

SENATE JUDICIARY COMMITTEE
Senator Richard E. Wilborn, Chairman

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
March 6, 2018

Proponent Testimony – HB 2088

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. It is the statutory charge of the Commission to recommend solutions to maintain the sentencing guidelines and further public safety by supporting the incarceration of the most violent offenders in the state's criminal justice system.

The Commission introduced this bill that amends K.S.A. 2017 Supp. 21-6824, commonly referred to as the 2003 SB 123 substance abuse treatment program, by expanding court ordered placement of offenders in certified drug abuse treatment programs to non-violent offenders whose offenses are classified in grid blocks 4-E, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes. See Attachment 1. The program currently only allows participation of severity level 5 drug offenders.

Adding severity level four offenders aims to target the possession offender that engages in small sales of controlled substances, mainly to support their addiction. For the most prevalent controlled substances that result in convictions in Kansas, small sale quantity thresholds that result in severity level 4 drug crimes are defined as the following:



Methamphetamine: < 1 gram



Marijuana: < 25 grams



Cocaine: < 3.5 grams

Safeguards have been built into the bill for public safety. Currently, severity level 5 offenders that are in criminal history category A or B are excluded from the SB 123 program if they have any priors for distribution, manufacture, cultivation or unlawful use of drug proceeds. In addition, if any of the person felonies that make up their criminal history are offgrid or severity level 1-7, they cannot be accepted in the program. Treatment is discretionary as the district court must find that public safety will not be compromised with the placement of the offender in SB 123 treatment. All severity level 4 offenders (4E-4I) will be placed in this same subsection (a)(2) and will have the same criteria as the 5A and 5B possession offenders. And like their severity level 5 counterparts, to be eligible for SB 123 treatment, severity level 4 offenders in the program must exhibit moderate to high risk on the LSI-R and high risk on the SASSI assessments.

In FY 2017, 406 offenders were convicted of the drug crimes whose offenses are classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid. Of these offenders 76 (18.7%) were sentenced to prison, 1 (0.2%) was sentenced to drug treatment; and 329 (81.1%) were sentenced to probation. Based upon the three scenarios presented by the Commission in its Prison Bed Impact Assessment, it is estimated that this bill will save 23, 39 or 62 prison beds by FY 2019 and 36, 62 or 99 prison beds in FY 2028 respectively depending on which scenario plays out. Expanding the SB 123 would save the costs of the beds but would also require a possible increase of 284 to 365 offenders in the SB 123 program. This would require \$1.02 million to \$1.31 million in new program funding.

Passage of the bill will provide direct savings to bed space and increase participation in the SB 123 program without compromising public safety.

On February 21, 2018, this bill passed out of the House 121-0.

I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support of the bill and would be happy to answer questions. Thank you.

SENTENCING RANGE- DRUG OFFENSES

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
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
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	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10
Presumptive Probation									
Border Box									
Presumptive Imprisonment									

•Fines not to exceed \$500,000 (SL1-SL2), \$300,000 (SL3-SL4), \$100,000 (SL5)

•Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.