



February 2015
Quarterly E-newsletter

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2014 Desk Reference Manual is available to order.
 Fill out the [2014 DRM Order Form](#) and return it with your payment.
Please note: There are additional tools available to order along with your manual.

***Commission’s Legislative Agenda
 Off to Quick Start***

The beginning of the 2015 Kansas Legislative Session is off and running and the Commission has introduced six bills for consideration this year. It is the statutory charge of the Commission to recommend solutions to maintain the sentencing guidelines and further public safety by supporting the incarceration of the most violent offenders in the state’s criminal justice system. Over 20 proposals were reviewed and debated at the Commission’s annual workshop last November. The bills below represent the legislative agenda for the Commission this year:

HB 2049 - Amending penalty for first and second marihuana possession convictions

This bill amends K.S.A. 2014 Supp. 21-5706 by modifying the criminal penalties of possession of marihuana. Upon a first violation for possession, the penalty would be reduced from a class A, nonperson misdemeanor to a class B, nonperson misdemeanor. If an offender has a prior conviction, the penalty would be reduced from a drug severity level 5, nonperson felony to a class A, nonperson misdemeanor. If an offender has two or more prior convictions, the penalty would remain a drug severity level 5, nonperson felony.

This proposal provides several benefits. First, even with the 2nd time possession penalty as a felony, only 10% of those convicted are sentenced to prison. It is estimated that reducing the penalty for 2nd time possession of marihuana to a misdemeanor will take 448 felony cases out of the system. In doing so, it is projected to save 46 prison beds in FY 2016, a possible savings of up to \$1,150,000. By FY 2025, savings of 85 beds or up to \$2,125,000 is projected. At minimum, passage of the bill would provide relief to an already

over-capacity prison system or free up space for more violent offenders to be placed in custody.

Second, on the probation side, the Commission anticipates it will pay out \$6,888,506 for FY 2015 for the SB 123 substance abuse treatment program for possession offenders statewide. By reducing the penalties for possession, the SB 123 program would realize an estimated \$788,986 in savings as 184 marijuana possession offenders would not participate in the program as they would be misdemeanants.

Finally, collateral consequences of a felony conviction may be considered when viewing this bill. Among the many rights and privileges that are enjoyed by Kansans, felony convictions prohibit the ability to vote or to possess firearms. Gaining employment is made more difficult if disclosure of a felony conviction is a requirement when applying for a job.

HB 2050 – Allow prison sanction without county jail sanction for absconders

The judiciary contacted the Commission with a request to have another option to manage offenders that abscond while on probation. When an absconder is returned to custody and a violation of their probation is determined, current law requires the court to impose a 2-3 day jail sanction prior to imposing a 120 or 180-day KDOC sanction against the offender. While courts would like to use the Justice Reinvestment Initiative sanctions at KDOC, they have been revoking offenders to prison to serve their original sentences instead due to the existing prerequisite jail sanction. By deleting the jail requirement, the bill seeks to provide courts with the option to pursue JRI violation sanctions rather than fully revoking an offender.

Specifically, the bill amends K.S.A. 2014 Supp. 22-3716, by adding subsection (c)(8)(B), to allow a district court to impose JRI sanctions if the offender absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction.

In addition to revoking the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender, the amendment allows the court to impose JRI intermediate sanctions under subsections (c)(1)(A) (continue or modify terms of probation), (c)(1)(C) (120-day sanction with KDOC) or (c)(1)(D) (180-day sanction with KDOC) without imposing a sanction under (c)(1)(B) (2-3 day county jail sanction).

Adopting the legislation will provide another tool for the courts to handle specific absconder issues in their jurisdictions and will also provide for shorter stays in KDOC as offenders will serve 120 or 180-day sanctions in KDOC rather than their full sentence.

HB 2051 – Amendments to calculation of good time and program credits for inmates

This bill is would amend K.S.A. 2014 Supp. 21-6821 by:

- Restoring 20% good time credit for drug severity level 3 (D3) offenders whose offenses occurred on or after July 1, 2012. Offenders with D3 offenses currently receive 15% good time credit;
- Increasing the amount of program credit an offender can earn from 60 days to 90 days, including D3 offenders;
- Requiring the secretary of corrections to make the good time and program credit calculation changes no later than January 1, 2016; and

- Applying the amendments retroactively.

Programming credit is currently available for offenders who committed crimes on or after January 1, 2008 and before July 1, 2012 that include nondrug grid level 4-10 offenses and drug grid 3-4 offenses. For offenders committing offenses after July 1, 2012, credit is available for nondrug grid level 4-10 offenses and drug grid level 4-5 offenses. Some examples of program credit offered by KDOC that offenders must earn include:

1. Substance abuse or cognitive-based curriculum;
2. GED readiness;
3. Vocational programs;
4. Risk reduction case planning;
5. Skills-building pre-release program;
6. Job readiness program;
7. Parenting class;
8. Work release; and
9. Kansas Correctional Industries, private industry employment, or any specialized warden-approved employment.

The request of this bill is to restore the amount of good time (20%) and program credit for severity level 3 drug offenders that existed as part of 2008 SB 14, prior to the transition to a five-level drug grid on July 1, 2012. When the four level drug grid was utilized, D4 offenses were possession crimes, levels one to three drug offenses were sales in which the offenders were charged at the various severity levels based upon prior number of sales. For example, a first time sale by an offender would be charged with a D3 offense, without regard to **any** amount sold by the offender. A second sale would be charged as a D2 offense and so on. Programming credit was offered to those offenders with D3 and D4 offenses. D1 and D2 offenders were excluded.

When the five-level drug grid was adopted on July 1, 2012, a quantity-based system of charging followed. D4 and D5 offenses are included for programming credit but D3 offenses, which now constitute at least 25 grams (.88 oz. of marijuana) but less than 450 grams (15.87 oz. of marijuana) have been precluded from good time credit of 20% and programming credit of 60 days. The Commission supports reinstating both of these in addition to increasing programming credit to a total of 90 days.

Increasing programming credit realizes two benefits. Offenders must avail themselves of more programming to receive the credit. The programs offered as part of the credits are designed to reduce the risk of reoffending. Incentivizing the offenders in this manner also realizes cost savings in bed space reduction (119 in FY 2016) due to the increase in number of available days of credit an offender may receive.

HB 2052 – Including diversions for felony violations in criminal history and the SB 123 drug abuse treatment program

This bill amends K.S.A. 2014 Supp. 21-6810 by adding subsection (d)(3) to include adult diversions for felony violations of K.S.A. 2014 Supp. 21-5706 (unlawful possession of controlled substances), committed on or after July 1, 2015. Such diversions would be scored as a nonperson felony adult conviction when determining the criminal history of an offender.

The bill also amends K.S.A. 2014 Supp. 21-6824 (2003 SB 123 substance abuse treatment pro-

gram) by adding subsection (j) to allow SB 123 substance abuse treatment to those placed on felony possession diversion. The provision provides in pertinent part, “Offenders committed to a certified drug abuse treatment program pursuant to subsection (a) that are placed on diversion may receive drug abuse treatment for up to 18 months and shall be supervised by community correctional services. The term of such treatment shall not exceed the term of diversion.”

The rationale for each of the amendments is to incentivize parties to the action in several ways. First, although diversion of drug possession crimes are currently available for prosecutors to offer to offenders, making diversion now a part of criminal history for a subsequent crime would allow additional assurance to prosecutors of compliance that otherwise is not currently present. Second, the offender is incentivized by knowing that successful completion of the diversion will result in the offender not being a felony offender. This would allow eligible offenders to be free from the collateral consequences that occasion being a felon (e.g., loss of voting rights, prohibition from possessing a firearm, or disclosure as a felon on a job application). Finally, for those offenders meeting the criteria of K.S.A. 2014 Supp. 21-6824, community resources would be dedicated to the offender in the form of paid SB 123 substance abuse treatment while on diversion to encourage offender success.

HB 2055 – Conversion of out-of-state misdemeanors

The agency receives well over 300 telephone and email inquiries each year regarding application of the Kansas Sentencing Guidelines Act. These are from stakeholders working every day in the criminal justice system throughout the state.

This bill is a product of those inquiries. HB 2055 amends K.S.A. 2014 Supp. 21-6811, by including new provisions for the treatment of out-of-state misdemeanors for criminal history calculation purposes. If a crime is a misdemeanor in another state, the state of Kansas shall refer to the comparable offense in order to classify the out-of-state crime as a class A, B or C misdemeanor. If the comparable offense in the state of Kansas is a felony, the out-of-state crime shall be classified as a class A misdemeanor. If the state of Kansas does not have a comparable offense, the out-of-state crime shall be classified as a class C misdemeanor. See table below.

HB 2055 Criminal History Scoring Matrix		
Out-of-State Convictions and Adjudications		
Out-of-State	Kansas	Scoring
Felony	Felony	Felony
Misdemeanor	Misdemeanor	A, B, or C Misdemeanor
Misdemeanor	Felony	A Misdemeanor
Misdemeanor	No Comparable	C Misdemeanor

HB 2056 - Use of risk assessment tool for community corrections placement

HB 2056 amends provisions of K.S.A. 2014 Supp. 75-5291, the provision that limits which offenders the court may place under community corrections supervision in a criminal action.

In 2013 as part of the Justice Reinvestment legislation, the Legislature tasked the Commission with the authority to “make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender.” K.S.A. 74-9101(b)(21). As a result, the Commission formed a subcommittee and engaged in a year-long study which culminated in extensive research of the state’s court services and community corrections probation programs. On July 1, 2014, the Commission released its findings to Kansas Supreme Court Chief Justice Lawton Nuss and Kansas Department of Corrections Secretary Ray Roberts that complies with the legislative mandate.

In conforming with the shift to probation placement based upon risk and needs rather than just severity level and criminal history score, the bill confirms the intent of the Legislature to utilize evidence-based risk assessment tools to determine placement of offenders in community correctional services and seeks to eliminate any perceived conflict with the Commission findings and the current “target population” requirements for community corrections that is currently found in K.S.A. 2014 Supp. 75-5291(a)(2) (A).

Conclusion

Please note that none of the bills are law at this time. All bills were introduced in the House Corrections and Juvenile Justice Committee, where the Commission testified on January 27 and 28. The Committee plans to work these bills shortly. If you have any questions, please contact Executive Director Scott Schultz.

***State v. Murdock Update***

The Commission has recently amended the [Journal Entry of Sentencing](#) on page one, section one, paragraph 11 and the [PSI](#) on the face sheet; page eight, paragraph six; and page nine in the code section, to assist practitioners when confronted with a *Murdock* Motion to Correct Illegal Sentence. Please see the appropriate links to the forms above in this paragraph and use them in the event that a *Murdock* resentencing occurs. They may also be found under the Forms tab on the agency [website](#).

As part of the 2015 legislative session, [HB 2053](#) has been introduced. The bill seeks to limit the ruling in *Murdock* and clarify criminal history scoring for out-of-state and in-state convictions occurring prior to the creation of the Kansas Sentencing Guidelines Act in 1993. The Commission supports sections one and two of the bill but has not considered the provisions in section three, which limit the time a court may correct an illegal sentence.

☀ **FY 2015 Prison Population Projections** ☀

Click [here](#) to view the entire report



☀ **FY 2015 KDOC Inmate Custody Classification Projection** ☀

The report may be found [here](#).



☀ **2013 Annual Report** ☀ To view the report click [here](#)



2014 Kansas Sentencing Guidelines – forms



All NEW 2014 Forms (effective 7/1/2014)

Click here to view all 2014 forms

Journal Entry of Judgment (JE) (**Revised 12/18/14**)

Probation Violation Hearing (PVJE)

Presentence Investigation Report (PSI) (**Revised 12/18/14**)

Please note:

Under each form of the **highlighted version** we have provided and an explanation document describing the latest changes.



2013 DRM

... Still Available!

Mail completed form
with your payment.

**Kansas Sentencing Guidelines
2013 Desk Reference Manual
(DRM)**



Did you know...

E-mail your Journal Entry (JE), Probation Violation Hearing (PVJE), or PSI forms 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

If you email JEs—**please include the following:**

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

If you have ANY questions
(785) 296-0923.

2003 Senate Bill 123

K.S.A. 21-6824

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. 21-5706.

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.

Senate Bill 123 News

Position Announcement

The Kansas Sentencing Commission is seeking a Program Director/Utilization Review and Treatment Specialist to manage in the operations of the SB 123 Drug Treatment and Alternative Sentencing Program. The position will have an integral role in defining the continued success of the program by ensuring that treatment funds are used efficiently and in accordance with evidence-based practices.

This is an opportunity to join the Kansas Sentencing Commission team and have an immediate impact on the delivery of addiction services treatment and care statewide.

Licensed Addiction Counselors and Licensed Clinical Addiction Counselors are encouraged to apply. Preference will be given to candidates with experience in clinical assessment, creating treatment plans, coordinating care and matching client needs with appropriate treatment. More information regarding the position may be found [here](#).

☀ **Any SB 123 billing inquiries-**

Please call Jennifer Dalton directly- (785) 291-3530. Thank you.

☀ **SB123 Billing Changes** ☀

Insurance billing changed in January 1, 2013. For more information [click here](#).

Observance of Length of Stay Caps when Billing for SB 123 Treatment letter

The Offender Insurance Coverage Report Form

Treatment Providers: Please remember:

- **Send All ASIs 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 or faxed to 785-296-0927 in care of Jennifer.**
- **SB123 questions— Please email Jennifer Dalton, jenniferd@sentencing.ks.gov**

