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Kansas Association of Court Services Officers Fall Conference Manhattan, Kansas October 23, 2015

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Kansas Sentencing Commission
www.sentencing.ks.gov
(785) 296-0923

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Agenda

2015 Legislative
Update

HB 2170
History/Process

FY 2015 Probation
Revocation Data

Why Should You
Care?

PSI and JE Update

Legislative Update 2015 Session



www.kslegislature.org

House Sub for SB 12 – Kansas Sexually Violent Predator Act

- **House Substitute for SB 12** creates and amends law governing the civil commitment of sexually violent predators and the Sexual Predator Treatment Program (SPTP).
- Provisions are added to the statute governing the initial identification of a person who may meet the criteria of a sexually violent predator (SVP) to require that notice be given to persons evaluated of the nature and purpose of the evaluation, that the evaluation will not be confidential, and that the person's statements and evaluator's conclusions could be disclosed to certain parties in proceedings under the Act. Disclosures to the Attorney General under the section are deemed to be in response to the Attorney General's civil demand for information to determine whether a petition shall be filed, and such information would have to be specific to the purposes of the Act and as limited in scope as reasonably practicable.
- Most hearings, while civil, to be heard through administrative hearing process. Venue is established in Pawnee County, Kansas, for all proceedings brought pursuant to KJRA, unless otherwise provided in the Act.

SB 13 - Criminal History Record Information

- **SB 13** clarifies the definition of “criminal history record information” in K.S.A. 22-4701 by excluding information regarding the release, assignment to work release, or any other change in custody status of a person confined by the Department of Corrections or a jail. The bill also removes a reference to the Juvenile Justice Authority.
- Effective July 1, 2015

SB 34 – Election Crimes

- **SB 34** creates or amends laws related to elections crimes, prosecution of those crimes, and elections definitions.
- Creates a separate crime of voting more than once, which currently is incorporated in the crime of voting without being qualified. The crime is a severity level 7, nonperson felony, and the general criminal attempt statute does not apply to the crime.
- Creates new law that gives the Secretary of State independent authority to prosecute any person for a Kansas election crime.

SB 34 – Election Crimes

- Amends the statute **prohibiting or requiring certain actions with regard to advance voting** to increase the severity level for a violation of its provisions from a class C misdemeanor to a severity level 9, nonperson felony.
- Amends the crime of **voting without being qualified** to remove the provisions regarding voting more than once (which becomes a separate crime, as described above). The severity level of this crime is increased from a class A misdemeanor to a severity level 7, nonperson felony, and the general criminal attempt statute does apply to the crime.

SB 34 – Election Crimes

- Increases the severity level for the crime of **election tampering** from a severity level 8 to a severity level 7, nonperson felony.
- Clarifies that the crime of **false impersonation of a voter** can occur by representing oneself as another person whether real or fictitious, and increases the severity level of this crime from a severity level 9 to a severity level 8, nonperson felony.

SB 45 - Constitutional Carry

- SB 45 amends laws concerning the concealed carry of firearms. The bill adds language allowing the concealed carry of a firearm **without** a concealed carry license issued by the State, as long as that individual is not prohibited from possessing a firearm under either federal or state law.
- Carrying of a concealed handgun cannot be prohibited in any building unless the building is posted in accordance with rules and regulations adopted by the Attorney General. Concealed carry licenses will still be issued by the State, but the availability of those licenses cannot be construed to prohibit the carrying of handguns without a license, whether carried openly or concealed, loaded or unloaded.

SB 45 - Constitutional Carry (Cont.)

- Related to concealed carry licenses, the bill also allows the AG to create a list of concealed carry handgun licenses or permits from other jurisdictions that have training requirements greater than or equal to the Kansas requirements. This list can be used by the AG when reviewing concealed carry license applications and making a determination about whether an individual has completed an approved handgun safety and training course required for issuance of a concealed carry license.
- The bill amends the definition of “criminal carrying of a weapon” to clarify that it is not legal for anyone under 21 years of age to carry any pistol, revolver, or other firearm concealed on one’s person, except when on such person’s land or in such person’s abode or fixed place of business.
- Effective July 1, 2015

SB 95 - Creation of the Unborn Protection from Dismemberment Act

- The bill prohibits the performance of or the attempt to perform a dismemberment abortion unless the procedure is necessary to preserve the life of the pregnant woman or a continuation of the pregnancy would cause a substantial and irreversible physical impairment of a major bodily function. A claim or diagnosis the woman would engage in conduct resulting in her death or in substantial and irreversible physical impairment of a major bodily function does not allow for a dismemberment abortion under the Act.
- A first conviction for a dismemberment abortion performed or attempted is a class A person misdemeanor. A second or subsequent conviction is a severity level 10, person felony.
- Effective July 1, 2015

SB 113 – Human Trafficking; Civil Action for Victims; Commercial Sexual Exploitation of a Child

- **SB 113** creates and amends law related to human trafficking crimes and the crime of commercial sexual exploitation of a child.
- The bill requires a sentencing court to order a person convicted of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child to pay restitution to the victim of the offense for expenses incurred or reasonably certain to be incurred as a result of the offense, including reasonable attorney fees and costs, as well as the greater of three times the following amounts, without reduction for the defendant's expenses in maintaining the victim:
 - Gross income to the defendant for, or the value to the defendant of, the victim's labor, services, or sexual activity;
 - Amount the defendant contracted to pay the victim; or
 - The value of the victim's labor, services, or sexual activity, calculated under the higher of the state or federal minimum wage.
- Restitution shall be ordered even if the victim is unavailable to accept the restitution. If the restitution is not claimed within five years, the restitution shall be paid to the Human Trafficking Victim Assistance Fund.

SB 240 – Recodification of the Banking Code

- The bill updates references to the classification of misdemeanors (*e.g.*, specifying Class A, nonperson misdemeanors). It further updates a provision regarding the making of a false report to account for filing of electronic information. The bill also excepts the FDIC from a provision governing violations by a receiver and eliminates a provision pertaining to embezzlement and instead provides it shall be unlawful to injure, defraud, or deceive a bank or trust company for personal gain and use such entity's name for such gains.
- Effective July 1, 2015

SB 252 - Unlawful Abuse of Toxic Vapors

- **SB 252** amends the crime of unlawful abuse of toxic vapors to include “other halogenated hydrocarbons” within the definition of “toxic vapors.”
- Effective July 1, 2015

HB 2048: Scrap Metal Theft Reduction Act

- Criminal damage to property is amended to create the crime of **aggravated criminal damage to property**, which is defined as criminal damage to property, if the value or amount of damage exceeds \$5,000, committed with the intent to obtain regulated scrap metal or related items, where the crime is committed on any building, structure, residence, facility, site, place, property, vehicle, or infrastructure. The new crime is a severity level 6, nonperson felony, and a special sentencing rule is added to the sentencing grid statute imposing a sentence of presumptive imprisonment where an offender has a prior conviction for any nonperson felony.

HB 2051 – Good time and program credits for certain inmates; use of risk assessment tool for community corrections placement.

- KSC's HB 2051 would modify good time and program credit calculations by restoring 20 percent good time credit for **drug severity level three** offenders whose offenses occurred on or after July 1, 2012, and by increasing the amount of program credit an offender can earn from **60 days to 90 days**. The Department of Corrections must make these calculation changes no later than January 1, 2016. The amendments would be applied retroactively.
- Amends the list of adult offenders in KSA 75-5291(a)(2) who are eligible to be placed in community correctional services programs to remove placements based on offense classification and expand placements based on the use of a standardized risk assessment tool specified by the Kansas Sentencing Commission. Those offenders who are determined, on or after July 1, 2014, to be moderate- to very-high risk by this tool would be eligible for placement.

HB 2051: Probation Cut-Off Scoring

LSI-R Score	Supervision Level	Presumed Supervision Agency
0 - 13	Low	Court Services
14 - 23	Low-Moderate	Court Services
24 - 33	Moderate	Community Corrections
34 - 40	High	Community Corrections
41 +	Very High	Community Corrections

KSC Letter to
Chief Justice Nuss
and Secretary of
Corrections
Roberts on June
20, 2014

- Offenders scoring 23 and lower on the LSI-R are presumed to be placed with Court Services;
- Offenders scoring 24 and higher on the LSI-R are presumed to be placed with Community Corrections;
- Cutoffs and supervision levels apply to all felonies, including SB 123 eligible offenses and nongrid offenses (e.g., DUI, Test Refusal, and Domestic Battery);
- This placement is based on **initial** assessment, being mindful that as offender risk and needs change, so should the supervision. These supervision levels contemplate a continuum of services which relies on evidenced-based decision making;
- Violations of conditions of release for those placed in Court Services per K.S.A. 75-5291(a)(5), is presumed to be placed with Community Corrections before being revoked to DOC;
- Offenses listed in K.S.A. 75-5291 may still be placed under supervision to Community Corrections regardless of LSI-R score, if ordered by the court;
- These cutoff scores and supervision levels apply prospectively to cases in which the underlying crime was committed on or after July 1, 2014.

HB 2055 – Battery Against a Law Enforcement Officer; Criminal History; Aggravated Battery when Driving Under the Influence

- **HB 2055** amends law related to battery against a law enforcement officer, determination of criminal history, aggravated battery when driving under the influence (DUI), and the items that may be included in a search warrant.

Battery Against a Law Enforcement Officer

- The bill amends the crime of battery against a law enforcement officer in K.S.A. 21-5413 to include battery against a judge engaged in the performance of the judge’s duty, an attorney engaged in the performance of the attorney’s duty, or a court services or community corrections officer in the performance of such officer’s duty. The bill similarly amends the crime of aggravated battery against a law enforcement officer.
- “Court services officer” is defined to include an employee of the Judicial Branch or local judicial district who supervises, monitors, writes reports, or performs related duties as assigned by the court.

HB 2055 – Battery Against a Law Enforcement Officer; Criminal History; Aggravated Battery when Driving Under the Influence

Criminal History Determination for Misdemeanors

- The bill amends K.S.A. 21-6811 governing the determination of an offender's criminal history to establish a procedure for classifying out-of-state misdemeanor convictions. The comparable Kansas offense shall be used to classify the out-of-state conviction as a class A, B, or C misdemeanor. If the comparable Kansas offense is a felony, the out-of-state conviction shall be classified as a class A misdemeanor. If there is no comparable Kansas offense, the out-of-state conviction will not be included in the criminal history.

HB 2055 – Battery Against a Law Enforcement Officer; Criminal History; Aggravated Battery when Driving Under the Influence

Aggravated Battery While DUI - [Special Rule 45 – new]

- The bill also amends K.S.A. 21-6811 with provisions known as Mija Stockman’s Law, which create a special rule for determining criminal history for a conviction of **aggravated battery when a person is DUI** and great bodily harm to another person or disfigurement of another person results from such act. The rule provides that, for the purposes of determining an offender’s criminal history, the **first** prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication of DUI, commercial DUI, or DUI test refusal shall count as one **nonperson felony**. Each **second or subsequent** prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication of these offenses would count as one **person felony**.

Involuntary Manslaughter while DUI – [Special Rule 42-amended]

- The bill also adds commercial DUI and DUI test refusal to prior convictions, diversions, or juvenile adjudications that count as **person felonies** in determining the criminal history for a conviction of involuntary manslaughter while DUI.

HB 2111: Courts – District Magistrate Judge Jurisdiction; Items Allowable as Costs, Judgment Dormancy, and Debts Owed to Courts

HB 2111 amends the law governing courts, including district magistrate judge jurisdiction, county law libraries, items allowable as costs; judgment dormancy; and debts owed to courts.

District Magistrate Judge Jurisdiction

- The bill clarifies the jurisdiction of district magistrate judges, by:
- Adding jurisdiction over wildlife, parks, and tourism violations; and
- Rewording language related to reassignment of a petition or motion requesting termination of parental rights to match language in the Revised Kansas Code for Care of Children.

HB 2111: Courts – District Magistrate Judge Jurisdiction; Items Allowable as Costs, Judgment Dormancy, and Debts Owed to Courts

Items Allowable as Costs

The bill amends the statute governing which items may be included in the taxation of court costs to include convenience fees and other administrative fees levied for the privilege of paying assessments, fees, costs, fines, or forfeitures by credit card or other means, including, but not limited to, fees for electronic filing of documents or pleadings with the court.

Debts Owed to Courts

The bill amends the statute governing the collection of restitution or debts owed to courts to add court costs, fines, fees, or other charges arising from failure to comply with a traffic citation within 30 days from the mailing of the notice to the definition of “debts owed to courts.” It also adds a provision requiring, when a contracting agent uses the state debt setoff procedures to recover a debt owed to the courts, that the agent’s cost of collection for debt recovered through that program be the contracted amount minus the collection assistance fee imposed by the Director of Accounts and Reports of the Department of Administration (Director).

HB 2111: Courts – District Magistrate Judge Jurisdiction; Items Allowable as Costs, Judgment Dormancy, and Debts Owed to Courts

State Debt Setoff Program

The bill adds the following to the definition of “debt”: assessment of court costs, fines, fees, moneys expended by the state in providing counsel and other defense services to indigent defendants, or other unpaid charges ordered by a district court judgment be paid to the court, including any interest or penalties and the cost of collection when the collection services of a contracting agent are used. The definition of “state agency” is amended to include a contracting agent contracted by a district court to collect debts owed to the court, who could directly establish a debt setoff account with the Director for the sole purpose of collecting such debts.

HB 2154: Veterans Municipal & District Court Diversions, Court-Ordered Treatment & Sentencing

Municipal and District Court Diversion

HB 2154 amends statutes related to diversions, court-ordered treatment, and sentencing with regard to military service members.

The bill expands the list of factors that must be considered by prosecuting attorneys when determining whether to enter into a diversion agreement with a defendant, by including the following factors:

- Whether there is a probability the defendant committed the crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury connected to service in a combat zone while in the U.S. Armed Forces; and
- If so, whether there is a probability the defendant will cooperate with and benefit from inpatient or outpatient treatment in a facility operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard, with the defendant's consent, as a condition of diversion.

HB 2154: Veterans Municipal & District Court Diversions, Court-Ordered Treatment & Sentencing

KSA 2014 Supp. 21-6630

Allows a defendant at the time of conviction or prior to sentencing to assert that the offense was committed as a result of mental illness, including post-traumatic stress disorder, stemming from service in a combat zone while in the U.S. Armed Forces.

Under the provisions of the bill, the court must hold a hearing to determine the following:

- Whether the defendant served in a combat zone while in the U.S. Armed Forces, as proven by a certification by the executive director of the Kansas Commission on Veterans' Affairs;
- Whether the defendant has separated from the armed forces with an **honorable discharge or a general discharge under honorable conditions**;
- Whether the defendant suffers from a **mental illness**; and
- The mental illness was caused or exacerbated by service in a combat zone.

2015 HB 2154

- Replaces the term “mental illness” with the phrase “injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury”
- Eliminates from the qualifying criteria the requirement that the defendant separated from the armed forces with an honorable discharge or general discharge under honorable conditions
- Effective July 1, 2015

[S Sub for HB 2448HB 2170 Text](#)
[Legislative Summary](#)
[Frequently Asked Questions](#)
[Waiver of Right to Probation](#)
[Violation Hearing Form](#)
[Graduated Sanctions Retroactivity](#)
[Open Letter](#)
[Veterans Treatment](#)

[Home](#) > [Legislation](#) > [Veterans Treatment](#)

VETERANS TREATMENT

[Senate Substitute for HB 2655](#)
[2014 HB 2655 Procedural Outline](#)
[Veteran Consent and Authorization Form](#)
[Request for Certification of Veterans Status Form](#)

External link- [Veterans Justice Outreach, U.S. Department of Veterans](#)



Veterans OJA Forms on KSC Website

REQUEST FOR CERTIFICATION OF VETERAN'S STATUS

Pursuant to 2014 Senate Substitute for House Bill 2655

Pursuant to 2014 Senate Substitute for House Bill 2655, the court requests certification from the Kansas Commission on Veterans Affairs Office regarding the combat zone service and discharge status of:

Veteran's Full Name
(including maiden name): _____

Veteran's Social Security Number: _____

Judge of the District Court

Court Contact Information:

Address 1: _____

Address 2: _____

City, State, Zip: _____

Telephone: _____

[Fax Number]: _____

[E-mail Address]: _____

Fax order and release of information to:
Kansas Commission on Veterans Affairs Office
Attn: Wayne Bollig
785-296-1458 (fax)

July 1, 2014

KSA 2014 Supp. 21-6630— Alternative Sentencing for Veterans in Certain Circumstances (Cont.)

**DISTRICT COURT CONSENT AND AUTHORIZATION
TO RELEASE AND RECEIVE INFORMATION REGARDING
VETERAN STATUS**

I, _____
(Name, including maiden name)

(Social Security Number) _____
(Date of Birth)

hereby consent to and authorize the disclosure and use of information regarding my service in a combat zone in the United States armed forces and my discharge status as allowed by 2014 Senate Substitute for House Bill 2655 by:

The Kansas Commission on Veterans Affairs Office
700 SW Jackson, Suite 1004
Topeka, KS 66603
Fax: (785) 296-1458

2. Name, address, and telephone and fax numbers of court authorized to *receive and use* the information:

3. The information to be released is for:

- Certification of my service in the armed forces of the United States of America in a combat zone as defined in section 112 of the federal Internal Revenue Code of 1986 and
- Certification that I separated from the armed forces with an honorable discharge or general discharge under honorable conditions.

4. This information will be used for:

- Determining that I meet the criteria established by 2014 Senate Substitute for House Bill 2655 for treatment at any treatment facility or program operated by the United States Department of Defense, the federal Veterans' Administration, or the Kansas National Guard and, if applicable;

1

July 1, 2014

- The presentence investigation;
- Probation case supervision; or
- Other purposes related to the case.

5. I understand that, once the uses and disclosures have been made pursuant to this consent and authorization, the information released will no longer be protected by federal privacy laws and will become part of the court record. Information received through this consent may be disclosed to the court assigned to the case, court employees, and the attorneys assigned to the case as necessary for the court's hearing of the case.

This consent and authorization has been executed with my full knowledge and understanding of its contents. I agree to the uses and disclosures listed above and understand that I will receive a copy of this signed consent and authorization.

Signature

Date

Signature of Personal Representative (if applicable)

Authority

2

July 1, 2014

OJA Forms on KSC Website

Substitute for HB 2159: Authorizing a driver's license with a DUI-IID designation; amending authorized restrictions of driving privileges, ignition interlock device; amending timeframe for expungements of DUI and other driving offenses

- The bill allows the Division of Vehicles to issue a restricted driver's license with a DUI-IID (Ignition Interlock Device) designation to a licensee allowed to operate a motor vehicle under ignition interlock restrictions
- The bill amends the statute governing ignition interlock restrictions of driving privileges following a first occurrence of a DUI related test refusal, test failure, or conviction, to allow the person under the restriction to drive to and from the ignition interlock provider for maintenance and downloading of device data.
- **Expungements of DUI and test refusal offenses** - The bill amends the statutes governing expungements of state and city ordinance DUIs and test refusal to change to **five** years that must have elapsed since the person satisfied the sentence or the terms of a diversion agreement or was discharged from probation, parole, postrelease supervision, conditional release, or a suspended sentence before petitioning for expungements of a first DUI conviction. A person may petition for expungements of a second or subsequent conviction of DUI or test refusal after **ten** years. Current law required the elapse of ten years for a municipal DUI violation and seven years for a DUI conviction under state law. For test refusal, current law required the elapse of three years for a municipal violation and seven years for a conviction under state law.

HB 2275 - Relating to substances included in schedules I, II, III and IV of the uniform controlled substances act.

- **HB 2275** adds several additional drugs or drug classes to the schedules of controlled substances. Specifically, the bill would add a hallucinogenic drug and a cannabinoid to schedule I, reschedule two hydrocodone drugs from schedule III to schedule II, add perampanel to schedule III, and add three drugs to schedule IV. The bill also corrects or standardizes spellings or descriptions of several substances (e.g., marihuana to marijuana).
- Effective April 16, 2015

HB 2336 - Risk Assessment and Juvenile Offender Placement

- **HB 2336** requires the court to administer a risk assessment tool or review a risk assessment tool administered within the past six months before a juvenile offender can be placed in a juvenile detention center, under house arrest, or in the custody of the Department of Corrections, or can be committed to a sanctions house or to a juvenile correctional facility. These provisions are effective July 1, 2015.
- Additionally, the bill modifies a general prohibition on placement of any juvenile convicted as an adult in a juvenile correctional facility by permitting placement of juveniles between 16 and 18 years of age who are convicted as adults or under extended jurisdiction juvenile prosecution in a juvenile correctional facility.
- Effective April 16, 2015

Bill of Interest Pending for 2016 Session



HB 2049 – Penalty Reduction of Possession of Marijuana

- KSC's HB 2049 would amend the penalties for the crime of possession of marijuana. A first conviction for possession 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 five, nonperson felony to a class A, nonperson misdemeanor. Two or more prior convictions for possession of marijuana would remain a drug severity level five, nonperson felony.
- Savings was estimated at 46 prison beds in FY16 and cost avoidance of \$788,986 from the 2003 SB 123 substance abuse alternative sentencing program.

HB 2170

History and Process



Intended Impacts of HB 2170

1. Increased Public Safety by Focusing Resources on Higher Risk Offenders

2. Reduction in Correctional Spending

3. Reduction in Prison Beds Demands

4. Increased Access to Community Programming

HB 2170: What Does the Law State?

- Provides for swift & certain responses to offender noncompliance in the community

- Provides graduated sanctioning options

- Establishes presumptive discharge from supervision for certain low-risk offenders

- Mandates postrelease supervision for offenders who are probation violators

Swift & Certain (Jail) Sanctions

Problem:

Delayed and inconsistent responses to minor violations do not produce behavior change.

Policy Change:

Enable court services and community corrections officers to apply swift and certain responses to people under felony supervision who commit minor violations.

Primary Agencies Affected: Court Services, Community Corrections, and County Jails

Why Swift & Certain (Jail) Sanctions?

Kansas can improve public safety by utilizing new (more effective) means of changing offender behavior.

Ignoring minor noncompliance sends the message that bad behavior is okay; in fact, **it reinforces it!**

Jail sanctions are one response in a range of intermediate sanctions to address offender noncompliance. While jail admissions may increase, the short stays mitigate overall population changes.

Swift & certain responses are more cost-effective for changing behavior than are longer, more costly prison stays. Short jail sanctions cause less disruption to an offender's pro-social network (i.e., they are less likely to lose a job, home, etc.) than if they served long period in state prison.

Graduated Judicial Sanctions

An array of judicial options to respond to technical probation violations



Graduated Judicial Sanctions

- Subject to up to a **50% reduction** (i.e., 120-days can be reduced to 60 days and 180-days to 90 days) by the Secretary of Corrections.
- 120-day and 180-day sanction **cannot be repeated** and 120 is not prerequisite to 180.
- Jail sanction (Quick Dip) is a **prerequisite** unless new crime, absconding or public safety threatened.
- Requires that a graduated sanction of either 120 or 180 days has been **imposed prior to full revocation** unless new crime, absconding or public safety is threatened. Deviations have to be documented.

2014 S Sub for HB 2448

Clean-up bill for HB 2170

1. Nongrid felony offenders are not subject to 120/180-day prison sanctions
 - K.S.A. 2013 Supp. 22-716(b)(3)(A) and (b)(3)(B) amended to clarify that offender convicted of a nongrid felony is not eligible to serve a prison sanction pursuant to 22-3716(c)(1)(C) or (c)(1)(D).



2014 S Sub for HB 2448

Clean-up bill for HB 2170

2. Court may impose up to 60 days in county jail, but not in addition to another graduated sanction
 - HB 2448 moved the language authorizing the court to impose confinement for up to 60 days in county jail from K.S.A. 2013 Supp. 21-6604(a)(3) to 22-3716(c)(11). The court had and will continue to have the authority to impose confinement in a county jail for up to 60 days upon finding the offender has violated the conditions of probation. However, the new language in K.S.A. 2014 Supp. 22-3716(c)(11) clarifies that this period of confinement is separate from the other graduated sanctions (i.e., quick dips and 120/180-day prison sanctions) and may not be imposed at the same time as these other sanctions.



2014 S Sub for HB 2448

Clean-up bill for HB 2170

3. Prior jail credit may not be applied to decrease length of 120/180-day prison sanctions
 - HB 2448 amended K.S.A. 2013 Supp. 22-3716(c)(1)(C) and (c)(1)(D) to provide that the 120 or 180-day sanction shall begin upon pronouncement by the court. Prior incarceration time, such as the time an offender spends awaiting a probation violation hearing, shall not be counted towards service on the prison sanction. However, time spent in county jail awaiting transport to a DOC facility after imposition of the sanction may be counted.





Post-Sanction: KDOC
pays costs to deliver
offender back to
community corrections

2014 S Sub for HB 2448

Clean-up bill for HB 2170

4. **Concurrent probation terms require concurrent sanctions**
 - An offender serving **multiple probation periods** concurrently is not eligible for **multiple consecutive violation sanctions**. K.S.A. 2014 Supp. 22-3716(c)(10).
 - For example, an offender serving two separate concurrent probation periods who commits a second or subsequent probation technical violation may not receive multiple consecutive prison sanctions. Rather, the court may impose a single prison sanction of either 120 or 180 days on each case, to be served concurrently.



2014 S Sub for HB 2448

Clean-up bill for HB 2170

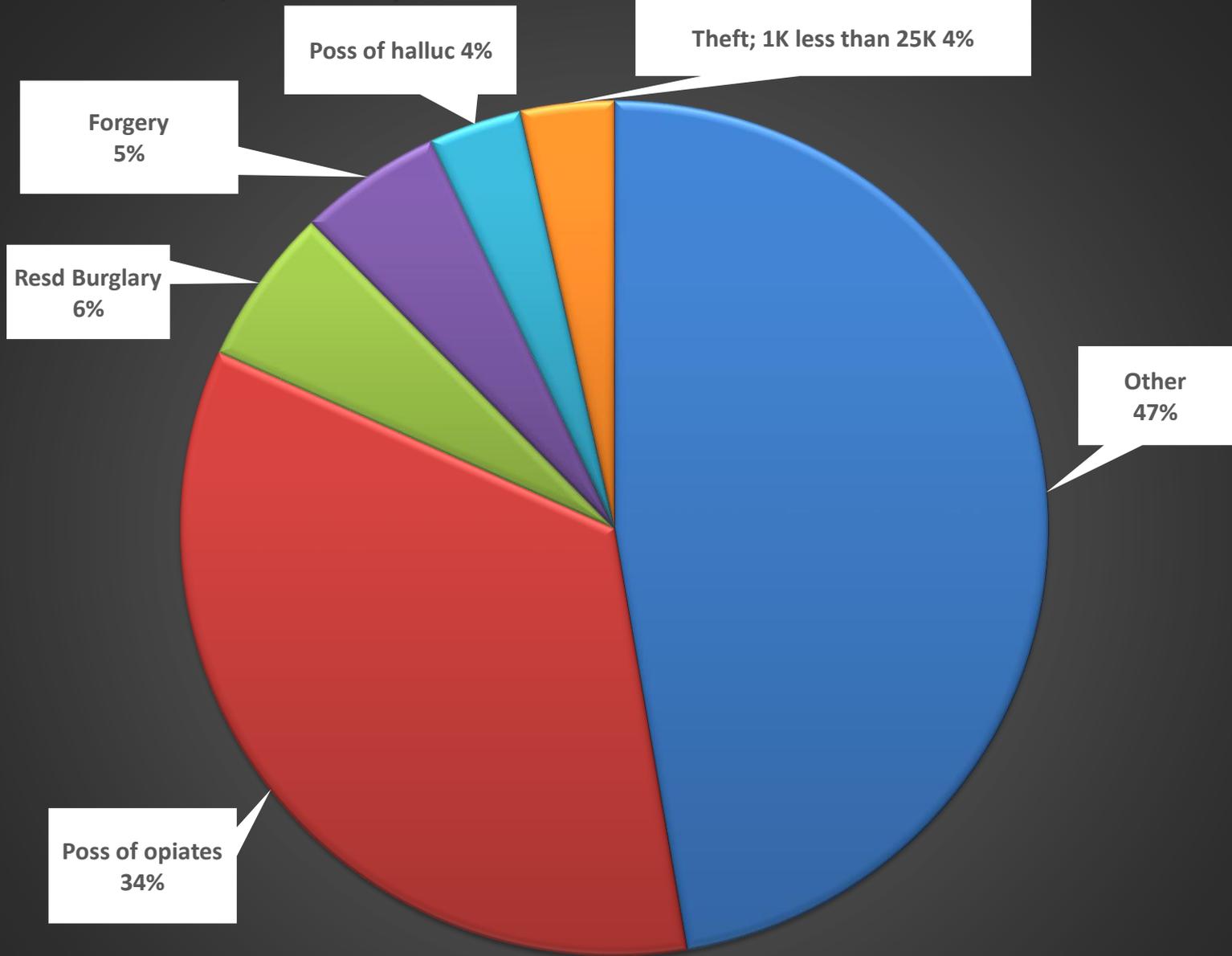
- 
5. Graduated sanctions apply to all probationers, regardless of their date of conviction.
 - HB 2448 adds additional language in K.S.A. 2013 Supp. 22-3716(c)(12) to clarify that the graduated sanction provisions shall apply to any probation violator, regardless of the date on which they committed their original crime of conviction.

HB 2170

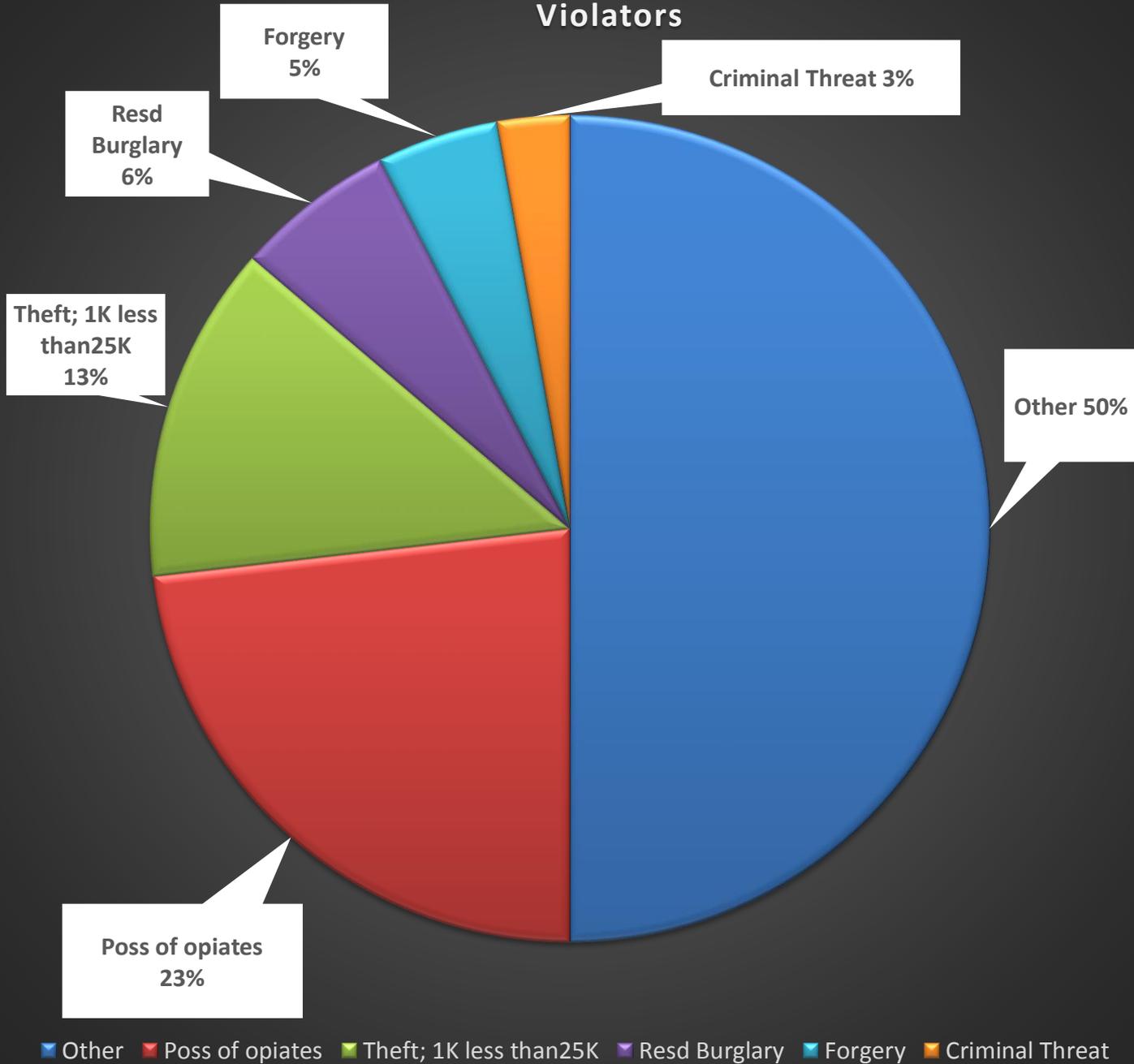
State Data for FY 2015



Top 5 Primary Convictions of Graduated Sanction Offenders



Top 5 Primary Convictions of Revoked Technical Violators



HB 2170

Why Should You Care?

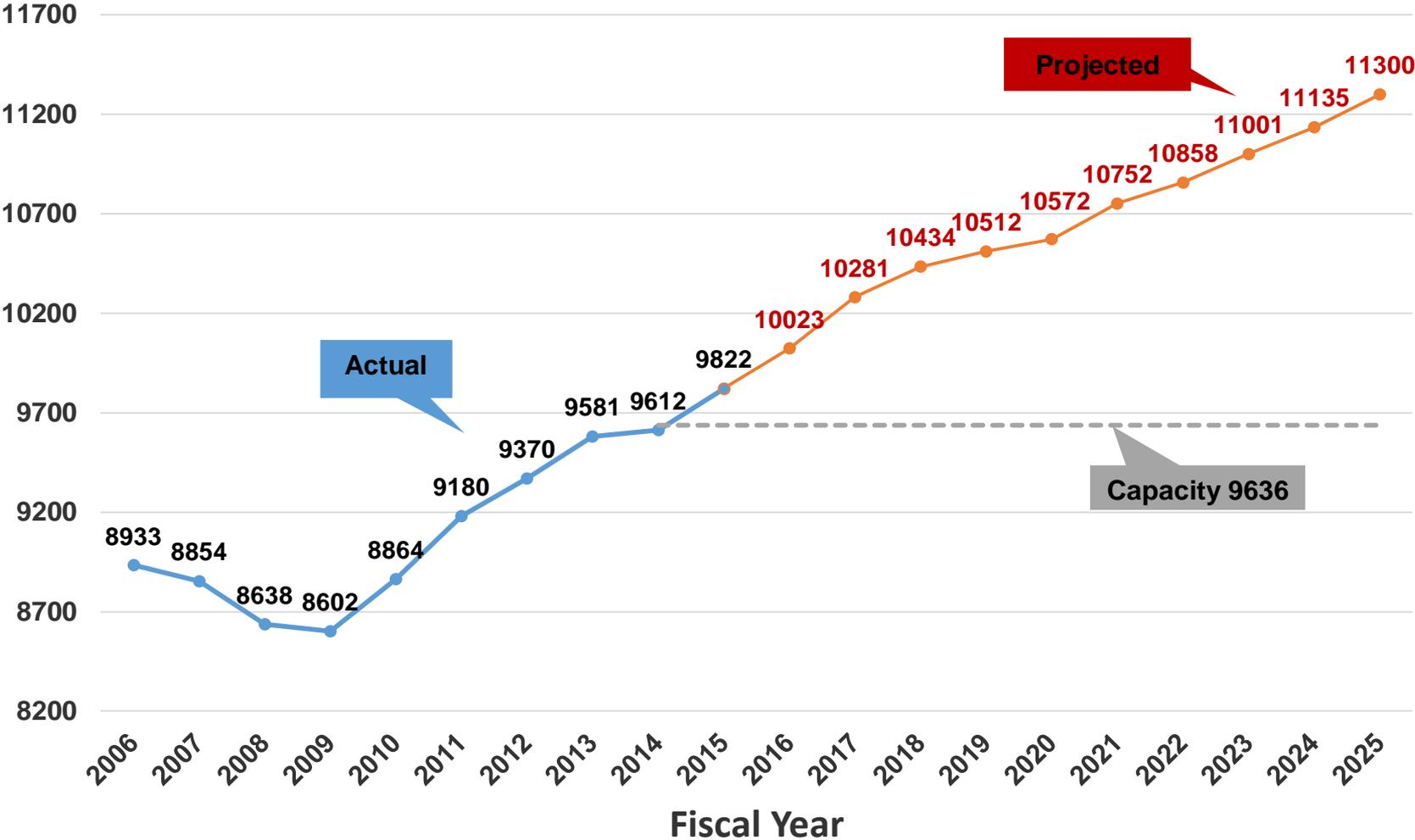


Kansas
Crime



Prison
Population

Kansas Prison Population - Actual and Projected



GOAL



Victimization

GOAL



Offender
Compliance



97% of
KDOC
inmates
will be
released



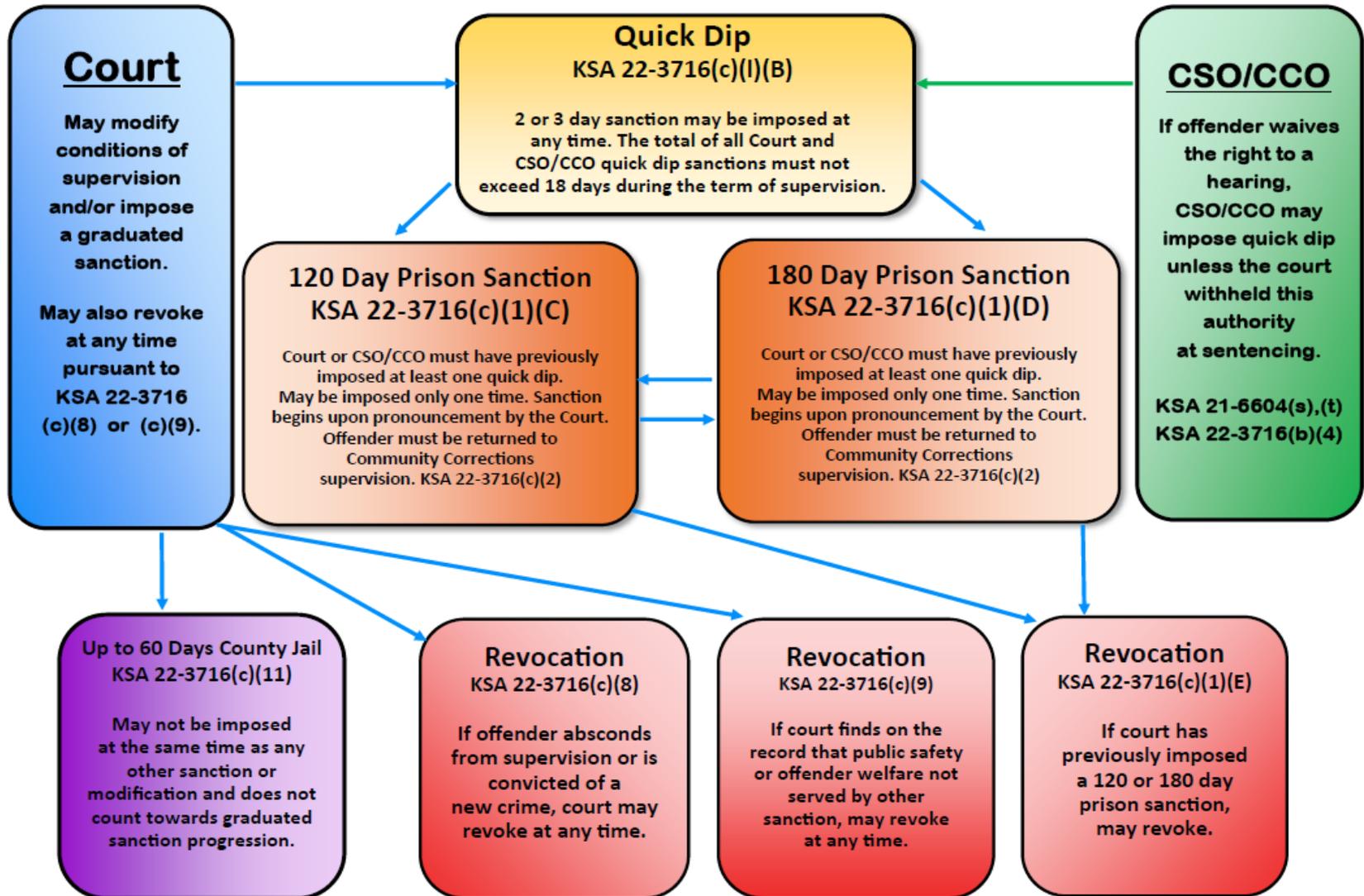
Negotiations



Recognize
Some Will
Not Reoffend

HB 2170 Felony Flowchart

Graduated Felony Sanctions as of July 1, 2014



• Considerations

- Building prisons costs money at state level
- Less state aid for judiciary and local governments
- Increased difficulty in providing community programming, including substance abuse and mental health services
- Increased difficulty hiring and retaining great CSOs
- Increased local property taxes

Journal Entries

Updates and Explanations



www.sentencing.ks.gov/forms

2015 PSI

Page 5

6 PLACEMENT OPTIONS: This is a list of placement options and the presentence investigator's professional assessment of possible conditions should the court place the offender on probation or order some form of community sanction.

COMMUNITY CORRECTIONS [Indicate the criteria from **2015 HB 2051** or Special Rule that qualifies the defendant for placement in Community Corrections.]

- (a)(2)(A) **Scored moderate, high or very high risk**
- (a)(2)(B) Downward dispositional departure from presumptive prison sentence
- (a)(2)(C) Convicted of offense severity level 7 or higher which requires registration
- (a)(2)(F) Drug Treatment for up to 18 months (K.S.A. 21-6824 *SB 123*)
- (a)(2)(G) Sentenced pursuant to K.S.A. 8-1567 (DUI)

** (a)(2)(E) Follows successful completion of a conservation camp program (** This option is included, but is unavailable)

- Special Rule Applies
- COURT SERVICES

7. OFFICER'S ASSESSMENT OF CONDITIONS OF PROBATION: K.S.A. 21-6607 [Check All That Apply.]

Alcohol evaluation Drug evaluation Mental Health evaluation ADSAP Evaluation Domestic Violence Offender Assessment (K.S.A. 21-6604(p))

In Patient Out Patient

Alcohol treatment Drug treatment Mental Health treatment (Follow recommendations of counselor)

No possession or consumption of alcohol or illegal drugs

At C.S.O. request and at defendant's own expense, submit to random: Breath test Blood test Urinalysis test

Community Service Work: _____ Hours

Gain employment Maintain employment

Notify the C.S.O. of changes in employment, residence and phone number

No contact with: Victim Co-defendant

Educational program: G.E.D. Vocational Higher Education

Register as an offender pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 et. seq. (NO registration is required for K.S.A. 21-5705(a)(2)-(a)(6) and ALL subsections (formerly K.S.A. 21-36a05(a)(2) and ALL subsections of (a)(2))

Attend a presentation by the Victim Impact Panel

Submit to KBI DNA testing and be responsible for the cost of the test

Curfew Restriction: _____

Travel Restriction: _____

Other: _____

8 COSTS PROPOSED:

† Total Restitution (Please complete pg. 4 item #4)	\$ _____	Correctional Supv. Fee (Felony \$120/ Misd. \$60)	\$ _____
Court Costs (including surcharge)	\$ _____	BIDS Attorney Fee	\$ _____
*Total Fines	\$ _____	BIDS Application Fee	\$ _____
DNA Database Fee (K.S.A. 21-2511 & 75-724)	\$ _____	Court-Appointed Attorney Fee	\$ _____
Extradition Costs	\$ _____	Community Corrections Fee (offenses after 1/4/07)	\$ _____
Domestic Violence Special Program Fee	\$ _____	Booking/fingerprint Fee	\$ _____
Apprehension Fee (Escape/Agg. Escape)	\$ _____	Reward Reimbursement	\$ _____
Alcohol &/or Drug Eval. Fee (offenses before 7/1/11)	\$ _____	Children's Advocacy Center Assessment Fee	\$ _____
Witness Fee	\$ _____	Medical Costs/Expenses Reimbursement	\$ _____
KBI Lab Fee	\$ _____	SB 123 Assessment Fee (\$200)	\$ _____
Other Lab Fee	\$ _____	SB 123 Offender Reimbursement (at least \$100)	\$ _____
Domestic Violence Assessment/Recommendations	\$ _____	Other:	\$ _____
		TOTAL COSTS	\$ _____

† On or after 7/1/15, restitution shall be ordered as per 2015 SB 113 if convicted of Human Trafficking (K.S.A. 21-5426), Agg. Human Trafficking (K.S.A. 21-5426) or Commercial Exploitation of a Child (K.S.A. 21-6422).

* On and after 7/1/11 for DUI or Test Refusal fine of \$250 shall be sent to Community Corrections Supervision Fund.

* On and after 7/1/13 for Promoting the Sale of Sexual Relations (K.S.A. 21-6420), Buying Sexual Relations (K.S.A. 21-6421), or Commercial Sexual Exploitation of a Child (K.S.A. 21-6422), fine of \$2500-5000 shall be sent to Human Trafficking Victim Assistance Fund.

2015 PSI Special Rules Supplement

CASE NO.

page 6

SPECIAL RULES SUPPLEMENTAL PAGE (IF APPLICABLE, check box of the special rule and include this page with the corresponding count.)

PUBLIC SAFETY OFFENSES / FIREARMS FINDING APPLY:

- 1 Person Felony Committed With a Firearm - presumed prison. K.S.A. 21-6804(h)
- 2 Agg. Battery against a L.E.O., if criminal history is 6H or 6I - presumed prison. K.S.A. 21-6804(g)
- 3 Agg. Assault of a L.E.O., if criminal history is 6H or 6I - presumed prison. K.S.A. 21-6804(g)
- 34 Battery on a L.E.O., K.S.A. 21-5413(c)(2), resulting in bodily harm- presumed prison and consecutive. K.S.A. 21-6804(r)
- 32 Drug Felony While in Possession of a Firearm- presumed prison. K.S.A. 21-6805(g)
- 33 Drug Felony With a Firearm that Discharges- presumed prison. K.S.A. 21-6805(g)
- 4 Crime Committed for Benefit of a Criminal Street Gang - presumed prison. K.S.A. 21-6804(h)
- 11 Extended Jurisdiction Juvenile Imposed - both juvenile and adult sentences imposed, adult sentence stayed conditioned on successful completion of juvenile sentence. K.S.A. 38-2347 and 38-2364
- 35 Agg. Endangering a Child - consecutive sentence required. K.S.A. 21-5601(c)(2)
- 36 Ballistic Resistant Material - presumed prison with additional 30 months and consecutive. K.S.A. 21-6804(t)
- 38 Unlawful Sexual Relations - presumed prison. K.S.A. 21-6804(s)

HABITUAL OR REPEAT OFFENSES APPLY:

- 5 Persistent Sex Offender - presumed prison - double the maximum duration. K.S.A. 21-6804(j)
- 12 2nd or Subs. Manufacture of a Controlled Substance Conviction - if previous conviction is for methamphetamine or analog, presumed prison, twice the maximum duration. K.S.A. 21-6805(e)
- 26 3rd or Subs. Felony Drug Possession occurring on or after July 1, 2008 - presumed prison. K.S.A. 21-6805(f)(1)
- 13 Residential Burglary with a Prior Residential, Nonresidential or Agg. Burglary Conviction or any attempt or conspiracy convictions of these priors - presumed prison. K.S.A. 21-6804(i)
- 27 Burglary With Two or More Prior Convictions for Theft, Burglary, or Agg. Burglary - presumed prison. K.S.A. 21-6804(p)
- 29 Felony Theft With Three or More Prior Convictions for a Felony Theft, Burglary, or Agg. Burglary - presumed prison. K.S.A. 21-6804(p)
- 30 ** For #27 or #29, Substance Abuse Underlying Factor, Treatment More Effective to Reduce Reoffense Risk and Community Safety Served - KDOC Intensive Substance Abuse Treatment Program, Return to Court Upon Successful Completion. K.S.A. 21-6804(p)
- 31 3rd or Subs. Criminal Deprivation of a Motor Vehicle - presumptive prison. K.S.A. 21-6804(n)
- 16 2nd Forgery, criminal history I - C, sentenced pursuant to sentencing requirements of K.S.A. 21-5823, term of imprisonment not in KDOC. Criminal history A or B, - sentenced for SL 8, NPF. K.S.A. 21-6804(i)
- 17 3rd or Subs. Forgery, criminal history I - C, sentenced pursuant to sentencing requirements of K.S.A. 21-5823, term of imprisonment not in KDOC. Criminal history A or B, - sentenced for SL 8, NPF. K.S.A. 21-6804(i)
- 9 Crime Committed While Incarcerated, on Probation, Parole, Conditional Release, or Postrelease Supervision for a Felony - new sentence shall be imposed consecutively. K.S.A. 21-6606(c). If new crime is a felony, court may impose prison even if presumption is nonprison. K.S.A. 21-6604(f)(1)
- 40 Felony Committed After Early Discharge When Offender Would Have Been On Probation or Postrelease Supervision for a Felony if committed after early discharge pursuant to K.S.A. 21-6608(d), or K.S.A. 22-3717(d)(2), may impose prison even if presumed nonprison. K.S.A. 21-6604(f)(2)
- 28 Felony Committed While Incarcerated in a Juvenile Correctional Facility for an Offense That Would be a Felony if Committed by an Adult - presumed prison. K.S.A. 21-6604(f)(3)
- 10 Crime Committed While on Felony Bond - new sentence imposed consecutively. K.S.A. 21-6606(d), 21-6604(f)(4). If new crime is a felony, court may impose prison even if presumption is nonprison, K.S.A. 21-6604(f)(4)
- 37 2nd or Subs. Identity Theft or Identity Fraud - presumed prison. K.S.A. 21-6804(u)
- 41 Leaving the Scene of an Accident - if current conviction is for K.S.A. 8-1602(b)(2), (b)(3) or (b)(4), prior convictions committed on and after July 1, 2011 of 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605, 40-3104, 21-5405(a)(3) and 21-5406(a)(3), or comparable convictions from a different jurisdiction, shall count as person felony for criminal history purposes. K.S.A. 21-6811(i)
- 42 Involuntary Manslaughter by DUI - if current conviction is for K.S.A. 21-5405(a)(3), all prior convictions, adjudications and diversions for K.S.A. 8-1567(DUI), K.S.A. 8-2,144 (Commercial DUI), K.S.A. 8-1025 (Test Refusal), or comparable law of a different jurisdiction, shall count as person felony for criminal history purposes. 2015 HB 2055
- 43 3rd or Subsequent Flee/Elude - presumed prison and imposed consecutively. K.S.A. 2014 Supp. 21-6804(v)
- 44 Agg. Battery by DUI - if current conviction is for K.S.A. 21-5413(b)(3), the first prior conviction, adjudication or diversion of K.S.A. 8-1567 (DUI), K.S.A. 8-2,144 (Commercial DUI), K.S.A. 8-1025 (Test Refusal), or comparable law of a different jurisdiction, shall count as a nonperson felony for criminal history purposes. Each second and subsequent prior adult conviction, diversion or juvenile adjudication of these offenses shall count as a person felony for criminal history purposes. 2015 HB 2055
- 45 Aggravated Criminal Damage to Property - presumed prison if current conviction is for K.S.A. 21-5813(b) (Scrap Metal) and offender has a prior conviction for any nonperson felony. 2015 HB 2048

NONGRID OFFENSES APPLY:

- 6 Felony D.U.I. (3rd, 4th or Subs.) - sentenced pursuant to specific mandatory sentencing requirements of K.S.A. 8-1567
- 39 Felony Test Refusal (2nd, 3rd, or Subs) - sentenced pursuant to mandatory sentencing requirements of K.S.A. 8-1025
- 8 Felony Domestic Battery - sentenced pursuant to specific mandatory sentencing requirements of K.S.A. 21-5414(b)(3)

2015 PSI Offender Registration Supplement

Case No. _____	page 8
OFFENDER REGISTRATION SUPPLEMENT to the PSI – K.S.A. 22-4901 et seq.	
REGISTRATION TERMS - check appropriate boxes indicating <u>REQUIRED TERM</u> of registration - See K.S.A. 22-4906	
<input type="checkbox"/> Defendant advised of Notice of Duty to Register	
Offender must register for 15 YEARS after the date of parole, discharge or release, whichever date is most recent, or, if offender is not confined, 15 YEARS from the date of conviction due to conviction of any of the following crimes:	
<input type="checkbox"/> Capital Murder - K.S.A. 21-5401	<input type="checkbox"/> Murder in the First Degree – K.S.A. 21-5402
<input type="checkbox"/> Murder in the Second Degree – K.S.A. 21-5403	<input type="checkbox"/> Voluntary Manslaughter – K.S.A. 21-5404
<input type="checkbox"/> Involuntary Manslaughter – K.S.A. 21-5405(a)(1), (a)(2) or (a)(4)	<input type="checkbox"/> Sexual Battery - K.S.A. 21-5505(a)
<input type="checkbox"/> Criminal Restraint – K.S.A. 21-5411 (except by parent, and only when victim is <u>less than 18 years of age</u>)	
<input type="checkbox"/> Any act determined beyond a reasonable doubt to have been <u>sexually motivated</u> AND the act did <u>not</u> involve non-forcible sexual conduct between a <u>victim at least 14 and offender no more than 4 years older than victim</u> – K.S.A. 22-4902(a)(15)	
<input type="checkbox"/> Any <u>conviction of a person felony with court finding</u> on the record that such felony was committed with a <u>DEADLY WEAPON</u> - K.S.A. 22-4902(e)(2)	
<input type="checkbox"/> An offense not otherwise required, as provided by the Kansas Offender Registration Act, K.S.A. 22-4902(a)(5)	
<input type="checkbox"/> Manufacture or attempted manufacture of any <u>controlled substance</u> – K.S.A. 21-5703	
<input type="checkbox"/> Possession of precursors with intent to manufacture any <u>controlled substance</u> – K.S.A. 21-5709(a)	
<input type="checkbox"/> Cultivation, Distribution, Possession with intent to distribute <u>opiates, opium or narcotic drugs or any stimulant</u> in K.S.A. 65-4107(d)(1), (d)(3), or (f)(1) – <u>ONLY</u>	
<input type="checkbox"/> Any of the following crimes when one of the parties is <u>less than 18 years of age</u> :	
<input type="checkbox"/> Adultery - K.S.A. 21-5511	<input type="checkbox"/> Buying Sexual Relations – K.S.A. 21-6421
<input type="checkbox"/> Lewd and Lascivious Behavior – K.S.A. 21-5513	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	
Offender must register for 25 YEARS after the date of parole, discharge or release, whichever date is most recent, or, if offender is not confined, 25 YEARS from the date of conviction due to conviction of any of the following crimes:	
<input type="checkbox"/> Indecent Solicitation of a Child – K.S.A. 21-5508	<input type="checkbox"/> Electronic Solicitation – K.S.A. 21-5509
<input type="checkbox"/> Agg. Incest – K.S.A. 21-5604(b)(1)	<input type="checkbox"/> Indecent Liberties With a Child – K.S.A. 21-5506(a)
<input type="checkbox"/> Unlawful Sexual Relations – K.S.A. 21-5512	<input type="checkbox"/> Agg. Sexual Battery – K.S.A. 21-5505(b)
<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510, <u>if the victim is at least 14 years of age but less than 18 years of age</u>	
<input type="checkbox"/> Promoting Prostitution – K.S.A. 21-6420, <u>if the victim is at least 14 years of age but less than 18 years of age</u>	
<input type="checkbox"/> Criminal Sodomy - K.S.A. 21-5504(a) <u>when one of the parties involved is less than 18 years of age</u>	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	
Offender is subject to LIFETIME registration due to any of the following:	
<input type="checkbox"/> 2 nd or Subsequent conviction of an offense requiring registration	
<input type="checkbox"/> Conviction of any of the following crimes:	
<input type="checkbox"/> Rape – K.S.A. 21-5503	
<input type="checkbox"/> Agg. Kidnapping – K.S.A. 21-5408(b)	
<input type="checkbox"/> Kidnapping – K.S.A. 21-5408(a)	
<input type="checkbox"/> Agg. Criminal Sodomy – K.S.A. 21-5504(b)	
<input type="checkbox"/> Criminal Sodomy – K.S.A. 21-5504(a)(3) or (a)(4)	
<input type="checkbox"/> Agg. Indecent Liberties With a Child – K.S.A. 21-5506(b)	
<input type="checkbox"/> Agg. Indecent Solicitation of a Child – K.S.A. 21-5508(b)	
<input type="checkbox"/> Agg. Human Trafficking – K.S.A. 21-5426(b)	
<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510, <u>if the victim is less than 14 years of age</u>	
<input type="checkbox"/> Commercial Sexual Exploitation of a Child – K.S.A. 21-6422	
<input type="checkbox"/> Promoting Prostitution – K.S.A. 21-6420, <u>if the victim is less than 14 years of age</u>	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	
<input type="checkbox"/> Duration determined by diversionary agreement, probation order or juvenile sentencing order: _____ years _____ months (K.S.A. 22-4906(i))	

2015 PSI- Criminal History Worksheet

Page 9

1. KBI #	2. CASE #	4. KANSAS CRIMINAL HISTORY WORKSHEET		7. OFFENDER NAME (Last, First, Middle)	
3. DISTRICT #	4. COURT/ORI #	NEW _____ PRIOR RECORD _____		8. DATE OF OFFENSE	9. DATE OF CONVICTION
5. PSI INVESTIGATOR NAME (Last, First, Middle)			10. DATE OF WORKSHEET	11. DATE OF SENTENCING	

12. IF THE OFFENDER WAS UNDER SUPERVISION AT THE TIME HE/SHE COMMITTED THE CURRENT OFFENSE, OR WOULD HAVE BEEN UNDER SUPERVISION BUT FOR EARLY DISCHARGE - pursuant to K.S.A. 21-6608(d) or K.S.A. 22-3717(d)(2) - PLEASE CHECK THOSE THAT APPLY.

<input type="checkbox"/> Probation/Community	Jurisdiction:	Case No.:	<input type="checkbox"/> Felony OR <input type="checkbox"/> Misdemeanor	Date Sentenced:
<input type="checkbox"/> Parole	Jurisdiction:	Case No.:	<input type="checkbox"/> Felony OR <input type="checkbox"/> Misdemeanor	Date Sentenced:
<input type="checkbox"/> Postrelease Supervision	Jurisdiction:	Case No.:	<input type="checkbox"/> Felony OR <input type="checkbox"/> Misdemeanor	Date Sentenced:
<input type="checkbox"/> Conditional Release	Jurisdiction:	Case No.:	<input type="checkbox"/> Felony OR <input type="checkbox"/> Misdemeanor	Date Sentenced:
<input type="checkbox"/> Other	Jurisdiction:	Case No.:	<input type="checkbox"/> Felony OR <input type="checkbox"/> Misdemeanor	Date Sentenced:
<input type="checkbox"/> Felony Early Discharge	Jurisdiction:	Case No.:		Date Discharged:

Comments:

13. CURRENT CRIME(S) OF CONVICTION					14. CRIMINAL HISTORY CONVICTIONS AND/OR ADJUDICATIONS PRIOR TO SENTENCING			
K.S.A. Number	Description	M/F	P/N	Level	Juvenile	Adult	Total	Type
								Person or Off-grid Felonies
								Nonperson Felonies
								Person Misdemeanors
								Nonperson Misdemeanors
					15. Amended Criminal History Convictions and/or Adjudications			
					Juvenile	Adult	Total	Type
								Person or Off-grid Felonies
								Nonperson Felonies
								Person Misdemeanors
								Nonperson Misdemeanors

16. CRIMINAL HISTORY CATEGORY <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I SCORED UNDER SPECIAL RULE <input type="checkbox"/> 41 <input type="checkbox"/> 42 <input type="checkbox"/> 44 <input type="checkbox"/> 45 Amended? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I	17. Number of Person Misdemeanors converted: <input type="checkbox"/> 3 <input type="checkbox"/> 6 <input type="checkbox"/> 9 <input type="checkbox"/> 12 <input type="checkbox"/> (Check One) Amended? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 3 <input type="checkbox"/> 6 <input type="checkbox"/> 9 <input type="checkbox"/> 12 <input type="checkbox"/> (Check One)
18. PRIOR CONVICTION USED TO ENHANCE / ELEVATE OR IS AN ELEMENT OF THE CURRENT CRIME OF CONVICTION? <input type="checkbox"/> Yes <input type="checkbox"/> No	19. Number of Decayed Juvenile Adjudications: Felony _____ Misdemeanors _____ Amended? <input type="checkbox"/> Yes <input type="checkbox"/> No Felony _____ Misdemeanors _____

Rev. 7/1/2015

2015 Journal Entry of Judgment (JE) Page 2

- Veteran's Treatment Eligibility
- Felony DUI & Test Refusal
- Other Nongrid Felony or Misdemeanor

Case No. _____	
KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT (PAGE 2)	
7. SPECIAL RULE APPLICABLE: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, enter the number(s) and brief description(s) corresponding to the applicable special rule. (Complete Special Rules Supplemental Page and Attach):	
8. SPECIAL FINDING that the crime was SEXUALLY MOTIVATED pursuant to the KS Offender Registration Act 8a. Did the court make a special finding that the crime was sexually motivated? 8b. IF YES to 8a, did the court find that the act involved non-forcible sexual conduct, the victim was at least 14 and the offender was no more than 4 years older than the victim? (K.S.A. 22-4902(c)(15)) 8c. IF YES to 8a and NO to 8b, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
9. Was offender determined by the Court to be an AGGRAVATED HABITUAL SEX OFFENDER? (K.S.A. 21-6626) IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Is offender being sentenced pursuant to K.S.A. 21-6627 where offender is 18 years of age or older and the victim is less than 14 years of age? IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Downward departure (K.S.A. 21-6818(a)) for a crime of extreme sexual violence (K.S.A. 21-6815)? IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Did offender, as determined by the court, commit the current crime with a deadly weapon? IF YES, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	<input type="checkbox"/> Yes <input type="checkbox"/> No
13. Was offender convicted of a violation of K.S.A. 21-5703, Manufacture or attempted manufacture; K.S.A. 21-5705(a)(1). Cultivation, Distribution, Possession w/ intent to distribute opiates, opium or narcotic drugs or any stimulant in K.S.A. 65-4107(d)(1), (d)(3), (f)(1); or K.S.A. 21-5709(a). Possession of precursors w/ intent to manufacture? IF YES, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	<input type="checkbox"/> Yes <input type="checkbox"/> No
14. Determination of domestic violence case designation 14a. Did offender, as determined by the <u>trier of fact</u> , commit a domestic violence offense? 14b. If YES to 14a above, did the court find that offender had no prior domestic violence conviction or diversion, AND that offender did not use the present domestic violence offense to coerce, control or punish the victim? 14c. If YES to 14a and NO to 14b, PLEASE CHECK THE DOMESTIC VIOLENCE CASE DESIGNATION BOX.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> DV Case
15. Veteran's Treatment Eligibility (2015 HB 2154): 15a. Did offender serve in the armed forces of the U.S. in a combat zone as certified by the Kansas Commission on Veteran Affairs? 15b. Does offender suffer from injury and the injury is connected to service in a combat zone in the armed forces of the U.S.? 15c. Does offender's current conviction place the offender in a presumptive probation grid box? If YES to 15a through 15c, check box if court ordered Veterans Treatment	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> VA treatment
SECTION IV. SENTENCE IMPOSED	
1. Guideline Range Imposed: <input type="checkbox"/> Aggravated <input type="checkbox"/> Standard <input type="checkbox"/> Mitigated <input type="checkbox"/> Departure - COMPLETE SECTION V	
2. Prison Term: KDOC _____ months (including enhancement sentence) (Enter months above then check one of the following) <input type="checkbox"/> Prison sentence imposed or <input type="checkbox"/> Underlying with probation granted ** or Underlying with KDOC Drug Trmt Prog. (min. 120 days) <input type="checkbox"/> Enhancement Sentence- Drug with Firearm: <input type="checkbox"/> 6 months <input type="checkbox"/> 18 months (K.S.A. 21-6805(g)) Ballistic Resistant Material: <input type="checkbox"/> 30 months (K.S.A. 21-6804(t)) <input type="checkbox"/> Off-grid Crime: <input type="checkbox"/> Life - Minimum 15 yrs. <input type="checkbox"/> Life - Minimum 20 yrs. <input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40 <input type="checkbox"/> Hard 50 <input type="checkbox"/> Life without Parole <input type="checkbox"/> Death Penalty <input type="checkbox"/> Per K.S.A. 2014 Supp. 21-6620, 21-6623 or 21-6627, if guidelines sentence greater than mandatory minimum _____ months.	
3. Postrelease Supervision Term: <input type="checkbox"/> 12 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months (sex offense) - COMPLETE SECTION V <input type="checkbox"/> Lifetime Postrelease <input type="checkbox"/> Lifetime Parole / Electronic Monitoring (K.S.A. 21-6604(r))	
4. Felony DUI & Test Refusal: <input type="checkbox"/> 3 rd D.U.I. <input type="checkbox"/> 4 th & Subs. D.U.I. <input type="checkbox"/> 2 nd Test Refusal <input type="checkbox"/> 3 rd & Subs. Test Refusal (Effective on after 7/1/12) Jail Sentence: _____ months _____ days <input type="checkbox"/> Release is authorized after jail service of _____ months _____ days _____ hours <input type="checkbox"/> Assigned to work release (K.S.A. 21-6604(a)(11)) or <input type="checkbox"/> House Arrest: _____ months _____ days _____ hours Post-Imprisonment Supervision (PIS) of 12 months supervised by: <input type="checkbox"/> Court Services <input type="checkbox"/> Community Corrections (check one) <input type="checkbox"/> Additional one month jail if child <14 in vehicle (K.S.A. 8-1567(c), K.S.A. 8-1025(c)) (include in total)	
5. Other Nongrid Felony and/or Misdemeanors: <input type="checkbox"/> 3 rd & Subs. Domestic Battery w/in 5 yrs. <input type="checkbox"/> Animal Cruelty <input type="checkbox"/> Jail Sentence Imposed: _____ months _____ days _____ hours <input type="checkbox"/> Probation Imposed (Complete # 6) <input type="checkbox"/> Probation granted after serving jail term. Jail Term: _____ months _____ days <input type="checkbox"/> Assigned to work release (K.S.A. 21-6604(a)(11)) or <input type="checkbox"/> House Arrest: _____ months _____ days _____ hours	

** This option is included in statute, but is unavailable

2015 JE Costs Ordered Page 3

Case No. _____			
KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT			
(PAGE 3)			
<p>6. Probation Term (If Granted): <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months</p> <p><input type="checkbox"/> Drug Treatment for up to 18 months. K.S.A. 21-6824 <input type="checkbox"/> Other: _____</p> <p><input type="checkbox"/> Extended Period K.S.A. 21-6608(c)(5) for: _____ months</p> <p>Probation Supervision to: <input type="checkbox"/> Court Services <input type="checkbox"/> Community Corrections <input type="checkbox"/> Unsupervised</p> <p>County Jail Time Imposed AS A CONDITION OF PROBATION: _____ days</p> <p>** Assignment to Correctional Conservation Camp</p> <p><input type="checkbox"/> Withheld authority of court services/community corrections to impose intermediate sanction pursuant to K.S.A. 21-6604(s) or (t)</p> <p>Comments: _____</p>			
SECTION V. DEPARTURE INFORMATION			
<p>1. Type of Departure: (Check all that apply.)</p> <p><input type="checkbox"/> Downward Durational <input type="checkbox"/> Upward Durational <input type="checkbox"/> Downward Dispositional <input type="checkbox"/> Upward Dispositional</p> <p><input type="checkbox"/> Postrelease Supervision (up to 60 months for sexually motivated offense) – K.S.A. 22-3717(d)(1)(D)(i)</p>			
2. Reasons Cited as Basis for Departure:			
SECTION VI. OTHER CONDITIONS			
1. General/Special Conditions of Probation (COMPLETE AND ATTACH ORDER OF PROBATION TO THIS JOURNAL ENTRY if needed)			
2. Costs Ordered:			
† Total Restitution (Please complete #3 below)	\$ _____	Correctional Supv. Fee (Felony \$120; Misd. \$60)	\$ _____
Court Costs (including surcharge)	\$ _____	BIDS Attorney Fee <input type="checkbox"/> Waived	\$ _____
* Total Fines	\$ _____	BIDS Application Fee	\$ _____
DNA Database Fee (K.S.A. 21-2511 & 75-724)	\$ _____	Court-Appointed Attorney Fee	\$ _____
Extradition Costs	\$ _____	Community Corr. Fee (offenses after 1/4/07)	\$ _____
Domestic Violence Special Program Fee	\$ _____	Booking/Fingerprint Fee	\$ _____
Apprehension Fee (Escape/Agg. Escape)	\$ _____	Reward Reimbursement	\$ _____
Alcohol and/or Drug Eval. Fee (offenses before 7/1/11)	\$ _____	Children's Advocacy Center Assessment Fee	\$ _____
Witness Fee	\$ _____	Medical Costs/Expenses Reimbursement	\$ _____
KBI Lab Fee	\$ _____	SB 123 Assessment Fee (\$200)	\$ _____
Other Lab Fee	\$ _____	SB 123 Offender Reimbursement (at least \$100)	\$ _____
Domestic Violence Assessment/Recommendations	\$ _____	Other: _____	\$ _____
TOTAL COSTS			\$ _____
<p>† <input type="checkbox"/> On or after 7/1/15, restitution shall be ordered as per 2015 SB 113 if convicted of Human Trafficking (K.S.A. 21-5426), Agg. Human Trafficking (K.S.A. 21-5428) or Commercial Exploitation of a Child (K.S.A. 21-6422).</p> <p>* <input type="checkbox"/> \$250 of DUI or Test Refusal fine shall be sent to Community Corrections Supervision Fund.</p> <p>* <input type="checkbox"/> On and after 7/1/13 for Promoting the Sale of Sexual Relations (K.S.A. 21-6420), Buying Sexual Relations (K.S.A. 21-6421), or Commercial Sexual Exploitation of a Child (K.S.A. 21-6422), fine of \$2500-5000 shall be sent to Human Trafficking Victim Assistance Fund.</p>			
3. Restitution to be paid as follows:			
Amount	Name and Address		
\$ _____	_____		
\$ _____	_____		
\$ _____	_____		
\$ _____	_____		
\$ _____	_____		

2015 Probation Violation JE (PVJE) Page 2

Case No.	(PAGE 2)
SECTION III. VIOLATION SANCTION HISTORY	
<input type="checkbox"/> Prior "Quick Dip" county jail sanctions imposed (K.S.A. 22-3716(c)(1)(B)):	
1 st _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 2 nd _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 3 rd _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 4 th _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 5 th _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 6 th _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 7 th _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 8 th _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court 9 th _____ days imposed by <input type="checkbox"/> Supervising officer <input type="checkbox"/> Court	<input type="checkbox"/> 120 days in KDOC (K.S.A. 22-3716(c)(1)(C)) <input type="checkbox"/> 180 days in KDOC (K.S.A. 22-3716(c)(1)(D)) Comments (including other jail sanction history):
SECTION IV. DISPOSITION OF THIS VIOLATION HEARING	
¹ Disposition: <input type="checkbox"/> No Violation Determined <input type="checkbox"/> The court finds sufficient evidence and grounds to show and orders: <input type="checkbox"/> Violations Determined, Probation Not Revoked But: <input type="checkbox"/> Probation Conditions Modified? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, describe conditions in box #4) <input type="checkbox"/> Ordered to Community Corrections Supervision <input type="checkbox"/> Probation Extended for _____ months <input type="checkbox"/> Drug Treatment for up to 18 months. K.S.A. 21-6824, ("SB123") <input type="checkbox"/> Violation Sanctions Ordered: Quick Dip: <input type="checkbox"/> 2 day <input type="checkbox"/> 3 day KDOC Prison Sanction: <input type="checkbox"/> 120 days <input type="checkbox"/> 180 days <input type="checkbox"/> County Jail up to 60 days _____ (may not be imposed at same time as other sanctions - K.S.A. 2014 Supp. 22-3716(c)(11)) <input type="checkbox"/> Violation Determined, Probation Revoked and Defendant Ordered to Serve: <input type="checkbox"/> Original Sentence <input type="checkbox"/> Modified Sentence _____ months <input type="checkbox"/> Court revoked because defendant absconded or committed new crime. (K.S.A. 22-3716(c)(8)) – state reasons in box #3. <input type="checkbox"/> Court revoked because of public safety or offender welfare finding. (K.S.A. 22-3716(c)(9)) – state reasons in comment box. <input type="checkbox"/> No Postrelease Period (only applies to crimes committed prior to July 1, 2013 - see K.S.A. 2012 Supp. 22-3716(e)) **Assigned to Conservation Camp (K.S.A. 21-6604(g)) ** KDOC Drug Treatment Program (minimum 120 days) ** (These options are included in statute, but are unavailable)	
Comments: 	
² BIDS FEES ORDERED: Application Fee Assessed \$ _____ (Per K.S.A. 22-4529, \$100 unless reduced or waived for "manifest hardship") Attorney Fee Assessed \$ _____ (Per K.S.A. 22-4513)	
³ If Probation was Revoked, Modified or Extended for any Reason, Please Provide a Brief Description of the Violation(s): 	
⁴ If Probation was Modified or Extended for any Reason, Please Provide a Brief Description of any New Conditions Imposed: 	

2015 PVJE

Page 3

Case No. _____	(PAGE 3)																
SECTION IV. DISPOSITION OF THIS VIOLATION HEARING (cont.)																	
5. Incarceration Credit: Jail Credit Awarded at Original Sentencing _____ + Credit Actually Awarded While on Probation for Current Crime (to include any KDOC violation sanction time) _____ = Total Number of Days of Credit Actually Awarded _____ Revocation Date: _____ - Total Number of Days of Credit Actually Awarded _____ = SENTENCE BEGINS DATE: _____ <small style="margin-left: 100px;">m/d/yyyy</small> <small>m/d/yyyy</small>																	
Enter dates (m/d/yyyy only) and days of credit potentially available for this case and check "A" if the days are actually awarded, or "N" if the days are not awarded by the court. (attach additional pages if necessary)																	
*Location- From: _____ To: _____ = _____ Days <input type="checkbox"/> A <input type="checkbox"/> N	*Location- From: _____ To: _____ = _____ Days <input type="checkbox"/> A <input type="checkbox"/> N																
*Location- From: _____ To: _____ = _____ Days <input type="checkbox"/> A <input type="checkbox"/> N	*Location- From: _____ To: _____ = _____ Days <input type="checkbox"/> A <input type="checkbox"/> N																
*Location- From: _____ To: _____ = _____ Days <input type="checkbox"/> A <input type="checkbox"/> N	*Location- From: _____ To: _____ = _____ Days <input type="checkbox"/> A <input type="checkbox"/> N																
*Enter appropriate letters to indicate the type of location where credit may have been earned: J=Jail TL=Treatment (Locked) TU=Treatment (Unlocked) RL=Residential (Locked) RU=Residential (Unlocked) HA=House Arrest																	
6. Prior Case(s) to Which the Current Sentence is to Run Concurrent or Consecutive: <table style="width: 100%; border: none;"> <tr> <td style="width: 20%;">Case No. _____</td> <td style="width: 20%;">County _____</td> <td style="width: 20%;">Sentence _____</td> <td style="width: 20%;">Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/></td> </tr> <tr> <td>Case No. _____</td> <td>County _____</td> <td>Sentence _____</td> <td>Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/></td> </tr> <tr> <td>Case No. _____</td> <td>County _____</td> <td>Sentence _____</td> <td>Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/></td> </tr> <tr> <td>Case No. _____</td> <td>County _____</td> <td>Sentence _____</td> <td>Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/></td> </tr> </table> Others: _____		Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>	Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>	Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>	Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>
Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>														
Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>														
Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>														
Case No. _____	County _____	Sentence _____	Concurrent <input type="checkbox"/> or Consecutive <input type="checkbox"/>														
SECTION V. SIGNATURES																	
1. Judge's Signature: _____ Date: _____ Signed: _____ Printed: _____																	
2. Prosecuting Attorney: _____ Date: _____ Signed: _____ Printed: _____ Supreme Court Number: _____ Address: _____ _____ _____ Phone No: _____	3. Defense Attorney: _____ Date: _____ Signed: _____ Printed: _____ Supreme Court Number: _____ Address: _____ _____ _____ Phone No: _____																
THIS FORM MUST BE ACCOMPANIED BY A COPY OF THE ORIGINAL JOURNAL ENTRY OF JUDGMENT																	

State v. Pearce: A Potential Change to Criminal History Scoring

No. 110,435

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellant,

v.

MICHAEL J. PEARCE, JR.,
Appellee.

SYLLABUS BY THE COURT

1. An appeal is heard on a question reserved by the State only to address a matter of some statewide importance, not merely to show that the district court was wrong in a particular case. The appellate court's ruling on a question reserved does not have any effect on the criminal defendant or juvenile offender in that case.

2. One factor that determines the length of a defendant's presumptive sentence for a felony conviction under the Kansas sentencing guidelines is the defendant's criminal-history score. Unless excluded by statute, all prior criminal convictions are considered for criminal-history-scoring purposes. K.S.A. 2013 Supp. 21-6810(d)(9).

3. Prior convictions considered under a statute applicable to certain recidivist burglars, K.S.A. 2013 Supp. 21-6804(l) (which provides a presumptive prison sentence instead of probation), are not excluded from consideration for determining the

defendant's criminal-history category. Thus, all prior burglary convictions are considered for criminal-history purposes.

Appeal from Miami District Court; AMY L. HARTH, judge. Opinion filed January 23, 2015.
Appeal sustained.

Jason A. Orapetz and Robert R. Johnson, assistant county attorneys, Elizabeth Sweeney-Reeder, county attorney, and Derek Schmidt, attorney general, for appellant.

Jenni L. Howsman, legal intern, and Randall L. Hodgkinson, of Kansas Appellate Defender Office, for appellee.

Before MALONE C.J., LEBEN and ATCHESON, JJ.

LEBEN, J.: Under the Kansas sentencing guidelines, the more serious a defendant's past offenses are, the greater the presumptive sentence if the defendant commits a new felony offense. After Michael Pearce, Jr., was convicted of his fifth burglary, however, the district court did not include Pearce's past residential burglary—a person felony—when calculating his criminal-history score because the court had used that conviction to apply a statute that makes prison the default sentence for recidivist burglars.

The State has appealed, contending that the district court erred by excluding the prior residential burglary when determining Pearce's criminal-history score. The defendant successfully argued in the district court that K.S.A. 2013 Supp. 21-6810(d)(9) prevents the court from counting this offense.

But that statute excludes prior convictions only when "they enhance the severity level, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction." K.S.A. 2013 Supp. 21-6810(d)(9). None of those criteria were met here: the past offense did not change the severity level of this offense (severity-

In applying Special Rule 13, the Court of Appeals held that burglary priors can be used to enhance the sentence under a special rule provision and for criminal history purposes. The Court also inferred forgery priors in Special Rules 16 and 17 could also be used.

State v. Pearce: KSA 21-6810(d)(9)

(Cont.)

Pre-2010

“Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level *or applicable penalties*, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.”
(Emphasis added).

Post-2010

“Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.”

Better Tools for you

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Thank You

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