 21-3426, and amendments thereto;

36 (4) aggravated robbery, as defined in K.S.A. 21-3427, and amend-
37 ments thereto;

38 (5) rape, as defined in K.S.A. 21-3502, and amendments thereto;

39 (6) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and
40 amendments thereto;

41 (7) abuse of a child, as defined in K.S.A. 21-3609, and amendments
42 thereto;

43 (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and

Renumber remaining sections accordingly.

9-15
2-8

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~~

3-16

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

Renumber remaining sections accordingly.

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

2-17

1 (D) At least \$25,000 but less than \$50,000, except as provided further,
2 is a severity level 8, nonperson felony.

3 (E) At least \$2,000 but less than \$25,000, except as provided further,
4 is a severity level 9, nonperson felony.

5 (F) At least \$1,000 but less than \$2,000, except as provided further,
6 is a severity level 10, nonperson felony.

7 (G) At least \$500 but less than \$1,000, except as provided further, is
8 a class A nonperson misdemeanor.

9 (H) Less than \$500, except as provided further, is a class B nonperson
10 misdemeanor.

11 (2) Counterfeiting of the retail value of at least \$1,000 but less than
12 \$25,000; that involves more than 100 but less than 1,000 items bearing a
13 counterfeit mark; or on a second violation of subsection (e)(1)(F),
14 (e)(1)(G) or (e)(1)(H) if the offender has a previous conviction of this
15 section, is a severity level 9, nonperson felony.

16 (3) Counterfeiting of the retail value of \$25,000 or more; that involves
17 1,000 or more items bearing a counterfeit mark; or on a third or subse-
18 quent violation of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or
19 (e)(1)(H) if the offender has two previous convictions of any combination
20 of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or (e)(1)(H), is a
21 severity level 7, nonperson felony.

22 (f) This section shall be part of and supplemental to the Kansas crim-
23 inal code.

24 ~~Sec. 59. K.S.A. 2008 Supp. 21-3811 is hereby amended to read as~~
25 ~~follows: 21-3811. Aiding escape is:~~

26 ~~(a) Assisting another who is in lawful custody on a charge or convic-~~
27 ~~tion of crime, on a charge or adjudication of a misdemeanor or felony or~~
28 ~~on a commitment to the state security hospital as provided in K.S.A. 22-~~
29 ~~3428 and amendments thereto based on a finding that the person com-~~
30 ~~mitted an act constituting any crime to escape from such custody; or~~

31 ~~(b) supplying to another who is in lawful custody on a charge or convic-~~
32 ~~tion of crime, on a charge or adjudication of a misdemeanor or felony~~
33 ~~or on a commitment to the state security hospital as provided in K.S.A.~~
34 ~~22-3428 and amendments thereto based on a finding that the person~~
35 ~~committed an act constituting any crime, any object or thing adapted or~~
36 ~~designed for use in making an escape, with intent that it shall be so used;~~
37 ~~or~~

38 ~~(e) introducing into an institution in which a person is confined on a~~
39 ~~charge or conviction of crime, on a charge or adjudication of a misde-~~
40 ~~memeanor or felony or into the state security hospital if such person is con-~~
41 ~~fined on a commitment to the state security hospital as provided in K.S.A.~~
42 ~~22-3428 and amendments thereto based on a finding that the person~~
43 ~~committed an act constituting any crime any object or thing adapted or~~

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1 designed for use in making any escape, with intent that it shall be so used.

2 (d) (1) Except as provided in paragraph (2), aiding escape is a severity
3 level 8, nonperson felony.

4 (2) Aiding escape by an employee or volunteer of the department of
5 corrections, or the employee or volunteer of a contractor who is under
6 contract to provide services to the department of corrections, is a severity
7 level 4 5, nonperson felony.

8 Sec. 60. K.S.A. 21-3812 is hereby amended to read as follows: 21-

9 3812. (a) Aiding a felon is knowingly harboring, concealing or aiding any
10 person who has committed a felony under the laws of this state, other
11 than a violation of K.S.A. 22-4903, and amendments thereto, or another
12 state or the United States with intent that such person shall avoid or
13 escape from arrest, trial, conviction or punishment for such felony.

14 Aiding a felon is a severity level 8, nonperson felony.

15 (b) Aiding a person charged with a felony is knowingly harboring,
16 concealing or aiding a person who has been charged with a felony under
17 the laws of this state, other than a violation of K.S.A. 22-4903, and amend-
18 ments thereto, or another state or the United States with intent that such
19 person shall avoid or escape from arrest, trial, conviction or punishment
20 for such felony.

21 Aiding a person charged with a felony is a severity level 8, nonperson
22 felony.

23 (c) Aiding a person who has been convicted of or who has been
24 charged with committing a misdemeanor under the laws of Kansas or
25 another state is knowingly concealing or aiding such person with intent
26 that such person shall avoid or escape from arrest, trial, conviction or
27 punishment for such misdemeanor.

28 Aiding a person convicted of or charged with committing a misde-
29 meanor is a class C misdemeanor.

30 (d) Aiding a person required to register under the Kansas offender
31 registration act, K.S.A. 22-4901 et seq., and amendments thereto, is
32 knowingly harboring, concealing or aiding any person who is required to
33 register under the act and who is not in compliance with the requirements
34 of the act with intent that such person shall avoid or escape from regis-
35 tration, arrest, trial, conviction, punishment or any criminal charges aris-
36 ing from the person's failure to comply with the requirements of the act.

37 Aiding a person required to register under the Kansas offender regis-
38 tration act is a severity level 5 10, person felony.

39 Sec. 61. K.S.A. 21-3826 is hereby amended to read as follows: 21-
40 3826. (a) Traffic in contraband in a correctional institution is introducing
41 or attempting to introduce into or upon the grounds of any correctional
42 institution or taking, sending, attempting to take or attempting to send
43 from any correctional institution or any unauthorized possession while in

*aid operator req to reg
as offender - bill decrease
from 5 to 10 - Remove
leave in current law*

Amended

Renumber remaining sections accordingly.

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1 of serious violence, or engaging in sexual acts involving penetration with
2 victims less than 14 years of age, and includes the following offenses:

- 3 (1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of
- 4 K.S.A. 21-3502, and amendments thereto;
- 5 (2) aggravated criminal sodomy as defined in subsection (a)(1) and
- 6 subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and
- 7 (3) any attempt, conspiracy or criminal solicitation, as defined in
- 8 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
- 9 fense defined in this subsection.

10 (i) "Institution of higher education" means any post-secondary school
11 under the supervision of the Kansas board of regents.

12 ~~Sec. 109. K.S.A. 22-4903 is hereby amended to read as follows: 22-~~
13 ~~4903. (a) Any person who is required to register as provided in the Kansas~~
14 ~~offender registration act who violates any of the provisions of such act,~~
15 ~~including all duties set out in K.S.A. 22-4904 through 22-4907, and~~
16 ~~amendments thereto, is guilty of a severity level 5-9, person felony. Any~~
17 ~~violation of any provision of such act, including a violation of the duties~~
18 ~~set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and amendments~~
19 ~~thereto, which continues for more than 30 consecutive days shall, upon~~
20 ~~the 31st consecutive day, constitute a new and separate offense and shall~~
21 ~~continue to constitute a new and separate offense upon completion of~~
22 ~~every 30 days thereafter for as long as the offense continues.~~

23 ~~(b) Prosecution of violations under subsection (a), shall be held: (1)~~
24 ~~In the county in which the offender resides; (2) if the offender is tem-~~
25 ~~porarily domiciled in a county and is required to be registered, in such~~
26 ~~county; or (3) in the county in which the offender is required to be reg-~~
27 ~~istered under this act.~~

28 Sec. 110. K.S.A. 22-4906 is hereby amended to read as follows: 22-
29 4906. (a) Except as provided in subsection (d), any person required to
30 register as provided in this act shall be required to register: (1) Upon the
31 first conviction of a sexually violent crime as defined in subsection (c) of
32 K.S.A. 22-4902, and amendments thereto, any offense as defined in sub-
33 section (a) of K.S.A. 22-4902, and amendments thereto, or any offense as
34 defined in subsection (d) of K.S.A. 22-4902, and amendments thereto, if
35 not confined, for a period of 10 years after conviction, or, if confined, for
36 a period of 10 years after paroled, discharged or released, whichever date
37 is most recent. The ten-year period shall not apply to any person while
38 the person is incarcerated in any jail or correctional facility. The ten-year
39 registration requirement does not include any time period when any per-
40 son who is required to register under this act knowingly or willfully fails
41 to comply with the registration requirement; or (2) upon a second or
42 subsequent conviction for such person's lifetime.

43 (b) Upon the first conviction, liability for registration terminates, if

Renumber remaining sections accordingly.

04-6

1 (8) whether the substance is an immediate precursor of a substance
2 already controlled under this article.

3 (c) The board shall not include any nonnarcotic substance within a
4 schedule if such substance may be lawfully sold over the counter without
5 a prescription under the federal food, drug and cosmetic act.

6 (d) Authority to control under this section does not extend to distilled
7 spirits, wine, malt beverages or tobacco.

8 (e) Upon receipt of notice under ~~K.S.A. 65-4105~~ *section 15, and*
9 *amendments thereto*, the board shall initiate scheduling of the controlled
10 substance analog on an emergency basis pursuant to this subsection. The
11 scheduling of a substance under this subsection expires one year after the
12 adoption of the scheduling rule. With respect to the finding of an im-
13 minent hazard to the public safety, the board shall consider whether the
14 substance has been scheduled on a temporary basis under federal law or
15 factors set forth in subsections (b)(4), (5) and (6), and may also consider
16 clandestine importation, manufacture or distribution, and if available, in-
17 formation concerning the other factors set forth in subsection (b). A rule
18 may not be adopted under this subsection until the board initiates a ru-
19 lemaking proceeding under subsection (a) with respect to the substance.
20 A rule adopted under this subsection lapses upon the conclusion of the
21 rulemaking proceeding initiated under subsection (a) with respect to the
22 substance.

23 Sec. 139. K.S.A. 65-4127c is hereby amended to read as follows: 65-
24 4127c. ~~Except as otherwise provided in K.S.A. 65-4127a and 65-4127b~~
25 ~~and K.S.A. 65-4160 through 65-4164 and amendments thereto~~, Any per-
26 son violating any of the provisions of the uniform controlled substances
27 act shall be guilty of a class A nonperson misdemeanor. The criminal
28 penalties prescribed for violations of the uniform controlled substances
29 act shall not be applicable to violations of the rules and regulations
30 adopted by the board pursuant thereto.

31 Sec. 140. K.S.A. 65-4139 is hereby amended to read as follows: 65-
32 4139. ~~This act~~ *Article 41 of chapter 65 of the Kansas Statutes Annotated,*
33 *and amendments thereto, shall be known and* may be cited as the uniform
34 controlled substances act.

35 Sec. 141. K.S.A. 65-2859 is hereby amended to read as follows: 65-
36 2859. Any person who shall file or attempt to file with the board any false
37 or forged diploma, certificate, affidavit or identification or qualification,
38 or any other written or printed instrument, shall be guilty of forgery as
39 provided by K.S.A. 21-3710, and ~~a severity level 8, nonperson felony~~
40 *amendments thereto.*

41 ~~Sec. 142. K.S.A. 2008 Supp. 65-3235 is hereby amended to read as~~
42 ~~follows: 65-3235. (a) Except as otherwise provided in subsection (b), a~~
43 ~~person that for valuable consideration, knowingly purchases or sells a part~~

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~~for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a severity level 5 8, nonperson felony.~~

~~(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.~~

Sec. 143. K.S.A. 2008 Supp. 65-3236 is hereby amended to read as follows: 65-3236. A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift or a refusal commits a severity level 8, nonperson felony.

Sec. 144. K.S.A. 2008 Supp. 65-4167 is hereby amended to read as follows: 65-4167. (a) Trafficking in counterfeit drugs is intentionally manufacturing, distributing, dispensing, selling or delivering for consumption purposes, or holding or offering for sale, any counterfeit drug.

(b) Trafficking in counterfeit drugs which have a retail value of less than \$500 is a class A nonperson misdemeanor, trafficking in counterfeit drugs which have a retail value of at least \$500 but less than \$25,000 is a severity level 9, nonperson felony and trafficking in counterfeit drugs which have a retail value of \$25,000 or more is a severity level 7, nonperson felony.

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

(2) At least \$75,000 but less than \$100,000 is a severity level 6, nonperson felony.

(3) At least \$50,000 but less than \$75,000 is a severity level 7, nonperson felony.

(4) At least \$25,000 but less than \$50,000 is a severity level 8, nonperson felony.

(5) At least \$2,000 but less than \$25,000 is a severity level 9, nonperson felony.

(6) At least \$1,000 but less than \$2,000 is a severity level 10, nonperson felony.

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

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

(c) A pharmacy which is inadvertently in possession of counterfeit drugs may return those drugs to the supplier who provided the drugs to the pharmacy.

Sec. 145. K.S.A. 65-5709 is hereby amended to read as follows: 65-5709. Violation of section 304 of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto, is a severity level 10, nonperson felony punishable by a fine of not more than \$25,000 or imprisonment for not more than two years, or both, for the first conviction and a fine of not

Renumber remaining sections accordingly.

2-2-20

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,

1 40-247 40-5013, 44-5,125, 44-619, 44-706, 44-719, 47-1827, 59-2132, 59-
2 29b46, 60-4104, 65-516, 65-3235, 65-3236, 65-4150, 65-4151, 65-4152,
3 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-
4 4166, 65-4167, 65-4168, 65-4168a, 65-7006, 72-5445, 72-89c01, 74-9101,
5 75-7c04, 75-52,144, 75-5291, 76-11a13, 79-15,235 and 79-3228 are
6 hereby repealed.
7 Sec. 161. This act shall take effect and be in force from and after
8 July 1, 2010, and its publication in the statute book.

2-23

Report of the Subcommittee on Offender
Reimbursement for Assessment and Treatment
Costs Pursuant to 2003 SB 123 to the House
Committee on Corrections and Juvenile Justice

CHAIRPERSON: Representative Bob Bethell

OTHER MEMBERS: Representative Nile Dillmore, and Representative Bob Brookens

STUDY TOPICS

- Study offender reimbursement for assessment and treatment costs pursuant to 2003 SB 123.

February 2009

Corrections and Juvenile Justice

Date: 3-5-09

Attachment # 4-1

Subcommittee on Offender Reimbursement for Assessment and Treatment Costs Pursuant to 2003 SB 123

CONCLUSIONS AND RECOMMENDATIONS: The Subcommittee recommends the Kansas Sentencing Commission (KSC) send a letter to the judges regarding the payment requirements in the statute and requesting their cooperation in ordering reimbursement for assessment and treatment costs to be collected by Community Corrections agencies; a flat fee of a minimum of \$300 be assessed by the Court at sentencing, with Community Corrections requesting, if necessary, modification based upon the offender's ability to pay; Community Corrections would be required to collect the fee and send it to the KSC; the probation not be extended if fees are still outstanding at the end of the probation term; the outstanding fees be turned over to a collection agency; and the collection of insurance does not waive collection of the \$300 flat fee.

Proposed Legislation: None. The Subcommittee concluded additional legislation is not necessary because its recommendations can be incorporated within the current law.

BACKGROUND

The Subcommittee was created at the initiative of Representative Pat Colloton, Chairperson of the House Committee on Corrections and Juvenile Justice to study offender reimbursement for assessment and treatment costs pursuant to what is commonly known as 2003 SB 123 (SB 123). SB 123 provides a sentencing alternative for an offender convicted of a first or second drug possession. The offender could be sentenced to Community Corrections intensive supervision and be required to successfully complete a certified drug treatment program in lieu of being sentenced to a state correctional facility. SB 123 promotes the policy of reserving correctional facility capacity for more serious, violent offenders.

The Kansas Department of Corrections (KDOC) is responsible for the certification of all treatment providers who wish to assess and treat SB 123 offenders. To obtain certification for SB 123 assessment and treatment, programs must:

- Be licensed by Social and Rehabilitation Services Addiction and Prevention Services (AAPS);
- Employ at least one counselor that is certified in the cognitive-behavioral tools, *via* the "Thinking for a Change" Facilitator Training conducted by the KDOC to treat SB 123 offenders;
- Employ at least one counselor that is trained and certified to administer the Addiction Severity Index (ASI); and
- Employ at least one counselor that is trained and certified to administer the Substance Abuse Subtle Screening Inventory (SASSI).

Once approved by KDOC, providers also must complete the following documentation with KSC and Community Corrections to ensure payment:

- Enter into a "Provider Agreement with Community Corrections Agency" with each Community Corrections agency to whom they intend to provide services; and

- Enter into a "Qualified Service Organization Agreement (QSOA)" with their Community Corrections agency and with the KSC.

COMMITTEE ACTIVITIES

The Subcommittee met on four occasions: January 27, 2009; February 4, 2009; February 17, 2009; and March 3, 2009. Items discussed by the 2009 Subcommittee relating to its charge by the Chairperson are reviewed in the following material, along with the Subcommittee conclusions and recommendations to the 2009 House Committee on Corrections and Juvenile Justice.

January 27, 2009

Helen Pedigo, Executive Director, KSC, provided the Subcommittee with information on the payment process of SB 123 invoices.

The KSC is the centralized payment system that processes invoices for payment, enters and tracks all expenditures and receipts; prepares the budget; and tracks funding allocations and balances for SB 123.

The offender reimbursement amount is determined by the Court pursuant to KSA 75-52,144.

All SB 123 invoices are submitted to the KSC through the Community Corrections agencies. KSC retains a copy of each "Provider Agreement with Community Corrections" and the treatment rates charged are pursuant to the agreement between the Provider and the Community Corrections agencies. Invoices submitted to KSC must be signed by the treatment provider, the community corrections officer, and the Director of the Community Corrections agency or designee. KSC will pay timely, valid, and authorized invoices.

KSC pays the Provider and the Provider determines whether the offender has insurance coverage. If the offender has insurance coverage, a claim will be filed by the Provider. Any funds received from the insurer by the Provider is sent to KSC. A monthly insurance report form is required to be sent each month by the Provider regardless of whether insurance is available.

Director Pedigo stated the average cost for assessment and treatment pursuant to SB 123 is about \$3,800 per offender per year. From the inception of SB 123 to the present, KSC has paid invoices in the approximate amount of \$33 million for assessments and treatment. The average reimbursement, for those submitting reimbursement, is about \$300 per offender. The average amount would cover the assessment (\$200) and a small portion of the treatment cost.

Director Pedigo mentioned there are some big judicial districts not collecting reimbursement and that a letter to the Court to remind the Court to order reimbursement might be helpful. Director Pedigo also mentioned that some judicial districts order offender reimbursement of SB 123 costs as a condition of probation. It is within the Court's discretion to determine the offender's ability to pay.

It was determined that it is necessary to gather information from the Community Corrections agencies regarding the practice of their respective Judicial Districts. The information would assist the Committee in assessing whether there is a lack of uniformity in ordering or collecting reimbursement for SB 123 costs as a condition of probation.

February 3, 2009

Chairperson Bethell called upon the Community Corrections agencies one-by-one to speak to each Judicial Districts' practice in imposing and collecting the treatment fees. The following organizations presented testimony to the Subcommittee:

- Reno County Community Corrections (27th Judicial District);
- Johnson County Community Corrections (10th Judicial District);
- Saline County Community Corrections (28th Judicial District);
- Riley and Clay County Community Corrections (21st Judicial District); and
- Northwest Kansas Community Corrections (supervises the following counties by contract: Cheyenne, Decatur, Ellis, Gove, Graham, Logan, Norton, Osborne, Phillips, Rawlins, Rooks, Sheridan, Sherman, Smith, Thomas, Trego, and Wallace).

Chairperson Bethell summarizes the discussions of the meeting as follows:

- The Courts are required by statute to determine the extent, if any, that such person is able to pay for such assessment and treatment;
- The Courts need uniform and consistent direction on how to determine the extent a person can pay for such assessment and treatment.
- The idea that offenders' care should be commensurate with the treatment fee assessed should be vetted, *i.e.*, if an offender receives more care, the treatment fee should be more than an offender who receives less care.
- Avoid doing anything detrimental to SB 123.

The Chairperson asked the Community Corrections agencies to provide input at the next meeting on how to collect the treatment fees and how to communicate with the Courts.

February 17, 2009

Stuart Little reported that Community Corrections Directors met on February 4 to create a proposal that crystallizes their input as directed by the Subcommittee. He introduced Keith Clark, Director, 4th Judicial District, to present the proposal to the Subcommittee. The Directors recommend:

- The KSC send a letter to the judges regarding the payment requirements in the statute and requesting their cooperation in ordering reimbursement for assessment and treatment costs to be collected by Community Corrections agencies;
- A flat fee of \$300 be assessed by the Court at sentencing, with Community Corrections requesting modification, if necessary, based upon the offender's ability to pay;
- Community Corrections would be required to collect the fee and send it to the KSC;
- The probation not be extended if fees are still outstanding at the end of the probation term;
- The outstanding fees be turned over to a collection agency; and
- The collection of insurance does not waive collection of the \$300 flat fee.

After discussion, the Subcommittee modified the proposal by setting the \$300 flat fee as a minimum fee. Additionally, the Chairperson asked Director Pedigo about amending the standard Journal Entry of Judgment form to include the SB 123 flat fee. Director Pedigo stated the amendment can be done when the form is amended at the end of the Legislative Session so that all changes could be incorporated into it.

4-4

March 3, 2009

Chairperson Bethell called a meeting to finalize the report of the Subcommittee.

CONCLUSIONS AND RECOMMENDATIONS

The Subcommittee concluded additional legislation is not necessary because its recommendations can be incorporated within the current law.

The Subcommittee recommends the KSC send a letter to the judges regarding the payment requirements in the statute and requesting their cooperation in ordering

reimbursement for assessment and treatment costs to be collected by Community Corrections agencies; a flat fee of a minimum of \$300 be assessed by the Court at sentencing, with Community Corrections requesting modification, if necessary, based upon the offender's ability to pay; Community Corrections would be required to collect the fee and send it to the KSC; the probation not be extended if fees are still outstanding at the end of the probation term; the outstanding fees be turned over to a collection agency; and the collection of insurance does not waive collection of the \$300 flat fee.