

SESSION OF 2003

SUPPLEMENTAL NOTE ON SENATE BILL NO. 123

As Amended by House Committee of the Whole

Brief*

SB 123 makes major changes in the Kansas criminal law relating to penalties for possession of illegal drugs and the state's sentencing policies relating to these crimes.

The bill establishes a non-prison sentence or sanction of drug abuse treatment, amends the current criminal statutes related to drug possessions to reduce all criminal penalties involving illegal drug possession (except first time marijuana possession which remains a class A misdemeanor) regardless of the second, third, or subsequent possession conviction to a level 4 drug offense.

Non-prison Sanction. The bill establishes "a non-prison sanction of certified drug abuse treatment programs for certain offenders." Specifically, those adult offenders who are convicted of KSA 65-4160 (the possession of opiates, etc., are eligible) and KSA 65-4165 possession of depressants, etc., and:

1. Whose offense is classified in Category 4-E through 4-I of the drug sentencing grid and have no prior felony offense for unlawful acts involving proceeds derived from violations of the Uniform Controlled Substances Act, unlawful manufacturing or attempting such of any controlled substance, and unlawful acts relating to sale or distribution of opiates, depressants, etc., within 1,000 feet of school property; or
2. Whose offense is classified in Category 4-A through 4-D of the drug sentencing grid and who meet the criteria in (1) above and whose prior person felonies were severity level 8, 9, and 10 of the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrld>

non-drug sentencing grid and the sentencing court finds that the offender is not a risk to the public safety.

Assessment and Treatment Provisions. The following apply regarding drug abuse assessment and treatment:

- ! A drug abuse assessment must be made to assign a high or low risk status to the offender and must include a recommendation concerning drug abuse treatment. The assessment shall be a statewide, mandatory, standardized risk assessment tool or instrument validated for drug abuse treatment program placements and must include a clinical interview with a mental health professional.
- ! The sentencing court is required to establish a drug abuse treatment program for each offender until the court determines the offender is suitable for discharge, not to exceed 18 months. High risk offenders shall be supervised by community corrections and low risk offenders shall be supervised by court service officers, however, the placement of offenders with prior person felony convictions is also subject to departure sentencing provisions.
- ! Offenders in the drug abuse treatment program shall be discharged from the program if the offender is convicted of a new felony offense other than drug possession, or for intentional conduct that demonstrates a refusal to comply with or participate in the treatment program, as established by a judicial finding. Discharged offenders shall be subject to the revocation provisions of a new special sentencing rule pursuant to KSA 21-4603d.
- ! The drug abuse treatment programs are responsible for: PSI assessments; the supervision and monitoring of the offenders convicted of drug possession; developing treatment options to address the continuum of services needed to reach recovery; developing treatment options to incorporate family and auxiliary support services; and developing treatment options for alcohol abuse when indicated by the PSI assessment, or when required by the sentencing court.

The cost for all drug abuse assessments and certified drug abuse treatment programs for any person shall be paid by the Kansas Sentencing Commission from funds appropriated for that purpose.

The Kansas Sentencing Commission shall contract for payment for services with the supervising agency. The sentencing court shall determine the extent, if any, that the offender is able to pay for the assessment and treatment and payments shall be used by the supervising agency to offset costs to the state. If financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence.

Disposition Changes. The bill amends KSA 21-4603d, the authorized dispositions statute, to change Category 4-E and 4-F on the drug sentencing grid from "border boxes" to presumption of probation boxes. It creates a special sentencing rule for offenders convicted of drug possession which mandates participation in the new certified drug treatment program and the approved after-care plan. In the event an offender fails to participate in, or has a pattern of intentional conduct that demonstrates a refusal to comply with the certified drug abuse treatment program by a judicial finding, then the offender would serve the underlying prison sentence.

The bill modifies the provision for restitution to be paid to include as a condition of postrelease supervision and it also modifies dispositional departures for offenders whose offense is classified in grid blocks 4-E and 4-F of the drug sentencing grid but do not otherwise qualify for the drug abuse treatment program. Those offenders would be added to the target population for consideration of placement at Labette Correctional Conservation Camp prior to any placement in a KDOC correctional facility. The Secretary of Corrections is also authorized to make direct placement of these same offenders at Labette.

KSA 21-4714 is amended to add a provision to require a drug and alcohol assessment for the target population for the drug abuse treatment program. The drug and alcohol assessment would be a restricted court document.

Condition Violation Changes. KSA 22-3716, the condition violator/postrelease supervision statute, is amended to create a non-prison sanction of up to 60 days for those offenders who are condition violators of the new drug and alcohol abuse treatment programs. The non-prison sanctions could include county jail, fines, community service, intensified treatment, house arrest or electronic monitoring.

The Senate Committee amendments were clarifying in nature.

The Senate Committee of the Whole deleted provisions making the new sentence structure retroactive; clarified that drug abuse treatment can include community-based and/or faith based programs; made the bill effective in the statute books; provided implementation on or before November 1, 2003; and provided that if funds appropriated are insufficient then drug abuse treatment programs will no longer be offered to eligible offenders.

The House Committee amended the bill as follows:

- ! Changed the effective date for various provisions of the bill to November 1, 2003.
- ! Made provisions of the bill apply to offenders from other jurisdictions.
- ! Provided that the presentence criminal risk need assessment shall be conducted by a court services officer or a community corrections officer.
- ! Established a Drug Abuse Treatment Program (DATP) to be administered by the Executive Director of the Kansas Sentencing Commission. All money credited to the DATP will be used to pay for costs related to certified DATPs. All expenditures will be made pursuant to vouchers approved by the Executive Director of the Kansas Sentencing Commission or designee.
- ! Inserted a provision whereby a convicted defendant can be ordered to repay expenses incurred by a fire district, fire department, or fire company responding to an arson fire.
- ! Provided that the sentence for a third or subsequent felony conviction shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison if the defendant has previously completed a certified DATP or has been discharged or has refused to participate in a certified DATP. Such sentence will not be considered a departure and shall not be subject to appeal.
- ! Established a DATP Fund and inserted funding provisions by increasing alcohol gallonage taxes on alcoholic liquors, beer and

cereal malt beverages or malt products, and wine as outlined in the bill. Of the moneys collected, a sum equal to 33.3 percent will go to the DATP Fund with the balance to be credited to the State General Fund (SGF). Of the moneys collected from taxes collected on alcohol and spirits, 6.6 percent will go to the Community Alcoholism and Intoxication Programs Fund, 33.3 percent will go to the DATP Fund, and the balance will go to the SGF.

- ! Provided for an alcohol gallonage tax, outlined in the bill, on inventory owned on July 1, 2003, by a licensed distributor or retail dealer. Prior to July 25, 2003, every distributor or retail dealer shall make a report to the director of taxation showing the total inventory and the report shall be accompanied by a remittance of the tax due. Failure to make the report or pay the tax, within the time prescribed, will make the license of a distributor or retail dealer subject to suspension or revocation. All taxes collected will be credited to the DATP Fund.

The House Committee of the Whole amended the bill by deleting the funding provisions dealing with increased alcohol gallonage taxes and inserted the provision, similar to an earlier one, that states that if there is no funding for the non-prison certified drug abuse treatment and supervision programs, the provisions of the bill will not take effect.

Background

The 2002 Special Committee on Judiciary, as part of its study of Topic No. 2—Drug Courts, agreed to introduce the recommendations of the Kansas Sentencing Commission in regard to the enactment of a treatment sanctions model for defendants whose crimes are primarily the result of substance abuse and addiction. SB 123 incorporates the Kansas Sentencing Commission's recommendations.

Proponents of the bill included the chairperson and vice chairperson of the Kansas Sentencing Commission, a Shawnee County district judge, and representatives of the Kansas Association of Addiction Professions, the National Action Network, and the Kansas Community Corrections Association.

The bill was opposed by the representatives of the Kansas Association of Court Services Officers, the Kansas Sheriffs' Association, the Quad County Drug Task Force, an assistant Riley County Attorney, the Kansas Attorney General, the Kansas Bureau of Investigation, and the Kansas Peace Officers Association.

The Kansas Sentencing Commission presented the following table showing the total prison beds needed if the current policy toward drug offenders is not changed, added beds needed if change is made, and total prison beds saved if SB 123 is enacted.

TOTAL PRISON BED IMPACT ASSESSMENT

June of Each Year	Beds Required— Current Policy Unchanged Re- quired	Beds Required— Current Policy Changed	Total Beds Saved
2004	432	49	383
2005	508	96	412
2006	540	87	453
2007	547	93	454
2008	589	93	496
2009	628	97	531
2010	658	87	571
2011	629	88	541
2012	655	98	557
2013	670	99	571

The fiscal note states the following:

Because the bill would reduce the average daily population (ADP) in the state's correctional facilities compared to the ADP that was included in The FY 2004 Governor's Budget Report, the systemwide budget of the Department of Corrections would be reduced. The ADP recommended by the Governor is 9,010 for FY 2004. If SB 123 is passed and if the projected reduction in the inmate population is spread evenly over the entire fiscal year, the resulting ADP for FY 2004 would be 8,832, or a reduction of 178 inmates. Applying the estimated marginal cost rate of \$2,000 per ADP, the resulting savings is estimated at \$356,000, all from the State General Fund.

SB 123 would not eliminate the need for future capacity expansion, but would result in delay of both construction costs and annual operating costs for the 383 to 571 beds projected to be saved as compared to current law. The Department reports that renovating existing buildings at Winfield and Osawatomie would cost between \$7,585 to \$9,948 per bed. Constructing new minimum security units at Hutchinson, El Dorado, or Lansing would cost between \$16,409 and \$20,144 per bed. Constructing new medium or maximum units at El Dorado would cost between \$28,000 and \$56,000, depending on the custody level of inmates housed. Annual operating costs are estimated at \$18,803 per bed for minimum security facilities, and between \$14,100 and \$25,000 for medium and maximum beds, depending on the configuration of the cellhouses.

The Department estimates that 3.0 FTE Program Specialists would be required for the certification of the drug treatment programs at a cost of \$178,000 from the State General Fund for FY 2004. This estimate includes annual costs of \$162,400 and start-up costs of \$15,600. The annual costs include \$138,900 for salaries and wages and \$13,500 for other operating expenditures. The start-up costs include office and computer equipment.

The Department of Corrections also notes that all inmates receiving sentence modifications would be transferred to community corrections agencies for supervision. These agencies would also receive all new offenders that are considered a "high risk." Although the agency does not have estimates of community corrections and court services caseload increases, using a comparable number of inmates that would be transferred from the correctional facilities would result in a caseload increase of approximately 317 inmates. Based on this number, grants to community corrections agencies would need to increase by \$920,000 each year.

Although the bill does not address how treatment program costs would be financed if the costs cannot be recovered by the offender receiving the service, the Department believes that some state level funding would be needed to make the program successful. The Sentencing Commission has estimated that the total cost of treatment would range from \$3,213 to \$6,436 per offender per year, depending on the type and intensity of services required. However, it is not known how much state funding would be needed.

According to the Sentencing Commission, SB 123 would require changes in the sentencing database and the projection software model to allow for the new sentencing rules outlined in the bill. It would also require modification to the sentencing journal entry form to indicate the proposed sentencing procedure. Although these changes would take significant staff time to complete initially, the changes would result in fewer probation revocation journal entries and postrelease revocations to be processed. As a result, the bill may reduce the total staff hours required for data entry over time.

The Office of Judicial Administration indicates that passage of the bill would require additional expenditures of \$1,235,324. This estimate includes the following: an additional 8.0 court service officers for supervision of "low risk" offenders at a cost of \$326,664; an additional 20.0 court service officers to prepare presentence reports and administer the LSI—R assessment at a cost of \$816,660; training expenditures in the amount of \$32,000 for 50.0 court service officers to learn to administer the assessment; and \$60,000 each year for the cost of the LSI—R forms to be used for all presentence investigations, as these forms are proprietary and are purchased in bulk at an estimated cost of \$2 each.