

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
Rep. J. Russell Jennings, Chairman

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
February 7, 2017

Proponent Testimony – HB 2090

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. It is the statutory charge of the Commission to recommend solutions to maintain the sentencing guidelines and further public safety by supporting the incarceration of the most violent offenders in the state's criminal justice system.

K.S.A. 21-6805(f)(1) currently provides that if an offender is sentenced for a third or subsequent drug possession offense, the sentence is presumptive prison. This provision, known as Special Rule 26, is mandatory imprisonment, even if the offender's criminal history places them in a presumptive probation box on the sentencing grid. Repealing Special Rule 26 accomplishes more uniform sentencing that will have a twofold result.

First, it will save 27 prison beds in FY 2018 and 41 prison beds in FY 2027. More importantly, the likelihood for offender success in treatment is greater with community programming and at less cost to the taxpayers of the state. Since passage in its current form, this mandatory provision is tempered by the Secretary of Corrections being allowed to place an inmate in an "intensive substance abuse treatment program" for up to four months while in prison. The offender may then be returned to court with a possibility of sentence modification. This, in theory, provides a laudable solution for punishment for the offender as a repeat offender is incarcerated but can still receive substance abuse treatment. But the effect on this nonviolent prisoner population has not materialized. Regrettably, this program has largely gone unused due to funding issues. Because KDOC is only able to treat approximately 10% of those needing substance abuse treatment, more serious offenders with longer sentences receive priority for the limited programming that is available. Rather than receiving necessary treatment in some cases in which the community and offenders can benefit, all offenders are instead serving the balance of their sentence in prison. Repealing the special rule would allow for community substance

abuse treatment for possession only offenders and promote uniformity with this type of crime.

In FY 2016, 53 offenders caught up in the cycle of addiction were imprisoned after only two opportunities to reform. This bill would save 27 prison beds in FY 2018 and 41 prison beds in FY 2027. Due to fewer offenders being admitted to prison, more would be eligible for certified substance abuse treatment in the community, commonly known as the 2003 SB 123 program that is administered by the Commission. The Commission estimates an increase in SB 123 drug treatment offenders by 170 persons. Based on an average cost of \$3,404.77 per SB 123 treatment offender in FY 2016, this may increase SB 123 programming costs by \$578,811 in FY 2018 to provide treatment to these offenders, thereby requiring additional appropriations to the program. The Commission is currently working with the Kansas Association of Addiction Professionals, many of which are SB 123 treatment providers, to resolve this fiscal challenge.

It is important to note that the law requires presumptive prison is mandatory in these cases. The current sentencing reality throughout the state though is that prosecutors, defendants and the courts are agreeing to **not** impose the special rule **75%** of the time. Last year, only 25% of the offenders that were sentenced for their third or subsequent drug possession were sentenced to prison. Supporting this bill will comport with the realities of what is currently already happening in our courtrooms.

Even considering the current budget climate, policy decisions in criminal justice should continue be made with public safety at the forefront. Removing this special rule will not compromise public safety, it will enhance our ability to provide treatment to the less violent offenders convicted of drug possession that would not otherwise receive treatment in prison. It will also provide direct savings in the form of bed space. I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support of the bill and would be happy to answer questions. Thank you.