

SESSION OF 2011

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2318**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

Sub. for HB 2318 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.

The bill also would delete the packaging or repacking of a substance or labeling or relabeling its container from the definition of "manufacture," and clarifying that it does not include the addition of dilutants or adulterants.

Next, it would amend as follows the severity levels for a violation of KSA 21-36a03(a), 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 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 for a first conviction.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

In KSA 21-36a05, 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;
- More than 3.5 grams but less than 100 grams, severity level 3;
- More than 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:
 - Less than 25 grams, severity level 4;
 - More than 25 but less than 450 grams, severity level 3;
 - More than 450 grams but less than 30 kilograms, severity level 2; or
 - 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:
 - Less than 1 gram, severity level 4;
 - More than 1 gram but less than 3.5 grams, severity level 3;
 - More than 3.5 grams but less than 100 grams, severity level 2; or
 - 100 grams or more, severity level 1.
- Violations involving substances outlined in KSA 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:

- Fewer than 10 dosage units, severity level 4;
 - More than 10 but less than 100 dosage units, severity level 3;
 - More than 100 but less than 1,000 dosage units, severity level 2; or
 - 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 crimes of distribution or possession with the intent to distribute controlled substances listed in schedule V would be class A person misdemeanors, except that if distributed to or possessed with the intent to distribute to a minor, it would be a severity level 7, person felony.

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

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

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:

- More than 4, but fewer than 50, severity level 3;

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

The bill also would amend KSA 21-36a05 to bar the use of certain defenses and define some key terms.

In KSA 21-36a06, possession of the substances listed in subsection (a) and a second conviction of possession of the substances listed in subsection (b) would be changed from a drug severity level 4 felony, to a level 5 felony.

KSA 21-36a09, concerning possession of certain drug precursors with the intent to manufacture a controlled substance, would be treated as an attempted violation of KSA 21-36a03. Further, in KSA 21-36a09, the penalties for possession of drug paraphernalia would be treated as an attempted violation of the following crimes:

- For possession with intent to manufacture a controlled substance, KSA 21-36a03(a);
- For possession with intent to distribute or cultivate a controlled substance listed in KSA 21-36a05(a), KSA 21-36a05(a);
- For possession with the intent to distribute a controlled substance, KSA 21-36a05(b).

A violation of possessing with the intent to possess or having under one's control a controlled substance listed in 21-36a06(a), would be treated as an attempted violation of 21-36a06(a).

A violation of possessing with the intent to possess or having under one's control a controlled substance listed in 21-36a06(b), would be treated as an attempted violation of 21-36a06(b).

The bill would provide, however, that KSA 21-36a09, as amended, would not preclude prosecution, conviction, and punishment for violations of KSA 21-36a03, 21-36a05, or 21-36a06 based on overt acts other than possession of precursors and paraphernalia.

In KSA 21-36a10(a), advertising, marketing, labeling, distributing, or possession with the intent to distribute the drugs listed in that subsection, the penalties would be changed from a drug severity level 2 felony to a level 3 felony.

KSA 21-36a10(b), distribution, possession with the intent to distribute, or manufacture with the intent to distribute drug paraphernalia when the seller knew or reasonably should have known it would be used to manufacture or distribute a controlled substance, would be changed from a drug severity level 4 felony, to a level 5 felony. Distribution or causing paraphernalia to be distributed to a minor or within 1,000 feet of any school property, would be changed from a drug severity level 3 felony to a level 4 felony.

KSA 21-36a10(c), which governs the crime of distribution, possession with the intent to distribute, or manufacture with intent to distribute drug paraphernalia when the seller knew or reasonably should have known it would be used as such in violation of KSA 21-36a01 to 21-36a17 (except KSA 21-36a06) would be changed from a drug severity level 4 felony to a level 5 felony when the offender distributed or caused paraphernalia to be distributed to a minor or within 1,000 feet of any school property.

In KSA 21-36a10, 21-36a13, and 21-36a14, the subsections with penalties for distribution or causing paraphernalia to be distributed to a minor or within 1,000 feet of any school property, the bill would strike the requirement that the offender be 18 or older.

The bill would amend KSA 21-36a14 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 for, convicted of, and punished for theft by deception.

The severity levels of crimes involving proceedings, KSA 21-36a16, would be amended as follows, based on the amount of the proceeds:

- Less than \$5,000, from a level 4 to level 5;
- At least \$5,000, but less than \$100,000, from a level 3 to a level 4;
- At least \$100,000, but less than \$500,000, which is currently a severity level 2, would be further divided as follows:
 - At least \$100,000, but less than \$250,000, from a level 2 to a level 3;
 - At least \$250,000, but less than \$500,000, would remain a level 2.

Background

HB 2318 is based on the recommendations of the Kansas Judicial Council's Criminal Advisory Committee. In the House Committee on Corrections and Juvenile Justice, representatives of the Kansas County and District Attorneys Association and the Kansas Judicial Council's Criminal Advisory Committee appeared in support of the bill.

The House Committee on Corrections and Juvenile Justice adopted a substitute bill incorporating changes required due to the adoption of a five level drug grid, which was recommended by the Kansas County and District Attorneys Association.

The fiscal note for HB 2318, as introduced, indicates that it has the potential to increase litigation, but the fiscal effect would likely be accommodated within existing resources.

The Kansas Sentencing Commission estimates an increase in annual convictions pursuant to HB 2318 of three prison beds in FY 2012 and no increases in FY 2021. As the number of male inmates already exceeds capacity, the bed impact of this bill in addition to the impact of other possible legislation is likely to require additional expenditures. *The FY 2012 Governor's Budget Report* includes \$2.5 million for contract prison beds and if construction is necessary, the Department of Corrections has identified two expansion projects: two high medium housing units at El Dorado Correctional Facility, with 512 beds and a cost of \$22.7 million for construction and \$9.3 million for operation, and one minimum security housing unit at Ellsworth Correctional Facility, with 100 beds and a cost of \$5.9 million for construction and \$1.8 million for operation.