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## May 2012

## Program Manager Named at the Commission

Hon. Ernest L. Johnson, Chair  
 Hon. Richard M. Smith, Vice Chair  
 Scott M. Schultz, Executive Director



[www.kansas.gov/ksc](http://www.kansas.gov/ksc)

### Inside this issue:

<a href="#">2011 Annual Report</a>	2
<a href="#">FY2012 KDOC Inmate Classification Projections</a>	2
<a href="#">2012 Prison Population Projection Report</a>	2
<a href="#">Case Law Updates</a>	3
<a href="#">Senate Bill 123 News</a>	3
<a href="#">Journal Entry of Judgment &amp; PSI News-</a>	4
<a href="#">Kansas Criminal Justice System Resource Directory</a>	5
<a href="#">Kansas Sentencing Guidelines Desk Reference Manual News</a>	5

The Sentencing Commission is pleased to announce the hiring of Jarod Waltner. Jarod joins the Commission staff after five sessions as a budget analyst for the Legislature, most recently as a senior fiscal analyst. He worked with the Sentencing Commission, Parole Board and Department of Corrections for four years and decided to transition to the Executive Branch of government when the opportunity to continue working with a public safety agency arose. Jarod has degrees in social work from Bethel College (North Newton) and Arizona State University, the latter including an emphasis in public policy. He will split his time with the Commission between the annual budget and the SB 123 drug treatment program. He replaces Jan Brasher who retired late last year.



## 2012 Legislative Update

### Significant impact on the sentencing guidelines:

#### S Sub for Sub HB 2318:

This bill makes several changes to the statutes governing controlled substances, including the adoption of a drug sentencing grid with five levels. The grid will add a new severity level 2 with penalties falling between the current first and second levels of the drug grid.

The bill also modifies the SB 123 nonprison sanction program and expands the border boxes of the drug grid.

The bill has been signed by the Governor and is effective July 1, 2012.

#### H Sub for SB 60:

The bill amends various administrative and criminal statutes related to driving under the influence (DUI) and allows the issuance of class C licenses for the operation of a motorized bicycle to certain persons with suspended or revoked drivers' licenses.

More highlights on S Sub for Sub HB 2318 and H Sub for SB 60 can be read starting on [page 6](#) of this newsletter.

# Have you ordered yours?



[www.kansas.gov/ksc](http://www.kansas.gov/ksc)

## 2011 Kansas Sentencing Guidelines Desk Reference Manual (DRM)

This popular tool is available in a manual or CD. It is also on our [web site](#).

[Fill out this order form](#) and send your payment (including tax if applicable) with the form to us. Thank you.



## 2011 Annual Report

The Kansas Sentencing Commission Annual Report is statistically analyzing sentencing practice and policies under Kansas Sentencing Guidelines.

During FY 2011, the Commission received a total number of 14,003 felony sentences, indicating an increase of 1.4% over that of FY 2010. Of the total number of sentences, 4,958 (35.4%) were prison sentences, 8,270 (59.1%) were probation sentences and 775 (5.5%) were county jail sentences. Nondrug sentences represented 71.8% or 10,059 sentences and drug sentences accounted for 28.2% or 3,944 sentences.

[View the entire report](#)



## FY 2012 KDOC Inmate Classification Projections

The custody classification projection addresses the types of beds that the state needs for the total number of beds projected in the baseline projection. This includes the number of maximum, medium high, medium low, minimum, special management and unclassified beds needed to accommodate the inmate population. [View the report](#)



## 2012 Prison Population Projection Report

In an attempt to formulate the most accurate assumptions, the Sentencing Commission utilizes a Prison Population Consensus Group to review and establish the final set of assumptions that are utilized in building the simulation model. Members of the Consensus Group represent various criminal justice agencies which play a role in processing an individual through the criminal justice system. Members contribute their agencies' expertise regarding formal and informal procedures and provide relevant information and data on specific issues or practices which may affect prison population. Thank you for your contribution. [View the report.](#)



Have a safe summer....



**2003 Senate Bill 123**  
**K.S.A. 2011 Supp. 21-6824**  
**(formerly K.S.A. 21-4729)**

Provides for community supervision (in lieu of incarceration) and mandatory substance abuse treatment for a defined target population on non-violent adult drug offenders who have been convicted of a drug offense under K.S.A. 2011 Supp 21-5706. (formerly K.S.A. 21-36a06)

**GOAL:** To provide community intervention and the opportunity for treatment to certain offenders with substance abuse problems in order to address more effectively the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

**SB123 questions—**

Please email Jennifer Dalton,  
[jenniferd@sentencing.ks.gov](mailto:jenniferd@sentencing.ks.gov)  
 or call with any questions.

Please welcome to the  
 Sentencing Commission  
 team—  
 Jarod Waltner,  
 Program Manager

## May Case Law Updates

- [State v. Anderson](#) – May 11, 2012 – Douglas – Affirmed, No. 99,123 (Jury Instructions)
- [State v. Mitchell](#) – May 11, 2012 – Sedgwick – Affirmed, No. 99,163 (Jury Instructions)
- [State v. Warrior](#) – May 11, 2012 – Wyandotte – Affirmed, No. 101,799 (Constitutionality, Jury Instructions, and Hard 50 Sentencing)
- [State v. Gilliland](#) – May 11, 2012 – Saline - Conviction affirmed, sentence vacated, and case remanded with directions, No. 102,265 (Constitutionality, Jury Instructions, Departures, and Jessica’s Law)
- [State v. Sprung](#) – May 4, 2012 – Cloud – Affirmed in part and reversed in part, and the sentence is vacated in part, No. 99,704 (Constitutionality and Multiplicity)
- [State v. Frey](#) – May 4, 2012 – Riley – Reversed and remanded, No. 101,292 (Appeals and Constitutionality)
- [State v. Peppers](#) – May 4, 2012 – Shawnee – Affirmed, No. 101551 (Jury Instructions)
- [State v. Rickerson](#) – May 18, 2012 – Johnson - Reversed and remanded with directions, No. 105,863 (Constitutionality and DUI)
- [State v. Teter](#) – May 11, 2012 – Reno – Affirmed, No. 105,495 (Constitutionality and Drugs)

## Senate Bill 123 News

### It’s that time of year again...

The State’s Financial System will not be accessible to us to make payments **July 12, 2012 to July 15, 2012 for FY 2012 invoices.**  
*(Services provided July 1, 2011-June 30, 2012)*

For more information [click here](#)

### Treatment Providers: Please remember:

- Send All ASI’s to us (KSC).
- In addition to monthly invoicing, the KSC accepts weekly or bi-weekly invoices for faster processing.

### Community Corrections:

- If you receive an ASI – please forward it to us (KSC).
- Our office gladly prefers invoices emailed to [jenniferd@sentencing.ks.gov](mailto:jenniferd@sentencing.ks.gov), or faxed to **785-296-0927** in care of Jennifer.

A Friendly Reminder- SB 123 Offender  
 Reimbursement- \$300

As it is noted on the PSI, and the JE, (where costs are proposed and ordered)  
 Please try to collect at least \$300. *Thank you for your efforts.*





### Kansas Sentencing Commission

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### Did you know...

You can E-mail your Journal Entry (JE), Probation Revocation, or PSI forms to us as an alternative to mailing them?

Just like everyone these days, we are always looking for ways to cut costs. Save paper and postage!

E-mail to:

[chrisc@sentencing.ks.gov](mailto:chrisc@sentencing.ks.gov)

## Journal Entry of Judgment (JE) and PSI News

**We always post the most recent forms on our website.**

It is important for us to keep you informed and provide you with forms containing the most current changes.

The JE and PSI have been provided with many separate documents all together for years. We have separated the JE and the PSI forms to provide individualized documents for times when no extra forms are needed (example: Special Rules page, Addition Offenses, Offender Registrations, etc.)

Separating these documents will also provide options when extra forms are all you need.

**To access the form(s) of your choice...**

[Click here](#)

### Revised Forms 8/2011:

- Journal Entry of Judgment (JE)
- Probation Revocation
- Presentence Investigation (PSI)

Due to the many **NEW** changes made in the forms– there are **highlighted versions** to show what, where and how things changed.



If you email JE's–  
**please include the following:**

- ▶ JE
- ▶ PSI
- ▶ Date of Birth
- ▶ Criminal History worksheet

We provide  
**KBI Offender  
Registration Forms**

**Don't forget...  
There are a few misdemeanor  
offenses that require  
registration!**

### Offender Registration Requirement K.S.A. 2011 Supp. 22-4902

Under the new Act the court sentencing an offender subject to the Act must not only inform the offender of the registration requirements but also, when that offender is granted some form of probation, see that the initial registration forms are completed. To get forms - [click here](#)

**Attention**

**When completing JE and  
PSI's please include the  
ENTIRE statute number  
- including subsections**

**Similar offenses are separated by  
these subsections**

Example:

**21-5705(a)(1)(c)(1)** - [formerly  
**21-36a05(a)(1)**] **Drugs; Cultivate,  
distribute, or possess w/ intent to distrib-  
ute opiates, cocaine, meth, narcotics and  
the like.**



**REGISTRATION  
REQUIRED!**

**21-5705(a)(2)(c)(1)** - [formerly  
**21-36a05(a)(2)**] **Drugs; Cultivate,  
distribute, or possess w/ intent to distrib-  
ute marijuana, depressant, stimulants  
and the like.**



**NO REGISTRATION  
required!**

Please contact Carrie Krusor if you have  
ANY questions (785) 296-0923.

Thank You!



## Kansas Criminal Justice System Resource Directory

### A Message to Entities Referenced in the Kansas Criminal Justice System Resource Directory-

The staff of the Kansas Sentencing Commission hopes the Resource Directory will be a valuable aid to you and your staff. Every effort has been made to ensure complete and accurate information. In order to maintain maximum efficiency of this directory, please keep us apprised of updates by emailing changes to: [office@sentencing.ks.gov](mailto:office@sentencing.ks.gov).

If **your** information in this **Resource Directory** has changed, please use this **revision form** to let us know.

**Thank you to those who help us keep your information accurate!**

\* Please feel free to print your own copy. \*



## Kansas Sentencing Guidelines Desk Reference Manual (DRM)



### The Kansas Sentencing Commission Desk Reference Manual ...

provides general instructions for application of the provisions of the Kansas Sentencing Guidelines Act (KSGA) K.S.A. 21-4701 *et seq.* The Manual contains features that we hope will not only inform users of the latest developments in sentencing law 2010, but also help to facilitate more efficient understanding and application of the law.

**2011 DRM**

... **order yours!**

Please check to see the **current** rate for **your** city or county - (we have to keep our books balanced too.)

**2012 Sales Tax Rates**

**Thank you!**

Mail completed form with your payment.

2010 Desk Reference Manual (DRM) are still available.

**To order yours!**

(Please send payment with the order form.)

To remove your name from our mailing list, please [click here](#).  
 Questions or comments? E-mail us at [sentencing@sentencing.ks.gov](mailto:sentencing@sentencing.ks.gov)  
 We welcome your questions – call us at 785-296-0923

S Sub for Sub HB 2318: The bill amends several statutes concerning the criminal code and drug crimes. Some of the highlights are as follows:

1. Creates the crime of "endangerment," defined as recklessly exposing another person to a danger of great bodily harm or death. Endangerment would be a class A person misdemeanor.
2. Amends the statute governing multiple prosecutions for the same act and lesser-included crimes to add language establishing that a defendant may not be convicted of identical offenses based upon the same conduct, the prosecution may choose which such offense to charge, and, upon conviction, the defendant shall be sentenced according to the charged offense.
3. Amends the conspiracy statute to allow the unilateral theory of conspiracy, which does not require the other person(s) with whom the defendant conspired to have the actual intent to commit the underlying crime, provided the defendant believed the other person(s) to have such intent.
4. Increases the severity level for the crime of incest from a severity level 5, person felony to a severity level 3, person felony if the victim is the offender's biological, step, or adoptive child.
5. Replaces "sexual battery" with "sexually motivated crime" in the burglary statute.
6. The bill also would adopt a new drug sentencing grid with five levels, adding a new level 2 with penalties falling between the current first and second levels of the drug grid. The grid also would expand the presumptive imprisonment boxes to include levels 4-C and 4-D (formerly levels 3-C and 3-D), making the presumed sentence for certain offenders convicted of level 4 crimes imprisonment, and expand the border boxes to include levels 5-C and 5-D (formerly levels 4-C and 4-D), allowing courts to impose an optional non-prison sentence for certain offenders convicted of level 5 offenses.
7. The bill would also specify that offenders assigned a high risk status, as determined by a drug abuse assessment, and a moderate or high risk status, as determined by the criminal risk-need assessment would be committed to a drug-abuse treatment program. Offenders so committed would be supervised by community correctional services. Otherwise, based on the result of the criminal risk assessment, they would be supervised either by community correctional services or court services.

Further, it would allow the court to order an offender who does not meet the drug risk assessment level requirements to undergo an additional drug risk assessment while the offender is on probation and to undergo drug abuse treatment if the offender is determined to meet the risk assessment level requirement. The offender would pay the costs of that assessment.

8. The bill further would make several changes to the statutes governing drug crimes. Specifically, the bill would delete the packaging or repackaging of a substance or labeling or relabeling its container from the definition of "manufacture," and clarify that it does not include the addition of dilutants or adulterants. It also would amend the definition of "drug paraphernalia" to clarify that it does not include certain drug precursors. Next, it would amend as follows the severity levels for a violation of K.S.A. 21-5703, manufacture or attempted manufacture of a controlled substance or controlled substance analog:

- a. Change a violation from a drug severity level 1 felony to a drug severity level 2 felony for a first conviction; a second or subsequent conviction for manufacture would be a drug severity level 1 felony; and
  - b. Specify that manufacture of methamphetamine would remain a drug severity level 1 felony.
9. In K.S.A. 21-5705, the bill would impose new felony classifications on the drug grid, based on quantity, for the crimes of distribution or possession with the intent to distribute the drugs listed in subsection (a), including lisdexamfetamine, a schedule II substance, as follows:
- a. Less than 3.5 grams, severity level 4;
  - b. At least 3.5 grams but less than 100 grams, severity level 3;
  - c. At least 100 grams but less than 1 kilogram, severity level 2; and
  - d. 1 kilogram or more, severity level 1.
10. The bill would create exceptions to these penalties, as follows:
- a. Violations involving marijuana would have the following felony classifications on the drug grid based on quantity:
    - i. Less than 25 grams, severity level 4;
    - ii. At least 25 grams but less than 450 grams, severity level 3;
    - iii. At least 450 grams but less than 30 kilograms, severity level 2; and
    - iv. 30 kilograms or more, severity level 1 felony.
  - b. Violations involving heroin or methamphetamine would have the following felony classifications on the drug grid based on quantity:
    - i. Less than 1 gram, severity level 4;
    - ii. At least 1 gram but less than 3.5 grams, severity level 3;
    - iii. At least 3.5 grams but less than 100 grams, severity level 2; or
    - iv. 100 grams or more, severity level 1.
  - c. Violations involving substances outlined in K.S.A. 65-4105, 65-4107, 65-4109, or 65-4111 (schedules I-IV) would have the following felony classifications on the drug grid based on quantity:
    - i. Fewer than 10 dosage units, severity level 4;
    - ii. At least 10 dosage units but less than 100 dosage units, severity level 3;
    - iii. At least 100 dosage units but less than 1,000 dosage units, severity level 2; and
    - iv. 1,000 dosage units or more, severity level 1.
  - d. Violations occurring within 1,000 feet of any school property would increase the severity level by 1 level.
11. The crime of distribution or possession with the intent to distribute a controlled substance listed in schedule V would be a class A person misdemeanor, except that if distributed to or possessed with the intent to distribute to a minor, it would be a nondrug severity level 7, person felony.
12. Cultivation of a controlled substance listed in subsection (a) would have the following felony classifications on the drug grid based on the number of plants cultivated:
- a. More than 4, but fewer than 50, severity level 3;
  - b. At least 50, but fewer than 100, severity level 2; or
  - c. 100 or more, severity level 1.
13. A rebuttable presumption of intent to distribute would be created for possession of the following amounts of controlled substances:
- a. 450 grams or more of marijuana;

- b. 3.5 grams or more of heroin or methamphetamine;
- c. 100 dosage units or more containing a controlled substance listed by statute in the Uniform Controlled Substances Act; or
- d. 100 grams or more of any other controlled substance listed under the Act.

The bill has been signed and is effective July 1, 2012.

H Sub for SB 60: The bill serves as a follow-up to 2011 H Sub for SB 6 (SB 6), which made extensive revisions to Kansas DUI law. Some of the highlights are as follows:

1. The bill would clarify that \$250 from each fine imposed by a municipal court for a violation of a DUI or commercial DUI ordinance shall be directed to the Community Corrections Supervision Fund.
2. The bill would create the crime of refusing to submit to a test to determine the presence of alcohol or drugs. Under this section, it would be a crime to refuse to submit to or complete such a test if a person has a prior test refusal or a prior conviction for DUI or commercial DUI, any of which occurred (1) on or after July 1, 2001, and (2) when such person was at least 18 years of age. Thus, a first-time test refusal would not constitute criminal conduct unless a person has a previous DUI or commercial DUI conviction as specified in the section. The penalties for a first conviction of test refusal would be the same as the penalties for a second DUI, the penalties for a second test refusal conviction would be the same as the penalties for a third DUI, and the penalties for a third or subsequent test refusal conviction would be the same as the penalties for a fourth or subsequent DUI conviction. The evaluation and procedural requirements for this crime would be the same as those for DUI, as amended by this bill. The implied consent statute would be amended to include information regarding the test refusal crime in the oral and written notice given to persons subject to testing.

In determining whether a test refusal conviction is a first, second, third, or subsequent conviction for sentencing under the new section, the following would count as a conviction, in addition to any convictions under the new section itself: convictions for DUI on or after July 1, 2001, and any lifetime convictions of commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide, or vehicular battery while DUI. "Convictions" would include conviction of violation of a city ordinance, county resolution, or law of another state; a diversion agreement; or punishment under the Uniform Code of Military Justice or Kansas Code of Military Justice. Convictions before the offender reached the age of 18 would not be included in this calculation. The bill would clarify that a previous DUI or commercial DUI conviction used to trigger the test refusal criminal provision shall not also be used for sentencing purposes.

The bill would amend the DUI and commercial DUI statutes to incorporate comparable provisions requiring the consideration of convictions of related crimes, including the new crime of test refusal, in determining the number of the current conviction. However, the provisions in the DUI and commercial DUI statutes would not exclude convictions before the age of 18.

3. The bill would allow a person to obtain a class C license for the operation of a motorized bicycle if such person's driving privileges have been suspended for a first time DUI conviction. Further, a person whose license has been revoked for being a habitual violator could obtain a class C license, so long as in the last five years the person has not had a test refusal; test failure; "alcohol or drug related conviction," as defined in Kansas law; or conviction for fleeing or eluding a police officer.



4. K.S.A. 8-1008, regarding alcohol and drug evaluations, would be amended to establish a minimum fee of \$150 for the required alcohol and drug evaluation. Evaluation providers would be required to agree to evaluate indigent defendants at no up-front cost and have the evaluation fee be assessed to the defendant as part of the judgment. The implementation of a provision requiring the use of a standardized substance use evaluation approved by the Secretary of Social and Rehabilitation Services would be delayed until July 1, 2013. A grandfather clause would be added to allow persons who, on or before July 1, 2012, were taking action to become a provider in accordance with the requirements of this section to continue to perform services described in the section until July 1, 2014. This section, as well as the test refusal, DUI, and commercial DUI sections, would be amended so that evaluations pursuant to this section would not be required for third and subsequent refusal or commercial DUI convictions or for third or fourth and subsequent DUI convictions.
5. K.S.A. 8-1014, governing the administrative penalties for test refusal or failure or an alcohol or drug-related conviction, would be amended to add an additional year of interlock restriction for a test refusal.
6. A \$100 application fee for restricted ignition interlock licenses would be created, and the first \$100,000 generated from this fee each fiscal year would be directed to the Division of Vehicles, with the remainder directed to the Community Corrections Supervision Fund.

Persons subject to first-time suspensions for test refusal, high blood alcohol content conviction, or test failure would be permitted to operate an employer's vehicle without an ignition interlock device installed during normal business activities.

7. The DUI criminal statute, K.S.A. 2011 Supp. 8-1567, would be amended to strike provisions regarding habitual users, impoundment, and revocation of license plates or temporary certifications. House arrest and work release provisions for third or subsequent convictions would be amended to increase the required minimum hours of confinement from 240 hours to 2,160 hours (90 days) to be consistent with the 90 days' imprisonment required elsewhere in this subsection.

The bill has been enrolled and is awaiting approval by the Governor. If signed, it will be effective on July 1, 2012, except where noted in the bill.