

## MEMORANDUM

To: Chairman Owens and Members of the Senate Judiciary Committee  
From: Jason Thompson, Senior Assistant Revisor  
Date: January 31, 2012  
Subject: Proposed Senate Sub for Sub for HB 2318, 12rs1976

Proposed Senate Substitute for Substitute for HB 2318, 12rs1976, contains the original policy recommendations made by the Kansas Criminal Code Recodification Commission and approved by the Kansas Judicial Council. There are also some technical amendments. While the House version of HB 2318 uses a new 5-level drug sentencing grid, the proposed substitute uses the current 4-level drug sentencing grid.

### Sec. 1. K.S.A. 21-5701, definitions.

Changes definition of “manufacture” on page 6; removes packaging and repackaging, leaves those acts as distribution; excludes “cutting” as well.

### Sec. 2. K.S.A. 21-5705, unlawful cultivation or distribution of controlled substances.

Moves cultivation to subsection (c), page 10, creates separate penalty. 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), rebuttable presumption of intent to distribute if a person possesses certain quantities.

### Sec. 3. K.S.A. 21-5706, unlawful possession of controlled substances.

Page 15, fix form of penalty section; technical cleanup concerning controlled substance analogs to be consistent with other drug code provisions.

Sec. 4. K.S.A. 21-5708, unlawfully obtaining a prescription-only drug.

Page 16, fix form of penalty section; specify nondrug grid.

Sec. 5. K.S.A. 21-5709, unlawful possession of certain precursors and paraphernalia.

Page 17, 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.

Sec. 6. K.S.A. 21-5710, unlawful distribution of certain precursors and paraphernalia.

Page 20, technical cleanup concerning controlled substance analogs. Page 21, fix form of penalty section; specify nondrug grid where applicable; removes requirement that offender must be 18 or older on school zone violations.

Sec. 7. K.S.A. 21-5713, unlawful distribution or possession of simulated controlled substance.

Page 22, fix form of penalty section; removes requirement that offender must be 18 or older on school zone violations.

Sec. 8. K.S.A. 21-5714, unlawful representation that substance is controlled substance.

Page 23, fix form of penalty section; use “minor”; specify that theft may also be charged.

Sec. 9. K.S.A. 21-5716, unlawful acts involving proceeds derived from violations.

Page 25, fix form of penalty section.

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

Page 26, removes reference to K.S.A. 21-5709 because sub (f), concerning minimum bail requirements, is removed by this bill.

Sections 11 and 12: Repealer and effective date (July 1, 2012).