

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 9, 2009, in Room 535-N of the Capitol.

All members were present except:

Representative Stan Frownfelter-excused

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.

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

Chairperson Colloton opened by announcing to the Committee the bed impact on **HB 2332** with the additional amendments, especially the ones regarding possession and distribution, are substantial in increasing the bed count and would add additional costs. She went on to say the bed count of the original bill without the amendments is 400. She stated the Senate probably would not be willing to work the bill as it stands.

A lengthy discussion followed. The consensus of the Committee is to make the changes to the bill cutting the bed impact as much as possible before sending it to the floor of the House.

Chairperson Colloton called on Representative Kinzer stating she does not want to be unfair but some of his amendments were on possession and distribution and they may have to be reconsidered.

Chairperson Colloton called on Jill Wolters, Office of the Revisor of Statutes, to review for the Committee which amendments were related to possession and distribution. Ms. Wolters called the Committee's attention to Pages 7, 8, and 10 on the Kinzer amendment and the severity level changes .

Chairperson Colloton asked if someone from the prevailing side having voted for those would like to make a motion.

Representative Brookens made a motion to reconsider the Kinzer amendments on Pages 7 and 8 regarding severity levels. Representative McCray-Miller seconded. Motion carried with Representative Dillmore, Representative Patton and Representative Kinzer voting "no".

Representative Brookens made a motion to reconsider the Kinzer amendments on Page 10 striking the severity levels. Representative Spaulding seconded. Motion carried with Representative Patton, Representative Kinzer and Representative Dillmore voting "no".

Chairperson Colloton called on Representative McCray-Miller to explain her amendment. ([Attachment 1](#)) She moved the Committee's attention to Page 7, Lines 32 and 42 and Page 9 Lines 2 and 21 to change the it from "person felony" to "non person felony."

Representative McCray-Miller moved her amendment. Representative Spaulding seconded.

A discussion followed.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on March 9, 2009, in Room 535-N of the Capitol.

Chairperson Colloton called for a vote on the McCray-Miller amendment on the floor. Motion failed.

Chairperson Colloton called on Representative Pauls to explain her amendment on **HB 2332**. She referred the Committee to Page 156 of the Kinzer amendments regarding sexual violent offense.

Representative Pauls moved her amendment. Representative Brookens seconded.

A discussion followed. Representative Pauls gave a further explanation on her amendment for failure to register. She stated the sexual violent offenders that fail to register would fall under a severity level of 5 which is what they are now and the rest of the sexual offenders would fall under a severity level 9.

A short discussion followed.

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

Chairperson Colloton recognized Representative Brookens.

Representative Brookens explained an amendment he is offering on Page 7 of the Kinzer amendment changing to severity level 8 and on Page 8 changing severity 7 to 8.

Representative Brookens moved his amendment. Representative Kinzer seconded.

Chairperson Colloton called for a vote. Motion carried by a show of hands.

Representative Pauls made a motion to move the bill out favorably as amended. Representative McCray-Miller seconded.

A lengthy discussion followed with several Committee members having concerns.

Chairperson Colloton called for a vote on the motion on the floor to pass HB 2332 out favorably as amended. Motion failed with a vote of 4 in favor and 5 opposed.

Chairperson Colloton adjourned the meeting with the next scheduled meeting being March 10, 2009 at 1:30 p.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 03-09-09

NAME	REPRESENTING
Helen Pedigo	KSC
Bunda Harmon	KSC
Scott Schultz	Securities Commission
Jennifer Hermann	KDOR-DMV
Mark Gleason	Judicial Branch
Tim Meddion	KROC
Richard Smarilego	Kenney & Assoc.

HOUSE BILL No. 2332

By Committee on Federal and State Affairs

2-12

Proposed amendment
Representative Miller
March 3, 2009

Corrections and Juvenile Justice
Date: 3-9-09
Attachment # 1-1

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

35
36 *Be it enacted by the Legislature of the State of Kansas:*
37 New Section 1. As used in sections 1 through 17, and amendments
38 thereto:
39 (a) "Controlled substance" means any drug, substance or immediate
40 precursor included in any of the schedules designated in K.S.A. 65-4105,
41 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.
42 (b) (1) "Controlled substance analog" means a substance that is in-
43 tended for human consumption, and:

1-2

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;

nonperson



1-3

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;

nonperson

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

1 is 100 or more.

2 (e) In any prosecution under this section, there shall be a rebuttable
3 presumption of an intent to distribute if any person possesses the quan-
4 tities of the following controlled substances or analogs thereof in the fol-
5 lowing amounts:

6 (1) 450 grams or more of marijuana;

7 (2) 3.5 grams or more of heroin;

8 (3) 100 dosage units or more containing a controlled substance; or

9 (4) 100 grams or more of any other controlled substance.

10 (f) It shall not be a defense to charges arising under this section that
11 the defendant:

12 (1) Is acting in an agency relationship on behalf of any other party in
13 a transaction involving a controlled substance;

14 (2) did not know the quantity of the controlled substance; or

15 (3) did not know the specific controlled substance contained in the
16 material that is distributed or possessed with the intent of distribution.

17 (g) As used in this section:

18 (1) "Material" means the total amount of any substance, including a
19 compound or a mixture, which contains any quantity of a controlled
20 substance.

21 (2) "Dosage unit" means a controlled substance distributed or pos-
22 sessed with the intent to distribute as a discrete unit, including, but not
23 limited to, one pill, one capsule or one microdot, and not distributed by
24 weight.

25 (A) For steroids, or controlled substances in liquid solution legally
26 manufactured for prescription use, "dosage unit" means the smallest
27 medically-approved dosage unit, as determined by the label, materials
28 provided by the manufacturer, a prescribing authority, licensed health
29 care professional or other qualified health authority.

30 (B) Except as provided further, for illegally manufactured controlled
31 substances in liquid solution or controlled substances in liquid products
32 not intended for human ingestion, "dosage unit" means 10 milligrams,
33 including the liquid carrier medium for controlled substances.

34 (C) For lysergic acid diethylamide (LSD) in liquid form, a "dosage
35 unit" means .4 milligrams, including the liquid carrier medium.

36 New Sec. 6. (a) It shall be unlawful for any person to possess any
37 opiates, opium or narcotic drugs, or any stimulant designated in subsec-
38 tion (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto,
39 or a controlled substance analog thereof.

40 (b) It shall be unlawful for any person to possess any of the following
41 controlled substances or controlled substance analogs thereof:

42 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
43 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109