

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
**Representative Stephen Owens, Chairman**

**KANSAS SENTENCING COMMISSION**  
**Scott M. Schultz, Executive Director**  
**February 15, 2022**

**Proponent Testimony – HB 2673**

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This bill was introduced by the Commission and reflects the current realities of sentencing drug offenders in Kansas. In doing so, the Commission proposes to modify the length of sentence of severity level 5 drug crimes and the presumptive probation ranges on the drug grid. A third provision would expand SB 123 treatment to certain offenders convicted of drug crimes.

**Modification of the Drug Grid**

Two modifications of the drug grid are proposed in HB 2673. First, severity level 5 drug crimes receive a decrease in length of sentence to be more consistent or proportional with severity level 8 nondrug crimes. Second, in order to reflect the current sentencing realities, border boxes and presumptive probation boxes are expanded for severity level 4 and 5 drug crimes.

*Severity Level 5 Drug Crimes*

The Joint Committee on Corrections and Juvenile Justice Oversight, Kansas Criminal Justice Reform Commission, and the Kansas Sentencing Commission support this bill, which includes proportionality in sentencing. The KCJRC studied drug possession proportionality for their three-year tenure and recommend in their final report to the legislature that drug severity level 5 crimes should be proportional with nondrug severity level 8 crimes. This was originally proposed in 2021 HB 2139 last year, but later amended into 2021 HB 2146. Attachment 1 provides a visual history from the current grid to the amended version, which is being proposed in HB 2673. Although not as thorough as the original version proposed by the KSSC in 2021 HB 2139, the Sentencing Commission supports the sentence lengths reached as part of a compromise.

*Border and Presumptive Probation Grid Boxes*

K.S.A. 2021 Supp. 21-6805 is amended to move:

1. 5-B, 4-C and 4-D to the list of border boxes from presumptive prison on the drug grid; and
2. 5-D, 4-G, 4-H, and 4-I from border boxes to presumptive probation on the drug grid.

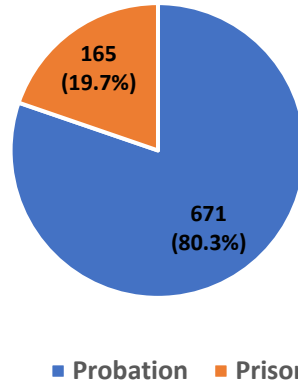
Please see Attachment 1 for a comparison of the current and proposed drug grids. As mentioned above, this proposed version is the same that passed out of this committee in 2021 HB 2146. This was the result of an agreement reached between the parties to the bill that was submitted by House Corrections and Juvenile Justice committee chair Russ Jennings. HB 2146 was amended and was favorably passed out of committee. It

did not appear above the line in the House and was stricken from the calendar. This bill is the exact language of HB 2146.

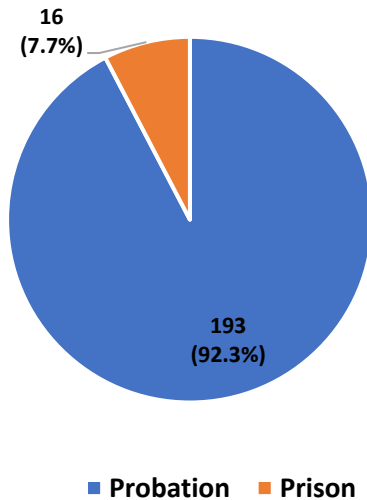
In reviewing the grid boxes proposed to be changed, the realities of sentencing are that all parties in these types of drug cases are generally making agreements to decrease punishment. The following examples illustrate that those offenders sentenced to the drug grid boxes proposed to be modified by the bill are already receiving probation at an extremely high percentage.

### Severity Level 5 Drug Sentences: FY 2021

Drug levels 5-A and 5-B crimes currently require presumptive prison sentences. Levels 5-C and 5-D are border boxes in which offenders are also required to be sentenced to prison. The reality is of 836 SL 5 offenders, **only 19.7% receive prison.**



### Drug Severity Level 4 Sentences: FY 2021



Drug levels 4-G, 4-H, and 4-I crimes are border boxes and are sometimes called Presumptive Imprisonment Boxes. Presumptive prison is required on the current drug grid but the trial court may sentence the offender to probation without utilizing a departure sentence. The reality is of 209 SL4 offenders, **only 7.7% receive prison.**

This proposal, while not as robust the KSSC’s original request, is a step forward to modify the presumptive probation boxes on the drug grid to more accurately reflect the current sentencing practice of prosecutors, defense counsel, and the district courts in the state. Adopting the proposal also reduces the need for departure motions for these crimes. If they fail to comply with the terms and conditions of their supervision while on probation, they remain subject to revocation and prison.

## **Expansion of SB 123 Substance Abuse Treatment Program**

K.S.A. 2021 Supp. 21-6824, commonly referred to as the 2003 SB 123 substance abuse treatment program, is amended to include mandatory certified drug treatment for grid boxes 5-A and 5-B. Those in grid boxes 3-G, 3-H, or 3-I of the sentencing guidelines grid for drug crimes will qualify for certified drug treatment if the person felonies in the offender's criminal history were severity level 8, 9, 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. This is a discretionary placement by the district court.

In many instances, offenders involved in the sale of drugs are also addicted to the substances they sell. This bill would allow for treatment of those offenders that qualify, provided they do not have serious criminal histories and the court makes a finding that public safety is preserved. **The expansion does not include those manufacturing drugs and is not a mandatory placement.**

Adoption of this portion of the bill will carry a fiscal note that is estimated by the Commission to add **110** offenders to the SB 123 program, totaling **\$265,720** in FY 2023. This increase can be managed within KSSC's existing budget appropriations.

The KSSC's bed space impact also indicates that this bill will save the state **110** prison beds in FY 2023 and **160** in FY2032. Criminal justice professionals throughout the state agree that now is the time to adjust the drug grid to be more proportional and accurately reflect current sentencing practice. I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.

# Kansas Sentencing Guidelines Drug Grid (Current and Proposed Modifications) 2022 HB 2673

ATTACHMENT 1

	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
	A	B	C	D	E	F	G	H	I
<b>Current</b>									
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>Proposed 2139</b>									
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	23,21,19	20,19,18	19,18,17	17,16,15	14,12,13	13,12,11	13,12,11	13,12,11	13,12,11
<b>Proposed 2146</b>									
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>Amendment</b>									
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	30,28,26	25, 24, 23	22, 20, 18	18, 17, 16	16, 15, 14	14, 13, 12	13,12,11	13,12,11

