



*February 15, 2022*

*Testimony Regarding HB 2673*

*Submitted by Patrick Armstrong, Project Manager, The Council of State Governments Justice Center*

Thank you to Chairman Owens, Vice Chairman Smith, and the committee for the opportunity to testify in support of HB 2673, a bill that would amend the drug sentencing grid to better reflect judicial sentencing practices, guide more people struggling with addiction to treatment, and allow judges to continue to sentence people to prison if they pose a public safety risk.

The Council of State Governments Justice Center is a nonpartisan, nonprofit organization that has been working in Kansas for the last two and a half years, providing research and assessment capacity for the Kansas Criminal Justice Reform Commission (“Commission”).

The Commission was focused on making Kansas a safer place, reducing drug addiction, and developing policy solutions tailored to the needs of the state.

It was important to let the practitioners working in Kansas counties and the data pulled from Kansas courts drive the state toward smart, research-based changes, to combat addiction.

An analysis of Kansas data revealed that drug addiction and crime created pressure at each level of the system. Judges, district and county attorneys, and law enforcement, all reported a desire to help people break the cycle of addiction.

Rather than make changes to the drug grid based on perception or to force a particular result, the Commission reviewed sentencing data and recommended changes that were data-driven and in alignment with sentencing decisions that judges were already making.

- There are 45 boxes in the drug sentencing grid.
- In 27 of those boxes sentencing data showed that judges were already sentencing the majority of those cases to probation (indicated by the blue boxes in the grid on page 4).
- But in order for judges to deliver those sentences, they are currently required explain their reasoning by making findings of fact, adding an extra, unnecessary step.
- Based on the data, adding 22 new presumptive probation boxes would align with the sentencing patterns of judges and reduce the need for them to explain their reasoning.
- The initial proposal was intended to be a measured, incremental approach, so the Commission only recommended to adding 11 new presumptive probation boxes.

- **The current proposal reduced that even further down to just 4 new presumptive probation boxes (4-G, 4-H, 4-I, 5-D)** and made adjustments to sentence lengths for the lowest-level drug offenses (page 3).

HB 2673 helps judges by making it easier for them to continue appropriately sentencing people, as they are already doing, but it eliminates the extra fact-finding step currently required (in the 4 new presumptive probation boxes). It also keeps in place the discretion they have to sentence people to prison, even if they fall into a presumptive probation box, when the facts require a stronger response.

During our work with the Commission, we heard from criminal justice system practitioners that care about the safety, security, and stability of Kansans. They would like the legislature to help make their jobs easier where possible, so they could support with people who struggle with addiction and help on their path to recovery.

Research shows that drug addiction is a disease. Repeated drug use changes the brain, including parts of the brain that enable self-control. This means even if a person with an addiction wants to quit, it will be very hard, and they will relapse sometimes.<sup>i</sup> Research also shows that prison costs more than providing treatment in the community for addiction and it does not result in lower rates of recidivism.<sup>ii</sup>

For the reasons stated above, I hope the committee will help Kansas take a small step in the right direction by voting in favor of HB 2673.

Sincerely,

Patrick Armstrong

Drug									
	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Non Person Felonies	2 Nonperson Felonies	1 Non Person Felony	2+ Misdemeanors	1 Misdemeanor No Record
Current	A	B	C	D	E	F	G	H	I
III	83, 78, 74	77, 73, 68	72, 68, 65	68, 64, 60	62, 59, 55	59, 56, 52	57, 54, 51	54, 51, 49	51, 49, 46
IV	51, 49, 46	47, 44, 41	42, 40, 37	36, 34, 32	32, 30, 28	26, 24, 23	23 22 20	19, 18, 17	16, 15, 14
V	42, 40, 37	36, 34, 32	32, 30, 28	25, 24, 23	22, 20, 18	18, 17, 16	16, 15, 14	14, 13, 12	12, 11, 10
<b>HB 2673</b>									
	A	B	C	D	E	F	G	H	I
III	83, 78, 74	77, 73, 68	72, 68, 65	68, 64, 60	62, 59, 55	59, 56, 52	57, 54, 51	54, 51, 49	51, 49, 46
IV	51, 49, 46	47, 44, 41	42, 40, 37	36, 34, 32	32, 30, 28	26, 24, 23	23 22 20	19, 18, 17	16, 15, 14
V	36, 34, 32	32, 30, 28	25, 24, 23	22, 20, 18	18, 17, 16	16, 15, 14	14, 13, 12	13,12,11	13,12,11

## FY2019 Felony Drug Sentences by Grid Cell – Percent Sentenced to Prison

		Criminal History Category								
		A	B	C	D	E	F	G	H	I
Severity Level	D01	75%	71%	50%	n/a	75%	100%	50%	100%	60%
	D02	69%	75%	66%	50%	39%	36%	34%	27%	26%
	D03	78%	59%	45%	29%	65%	38%	42%	32%	16%
	D04	74%	67%	47%	32%	40%	33%	23%	12%	4%
	D05	43%	37%	15%	3%	14%	10%	3%	1%	1%

0 - 10%
11 - 25%
26 - 50%
51 - 75%
76 - 100%

Presumptive  
Prison

Border  
Box

Presumptive  
Probation

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<sup>i</sup> National Institute on Drug Abuse. The Science of Drug Use: A Resource for the Justice Sector. <https://nida.nih.gov/drug-topics/criminal-justice/science-drug-use-resource-justice-sector>

<sup>ii</sup> Loeffler, C. E., & Nagin, D. S. (2022). The impact of incarceration on recidivism. *Annual Review of Criminology*, 5.

<https://www.annualreviews.org/doi/abs/10.1146/annurev-criminol-030920-112506>

<sup>iii</sup> CSG Justice Center analysis of Kansas Sentencing Commission felony sentencing data, September 2020.