

SESSION OF 2005

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2231**

As Amended by House Committee on  
Federal and State Affairs

**Brief\***

HB 2231, as amended, would establish a process by which certain adult inmates may petition the court to have the inmate's drug possession sentence modified to community corrections supervision with the condition of participation in a certified drug treatment program if the following criteria are met:

- ! The inmate is convicted solely of a felony possession of opiates or hallucinogenic drugs;
- ! The inmate's offense is classified in Category 4-E through 4-I of the drug sentencing grid and the inmate has no prior felony offense for unlawful acts involving proceeds derived from violations of the Uniform Controlled Substances Act, unlawful manufacturing or attempted manufacturing of any controlled substance, and unlawful acts relating to sale or distribution of opiates or hallucinogenic drugs within 1,000 feet of school property; and
- ! The inmate's offense is classified in Category 4-A through 4-D of the drug sentencing grid and the inmate has no prior felony offense for unlawful acts involving proceeds derived from violations of the Uniform Controlled Substances Act, unlawful manufacturing or attempted manufacturing of any controlled substance, and unlawful acts relating to sale or distribution of opiates or hallucinogenic drugs within 1,000 feet of school property. Additionally, the inmate's prior person felonies were a severity level 8, 9, or 10 on the non-drug sentencing grid.

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\*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>

**Initial Review.** The bill would establish a process where the Department of Corrections would review all eligible inmates who have more than 180 days to serve until the inmate's initial release date. The Department would submit a report to the inmate, the prosecuting attorney, and the sentencing court of its findings on the inmate's eligibility for modification of the sentence. If there is no objection to the report, the Department of Corrections' finding would be deemed correct.

**Sentencing Court Review.** Modification of a sentence under this bill would not occur without the sentencing court's review and order. Under all circumstances, the inmate would be required to request a hearing with the sentencing court within 60 days of the issuance of the report to preserve the inmate's eligibility for modification of the sentence. The inmate or the prosecuting attorney may object to the findings in the Department of Corrections' report within 60 days and require the sentencing court to determine if the inmate is eligible for modification of the sentence. The burden of proof would be on the prosecuting attorney to prove the inmate is not eligible for modification of the sentence.

The sentencing court also would be required to determine whether the safety of the members of the public would be jeopardized by the modification of the sentence. If the sentencing court determines it would not jeopardize the safety of the members of the public, the sentencing court would be required to grant modification of sentence and forward an order to the Secretary of Corrections to parole the inmate to community corrections supervision with the condition of participation in a certified drug treatment program. Conversely, if the sentencing court determines it would jeopardize the safety of the members of the public, the sentencing court would be required to deny modification of the sentence.

Other major provisions under this review are as follows:

- ! The hearing would be required to occur within 60 days of the request for hearing if the sentencing court deems a hearing is necessary, and the sentencing court would be required to make a ruling on the issues presented within 30 days of the hearing;
- ! The inmate would be represented by counsel;

- ! The inmate's personal attendance at the hearing would not be required nor is it a matter of right for the inmate to be present in person at the hearing; and
- ! The inmate would not be given credit toward the original prison sentence for time served on the modified sentence.

**Revocation.** The bill would provide that if the offender is judicially determined to have failed to participate in or has a pattern of intentional conduct that demonstrates a refusal to comply with or participate in the certified drug treatment program, the offender would be subject to revocation of parole and would be required to serve the remainder of the underlying prison sentence. Upon completion of the sentence, the offender would not be subject to postrelease supervision.

## **Background**

Legislation enacted into law during the 2003 Session (SB 123) with various provisions taking effect on November 1, 2003. The bill established a non-prison sentence of drug abuse treatment for certain offenders convicted of possession of opiates or hallucinogenic drugs. HB 2231 extends the benefits of the 2003 Legislation retroactively to those inmates who committed a specified drug offense on or after July 1, 1993 (the enactment date of the Kansas Sentencing Guidelines Act) and sentenced before November 1, 2003.

Representative McCreary sponsored the bill and testified as a proponent. Senator Betts and Representatives Bethell, Roth, and Kelsey also testified as proponents of the bill. Representatives from the Families Against Mandatory Minimums Foundation, various alcohol and drug treatment centers, a member of the legal profession, a parole officer, and citizens testified in support of the bill. Representative Faust-Goudeau presented written testimony in support of the bill.

A representative of the Kansas County and District Attorney's Association testified in opposition of the bill.

The House Committee amended the bill to define the inmates eligible for modification of the inmate's sentence are those inmates who

were convicted solely of and incarcerated for a felony possession of opiates or hallucinogenic drugs.

The fiscal note for the bill as introduced indicates the following:

- ! The Kansas Sentencing Commission estimates that 516 inmates would be eligible for sentence modification and that passage of the bill would reduce the need for prison beds by 175 by the end of FY 2006, 89 beds by the end of FY 2007, and gradually decreasing to four prison beds by the end of FY 2015. A reduction in annual cost of approximately \$2,000 per inmate for marginal expenses is projected.
- ! The Kansas Sentencing Commission estimates that the cost of treatment for inmates eligible for modification under this bill would be approximately \$5,648 per offender. At 516 offenders, the agency would require additional expenditures of \$2,914,368 from the State General Fund.
- ! The Kansas Sentencing Commission also estimates it would incur additional administrative costs in FY 2006 totaling \$101,282 from the State General Fund.
- ! The Department of Corrections estimates that enactment of this bill would increase the number of field supervision caseloads in the Community Corrections Program and would cause an additional expenditure of \$1,526,328 from the State General Fund.
- ! The Department of Corrections estimates that implementation of its review of eligible inmates would cost the agency \$66,259.