

MEMORANDUM

To: Chairman Owens and Members of the Senate Judiciary Committee
From: Jason Thompson, Senior Assistant Revisor
Date: March 21, 2011
Subject: Substitute for HB 2318

The controlled substances act was recodified and moved from chapter 65 to chapter 21 in 2009, as a prelude to the recodification of the entire criminal code. Suggested policy changes were not made at that time, and were also deferred last year when the legislature passed a cleanup bill concerning the recodified drug code. Substitute for HB 2318 contains those policy recommendations, made by the Kansas Criminal Code Recodification Commission and approved by the Kansas Judicial Council.

The House Corrections and Juvenile Justice Committee made many of the policy changes contained in the original draft, but also created a drug sentencing grid with five levels. This required a few changes to drug crime penalties and a number of technical changes in other statutes. Below is a summary of each section of the substitute bill.

Sec. 1. K.S.A. 21-36a01, definitions.

Changes definition of "manufacture" on page 4. Lines 18-19, removes packaging and repackaging, leaves those acts as distribution. Lines 32-34, excludes "cutting" as well.

Sec. 2. K.S.A. 21-36a03, unlawful manufacturing of controlled substances.

Page 6, line 13, subsection (b), drug severity level 1 felony changes to: 1st offense, drug SL 2 felony; 2nd offense, drug SL 1 felony; 1st offense if manufacturing methamphetamine, drug SL 1 felony.

Sec. 3. K.S.A. 21-36a05, unlawful cultivation or distribution of controlled substances.

Moves cultivation to subsection (c), creates separate penalty. Page 8, divides penalties into levels based on the quantity of material. Subsection (d)(1) is general violations, (d)(2) for material containing marijuana, (d)(3) for material containing heroin or methamphetamine, and (d)(4) for material distributed by dosage unit. Subsection (d)(5), school zone enhancement, removes requirement that offender must be 18 or older. Subsection (d)(6), penalty for schedule V drugs, and (d)(7) enhances that penalty if distribution was to a minor. Subsection (d)(8), penalty for cultivation. Subsection (e), creates rebuttable presumption of intent to distribute if a person possesses certain quantities.

Sec. 4. K.S.A. 21-36a06, unlawful possession of controlled substances.

Page 10, line 40, subsection (c)(1), drug SL 4 felony, changes to drug SL 5 felony. Lines 41-43, subsection (c)(2), misdemeanor, no change; 2nd offense, SL 4, changes to SL 5.

Sec. 5. K.S.A. 21-36a09, unlawful possession of certain precursors and paraphernalia.

Page 12, paraphernalia crimes become attempted violations of other crimes. Attempted manufacture would be punished the same as actual manufacturing, while all other attempts would be punished with a 6-month reduction of the prescribed prison term (See section 33 of chapter 136, attempt).

Sec. 6. K.S.A. 21-36a10, unlawful distribution of certain precursors and paraphernalia.

Page 13, penalties in subsection (e). Subsection (e)(1), SL 2 becomes SL 3; (e)(2), SL 4 becomes SL 5. Subsection (e)(3), school zone violation, SL 3 becomes SL 4, also removes requirement that offender must be 18 or older. Subsection (e)(4), SL 9, nonperson felony, no change. Subsection (e)(5), school zone violation, SL 4 becomes SL 5, also removes requirement that offender must be 18 or older.

Sec. 7. K.S.A. 21-36a13, unlawful distribution or possession of simulated controlled substance.

School zone change, removes requirement that offender must be 18 or older.

Sec. 8. K.S.A. 21-36a14, unlawful representation that substance is controlled substance.

Refers to definition of "minor" and clarifies that theft may also be charged.

Sec. 9. K.S.A. 21-36a16, unlawful acts involving proceeds derived from violations.

Page 16, penalties in subsection (e). Subsection (e)(1), value of the proceeds is less than \$5,000, SL 4 becomes SL 5; (e)(2), at least \$5,000 but less than \$100,000, SL 3 becomes SL 4. Subsection (e)(3), at least \$100,000 but less than \$500,000, SL 2, split into 2 levels: (e)(3), at least \$100,000 but less than \$250,000, SL 3; and (e)(4), at least \$250,000 but less than \$500,000, SL 2. Subsection (e)(4) becomes (e)(5), \$500,000 or more, remains a SL 1.

Sec. 10. K.S.A. 21-36a17, uniformity of act.

Removes reference to K.S.A. 21-36a09 because penalties are removed.

Sections 11 through 25: Technical cleanup related to sentencing grid change.

Sec. 26. Section 286 of chapter 136 of the 2010 Session Laws, drug sentencing grid.

Page 66, shows new grid with 5 levels.

Sections 27 through 30: Technical cleanup related to sentencing grid change.

Sections 31 and 32: Repealer and effective date (July 1, 2011).

