

# STATE OF KANSAS



KANSAS SENTENCING COMMISSION  
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<http://www.sentencing.ks.gov>

GOVERNOR JEFF COLYER, M.D.

## MEMORANDUM

TO: Community Corrections Directors  
Chief Court Service Officers  
SB 123 Certified Treatment Providers  
Marie McNeal, KDOC  
Chris Mechler, OJA

FROM: Scott Schultz, Executive Director  
Kira Johnson, LMLP, SB 123 Program Director

DATE: October 1, 2018

RE: SB 123 Eligibility for Severity Level 4 Drug Offenders On or After July 1, 2018

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This memo summarizes the current status of SB 123 eligibility and the Kansas Sentencing Commission (KSSC) plan going forward.

The 2003 SB 123 substance abuse treatment program is set forth in [2017 Supp. 21-6824](#). As administrators of the program, the KSSC is celebrating 15 years of continued support for offenders that require substance abuse treatment in the community. The SB 123 drug treatment program has utilized approximately \$98 million between the beginning of the program in FY 2004 and FY 2018. Those funds have been used for the assessment and treatment of 16,511 offenders during that time period. Cost averages are approximately \$6,900 per offender. Cooperation with all stakeholders has made the program effective in reducing offender recidivism.

The KSSC is statutorily required and continues to monitor the criminal justice system with annual recommendations to the governor and legislature for criminal justice reforms. Last year, one of those reform efforts included expanding eligibility of the SB 123 program to all severity level 4, small drug sales. Many offenders sell to support their own habit and expansion of the program addresses the ability of the court to exercise discretion to order paid treatment through SB 123. As a result, the KSSC introduced 2018 HB 2088 to allow SB 123 treatment, if certain criteria was met. Eligibility was later modified by the legislature to only include those offenders with criminal history 4E-4I. As part of the normal legislative process at the end of the session, HB 2088 was amended into [2018 HB 2458](#) with other criminal bills. It was passed signed into law and was effective July 1, 2018.

Despite the intended purpose of HB 2458, a closer review of section eight of the bill reveals that while 4E-I criminal history was contemplated for eligibility in subsection (a)(2), the specific drug distribution/sales statute in KSA 21-5706 was inadvertently omitted in subsection (a). **The practical effect of this omission is that**

**there is no change to the SB 123 statute regarding eligibility on or after July 1, 2018.** Possession offenses in KSA 21-5705 continue to be eligible but the addition of the small sales statute, KSA 21-5706, is absent from the new version that is now current law.

On September 20, 2018, the KSSC at its annual workshop, approved a technical fix that will be introduced during the 2019 legislative session. It will be substantially in the draft form provided below. It is anticipated the new bill will be approved at the October meeting of the Commission.

The result of the drafting error is that no severity level 4 drug offenses are eligible for SB 123 funding. KSSC-issued SB 123 flowcharts for 2018 will not change. Finally, **we will be unable to pay for any ordered treatment for those in violation of KSA 21-5706 as the statute does not currently provide authority to do so.** If you have questions, please let Kira or me know. Thank you to all of you for your work in this beneficial program. You make it work.

8 Supp. 21-5705  
and

Sec. 8. K.S.A. 2017 Supp. 21-6824 is hereby amended to read as follows: 21-6824. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of ~~K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2017 Supp. 21-5706,~~ and amendments thereto, *whose offense is classified in grid blocks:*

(1) ~~Whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2017 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or~~

(2) ~~whose offense is classified in grid blocks 5-A, or 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes, such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2017 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction, if the person felonies in the offender's criminal history were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes, and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.~~