

**House Judiciary Committee
February 15, 2016
House Bill 2611**

**Testimony of the
Kansas Association of Criminal Defense Lawyers
Neutral**

Dear Chairman Barker and Members of the Committee:

The Kansas Association of Criminal Defense Lawyers is a 350+ member organization dedicated to ensuring justice and due process for people accused of crimes and other wrongdoing.

We are very thankful that Representative Gonzalez has introduced this issue to the Legislature. He is a champion for the wrongfully convicted. We are also so grateful that Floyd Bledsoe is spending his valuable time sharing his story with policy makers and the public as a whole. We are honored to be a conferee along side so many wonderful advocates.

One thing we want to specifically address is the bill's failure to compensate those people who plead rather than have a trial.

Last week at the hearing on HB 2593 (recording certain felony interrogations), we learned that 28% of exoneration cases involved false confessions (and 68% of those cases were homicides). According to the Innocence Project, 72% of cases involved eyewitness misidentifications and 47% involved unvalidated/improper forensics.¹

As you know, recently the Legislature made significant changes in the sentences for murder. In 2013, the presumptive sentence for premeditated first degree murder increased from Life/Hard 25 to Life/Hard 50. The sentence for felony murder increased from Life/Hard 20 to Life/Hard 25. Also in 2013, the Legislature created the crime of attempted capital murder, which carries a sentence of Life/Hard 25. The sentence for capital murder when the jury does not impose death is life without the possibility of parole. The presumptive sentence for second degree murder is 147 to 653 months, depending on the defendant's criminal history. The presumptive sentence for first-time Jessica's Law offenses is Life/Hard 25.

Attached is a sentencing grid for drug and nondrug offenses. The presumptive sentence for rape (a SL 1 offense) is 147 to 653 months, depending on criminal history.

In Kansas, an average of 97% of felony cases resulting in a conviction are pleas. Attached is a chart showing the numbers from all 31 judicial districts in Kansas. This data is from the 2015

¹ <http://www.innocenceproject.org/causes-wrongful-conviction>

Annual Report for the Courts of Kansas.² For example, 59 out of 105 counties had zero jury trials in FY 2015.³

How do a 97% average plea rate, Kansas sentencing law, and the reasons for wrongful convictions all relate? It boils down to this: often **the risks are too great for people to take their cases to trial. As a result, innocent people plead to things they did not do.**

We strongly urge this Committee to amend the bill to allow defendants who entered pleas and who are later exonerated to be eligible for compensation. In addition, we encourage this Committee to recommend an interim study so that the issues raised by the conferees and others can be discussed so that our future law can be the best it can be for those who are wrongfully convicted.

Thank you for your consideration,



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² <http://web.kscourts.org/stats/15/2015%20Criminal%20Terms.pdf>

³ Wabaunsee, Anderson, Osage, Chase, Bourbon, Linn, Marion, Morris, Crawford, Jewell, Mitchell, Republic, Washington, Montgomery, Logan, Rawlins, Sheridan, Sherman, Thomas, Wallace, Clark, Comanche, Gray, Kiowa, Meade, Decatur, Graham, Osborne, Phillips, Smith, Ellsworth, Russell, Stafford, Brown, Doniphan, Marshall, Nemaha, Gove, Trego, Edwards, Hodgeman, Lane, Ness, Rush, Greeley, Hamilton, Kearny, Scott, Wichita, Grant, Haskell, Morton, Stanton, Ottawa, Barber, Allen, Neosho, Wilson, and Woodson.

Felony disposition chart (data taken from <http://web.kscourts.org/stats/15/2015%20Criminal%20Terms.pdf>)

Judicial District	Total felony dispositions	guilty pleas	trials to jury	trial to court	percentage of cases ending in a conviction that are pleas	dismissals	diversions	other
1 (Atchison and Leavenworth)	491	382	16	1	95%	50	26	16
2 (Jackson, Jefferson, Pottawatomie, and Wabaunsee)	472	387	6	2	98%	54	14	9
3 (Shawnee)	1,560	1,216	35	13	96%	195	91	10
4 (Anderson, Coffey, Franklin, and Osage)	387	305	5	0	98%	39	31	7
5 (Chase and Lyon)	424	273	23	3	90%	96	25	4
6 (Bourbon, Linn, and Miami)	308	232	2	0	99%	51	20	3
7 (Douglas)	416	305	7	1	98%	59	36	8
8 (Dickinson, Geary, Marion, and Morris)	875	621	8	1	99%	197	26	22
9 (Harvey and McPherson)	463	368	6	4	97%	72	4	9
10 (Johnson)	1,766	1,355	31	9	97%	194	95	82
11 (Cherokee, Crawford, and Labette)	572	367	8	1	98%	105	50	41
12 (Cloud, Jewell, Lincoln, Mitchell, Republic, and Washington)	248	164	3	1	98%	66	14	0
13 (Butler, Elk, and Greenwood)	389	275	8	3	96%	63	9	31
14 (Chautauqua and Montgomery)	357	280	2	0	99%	37	37	1

Judicial District	Total felony dispositions	guilty pleas	trials to jury	trial to court	percentage of cases ending in a conviction that are pleas	dismissals	diversions	other
15 (Cheyenne, Logan, Rawlins, Sheridan, Sherman, Thomas, and Wallace)	381	283	1	0	99%	57	32	8
16 (Clark, Comanche, Ford, Gray, Kiowa, and Meade)	579	450	7	1	98%	87	25	9
17 (Decatur, Graham, Norton, Osborne, Phillips, and Smith)	95	75	1	0	99%	13	5	1
18 (Sedgwick)	2,865	2,468	65	34	96%	203	37	58
19 (Cowley)	314	242	1	0	99%	50	18	3
20 (Barton, Ellsworth, Rice, Russell, and Stafford)	469	370	4	1	99%	77	12	5
21 (Clay and Riley)	336	213	10	1	95%	62	38	12
22 (Brown, Doniphan, Marshall, and Nemaha)	283	202	0	1	99%	68	9	3
23 (Ellis, Gove, Rooks, Trego)	403	330	6	0	98%	37	29	1
24 (Edwards, Hodgeman, Lane, Ness, Pawnee, and Rush)	197	97	3	1	96%	43	49	4
25 (Finney, Greeley, Hamilton, Kearny, Scott, and Wichita)	563	338	7	1	98%	135	77	5

Judicial District	Total felony dispositions	guilty pleas	trials to jury	trial to court	percentage of cases ending in a conviction that are pleas	dismissals	diversions	other
26 (Grant, Haskell, Morton, Seward, Stanton, and Stevens)	507	341	11	2	96%	104	42	7
27 (Reno)	674	530	21	1	96%	113	4	5
28 (Ottawa and Saline)	867	726	20	7	96%	97	2	15
29 (Wyandotte)	1,186	785	58	12	91%	88	84	159
30 (Barber, Harper, Kingman, Pratt, and Sumner)	547	443	9	0	98%	77	12	6
31 (Allen, Neosho, Wilson, and Woodson)	400	278	0	0	100%	72	40	10
TOTALS	19,394	14,701	384	101	97%	2,661	993	554

2015 SENTENCING RANGES

NONDRUG OFFENSES

	A	B	C	D	E	F	G	H	I	TERMS		
	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	PROB	POST REL	GOOD TIME
1	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	36	36	15%
2	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	36	36	15%
3	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	36	36	15%
4	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	36	36	15%
5	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	36	24	15%
6	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	24	24	15%
7	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	24	12	20%
8	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	≤18	12	20%
9	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	≤12	12	20%
10	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	≤12	12	20%

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 Levels 7-10

Presumptive Imprisonment

Border Box

Presumptive Probation

DRUG OFFENSES

	A	B	C	D	E	F	G	H	I	TERMS		
	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	PROB	POST REL	GOOD TIME
1	204/194/185	196/186/17	187/178/169	179/170/161	170/162/154	167/158/150	162/154/146	161/150/142	154/146/138	36	36	15%
2	144/136/130	137/130/122	130/123/117	124/117/111	116/111/105	113/108/101	110/104/99	108/100/96	103/98/92	36	36	15%
3	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	36	36	***20%
4	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	≤18	24	20%
5	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	*≤12	12	20%

**Distribute or Possess w/ Intent to Distribute

Levels	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	Cultivate	Dosage Units	Fines NOT to exceed
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	\$500,000
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	\$500,000
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	\$300,000
IV	< 3.5 g	< 1 g	< 25 g			<10	\$300,000
V	Possession		Poss.-2nd offense				\$100,000

Rebuttable Presumption
Intent to Distribute

≥450 g Marijuana

≥3.5 g Heroin or Meth

≥100 dosage units of controlled
substance

≥100 g of any other controlled
substance

* ≤ 18 months for 2003 SB123 offenders

** Severity level increases one level if on or w/in 1000 ft of any school property.

*** Effective July 1, 2015- retroactive