

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2146

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2146, as amended, would amend the statutes governing sentencing for drug crimes, including the adoption of a drug sentencing grid with expanded ranges for presumptive probation and border boxes; would amend sentencing ranges in certain grid boxes; and would extend eligibility for the 2003 SB 123 drug abuse treatment program to certain offenders.

Sentencing Guidelines

[*Note:* Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid structured by the crime severity level (1 to 5, 1 being the highest severity level) on one axis and the offender's criminal history score (A to I, A being the highest criminal history score) on the other axis to determine the presumptive sentence for an offense. Each grid box contains three numbers that provide the sentencing court a range for sentencing in number of months. The middle number in the box is the presumed sentence, while the court has discretion to sentence within the range depending on aggravating and mitigating factors. Unshaded grid boxes are designated as presumptive imprisonment for the sentence. Certain other boxes are designated as presumptive probation with an underlying prison sentence. Some boxes are designated as border boxes, which have a presumptive prison sentence; however, the sentencing court may choose

*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>

to impose an optional nonprison sentence, which would not constitute a departure.]

[*Note:* The bill would not change box designations for severity level 1 and 2 crimes.]

Border Boxes

The bill would designate the following as border boxes:

- Boxes 5-B and 5-C (the current grid designates boxes 5-C and 5-D as border boxes); and
- Boxes 4-C through 4-F (the current grid designates boxes 4-E through 4-I as border boxes).

Presumptive Probation

The bill would expand the presumptive probation boxes in the drug grid by designating:

- Boxes 5-D through 5-I as presumptive probation (the current grid designates boxes 5-E through 5-I as presumptive probation); and
- Boxes 4-G through 4-I as presumptive probation (the current grid does not designate any severity level 4 boxes as presumptive probation).

Sentencing Ranges

The bill would reduce the potential sentence lengths for an offender classified in grid boxes 5-A through 5-H and increase the potential sentence lengths for an offender classified in grid box 5-I as follows:

- Box 5-A would be reduced from a range of 42-37 months to a range of 36-32 months;

- Box 5-B would be reduced from a range of 36-32 months to a range of 30-26 months;
- Box 5-C would be reduced from a range of 32-28 months to a range of 25-23 months;
- Box 5-D would be reduced from a range of 26-23 months to a range of 22-18 months;
- Box 5-E would be reduced from a range of 22-18 months to a range of 18-16 months;
- Box 5-F would be reduced from a range of 18-16 months to a range of 16-14 months;
- Box 5-G would be reduced from a range of 16-14 months to a range of 14-12 months;
- Box 5-H would be reduced from a range of 14-12 months to a range of 13-11 months; and
- Box 5-I would be increased from a range of 12-10 months to a range of 13-11 months.

Current Drug Grid

[Key: Dark gray designates presumptive probation; light gray designates a border box; white designates presumptive imprisonment.]

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Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor; No Record
3	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
4	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
5	42/40/37	36/34/32	32/30/28	26/24/23	22/20/18	18/17/16	16/15/14	14/13/12	12/11/10

Proposed Changes to the Drug Grid

[Key: Dark gray designates presumptive probation; light gray designates a border box; white designates presumptive imprisonment.]

5-2146

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor; No Record
3	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
4	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
5	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

2003 SB 123

The bill would expand eligibility for the nonprison sanction of placement in a certified drug abuse treatment program (2003 SB 123 drug abuse treatment program).

Eligibility would be expanded from offenders convicted of a drug severity level 4 possession offense with a criminal history of E or lower to also include offenders convicted of a drug severity level 4 possession offense with a criminal history of C or D and offenders convicted of a level 3 possession offense with a criminal history of G or lower who have not been convicted of certain other crimes.

[*Note:* Under continuing law, an offender is classified as having a criminal history level of C if the offender does not have more than one person felony and at least one nonperson felony. An offender is classified as having a criminal history level of D if the offender does not have more than one person felony. An offender is classified as having a criminal history level of G if the offender has one nonperson felony but has not been convicted of a person felony.]

The bill would also remove the requirement that offenders convicted of a drug severity level 5 possession offense with a criminal history of B or higher only be eligible for treatment if the court finds that the safety of the members of the public will not be jeopardized by placement in a drug abuse treatment program and that the offender's criminal history does not include convictions of certain person felonies or nongrid offenses for nondrug crimes.

Under continuing law, an offender is classified as having a criminal history level of B if the offender has been convicted of at least two person felonies.

Technical Amendments

The bill would make technical amendments to ensure consistency in statutory phrasing.

Background

SB 123 (2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the “Senate Bill 123 Program,” this program is administered by the Kansas Sentencing Commission (Commission).

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Commission.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 10, 2021, **proponent** testimony was presented by representatives of the American Civil Liberties Union of Kansas, the Council of State Governments, the Kansas Department of Corrections, and the Commission. Proponents stated the proposed changes to the sentencing grid would reflect current practices in sentencing and would help reduce beds needed in state correctional facilities.

Opponent testimony was presented by a representative of the Johnson County Sheriff’s Office and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and the Kansas Sheriffs Association. The opponents stated their concern that plea bargains would result in shorter sentences and the current level of judicial discretion is appropriate.

The House Committee amended the bill by redesignating certain grid boxes and amending the sentencing range in certain boxes.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill would increase expenditures by the Judicial Branch, as it would require court services officers to complete additional pre-sentence investigations and assessments and supervise more offenders. OJA indicates the bill could also increase revenues to the Judicial Branch from the collection of additional supervision fees. However, a fiscal effect on expenditures by and revenues to the Judicial Branch cannot be estimated.

According to the Prison Bed Impact Statement prepared by the Commission on the bill, as introduced, enactment of the bill would result in the decreased use of 295 adult prison beds in FY 2022 and 452 prison beds in FY 2031. The current estimated available bed capacity is 9,420 for males and 948 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2020 Adult Inmate Prison Population Projections report, it is estimated that the year-end population for available male capacity will be under capacity by 1,287 inmates in FY 2021 and 1,241 inmates in FY 2022. The Department of Corrections estimates the reduction in beds would reduce expenditures by \$314,408 for FY 2022. The Commission estimates the bill would increase the number of probationers by 301 probationers in FY 2022 and 329 probationers in FY 2031. The Commission estimates the cost to the 2003 SB 123 drug abuse treatment program will be \$378,392 for FY 2022 and \$382,176 for FY 2023. The Commission reports this assessment is based on the average cost of treatment of \$3,143 per offender in FY 2019.

[*Note:* See below for the Commission's updated prison bed impact statement.]

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

According to the Commission's prison bed impact assessment updated to reflect the House Committee amendment, the bill as amended would reduce 242 prison admissions in FY 2022 and 265 prison admissions in FY 2031. The bill would reduce the use of 228 prison beds in FY 2022 and 277 prison beds in FY 2031. The bill would increase the number of probationers by 242 probationers in FY 2022 and 265 probationers in FY 2031. The bill would result in no additional journal entry workload of the Commission. The bill would increase the cost of the 2003 SB 123 drug treatment program by \$302,242 for FY 2022 and \$333,158 for FY 2031 based on the annual average cost of \$3,143 per offender in FY 2019.

Certified drug treatment; drug grid; 2003 SB 123 Program; sentencing guidelines