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SB 123 Bill Continues Through the Legislature

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



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Legislation introduced in the Senate as recommended by the Commission is making its way through the Kansas Legislature. Originally SB 368, the Commission’s request to apply evidence-based practices by means of risk needs assessments in the sentencing process has been combined with a mega-drug bill and is now Senate Substitute for Substitute for HB 2318. This bill would amend several statutes concerning drug crimes. While not exhaustive, the following is a summary of selected major points of the bill.

The bill would adopt a new drug sentencing grid with five levels. The grid would add a new severity level 2 with penalties falling between the current first and second levels of the drug grid. The bill would also specify that drug possession 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 needs assessment would be committed to the drug abuse treatment program provided in K.S.A. 21-6824. 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. The border boxes on the drug grid would be expanded to include levels 5-C and 5-D, which would allow the imposition of optional non-prison sentences for certain level 5 offenses (formerly level 4 offenses).

The bill also 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. 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:

- 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
- Specify that manufacture of methamphetamine would remain a drug severity level 1 felony.

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Have you ordered yours?

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 with the form to us. Thank you.

2012 Legislative Update

We are tracking the following bill that may have significant impact on the sentencing guidelines:



S Sub for Sub for HB 2318:

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

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

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](#)





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
 or call with any questions.

ASI Training in May.
 Where: Lawrence, Ks
 To register
[view the brochure](#)

April Case Law Updates

- [State v. Hernandez](#) – April 12, 2012 – Sedgwick – Affirmed in part, reversed in part and remanded, No. 101,719 (Jessica’s Law)
- [State v. Snellings](#) – April 6, 2012 – Reno – Affirmed in part, vacated in part and remanded, No. 101,378 (Criminal History, Drugs and Multiplicity)
- [State v. Adams](#) – April 6, 2012 – Comanche – Affirmed in part, vacated in part and remanded, No. 101,392 (Jury Instructions, Criminal History and Multiplicity)
- [State v. Behrendt](#) – April 27, 2012 – Reno – Affirmed in part, reversed in part, and remanded, No. 105,222 (Restitution)
- [State v. Unrein](#) – April 20, 2012 – Sedgwick – Affirmed, No. 104,824 (Kansas Offender Registration Act)

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.](#)

Senate Bill 123 News

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, 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

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.

We also provide the

[KBI Offender Registration Forms](#)

These can also be found on our web site.



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

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

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 distribute 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 distribute 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.

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.

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2010 Desk Reference Manual (DRM) are still available.

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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) as follows:

- Less than 3.5 grams, severity level 4;
- At least 3.5 grams but less than 100 grams, severity level 3;
- At least 100 grams but less than 1 kilogram, severity level 2; and
- 1 kilogram or more, severity level 1.

The bill would create exceptions to these penalties as follows:

- Violations involving marijuana would have the following felony classifications on the drug grid based on quantity:
 1. Less than 25 grams, severity level 4;
 2. At least 25 grams but less than 450 grams, severity level 3;
 3. At least 450 grams but less than 30 kilograms, severity level 2; and
 4. 30 kilograms or more, severity level 1 felony.
- Violations involving heroin or methamphetamine would have the following felony classifications on the drug grid based on quantity:
 1. Less than 1 gram, severity level 4;
 2. At least 1 gram but less than 3.5 grams, severity level 3;
 3. At least 3.5 grams but less than 100 grams, severity level 2; or
 4. 100 grams or more, severity level 1.
- 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:
 1. Fewer than 10 dosage units, severity level 4;
 2. At least 10 dosage units but less than 100 dosage units, severity level 3;
 3. At least 100 dosage units but less than 1,000 dosage units, severity level 2; and
 4. 1,000 dosage units or more, severity level 1.
- Violations occurring within 1,000 feet of any school property would increase the severity level by 1 level.

The crime of distribution or possession with the intent to distribute 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.

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:

1. More than 4, but fewer than 50, severity level 3;
2. At least 50, but fewer than 100, severity level 2; or
3. 100 or more, severity level 1.

A rebuttable presumption of intent to distribute would be created for possession of the following amounts of controlled substances:

1. 450 grams or more of marijuana;
2. 3.5 grams or more of heroin or methamphetamine;
3. 100 dosage units or more containing a controlled substance listed by statute in the Uniform Controlled Substances Act; or
4. 100 grams or more of any other controlled substance listed under the Act.

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In K.S.A. 21-5710, the subsections with enhanced penalties for distribution or causing paraphernalia to be distributed to a minor on or within 1,000 feet of any school property would be amended to strike the requirement that the offender be 18 or older.

The bill would amend K.S.A. 21-5714 to clarify that a person prosecuted for the distribution or possession with the intent to distribute a noncontrolled substance as a controlled substance also could be prosecuted and convicted of theft.

In K.S.A. 21-5716, concerning crimes involving proceeds derived from the commission of any drug crime, the severity level of crimes involving proceeds of \$100,000-\$500,000, would be amended to raise the severity level for proceeds of \$100,000-\$250,000, from a level 2 to a level 3, due to the adoption of the five-level grid. For proceeds of \$250,000- \$500,000, the severity level would remain a level 2.



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Questions or comments? E-mail us at sentencing@sentencing.ks.gov
We welcome your questions – call us at 785-296-0923