

SESSION OF 2012

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

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for Sub. for HB 2318 would amend the statutes governing sentencing for drug crimes, 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 grid also would expand the presumptive probation boxes to include levels 5-C and 5-D (formerly levels 4-C and 4-D), which would make offenders convicted of certain level 5 crimes (formerly level 4 crimes) eligible for sentences of presumptive probation and certified drug abuse treatment.

The bill would specify that offenders assigned a high risk status, as determined by a drug abuse assessment, and a moderate or high risk status, as determined by the criminal risk-need assessment would be committed to a drug-abuse treatment program. Offenders so committed would be supervised by community correctional services. Otherwise, based on the result of the criminal risk assessment, they would be supervised either by community correctional services or court services.

The border boxes also would be expanded to include levels 4-C and 4-D (formerly levels 3-C and 3-D), which would allow the imposition of optional non-prison sentences for certain level 4 offenses (formerly level 3 offenses).

*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>

The bill also would make several changes to the statutes governing drug crimes. Specifically, the bill would delete the packaging or repackaging of a substance or labeling or relabeling its container from the definition of "manufacture," and clarify that it does not include the addition of dilutants or adulterants.

Next, it would amend as follows the severity levels for a violation of KSA 21-5703, manufacture or attempted manufacture of a controlled substance or controlled substance analog:

- Change a violation from a drug severity level 1 felony to a drug severity level 2 felony for a first conviction; a second or subsequent conviction for manufacture would be a drug severity level 1 felony; and
- Specify that manufacture of methamphetamine would remain a drug severity level 1 felony.

In KSA 21-5705, the bill would impose new felony classifications on the drug grid, based on quantity, for the crimes of distribution or possession with the intent to distribute the drugs listed in subsection (a) as follows:

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

The bill would create exceptions to these penalties, as follows:

- Violations involving marijuana would have the following felony classifications on the drug grid based on quantity:
 - Less than 25 grams, severity level 4;
 - At least 25 grams but less than 450 grams, severity level 3;
 - At least 450 grams but less than 30 kilograms, severity level 2; and
 - 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;
 - At least 1 gram but less than 3.5 grams, severity level 3;
 - At least 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;

- At least 10 dosage units but less than 100 dosage units, severity level 3;
- At least 100 dosage units but less than 1,000 dosage units, severity level 2; and
- 1,000 dosage units or more, severity level 1.
- Violations occurring within 1,000 feet of any school property would increase the severity level by 1 level.

The crime of distribution or possession with the intent to distribute a controlled substances listed in schedule V would be a class A person misdemeanor, except that if distributed to or possessed with the intent to distribute to a minor, it would be a nondrug severity level 7, person felony.

Cultivation of a controlled substance listed in subsection (a) would have the following felony classifications on the drug grid based on the number of plants cultivated:

- 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.

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.

The bill also would amend KSA 21-5705 to bar the use of certain defenses and define some key terms.

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

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

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

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.

In the Senate Committee on Judiciary, representatives of the Kansas Judicial Council, the Kansas County and District Attorneys Association, and the Attorney General appeared in support of the bill.

The Committee amended the bill by adopting another substitute bill, which is substantially similar to the House substitute, but reverted to current law in KSA 21-5709, concerning drug paraphernalia, and added the provisions of SB 368, concerning presumptive probation and border boxes on the drug sentencing grid.

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 estimated an increase in annual convictions pursuant to HB 2318 of three prison beds in FY 2012 and no increases in FY 2021.

The fiscal note for SB 368 indicates passage would require \$101,985 for two new court services officers. The Kansas Sentencing Commission indicates passage would increase the number of offenders eligible for drug treatment by 202 offenders in FY 2012, which would require \$930,640 in additional funding. Further, the Commission estimates a decrease of 67 adult prison beds in FY 2013 and 146 by FY 2022. An estimate from the Department of Corrections was not available at the time the fiscal note was offered.