



Kansas County & District Attorneys Association

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TO: Senate Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney

RE: SB 58

DATE: January 30, 2013

Hon. Chairman King and Members of the committee:

Thank you for the opportunity to submit testimony regarding SB 58, which amends K.S.A. 21-5703 and 21-6805(e) regarding sentencing for the crime of manufacture of controlled substances. My name is Tom Stanton, and I am the Deputy Reno County District Attorney. I am a past president of the KCDA, and I am currently the Section Leader for the KCDA Drug Section. I am before you today on behalf of the KCDA in support of this legislation.

The issue addressed by this legislation is the recognition of a possible conflict existing in Chapter 150 of the 2012 Session Laws of Kansas (HB 2318) regarding the penalty for a second conviction of manufacture of methamphetamine.

The law prior to HB 2318 was very simple: a conviction for the commission of the crime of manufacture of any controlled substance resulted in a severity level one drug felony sentence. The penalty was listed in the body of the criminal statute controlling the manufacture of controlled substances, K.S.A. 21-5703. A special sentencing rule was adopted by the legislature regarding second or subsequent convictions for manufacturing a controlled substance, and it was placed in K.S.A. 21-6805(e). This special rule established the penalty for a second or subsequent conviction of manufacturing a controlled substance to two time the aggravated sentence in the defendant's applicable sentencing grid box. The rule also gave the sentencing court the ability to reduce that sentence by 50% of the increase required by the special sentencing provision.

The legislature made an adjustment in this sentencing scheme when in enacted HB 2318. The adjustment was intended to make the penalty for the manufacture of a controlled substance *other than methamphetamine* a level two drug felony, while leaving the penalty for the manufacture



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of methamphetamine a level one drug felony. The legislature also intended to make a second or subsequent conviction for the manufacture of a controlled substance other than methamphetamine a level one felony. The legislature also left the special rule of K.S.A. 21-6805(e) in place with the intent to make the penalty for a second or subsequent conviction for methamphetamine more severe.

K.S.A. 21-5703 as amended by HB 2318 reads as follows:

Section 8 of Chapter 150, 2012 Session Laws of Kansas (KSA 21-5703):

- (a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.
- (b) Violation or attempted violation of subsection (a) is a:
 - (1) Drug severity level 2 felony, except as provided in subsections (b)(2), and(b)(3);
 - (2) drug severity level 1 felony if the offender has a prior conviction under this section, under K.S.A. 65-4159, prior to its repeal, or under a substantially similar offense from another jurisdiction; and
 - (3) drug severity level 1 felony if the controlled substance is methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof.

The special rule of K.S.A. 21-6508(e) as amended by hb 2318 reads as follows:

Section 33(e) of Chapter 150, 2012 Session Laws of Kansas (KSA 21-6805[e]):

The sentence for a second or subsequent conviction of K.S.A. 65-4159, prior to its repeal, or K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2011 Supp. 21-5703, and amendments thereto, for manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 2011 Supp. 21-6815, and amendments thereto, justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal (Emphasis added.)

Because the special rule does not limit the application of the rule to manufacturing of



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methamphetamine, there appears to be a conflict between the special rule and K.S.A. 21-5703(b)(2). The combination of statutes could be seen as overlapping, although no such overlapping is seen when applying the special rule to subsection (b)(3). The conflict exists because the special rule could be read as not applying only to the provisions of subsection (b)(3).

SB 58 is an attempt to clarify the language of the statute to clearly delineate between the penalty for a second conviction for the manufacture of methamphetamine, and a second conviction for the manufacture of a controlled substance other than methamphetamine.

The proposed amendments are as follows:

Section 8 of Chapter 150, 2012 Session Laws of Kansas (KSA 21-5703):

(a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a:

(1) Drug severity level 2 felony, except as provided in subsections (b)(2), and(b)(3);

(2) drug severity level 1 felony if:

(A) The controlled substance is not methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof; and

(B) the offender has a prior conviction for unlawful manufacturing of a controlled substance under this section, under K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 36a03, prior to its transfer or under a substantially similar offense from another jurisdiction and the substance was not methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof, in any such prior conviction; and

(3) drug severity level 1 felony if the controlled substance is methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof.

Section 33(e) of Chapter 150, 2012 Session Laws of Kansas (KSA 21-6805[e]):

The sentence for a second or subsequent conviction *for unlawful manufacturing a controlled substance, of K.S.A. 65-4159, prior to its repeal, or K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2011 Supp. 21-5703, and amendments thereto, or a substantially similar offense from another jurisdiction, if the controlled substance in any prior conviction was*



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methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof, ~~for manufacture of any controlled substance or controlled substance analog~~ shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 2011 Supp. 21-6815, and amendments thereto, justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal

As you can see, the language I emphasized in the current version of K.S.A. 21-6805(e) has been struck in favor of language applying the special rule only in the case of the manufacture of methamphetamine. K.S.A. 21-5703(b)(2) has been amended to clarify that the section only applies to the manufacture of controlled substances which are not methamphetamine. Subsection (b)(3) remains to establish the penalty for the first offense of manufacture of methamphetamine as a level one drug felony. These amendments simply insure that the legislature's intent regarding the penalties for manufacture of methamphetamine are clear, and insure no overlapping penalties exist. Additionally, because these amendments clarify, rather than change, existing law, there should be no accompanying increase in bed space.

I respectfully request that this Committee consider SB 58, and recommend this legislation for passage.

Respectfully submitted,

Thomas R. Stanton
Deputy Reno County District Attorney