

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
**Representative Russ Jennings, Chair**

**KANSAS SENTENCING COMMISSION**  
**Scott M. Schultz, Executive Director**  
**February 10, 2021**

**Proponent Testimony – HB 2139**

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This proportionality bill is introduced by the Commission to address the prison population by lowering drug sentences for simple possession crimes so that valuable bed space may be reserved for more violent offenders. It is also recommended for favorable passage by the Kansas Criminal Justice Reform Commission.

More imprisonment of drug offenders with lengthy prison terms does not reduce state drug problems. In a study from The Pew Charitable Trusts in 2018, a hypothesis was tested that if imprisonment were an effective deterrent to drug use and crime, then, all other things being equal, the extent to which a state sends drug offenders to prison should be correlated with certain drug-related problems in that state. It was not. Pew found that “[t]he absence of any relationship between states’ rates of drug imprisonment and drug problems suggests that expanding imprisonment is not likely to be an effective national drug control and prevention strategy. The state level analysis reaffirms the findings of previous research demonstrating that imprisonment rates have scant association with the nature and extent of the harm arising from illicit drug use.” Pew went further to add, “[o]n the other hand, reduced prison terms for certain federal drug offenders have not led to higher recidivism rates. In 2007, the [United States] Sentencing Commission retroactively cut the sentences of thousands of crack cocaine offenders, and a seven-year follow-up study found no increase in recidivism among offenders whose sentences were shortened compared with those whose were not...These and other research findings suggest that **the most effective response to drug misuse is a combination of law enforcement to curtail trafficking and prevent the emergence of new markets; alternative sentencing to divert nonviolent drug offenders from costly imprisonment; treatment to reduce dependency and recidivism; and prevention efforts that can identify individuals at high risk for substance use disorders.**” [Emphasis added.]<sup>1</sup>

According to a 2016 National Conference of State Legislatures article identifying drug sentencing trends, more than a third of states have amended drug penalties from 2011 to 2016. States have lowered penalties for possession of small amounts of drugs while maintaining or increasing penalties for larger quantities and drug trafficking offenses. One objective of these changes has been to reserve expensive prison

---

<sup>1</sup> <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.

space for the most serious offenders while providing treatment-based sentencing options, when appropriate. At that time, at least nine states had lowered some drug possession crimes from a felony to a misdemeanor.<sup>2</sup>

Below are two tables that compare in months the current sentences for drug possession offenders and the proposed drug level 5 sentence ranges:

**Current Drug Level 5 Sentencing Ranges**

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

**HB 2139 Drug Level 5 Proposed Sentencing Ranges**

Categories →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
V	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	13 12 11	13 12 11	13 12 11

The Commission encourages this committee to adopt similar sentences that currently exist on the nondrug grid for severity level 8 crimes. This severity level and its penalties were found by the KSSC and the Reform Commission to be proportional with drug level 5 crimes. Some examples of severity level 8, nondrug offenses are listed in Attachment 1. The only exception to mirroring severity level 8 nondrug crimes on the drug grid would be criminal history classifications 5G, 5H, and 5I, which would remain at 11, 12, and 13 months rather than be lowered to 7-11 months. Both Commissions make this recommendation out of concern for the time required to effectively administer substance abuse treatment programs. Severity level 5 drug crimes are primarily possession only offenses. **This bill does not change sentence length for drug manufacture, cultivation, or distribution/sale crimes.**

Last year, 198 offenders were directly committed to prison for severity level 5 possession of drugs. This proposal would save **80** prison beds in FY 2022 and **118** prison beds in FY 2031. The savings are outlined in more detail by the following table:

<sup>2</sup> <http://www.ncsl.org/research/civil-and-criminal-justice/drug-sentencing-trends.aspx>

### Prison Bed Space Impact Assessment

<b>Fiscal Year</b>	<b>Current Policy Unchanged Beds Needed</b>	<b>D5 New Sentencing Ranges Beds Needed</b>	<b>Prison Bed Savings</b>
2022	200	120	80
2023	231	119	112
2024	231	127	104
2025	236	126	110
2026	239	125	114
2027	237	123	114
2028	239	125	114
2029	240	130	110
2030	246	130	116
2031	250	132	118

The bill as presented is prospective unless the legislature determines retroactive application is warranted. 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.

Statute Number Violated	Statutory Penalty Section	Registration Required "R"	Statute Description	Severity Level / Class	Attempt, Conspiracy & Solicitation			Person Nonperson/ Select
					A	C	S	
21-5413(b)(2)(B)	(g)(2)(D)		<b>Aggravated Battery;</b> Recklessly causing bodily harm to another with a deadly weapon, or in a manner whereby great bodily harm, disfigurement or death can be inflicted	8	10	10	10	Person
21-5417(a)(3)	(b)(3)		<b>Mistreatment of Dependent Adult or Elder Person;</b> Knowingly omit or deprive of treatment, goods or services necessary to maintain physical or mental health of a dependent adult or elder person	8	10	10	10	Person
21-5507(a)(1)(A)	(b)(1)		<b>Unlawful Voluntary Sexual Relations;</b> Sexual intercourse between a child 14 or 15 and a person less than 19 and less than four yrs older than the child	8	10	10	10	Person
21-5707(a)(1)	(b)		<b>Drugs;</b> Knowingly or intentionally use any communication facility in committing, causing, or facilitating the commission of any felony under K.S.A. 21-5703, 21-5705, or 21-5706 ; each separate use of a communication facility may be charged as a separate offense	8	10	10	10	Nonperson
21-5823(a)(3)	(b)(1)		<b>Forgery;</b> With intent to defraud; Possess, with intent to issue or deliver, any forged instrument knowing it is forged	8	10	10	10	Nonperson
21-5840(a)(1)	(b)(1)(B)		<b>Counterfeiting Currency;</b> Making, forging or altering note, currency, obligation or security of US with intent to defraud; if total face value less than \$25,000	8	10	10	10	Nonperson
21-5904(a)(1)(A)	(b)(1)(B)		<b>Interference with Law Enforcement;</b> In the case of a felony; Falsely reporting to law enforcement officer or state investigative agency that person has committed a crime, knowing the information is false and intending that the officer or agency act in reliance on that information	8	10	10	10	Nonperson
21-5911(b)(1)(C)	(c)(2)(A)		<b>Aggravated Escape From Custody;</b> While held prior to or upon finding of probable cause for evaluation as a sexually violent predator	8	10	10	10	Nonperson
21-5912(a)(2)	(b)(1)		<b>Aiding an Escape;</b> Supply to another any object or thing adapted or designed for use in making an escape	8	10	10	10	Nonperson