

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on January 27, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Lance Kinzer- excused

Committee staff present:

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

Conferees appearing before the Committee:

Tom Drees, County Attorney, Ellis County
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Tom Stanton, Deputy Reno County District Attorney

Others attending:

See attached list.

Tom Drees, County Attorney, Ellis County
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Tom Stanton, Deputy Reno County District Attorney

HB 2518 - Proportionality of sentencing; merging the drug and nondrug sentencing grids.

Chairperson Colloton announced to the Committee that they would have to meet on a Friday to work bills. She stated it would be February 5th even though it is a pro forma day. It was decided by the Committee to meet at 9:00 a.m. on that Friday in room 144-S to hear all the parole board bills.

The Chair opened the floor for bill introductions; being none, she opened the hearing on **HB 2518** and called on Jason Thompson, Revisor's Office, to explain the bill. Mr. Thompson presented written copies. Memorandum **HB 2518** from Jason Thompson (Attachment 1), Memorandum-**HB2518**-Balloon, (Attachment 2), and **HB2518**.pdf (Attachment 3). Mr. Thompson explained the bill to the Committee and how it was different from the bill last session.

A discussion followed and it was noted that all special rules from last year stayed in the bill.

Upon the conclusion of the discussion, Chairperson Colloton introduced Tom Drees, County Attorney, Ellis County, to give his testimony as a proponent of **HB 2518**. Mr. Drees presented written copy of the sentencing grids; *Sentencing Range-Nondrug Offenses* (Attachment 4); and *Sentencing Range-Drug Offenses* (Attachment 5). He explained that they decided to keep the special rules and stay with the nondrug grid. He addressed questions from the Committee while giving his testimony. In closing, he stated they tried to retain what the Committee liked about the bill from last year.

Chairperson Colloton introduced Helen Pedigo, Executive Director, Kansas Sentencing Commission, to give her testimony as a proponent of the bill. Ms. Pedigo presented written copies of her testimony. *Summary of 2010 Proportionality Recommendations Kansas Sentencing Commission Proportionality Committee*, (Attachment 6) and *Prison Bed Impact, Revised **HB 2518** Proportionality*. (Attachment 7) Ms. Pedigo addressed questions from the Committee while giving her testimony. Ms. Pedigo explained the changes in some of the severity levels and why they were changed. She also reviewed the projected prison bed impact related to the bill.

Chairperson Colloton introduced Richard Samaniego to refer the Committee to the "written only" opponent testimony of Tom Stanton representing the Kansas County and District Attorneys Association. (Attachment 8) Mr. Samaniego stated the Kansas County & District Attorney's Association could not support the bill.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on January 27, 2010, in Room 144-S of the Capitol.

They have concerns regarding the disparity in penalties between crimes involving heroin and crimes involving other drugs, primarily methamphetamine and cocaine. They had this same concern and others with the bill last session. He stated that some of the members of the Kansas County and District Attorneys Association would like to respond to the bill but did not get it in time to do so. They would appreciate another opportunity to convey their perspectives on the bill.

Chairperson Colloton stated she would continue the hearing to February 4th.

Questions and answers followed regarding **HB 2518**.

Chairperson Colloton called for a quick report on the Sub-committee and recognized Representative Bethell and he stated they would like to expand the scope to the collection of fees and insurance. In regard to the offender registration, they met today at noon. They need to look at capabilities of law enforcement and whether the designation needed to be on the drivers licenses. He stated they would meet again tomorrow in 159S.

Chairperson Colloton adjourned the meeting at 3:00 p.m. with the next meeting January 28, 2010 at 1:30 p.m. in room 144-S.

MEMORANDUM

To: Chairperson Colloton and Members of the
House Corrections and Juvenile Justice Committee

From: Jason Thompson, Assistant Revisor (JT)

Date: January 27, 2010

Subject: HB 2518 - Proportionality; merging the drug and non-drug grids

Below is a brief explanation of the provisions of HB 2518.

- Merging the drug and non-drug sentencing grids
 - (1) Repeals the drug grid (K.S.A. 21-4705).
 - (2) Assigns drug sentences severity levels on the existing nondrug grid:
 - Drug severity level 1 felony to severity level 2, nonperson felony;
 - drug severity level 2 felony to severity level 4, nonperson felony;
 - drug severity level 3 felony to severity level 6, nonperson felony;
 - drug severity level 4 felony to severity level 7, nonperson felony.
 - (3) Conforming amendments to eliminate references to drug grid.

- Special sentencing rules for drugs (Sec. 44, p. 73)
 - (1) Places a cap on drug offense sentences at 204 months.
 - (2) Convictions for a medium, large or super felony distribution, with a criminal history of one prior medium, large or super distribution, may result in a sentence up to double the maximum sentence in the applicable grid box; such a conviction with a criminal history of two or more prior medium, large or super distributions, may result in a sentence up to triple the maximum sentence.

- Drug Code Amendments (Sec. 11-21, p. 14-29)
 - (1) Amends K.S.A. 21-36a03 so that manufacturing methamphetamine is a severity level 1, nonperson felony, and any other drug is a severity level 3, nonperson felony.
 - (2) Amends K.S.A. 21-36a05, distribution or possession with intent to distribute, so that penalties are set at 4 levels based on quantity of drugs: small, medium, large or super.
 - (3) Weight to be determined by the product as packaged for distribution.
 - (4) Adds "to a minor" and "in the presence of a minor" to the sentence enhancement "within 1,000 feet of a school" in K.S.A. 21-36a05, 21-36a10 and 21-36a13. Adds corresponding definitions in 21-36a01.

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(5) Amends K.S.A. 21-36a16, receiving or acquiring proceeds from drugs: Proceeds of < \$5,000 from drug severity level 4 felony to severity level 9, nonperson felony; at least \$5,000 but less than \$100,000 from drug severity level 3 felony to severity level 6, nonperson felony; at least \$100,000 but less than \$500,000 from drug severity level 2 felony to severity level 5, nonperson felony; \$500,000 or more from drug severity level 1 felony to severity level 4, nonperson felony.

- Securities law changes (Sec. 3, p.3)

(as recommended by Commissioner Biggs in 2009)

(1) Amends K.S.A. 17-12a508 (a)(1), intentional securities violation, from a severity level 7, nonperson felony to severity level 8.

(2) Amends K.S.A. 17-12a508 (a)(2), conviction for an intentional violation of 17-12a501 or 17-12a502. New severity levels:

Loss of < \$25,000 = severity level 8, nonperson felony;

\$25,000 but less than \$50,000 = severity level 7, nonperson felony;

\$50,000 but less than \$75,000 = severity level 6, nonperson felony;

\$75,000 but less than \$100,000 = severity level 5, nonperson felony;

\$100,000 but less than \$250,000 = severity level 4, nonperson felony;

\$250,000 but less than \$1,000,000 = severity level 3, nonperson felony;

\$1,000,000 or more = severity level 2, nonperson felony.

(3) Amends K.S.A. 17-12a508(a)(4), intentional violation of cease and desist order, from severity level 8, nonperson felony to severity level 6.

- Probation supervision (Sec 38, p. 54)

Amends K.S.A. 21-4603d to add a new subsection requiring Court Services to supervise all Chapter 21 and 2nd time DUI class A misdemeanants placed on probation.

- Property offenses (Sec. 1, 2, many others)

Several amendments in chapter 21, as well as amendments to K.S.A. 9-2012, 16-305, 17-1311a, 19-3519, 39-717, 39-720, 40-2,118, 40-247, 40-5013, 44-5,125, 44-719, 47-1827 and 65-4167, creating different penalty levels based on the amount of loss:

Less than \$500 is a class B nonperson misdemeanor;

at least \$500 but less than \$1,000 is a class A nonperson misdemeanor;

at least \$1,000 but less than \$2,000 is a level 10, nonperson felony;

at least \$2,000 but less than \$25,000 is a level 9, nonperson felony;

at least \$25,000 but less than \$50,000 is a level 8, nonperson felony;


at least \$50,000 but less than \$75,000 is a level 7, nonperson felony;

at least \$75,000 but less than \$100,000 is a level 6 nonperson felony; and

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

MEMORANDUM

To: Chairperson Colloton and Members of the
House Corrections and Juvenile Justice Committee

From: Jason Thompson, Assistant Revisor 

Date: January 27, 2010

Subject: HB 2518-Balloon

Below is a brief explanation of the amendments in "HB 2518-Balloon.pdf."

- p. 7: Technical correction, 2007 to 2009.
- p. 18: Person felony should be nonperson felony, just like all other drug crimes.
- p. 37: Technical correction, 2007 to 2009.
- p. 69: Subsection (f)(2)(B) was inadvertently left out of the draft.
- p. 73: Current law, provision from K.S.A. 21-4705(c)(1), the drug grid, which is repealed in HB 2518.
- p. 74: Current law, provision from K.S.A. 21-4708(b)(2), related to drug grid, which is repealed in HB 2518.
- p. 83-84: Moves grid boxes 7-C and 7-D, as requested in proportionality proposal, inadvertently left out of the draft.
- p. 86: Special bond provision for current drug severity level 4 offenses, preserved for felony violations of K.S.A. 2009 Supp. 21-36a06 (possession).

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Attachment # 2

HOUSE BILL No. 2518

By Joint Committee on Corrections and Juvenile Justice Oversight

1-22

9
10 AN ACT concerning crimes, punishment and criminal procedure;
11 amending K.S.A. 9-2012, 16-305, 17-12a508, 17-1311a, 19-3519, 21-
12 2511, 21-3301, 21-3302, 21-3303, 21-3437, 21-3701, 21-3704, 21-3707,
13 21-3720, 21-3729, 21-3734, 21-3761, 21-3763, 21-3846, 21-3902, 21-
14 3904, 21-3905, 21-3910, 21-4018, 21-4111, 21-4503a, 21-4638, 21-
15 4643, 21-4703, 21-4706, 21-4707, 21-4709, 21-4710, 21-4711, 21-4720,
16 21-4722, 22-2908, 22-3303, 22-4906, 39-720 and 65-2859 and K.S.A.
17 2009 Supp. 21-36a01, 21-36a03, 21-36a05, 21-36a06, 21-36a07, 21-
18 36a08, 21-36a09, 21-36a10, 21-36a13, 21-36a14, 21-36a16, 21-4603d,
19 21-4611, 21-4619, 21-4704, 21-4717, 21-4729, 22-2802, 22-3412, 22-
20 3604, 22-3716, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376,
21 38-2377, 39-717, 40-247, 40-2,118, 40-5013, 44-5,125, 44-719, 47-
22 1827, 65-4167, 74-9101 and 75-5291 and repealing the existing sec-
23 tions; also repealing K.S.A. 21-4724 and K.S.A. 2009 Supp. 21-4705
24 and 21-4708.

25
26 *Be it enacted by the Legislature of the State of Kansas:*

27 Section 1. K.S.A. 9-2012 is hereby amended to read as follows: 9-
28 2012. ~~Every~~ (a) *It shall be unlawful for a president, director, cashier,*
29 *assistant cashier, teller, clerk, officer or agent of any bank or trust com-*
30 *pany who embezzles, abstracts with the intent to injure, defraud or de-*
31 *ceive any individual, bank, trust company, business entity or agent ap-*
32 *pointed to examine the affairs of the bank or trust company to:*

33 (1) *Embezzle, abstract or willfully misapplies misapply any of the*
34 *moneys, funds, securities or credits of the bank or trust company; or who*
35 *issues or puts;*

36 (2) *issue or put forth any certificate of deposit, draws draw any draft*
37 *or bill of exchange, makes make any acceptance, assigns assign any note,*
38 *bond, draft, bill of exchange, or who makes; or*

39 (3) *make use of the name of the bank or trust company in any manner*
40 *with intent in either case to injure or defraud the bank or trust company*
41 *or any individual, person, partnership, company or corporation, or to de-*
42 *ceive any officer of the bank or trust company or any agent appointed to*
43 *examine the affairs of the bank or trust company, and any person who*

HB2518-Balloon.pdf
RS - JThompson - 01/27/10

3-2

1 years of age; a violation of K.S.A. 21-3515, and amendments thereto,
2 when one of the parties involved is less than 18 years of age; or a violation
3 of K.S.A. 21-3517, and amendments thereto; including an attempt, con-
4 spiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or
5 21-3303 and amendments thereto, of any such offenses provided in this
6 subsection regardless of the sentence imposed, shall be required to sub-
7 mit specimens of blood or an oral or other biological sample authorized
8 by the Kansas bureau of investigation to the Kansas bureau of investiga-
9 tion in accordance with the provisions of this act, if such person is:

10 (1) Convicted as an adult or adjudicated as a juvenile offender be-
11 cause of the commission of a crime specified in subsection (a) on or after
12 the effective date of this act;

13 (2) ordered institutionalized as a result of being convicted as an adult
14 or adjudicated as a juvenile offender because of the commission of a crime
15 specified in subsection (a) on or after the effective date of this act; or

16 (3) convicted as an adult or adjudicated as a juvenile offender because
17 of the commission of a crime specified in this subsection before the ef-
18 fective date of this act and is presently confined as a result of such con-
19 viction or adjudication in any state correctional facility or county jail or is
20 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or
21 K.S.A. ~~2007~~ Supp. 38-2361, and amendments thereto.

2009

22 (b) Notwithstanding any other provision of law, the Kansas bureau of
23 investigation is authorized to obtain fingerprints and other identifiers for
24 all persons, whether juveniles or adults, covered by this act.

25 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide
26 such specimen or sample shall be ordered by the court to have such
27 specimen or sample collected within 10 days after sentencing or
28 adjudication:

29 (1) If placed directly on probation, that person must provide such
30 specimen or sample, at a collection site designated by the Kansas bureau
31 of investigation. Collection of specimens shall be conducted by qualified
32 volunteers, contractual personnel or employees designated by the Kansas
33 bureau of investigation. Failure to cooperate with the collection of the
34 specimens and any deliberate act by that person intended to impede,
35 delay or stop the collection of the specimens shall be punishable as con-
36 tempt of court and constitute grounds to revoke probation:

37 (2) if sentenced to the secretary of corrections, such specimen or
38 sample will be obtained as soon as practical upon arrival at the correc-
39 tional facility; or

40 (3) if a juvenile offender is placed in the custody of the commissioner
41 of juvenile justice, in a youth residential facility or in a juvenile correc-
42 tional facility, such specimen or sample will be obtained as soon as prac-
43 tical upon arrival.

2-2

1 ~~(n)~~ (o) "Person" means individual, corporation, government or gov-
2 ernmental subdivision or agency, business trust, estate, trust, partnership,
3 association or any other legal entity.

4 ~~(o)~~ (p) "Poppy straw" means all parts, except the seeds, of the opium
5 poppy, after mowing.

6 ~~(p)~~ (q) "Possession" means having joint or exclusive control over an
7 item with knowledge of and intent to have such control or knowingly
8 keeping some item in a place where the person has some measure of
9 access and right of control.

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

15 This definition shall not be construed as requiring that a defendant
16 actually be aware of the presence of a minor or a minor actually be aware
17 of the illegal activity.

18 ~~(q)~~ (s) "School property" means property upon which is located a
19 structure used by a unified school district or an accredited nonpublic
20 school for student instruction or attendance or extracurricular activities
21 of pupils enrolled in kindergarten or any of the grades one through 12.
22 This definition shall not be construed as requiring that school be in session
23 or that classes are actually being held at the time of the offense or that
24 children must be present within the structure or on the property during
25 the time of any alleged criminal act. If the structure or property meets
26 the above definition, the actual use of that structure or property at the
27 time alleged shall not be a defense to the crime charged or the sentence
28 imposed.

29 ~~(r)~~ (t) "Simulated controlled substance" means any product which
30 identifies itself by a common name or slang term associated with a con-
31 trolled substance and which indicates on its label or accompanying pro-
32 motional material that the product simulates the effect of a controlled
33 substance.

34 Sec. 12. K.S.A. 2009 Supp. 21-36a03 is hereby amended to read as
35 follows: 21-36a03. (a) It shall be unlawful for any person to manufacture
36 any controlled substance or controlled substance analog.

37 ~~(b) Violation or attempted violation of subsection (a) is a drug severity~~
38 ~~level 1 felony.~~

39 (b) (1) Except as provided further, violation or attempted violation
40 of subsection (a) is a severity level 3, ~~person~~ felony.

41 (2) Violation of subsection (a) is a severity level 1, ~~person~~ felony if
42 such substance being manufactured or attempted to be manufactured is
43 any methamphetamine as defined by subsection (d)(3) or (f) 1) of K.S.A.

nonperson

nonperson

- 1 65-4107, and amendments thereto.
- 2 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-
3 ments thereto, shall not apply to a violation of attempting to unlawfully
4 manufacture any controlled substance pursuant to this section.
- 5 ~~(c)~~ (d) For persons arrested and charged under this section, bail shall
6 be at least \$50,000 cash or surety, unless the court determines, on the
7 record, that the defendant is not likely to re-offend, the court imposes
8 pretrial supervision, or the defendant agrees to participate in a licensed
9 or certified drug treatment program.
- 10 ~~(d)~~ (e) The sentence of a person who violates this section shall not be
11 subject to statutory provisions for suspended sentence, community serv-
12 ice work or probation.
- 13 ~~(e)~~ (f) The sentence of a person who violates this section or K.S.A.
14 65-4159, prior to its repeal, shall not be reduced because these sections
15 prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-
16 4163, prior to such sections repeal, or K.S.A. 2009 Supp. 21-36a05, and
17 amendments thereto.
- 18 Sec. 13. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as
19 follows: 21-36a05. (a) It shall be unlawful for any person to ~~cultivate~~
20 distribute or possess with the intent to distribute any of the following
21 controlled substances or controlled substance analogs thereof:
- 22 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
23 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
24 thereto;
- 25 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
26 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
27 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- 28 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
29 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
30 65-4109, and amendments thereto;
- 31 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
32 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
33 4109, and amendments thereto;
- 34 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
35 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
36 thereto; or
- 37 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
38 4109, and amendments thereto.
- 39 (b) It shall be unlawful for any person to distribute or possess with
40 the intent to distribute a controlled substance or a controlled substance
41 analog designated in K.S.A. 65-4113, and amendments thereto.
- 42 ~~(c) (1) Violation of subsection (a) is a drug severity level 3 felony,~~
43 ~~except that:~~

H26

1 (d) Nothing in this section shall be construed as limiting a represen-
 2 tative or member of a labor organization which represents or is seeking
 3 to represent the employees of the railroad, from conducting such business
 4 as provided under the railway labor act (45 U.S.C. 151, et seq.) and other
 5 federal labor laws.

6 (e) As used in this section "railroad property" includes, but is not
 7 limited to, any train, locomotive, railroad car, caboose, rail-mounted work
 8 equipment, rolling stock, work equipment, safety device, switch, elec-
 9 tronic signal, microwave communication equipment, connection, railroad
 10 track, rail, bridge, trestle, right-of-way or other property that is owned,
 11 leased, operated or possessed by a railroad company.

12 Sec. 29. K.S.A. 21-3763 is hereby amended to read as follows: 21-
 13 3763. (a) Counterfeiting is intentionally manufacturing, using, displaying,
 14 advertising, distributing, offering for sale, selling or possessing with intent
 15 to sell or distribute any item or services bearing or identified by a coun-
 16 terfeit mark.

17 (b) A person having possession, custody or control of more than 25
 18 items bearing a counterfeit mark shall be presumed to possess such items
 19 with intent to sell or distribute.

20 (c) Any state or federal certificate of registration of any intellectual
 21 property shall be prima facie evidence of the facts stated therein.

22 (d) As used in this section:

23 (1) "Counterfeit mark" means:

24 (A) Any unauthorized reproduction or copy of intellectual property;
 25 or

26 (B) intellectual property affixed to any item knowingly sold, offered
 27 for sale, manufactured or distributed, or identifying services offered or
 28 rendered, without the authority of the owner of the intellectual property.

29 (2) "Intellectual property" means any trademark, service mark or
 30 trade name as such terms are defined in K.S.A. ~~2007~~ Supp. 81-202, and
 31 amendments thereto.

32 (3) "Retail value" means the counterfeiter's regular selling price for
 33 the item or service bearing or identified by the counterfeit mark. In the
 34 case of items bearing a counterfeit mark which are components of a fin-
 35 ished product, the retail value shall be the counterfeiter's regular selling
 36 price of the finished product on or in which the component would be
 37 utilized.

38 (4) The quantity or retail value of items or services shall include the
 39 aggregate quantity or retail value of all items bearing, or services identi-
 40 fied by, every counterfeit mark the defendant manufactures, uses, dis-
 41 plays, advertises, distributes, offers for sale, sells or possesses.

42 (e) (1) *Except as provided further*, counterfeiting of the retail value
 43 of less than \$1,000 is a class A nonperson misdemeanor.:

2009

1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid ~~for nondrug crimes~~. Sentences expressed in such grid
3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.

9 (d) The sentencing guidelines grid ~~for nondrug crimes~~ as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

29 (f) (1) Each grid block states the presumptive sentencing range for
30 an offender whose crime of conviction and criminal history place such
31 offender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be
33 nonimprisonment.

34 (2) (A) If an offense is classified in a grid block above the disposi-
35 tional line, the presumptive disposition shall be imprisonment. If an of-
36 fense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
37 an optional nonprison sentence upon making the following findings on
38 the record:

39 ~~(1)~~ (i) An appropriate treatment *or behavior modification* program
40 exists which is likely to be more effective than the presumptive prison
41 term in reducing the risk of offender recidivism; and

42 ~~(2)~~ (ii) the recommended ~~treatment~~ program is available and the of-
43 fender can be admitted to such program within a reasonable period of

2.7

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

4 ~~(B)~~ Any decision made by the court regarding the imposition of an
5 optional nonprison sentence if the offense is classified in grid blocks 5-
6 H, 5-I or 6-G shall not be considered a departure and shall not be subject
7 to appeal.

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

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

26 (i) The sentence for the violation of the felony provision of K.S.A. 8-
27 1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)
28 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
29 thereto, shall be as provided by the specific mandatory sentencing
30 requirements of that section and shall not be subject to the provisions of
31 this section or K.S.A. 21-4707 and amendments thereto. If because of the
32 offender's criminal history classification the offender is subject to pre-
33 sumptive imprisonment or if the judge departs from a presumptive pro-
34 bation sentence and the offender is subject to imprisonment, the provi-
35 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
36 apply and the offender shall not be subject to the mandatory sentence as
37 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
38 the provisions of any other section, the term of imprisonment imposed
39 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)
40 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
41 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
42 be served in a state facility in the custody of the secretary of corrections,
43 except that the term of imprisonment for felony violations of K.S.A. 8-

(C)

(B) Any party requesting the nonprison sentence be served by attending and successfully completing a treatment or behavioral modification program shall notify the court and opposing counsel prior to sentencing of the proposed program. The presentence investigation report by the court services officer shall verify the availability of the program and the adequacy of the provider of such program and the treatment or behavioral modification plan.

1 be subject to appeal.

2 (r) *If an offender is convicted of a violation of article 36a of chapter*
3 *21 of the Kansas Statutes Annotated, and amendments thereto, and such*
4 *offender's crime of conviction and criminal history place such offender in*
5 *a grid block with a maximum presumptive sentence greater than 204*
6 *months, such offender shall not be sentenced to a term of imprisonment*
7 *greater than 204 months. Such sentence shall not be considered a depart-*
8 *ure and shall not be subject to appeal.*

9 (s) (1) *Subject to the provisions of subsection (r), the sentence for a*
10 *person who is convicted of a drug offense who has been convicted of:*

11 (A) *One prior drug offense, or any substantially similar offense from*
12 *another jurisdiction, shall be presumed imprisonment and may be up to*
13 *double the maximum duration of the presumptive imprisonment term; or*

14 (B) *two or more prior drug offenses, or any substantially similar of-*
15 *fense from another jurisdiction, shall be presumed imprisonment and may*
16 *be up to triple the maximum duration of the presumptive imprisonment*
17 *term.*

18 (2) *Such sentence shall not be considered a departure and shall not*
19 *be subject to appeal.*

20 (3) *As used in this subsection, "drug offense" means a violation of*
21 *subsection (d)(1)(B), (d)(1)(C), (d)(1)(D), (d)(2)(B), (d)(2)(C), (d)(2)(D),*
22 *(d)(3)(B), (d)(3)(C), (d)(3)(D), (d)(4)(B), (d)(4)(C), or (d)(4)(D) of K.S.A.*
23 *21-36a05, and amendments thereto.* ←

24 Sec. 45. K.S.A. 21-4706 is hereby amended to read as follows: 21-
25 4706. (a) For crimes committed on or after July 1, 1993, the sentences
26 of imprisonment shall represent the time a person shall actually serve,
27 subject to a reduction of up to 15% of the primary sentence for good
28 time as authorized by law. For crimes committed on or after January 1,
29 2008, the sentences of imprisonment shall represent the time a person
30 shall actually serve, subject to a reduction of up to 20% of the primary
31 sentence for good time for drug severity level 3 or 4, *prior to such level's*
32 *repeal, or non-drug* severity level 7 through 10 crimes and a reduction for
33 program credit as authorized by K.S.A. 21-4722, and amendments
34 thereto.

35 (b) The sentencing court shall pronounce sentence in all felony cases

36 (c) Violations of K.S.A. 21-3401, 21-3439, 21-3449, 21-3450 and 21-
37 3801, and amendments thereto, are off-grid crimes for the purpose of
38 sentencing. Except as otherwise provided by K.S.A. 21-4622 through 21-
39 4627, and 21-4629 through 21-4631, and amendments thereto, the sen-
40 tence shall be imprisonment for life and shall not be subject to statutory
41 provisions for suspended sentence, community service or probation

42 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-
43 3513 and 21-3516, and amendments thereto, if the offender is 18 years

Current law
(t) The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

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1 of age or older and the victim is under 14 years of age, such violations
2 are off-grid crimes for the purposes of sentencing. Except as provided in
3 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-
4 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

5 Sec. 46. K.S.A. 21-4707 is hereby amended to read as follows: 21-
6 4707. (a) The crime severity scale contained in the sentencing guidelines
7 grid ~~for nondrug crimes~~ as provided in K.S.A. 21-4704 and amendments
8 thereto consists of 10 levels of crimes. Crimes listed within each level are
9 considered to be relatively equal in severity. Level 1 crimes are the most
10 severe crimes and level 10 crimes are the least severe crimes. If a person
11 is convicted of two or more crimes, then the severity level shall be de-
12 termined by the most severe crime of conviction.

13 (b) When the statutory definition of a crime includes a broad range
14 of criminal conduct, the crime may be subclassified factually in more than
15 one crime category to capture the full range of criminal conduct covered
16 by the crime.

17 (c) The provisions of this subsection shall be applicable with regard
18 to ranking offenses according to the crime severity scale as provided in
19 this section:

20 (1) When considering an unranked offense in relation to the crime
21 severity scale, the sentencing judge should refer to comparable offenses
22 on the crime severity scale.

23 (2) Except for off-grid felony crimes, which are classified as person
24 felonies, all felony crimes omitted from the crime severity scale shall be
25 considered nonperson felonies.

26 (3) All unclassified felonies shall be scored as level 10 nonperson
27 crimes.

28 (4) The offense severity level of a crime for which the court has ac-
29 cepted a plea of guilty or nolo contendere pursuant to K.S.A. 22-3210
30 and amendments thereto, or of a crime of which the defendant has been
31 convicted shall not be elevated or enhanced for sentencing purposes as a
32 result of the discovery of prior convictions or any other basis for such
33 enhancement subsequent to the acceptance of the plea or conviction. Any
34 such prior convictions discovered after the plea has been accepted by the
35 court shall be counted in the determination of the criminal history of the
36 offender.

37 Sec. 47. K.S.A. 21-4709 is hereby amended to read as follows: 21-
38 4709. The criminal history scale is represented in abbreviated form on
39 the horizontal axis of the sentencing guidelines grid ~~for nondrug crimes~~
40 ~~and the sentencing guidelines grid for drug crimes~~. The relative severity
41 of each criminal history category decreases from left to right on ~~such grids~~
42 ~~the grid~~. Criminal history category A is the most serious classification.
43 Criminal history category I is the least serious classification. The criminal

Current law

(d) No plea bargaining agreement may be entered into whereby the prosecutor agrees to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a06, and amendments thereto, or agrees to exclude any prior conviction from the defendant's criminal history.

3-10

1 calculations:

2 (A) A system shall be developed whereby program credits may be
3 earned by inmates for the successful completion of a general education
4 diploma, a technical or vocational training program, a substance abuse
5 treatment program or any other program designated by the secretary
6 which has been shown to reduce offender's risk after release; and

7 (B) the amount of time which can be earned and retained by an
8 inmate for the successful completion of programs and subtracted from
9 any sentence is limited to not more than 60 days.

10 (2) Any time which is earned and subtracted from the prison part of
11 the sentence of any inmate pursuant to program credit calculation shall
12 be added to such inmate's postrelease supervision obligation, if
13 applicable.

14 (3) When separate sentences of imprisonment for different crimes
15 are imposed on a defendant on the same date, a defendant shall only be
16 eligible for program credits if such crimes are a ~~non~~drug severity level 4
17 through 10 or a drug severity level 3 or 4, *prior to such level's repeal*.

18 (4) Program credits shall not be earned by any offender successfully
19 completing a sex offender treatment program.

20 (5) The secretary of corrections is hereby authorized to adopt rules
21 and regulations to carry out the provisions of this subsection regarding
22 program credit calculations. Such rules and regulations shall provide cir-
23 cumstances upon which an inmate may earn program credits and for the
24 forfeiture of earned credits and such circumstances may include factors
25 substantially related to program participation and conduct.

26 (6) The secretary of corrections shall report to the Kansas sentencing
27 commission and the Kansas reentry policy council the data on the pro-
28 gram credit calculations.

29 Sec. 53. K.S.A. 2009 Supp. 21-4729 is hereby amended to read as
30 follows: 21-4729. (a) There is hereby established a nonprison sanction of
31 certified drug abuse treatment programs for certain offenders who are
32 sentenced on or after November 1, 2003. Placement of offenders in cer-
33 tified drug abuse treatment programs by the court shall be limited to
34 placement of adult offenders, convicted of a felony violation of K.S.A. 65-
35 4160 or 65-4162, prior to such ~~sections~~ *section's* repeal, or K.S.A. 2009
36 Supp. 21-36a06, and amendments thereto:

37 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
38 4-I of the sentencing guidelines grid for drug crimes, *prior to such grid's*
39 *repeal, or classified in grid blocks 7-E, 7-F, 7-G, 7-H or 7-I of the sen-*
40 *tencing guidelines grid* and such offender has no felony conviction of
41 K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to such ~~sec-~~
42 ~~tions~~ *section's* repeal, or K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-
43 36a16, and amendments thereto, or any substantially similar offense from

7-C, 7-D,

Sentencing Commission

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1 another jurisdiction; or

2 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
3 the sentencing guidelines grid for drug crimes, prior to such grid's repeal,
4 or classified in grid blocks 7-A, ~~7-B, 7-C or 7-D~~ of the sentencing guide-
5 lines grid and such offender has no felony conviction of K.S.A. 65-4142,
6 65-4159, 65-4161, 65-4163 or 65-4164, prior to such sections section's
7 repeal, or K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a16, and
8 amendments thereto, or any substantially similar offense from another
9 jurisdiction, if such person felonies committed by the offender were se-
10 verity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines
11 grid for non-drug crimes and the court finds and sets forth with particu-
12 larity the reasons for finding that the safety of the members of the public
13 will not be jeopardized by such placement in a drug abuse treatment
14 program.

or

strike ", 7-C or 7-D"

15 (b) As a part of the presentence investigation pursuant to K.S.A. 21-
16 4714, and amendments thereto, offenders who meet the requirements of
17 subsection (a) shall be subject to:

18 (1) A drug abuse assessment which shall include a clinical interview
19 with a mental health professional and a recommendation concerning drug
20 abuse treatment for the offender; and

21 (2) a criminal risk-need assessment, unless otherwise specifically or-
22 dered by the court. The criminal risk-need assessment shall assign a high
23 or low risk status to the offender.

24 (c) The sentencing court shall commit the offender to treatment in a
25 drug abuse treatment program until determined suitable for discharge by
26 the court but the term of treatment shall not exceed 18 months.

27 (d) Offenders shall be supervised by community correctional services.

28 (e) Placement of offenders under subsection (a)(2) shall be subject
29 to the departure sentencing statutes of the Kansas sentencing guidelines
30 act.

31 (f) (1) Offenders in drug abuse treatment programs shall be dis-
32 charged from such program if the offender:

33 (A) Is convicted of a new felony; or

34 (B) has a pattern of intentional conduct that demonstrates the of-
35 fender's refusal to comply with or participate in the treatment program,
36 as established by judicial finding.

37 (2) Offenders who are discharged from such program shall be subject
38 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and
39 amendments thereto.

40 (g) As used in this section, "mental health professional" includes li-
41 censed social workers, licensed psychiatrists, licensed psychologists, li-
42 censed professional counselors or registered alcohol and other drug abuse
43 counselors licensed or certified as addiction counselors who have been

1 certified by the secretary of corrections to treat offenders pursuant to
2 K.S.A. 2009 Supp. 75-52,144, and amendments thereto.

3 (h) (1) The following offenders who meet the requirements of sub-
4 section (a) shall not be subject to the provisions of this section and shall
5 be sentenced as otherwise provided by law:

6 (A) Offenders who are residents of another state and are returning
7 to such state pursuant to the interstate corrections compact or the inter-
8 state compact for adult offender supervision; or

9 (B) offenders who are not lawfully present in the United States and
10 being detained for deportation.

11 (2) Such sentence shall not be considered a departure and shall not
12 be subject to appeal.

13 Sec. 54. K.S.A. 2009 Supp. 22-2802 is hereby amended to read as
14 follows: 22-2802. (1) Any person charged with a crime shall, at the per-
15 son's first appearance before a magistrate, be ordered released pending
16 preliminary examination or trial upon the execution of an appearance
17 bond in an amount specified by the magistrate and sufficient to assure
18 the appearance of such person before the magistrate when ordered and
19 to assure the public safety. If the person is being bound over for a felony,
20 the bond shall also be conditioned on the person's appearance in the
21 district court or by way of a two-way electronic audio-video communi-
22 cation as provided in subsection (14) at the time required by the court to
23 answer the charge against such person and at any time thereafter that the
24 court requires. Unless the magistrate makes a specific finding otherwise,
25 if the person is being bonded out for a person felony or a person mis-
26 demeanor, the bond shall be conditioned on the person being prohibited
27 from having any contact with the alleged victim of such offense for a
28 period of at least 72 hours. The magistrate may impose such of the fol-
29 lowing additional conditions of release as will reasonably assure the ap-
30 pearance of the person for preliminary examination or trial:

31 (a) Place the person in the custody of a designated person or organ-
32 ization agreeing to supervise such person;

33 (b) place restrictions on the travel, association or place of abode of
34 the person during the period of release;

35 (c) impose any other condition deemed reasonably necessary to as-
36 sure appearance as required, including a condition requiring that the
37 person return to custody during specified hours;

38 (d) place the person under a house arrest program pursuant to K.S.A.
39 21-4603b, and amendments thereto; or

40 (e) place the person under the supervision of a court services officer
41 responsible for monitoring the person's compliance with any conditions
42 of release ordered by the magistrate.

43 (2) In addition to any conditions of release provided in subsection (1),

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1 for any person charged with a felony, the magistrate may order such
2 person to submit to a drug abuse examination and evaluation in a public
3 or private treatment facility or state institution and, if determined by the
4 head of such facility or institution that such person is a drug abuser or
5 incapacitated by drugs, to submit to treatment for such drug abuse, as a
6 condition of release.

7 (3) The appearance bond shall be executed with sufficient solvent
8 sureties who are residents of the state of Kansas, unless the magistrate
9 determines, in the exercise of such magistrate's discretion, that requiring
10 sureties is not necessary to assure the appearance of the person at the
11 time ordered.

12 (4) A deposit of cash in the amount of the bond may be made in lieu
13 of the execution of the bond pursuant to paragraph (3). Except as pro-
14 vided in paragraph (5), such deposit shall be in the full amount of the
15 bond and in no event shall a deposit of cash in less than the full amount
16 of bond be permitted. Any person charged with a crime who is released
17 on a cash bond shall be entitled to a refund of all moneys paid for the
18 cash bond, after deduction of any outstanding restitution, costs, fines and
19 fees, after the final disposition of the criminal case if the person complies
20 with all requirements to appear in court. The court may not exclude the
21 option of posting bond pursuant to paragraph (3).

22 (5) Except as provided further, the amount of the appearance bond
23 shall be the same whether executed as described in subsection (3) or
24 posted with a deposit of cash as described in subsection (4). When the
25 appearance bond has been set at \$2,500 or less and the most serious
26 charge against the person is a misdemeanor, a severity level 8, 9 or 10
27 nonperson felony, a drug severity level 4 felony or a violation of K.S.A.
28 8-1567, and amendments thereto, the magistrate may allow the person
29 to deposit cash with the clerk in the amount of 10% of the bond, provided
30 the person meets at least the following qualifications:

- 31 (A) Is a resident of the state of Kansas;
- 32 (B) has a criminal history score category of G, H or I;
- 33 (C) has no prior history of failure to appear for any court appearances;
- 34 (D) has no detainer or hold from any other jurisdiction;
- 35 (E) has not been extradited from, and is not awaiting extradition to,
36 another state; and
- 37 (F) has not been detained for an alleged violation of probation.

38 (6) In the discretion of the court, a person charged with a crime may
39 be released upon the person's own recognizance by guaranteeing pay-
40 ment of the amount of the bond for the person's failure to comply with
41 all requirements to appear in court. The release of a person charged with
42 a crime upon the person's own recognizance shall not require the deposit
43 of any cash by the person.

Sentencing Comm

or a felony violation of
K.S.A. 2009 Supp.
21-36a06, and
amendments thereto,

,

SENTENCING RANGE - NONDRUG OFFENSES

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

Probation Terms are:

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

Postrelease Supervision Terms are:

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

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

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

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

SENTENCING RANGE – DRUG OFFENSES

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

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-2

18 months (up to) for felonies classified in Severity Level 3
and, on and after July 1, 2009, felony cases sentenced pursuant to K.S.A. 21-4729 (SB 123)

12 months (up to) for felonies classified in Severity Level 4

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-2

24 months for felonies classified in Severity Level 3

12 months for felonies classified in Severity Level 4 except for some
(2009 HB 2236 Sec. 6, K.S.A. 65-4160 and 65-4162) offenses on and after 11/01/03.

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

24 months for felonies classified in Severity Levels 1-3

12 months for felonies classified in Severity Level 4

**SUMMARY OF 2010 PROPORTIONALITY RECOMMENDATIONS
KANSAS SENTENCING COMMISSION PROPORTIONALITY COMMITTEE**

ISSUE	RATIONALE OR RESULT
SEX CRIMES	NO CHANGES TO CHAPTER 21, ARTICLE 35 ARE CONTEMPLATED AS PART OF THIS PROPOSAL.
SPECIAL RULES	NO ELIMINATION OF SPECIAL RULES IS CONTEMPLATED AS PART OF THIS PROPOSAL.
A conviction for a medium, large or super felony distribution, with a criminal history of one prior medium, large or super distribution, would result in a sentence up to double the applicable grid box sentence; such a conviction with a criminal history of two or more prior medium, large or super distributions, would result in a sentence up to triple the applicable grid box sentence.	Provides an enhancement for multiple convictions.
SENTENCING GRIDS	
Merge drug sentences onto the existing nondrug grid. Place a sentence cap on drug offenses at 204 months. Transfer: 1D to N2; 2D to N4; 3D to N6; 4D to N7 (includes small sale and felony possession).	<ol style="list-style-type: none"> 1. Reflects sentencing patterns and special rules adopted by the Legislature since guideline sentencing implemented. 2. Increases the number of levels for drug sentencing from 4 to 10. 3. Allows proportional comparison of drug and nondrug penalties.
DRUGS	<ol style="list-style-type: none"> 1. Current repeat drug offenses carry longer presumptive sentences than repeat offenses for more severe person felonies. 2. Presently, 7 drug offenses carry presumptive prison sentences that are longer than many violent person felonies for a first offense.
Manufacturing, presently at drug severity level 1, would be amended such that manufacturing methamphetamine would be a level 1 nonperson felony. Manufacturing any other drug would be a level 3 nonperson felony.	<ol style="list-style-type: none"> 1. Recognizes the potential danger and resulting harm meth manufacturing has on the community. 2. Level 1 is comparable to heat of passion murder and rape.
Sale, distribution, and possession with intent to distribute are set at 4 levels based on quantity of drugs possessed to be sold or actually sold (FY2007 sentencing data shows departure rates of 88% on current level 1 drug grid, 66% on current level 2 drug grid. 80% of current level 3 drug sentences (border box) are placed on probation.	<ol style="list-style-type: none"> 1. Small quantity, level 7 nonperson felony. 2. Medium quantity, level 6 nonperson felony. 3. Large quantity, level 4 nonperson felony. 4. Super quantity, level 2 nonperson felony. <p>Differentiates the act of selling small quantities from larger quantities for wholesale distribution and to better reflect levels of harm to the community.</p>

KANSAS SENTENCING COMMISSION 2010 PROPORTIONALITY RECOMMENDATIONS

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<p>Add the wording “or distribution within the presence of a minor” to the enhancement “distribution within 1,000 feet of a school”. Either of these enhancements would elevate the sentence for distribution by 1 severity level.</p>	<ol style="list-style-type: none"> 1. This recommendation provides for an enhanced sentence when children are in the presence of this type of activity. 2. Enhancement results in a sentence at severity level 1 for a super sale; severity level 3 for a large sale; severity level 5 for a medium sale; and severity level 6 for a small sale. 		
<p>Weight to be determined by the product as packaged for distribution.</p>	<p>Drug purity would not be considered.</p>		
<p>Mandatory treatment program for personal use possession (Senate Bill 123) remains intact to include criminal history categories 7-C and 7D. Exclusion of offenders having SL 1 – 7 person crimes in their criminal history remain intact.</p>	<p>The program works well in the communities, offenders get treatment, and public safety is maintained.</p>		
<p>Receiving or acquiring proceeds from drugs would be amended based upon presently defined amounts: 1) proceeds of \$1 – \$4,999 from drug severity level 4 to merged severity level 9; and 2) proceeds of \$5,000 - \$100,000 from drug severity level 3 to merged severity level 6.</p>	<p>Amounts and penalties remain roughly the same as presently.</p>		
<p>Possession of precursors would be amended from drug severity level 2 to merged severity level 4.</p>	<p>Penalty remains roughly the same as presently.</p>		
<p>SECURITIES</p>	<p>2009 HB 2332, as amended by the House Committee</p>		
<p>Securities – intentional violation presently at SL 7 amended to SL 8.</p>	<p>As requested by the Securities Commissioner, to provide a higher level of accountability than at present.</p>		
<table border="0"> <tr> <td data-bbox="121 867 604 1127"> <p>K. S. A. 17-12a501 or 17-12a502 Intentional Violation</p> <p>Presently: Loss of < \$25,000 = SL 7N \$25,000 but < \$100,000 = SL 5N \$100,000 or more = SL 4N</p> </td> <td data-bbox="604 867 1108 1127"> <p>New severity levels: Loss of < \$25,000 = SL 8N \$25,000 but less than \$50,000 = SL 7N \$50,000 but less than \$75,000 = SL 6N \$75,000 but less than \$100,000 = SL 5N \$100,000 but less than \$250,000 = SL 4N \$250,000 but less than \$1M = SL 3N \$1M or more = SL 2N</p> </td> </tr> </table>	<p>K. S. A. 17-12a501 or 17-12a502 Intentional Violation</p> <p>Presently: Loss of < \$25,000 = SL 7N \$25,000 but < \$100,000 = SL 5N \$100,000 or more = SL 4N</p>	<p>New severity levels: Loss of < \$25,000 = SL 8N \$25,000 but less than \$50,000 = SL 7N \$50,000 but less than \$75,000 = SL 6N \$75,000 but less than \$100,000 = SL 5N \$100,000 but less than \$250,000 = SL 4N \$250,000 but less than \$1M = SL 3N \$1M or more = SL 2N</p>	<p>As requested by the Securities Commissioner, to provide a higher level of accountability than at present; Values are generally grouped the same as other property crimes with penalty at 1 severity level higher, except that more severe penalties are provided for values over \$100,000.</p>
<p>K. S. A. 17-12a501 or 17-12a502 Intentional Violation</p> <p>Presently: Loss of < \$25,000 = SL 7N \$25,000 but < \$100,000 = SL 5N \$100,000 or more = SL 4N</p>	<p>New severity levels: Loss of < \$25,000 = SL 8N \$25,000 but less than \$50,000 = SL 7N \$50,000 but less than \$75,000 = SL 6N \$75,000 but less than \$100,000 = SL 5N \$100,000 but less than \$250,000 = SL 4N \$250,000 but less than \$1M = SL 3N \$1M or more = SL 2N</p>		
<p>Intentional violation of cease and desist order, presently at SL 8 amended to SL 6.</p>			
<p>Presumptive prison remains intact for crimes resulting in a loss of \$25,000 or more.</p>			
<p>SENTENCING STATUTES</p>			
<p>Court Services should supervise all Chapter 21 and 2nd time DUI class A misdemeanants who are not sentenced to jail.</p>	<p>Offenders should be supervised while on probation. Class A offenses are often enhanced from class B offenses. Supervision at this level may prevent further criminal activity and subsequent enhancement to a felony.</p>		

KANSAS SENTENCING COMMISSION 2010 PROPORTIONALITY RECOMMENDATIONS

6-2

PROPERTY OFFENSES	
Up to \$499.99, a class B nonperson misdemeanor; up to \$999.99, a class A nonperson misdemeanor; up to \$1,999.99, a level 10 nonperson felony; up to \$24,999.99, a level 9 nonperson felony; up to \$49,999.99, a level 8 nonperson felony; up to \$74,999.99, a level 7 nonperson felony; up to \$99,999.99, a level 6 nonperson felony; and \$100,000 and higher, a level 5 nonperson felony.	Standardization of all theft statutes so that theft, no matter how it is committed, has a uniform and proportional punishment.



KANSAS

KANSAS SENTENCING COMMISSION

MARK PARKINSON, GOVERNOR

Honorable Ernest L. Johnson, Chair
Honorable Richard M. Smith, Vice Chair
Helen Pedigo, Executive Director

MEMORANDUM

To: Duane Goossen, Secretary, Department of Administration

Attn: Brendan Yorkey

From: Helen Pedigo, Executive Director

Date: January 27, 2010

Re: Prison Bed Impact, Revised HB 2518 Proportionality

Impact of the Bill:

- If present departure practice is considered:
 - This bill will result in 48 prison admission reductions by the end of FY 2011 and 44 prison admission reductions by the end of FY 2020.
 - The bed impact of this proposal will result in a reduction of 21 prison beds by the end of FY 2011 and 28 additional prison beds by the end of FY 2020.
- If present departure practice is NOT considered:
 - This bill will reduce 11 prison admissions by the end of FY 2011 and 6 prison admissions by the end of FY 2020.
 - This proposal will result in 17 additional prison beds by the end of FY 2011 and 772 additional prison beds by the end of FY 2020.

Impact on the SB 123 Budget of the Commission:

- This bill will result in 224 additional offenders in SB 123 treatment at the end of FY 2011 and 268 additional offenders in treatment by the end of FY 2020. The agency would need to hire the services of a part-time office assistant to help with the processing of additional invoices as currently there is only one staff member processing over 14,000 invoices per year. The estimated cost of salary and certain benefits would be \$22,500.
- The additional cost of providing treatment in the SB 123 program would be approximately \$712,768 in year one and ranging to \$852,776 in year 10.
- A total impact is expected on the SB 123 Budget of \$735,268 in year 1.

Bill Summary: This bill would merge drug sentences onto the existing nondrug grid and provide penalties for drug distribution according to four quantity levels, as recommended by the Recodification Commission, with the following additional provisions:

1. Add special sentencing rules for drugs: conviction of a second distribution would result in a sentence of up to double the maximum sentence contained in the applicable grid box; a third

- or subsequent distribution would result in a sentence of up to triple the maximum sentence contained in the applicable grid box.
2. Merge drug sentences onto the existing nondrug grid, generally transferring sentences presently at 1D to N2; 2D to N4; 3D to N6; 4D to N7.
 3. Place a sentence cap on drug offenses at 204 months.
 4. Set two sentencing levels for drug manufacture - methamphetamine at N1, and any other drug at N3.
 5. Add the wording "or distribution within the presence of a minor" to the sentence enhancement "distribution within 1,000 feet of a school" in KSA 21-36a05, 21-36a10 and 21-36a13. Add corresponding definition in 21-36a01.
 6. Amend KSA 21-4729 (SB 123) to include criminal history categories 7-C and 7-D. Exclusion of offenders having SL 1 – 7 person crimes in their criminal history would remain intact.
 7. Amend KSA 21-36a16 (receiving or acquiring proceeds from drugs): Proceeds of < \$5,000 from D4 to N9; proceeds of at least \$5,000 but less than \$100,000 from D3 to N6; proceeds of at least \$100,000 but less than \$500,000 from D2 to N5; proceeds of \$500,000 or more from D1 to N4.
 8. Amend Securities provisions as they appeared in HB 2332 as it came out of this committee during the 2009 Legislative Session.
 9. Require Court Services to supervise Chapter 21 and 2nd time DUI class A misdemeanants, who are not sentenced to jail; and
 10. Amend property offenses so that all have the same dollar thresholds and penalties.

Key Assumptions

- The target population in this bill includes all offenders who are convicted of the crimes as defined in the Kansas criminal codes based on the merged sentencing grid except nongrid and offgrid offenders.
- Projected admissions to prison for the target offenders is assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2009 by the Kansas Sentencing Commission.
- The percentage of sentence served in prison for severity levels 1 to 6 offenders is assumed to be 85% less jail credit and good time.
- The percentage of sentence served in prison for severity levels 7 to 10 offenders is assumed to be 80% less jail credit and good time
- The good time percentage rate is consistent with the projections released in August 2009.
- It is assumed that the new policy effective date starts on July 1, 2010.

Findings: In FY 2009, 9,438 offenders were convicted of one or more crimes as defined in the Kansas criminal codes except nongrid and offgrid offenders. Of this number,

- 2,355 (24.9%) were sentenced to prison,
- 4 (0.0%) were sentenced to county jail,
- 5,911 (62.6%) were sentenced to probation and
- 1,168 (12.4%) were sentenced to SB 123 drug treatment.

Impact Assessment

Scenario One: No Downward Departures Applied to Drug Sentences

- **Impact on Prison Admissions:** The impact of this bill will reduce 11 prison admissions by the end of FY 2011 and 6 prison admissions by the end of FY 2020.

Prison Admission Assessment with No Downward Departures Applied

Fiscal Year	Current Policy	Admission after Merge	Admission Decrease/Increase
2011	551	540	-11
2012	562	585	23
2013	573	596	23
2014	585	578	-7
2015	596	606	10
2016	608	610	2
2017	620	621	1
2018	633	641	8
2019	645	667	22
2020	658	652	-6

- **Impact on Prison Beds:** The impact of this proposal will result in 17 additional prison beds by the end of FY 2011 and 772 additional prison beds by the end of FY 2020.

Prison Bed Space Assessment with No Downward Departures Applied

Fiscal Year	Current Policy	Beds Needed after Merge	Additional Beds Needed
2011	511	528	17
2012	858	955	97
2013	1,067	1,237	170
2014	1,151	1,410	259
2015	1,183	1,594	411
2016	1,246	1,717	471
2017	1,303	1,853	550
2018	1,331	2,022	691
2019	1,358	2,119	761
2020	1,419	2,191	772

Scenario Two: Current Downward Departures Applied to Drug Sentences

- **Impact on Prison Admissions:** The impact of this proposal will result in 48 prison admission reductions by the end of FY 2011 and 44 prison admission reductions by the end of FY 2020.

Prison Admission Assessment with Downward Departures Applied

Fiscal Year	Current Policy	Admission after Merge	Admission Reduced
2011	551	503	-48
2012	562	526	-36
2013	573	544	-29
2014	585	544	-41
2015	596	566	-30
2016	608	573	-35
2017	620	559	-61
2018	633	545	-88
2019	645	621	-24
2020	658	614	-44

- **Impact on Prison Beds:** The impact of this proposal will result in a reduction of 21 prison beds by the end of FY 2011 and 28 additional prison beds by the end of FY 2020.

Prison Bed Space Assessment with Downward Departures Applied

Fiscal Year	Current Policy	Beds Needed after Merge	Beds Decrease/Increase
2011	511	490	-21
2012	858	845	-13
2013	1,067	1,048	-19
2014	1,151	1,183	32
2015	1,183	1,253	70
2016	1,246	1,322	76
2017	1,303	1,323	20
2018	1,331	1,341	10
2019	1,358	1,408	50
2020	1,419	1,447	28

- **Impact on the workload of the Commission:** The impact of this bill will result in 224 additional SB 123 treatment offenders in the end of FY 2011 and 268 by the end of FY 2020.

Fiscal Year	Additional SB 123 Drug treatment Offenders
2011	224
2012	228
2013	233
2014	238
2015	242
2016	247
2017	252
2018	257
2019	262
2020	268

- **Impact on the SB 123 Budget of the Commission:** This bill will result in an approximate 19% increase in invoices for payments, assuming that all of the additional offenders would actually participate in substance abuse treatment. If it is assumed that LSI-R level 4 offenders with low substance abuse addiction would not be provided treatment, then an additional 192 offenders would be in the program for an increase in invoice payments of 2,304 for FY 2011. The agency would need to hire the services of a part-time office assistant to help with the processing of the additional invoices as currently there is only one staff member processing over 14,000 invoices per year. The marginal increase of subsequent years could be handled by additional part-time position and current staff. The estimated cost of salary and certain benefits would be \$22,500.
- **The additional cost of providing treatment would impact the SB 123 Budget:**

Fiscal Year	Additional SB 123 Drug Treatment Offenders	Additional SB 123 Offenders likely to get treatment	Average Cost Per Offender*	Estimated Annual Cost
2011	224	193	\$3,700	\$712,768
2012	228	196	\$3,700	\$725,496
2013	233	200	\$3,700	\$741,406
2014	238	205	\$3,700	\$757,316
2015	242	208	\$3,700	\$770,044
2016	247	212	\$3,700	\$785,954
2017	252	217	\$3,700	\$801,864
2018	257	221	\$3,700	\$817,774
2019	262	225	\$3,700	\$833,684
2020	268	230	\$3,700	\$852,776

*Assuming that the average cost remains constant



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TO: Representative Colloton, Chair
The Honorable Representatives of the Committee on Corrections and
Juvenile Justice

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
Past President, KCDA

RE: House Bill 2518

DATE: January 27, 2010

Chairman Colloton and Members of the Committee:

Thank you for giving me the opportunity to testify regarding House Bill 2518. This legislation is similar to House Bill 2332, which was introduced last year. I submitted testimony on that legislation, and I have been asked to submit testimony on this legislation.

The KCDA was unable to obtain a copy of this legislation with adequate time to fully review the legislation. The Board determined that it could not support the legislation until a complete review could be accomplished. However, we did identify a few areas of concern we would like to bring to your attention.

Last year we expressed a concern regarding the disparity in penalties between crimes involving heroin and crimes involving other drugs, primarily methamphetamine and cocaine. We continue to express our concern on this issue. Most Kansas jurisdictions do not have serious issues with heroin; we do have serious problems with methamphetamine and cocaine. It makes no sense to promulgate criminal sanctions which do not reflect the issues facing Kansas. The fact that methamphetamine and cocaine are the substances creating a scourge in our communities cannot be denied, and passing legislation which addresses heroin as if it is the major drug problem in our communities is not reflective of the reality of drug trafficking and usage in Kansas.. Prosecutors need tools to crack down on the distribution of methamphetamine and cocaine, and this legislation fails to provide us with those tools.

Corrections and Juvenile Justice

Date: 1-27-10

Attachment # 8

We continue to have a great concern with the portion of the proposed legislation that purports to determine by legislative fiat how a jury will determine the issue of presumptive amounts needed to suggest a presumption for possession of certain controlled substances with the intent to sell. Cocaine, and to a lesser extent methamphetamine, can be sold by either weight or dosage unit. Defining the presumptions for these drugs based on weight only ignores the realities of drug distribution. Additionally, the amounts fixed by the legislation, which establish a presumption with intent to sell, do not reflect the realities of street sales. For example, marijuana sells for about \$50 to \$100 per ounce on the street, while methamphetamine sells for about \$100 per gram. The presumption section within the proposed legislation (Section 13(e)) would set the presumption for possession of marijuana with the intent to sell at 450 grams, or about \$1,800 to \$3,600 worth of the drug. However, the same statute sets the presumption for the sale of methamphetamine at 100 grams, or a street value of \$10,000. Ecstasy sells for about \$10 per pill, and the presumption for intent to sell is set at 100 dosage units, or about \$1,000 street value. Finally, heroin sells for between \$100 and \$200 per gram in Kansas. This bill sets the presumption for possession of heroin with intent to sell at 3.5 grams, or a street value of between \$350 and \$700. The limited distribution of heroin in Kansas does not support the dramatically reduced cut-off amounts vis-à-vis methamphetamine and cocaine. The quantity breakdowns should be modified to reflect the issues we face in Kansas.

Additionally, presumptions can work against prosecutors. Setting a presumptive amount to establish intent to sell leads to the ability of defense counsel to argue that any quantity under the presumptive amount should be considered to be possessed for personal use. In reality, marijuana may be sold in quarter ounce (seven gram) increments, and the possession of an "eightball" (3.5 grams) of methamphetamine may easily support a distribution quantity depending on the other evidence available in a case. We are suggesting the removal of the section that sets presumptive quantities as reputable distribution levels.

Finally, we have a concern over Sections 44(r) through 44(s) of the legislation. I do not recall this language being included in last year's legislation. Section 44(r) limits the length of all drug sentences to 204 months. This represents the longest term currently listed in the drug grid. There is no provision for increased time for a second or subsequent conviction for manufacturing methamphetamine as currently exists in K.S.A. 21-4705(e). There is also no exclusion in Section 44(s) of the 204 month limit for second or subsequent convictions for drug offenses.

The purpose of this legislation was to combine the drug and non-drug grids of the sentencing guidelines act. If the current limitation in the drug grid of 204 months is optimum, there is no reason to combine the grids. There should either be two grids, or the drug crimes should be subject to the exact same grid as non-drug crimes. An example of this is found in the proposed penalty for manufacture of methamphetamine in Section 12 of HB 2518. Manufacture is defined as a severity level three, person felony, unless the drug being manufactures is methamphetamine. If methamphetamine is being manufactured, it is a level one, person felony. The 204 month limitation means that a

person with one, nonperson felony on his record (criminal history category G) will be treated about the same as a person with three person felony convictions on his record (criminal history category A). This is because the high end of the sentencing box for criminal history category G is 203 months. Thus, the defendant with a much greater, and clearly more violent, criminal history of A could only receive one month more than the possible sentence for the defendant with a criminal history category of G.

The issue presented in here may be applied to many situations within this legislation. For example, this legislation would prescribe a level 2, nonperson felony sentence for a person guilty of possessing more than 1 kilogram of methamphetamine or cocaine for sale. The *minimum* sentence for a defendant with no record convicted under that provision would be 109 months. A second conviction would be twice that sentence, or 218 months. However, the legislation limits the total sentence to 204 months. There is, then, no greater penalty for a third conviction. The threat of triple the sentence for a third conviction is meaningless.

Finally, the previous legislation made all drug felonies person felonies. This legislation reduces nearly all drug crimes to their current level of nonperson felonies. Much of the support garnered from prosecutors for this legislation last year was based on the fact convictions would move a defendant into higher criminal history categories. This was attractive because of the community safety benefits resulting from being able to incarcerate drug offenders for crimes related to their drug activity. This change in the current bill removes that community safety aspect of the legislation, making it more difficult for prosecutors to support the current bill.