

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

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

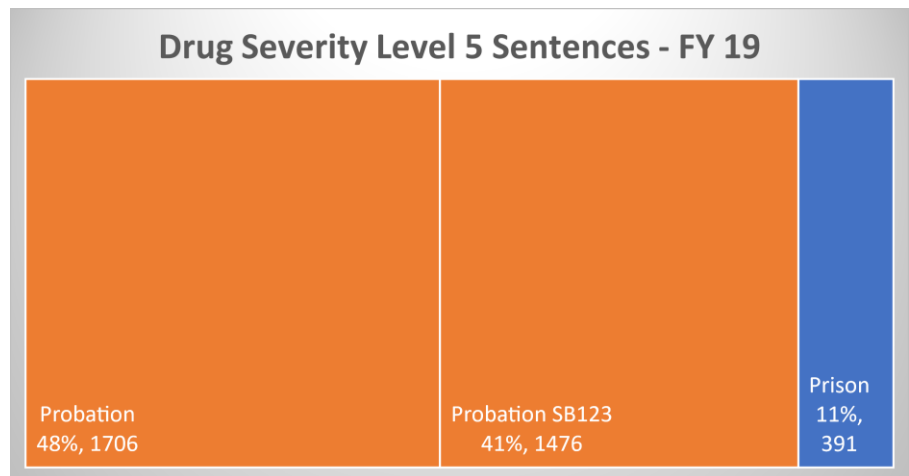
**Proponent Testimony – HB 2146**

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 presumptive probation ranges on the drug grid. A second provision would expand SB 123 treatment to certain offenders convicted of drug crimes.

**Modification of the Drug Grid**

K.S.A. 2020 Supp. 21-6805 is amended to change the dispositional line on the sentencing grid to increase the number of grid boxes that are presumptive probation (all level 5s, 4-G, 4-H, 4-I, 3-H, and 3-I). Also, 3-G becomes a border box in which the court may impose an optional nonprison sanction. If an offense is classified in a grid block **below** the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block **above** the dispositional line, the presumptive disposition shall be imprisonment. Please see Attachment 1 for a comparison of the proposed and current drug grids.

Drug levels 5-A and 5-B crimes 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 3,573 offenders, **only 11% receive prison.**



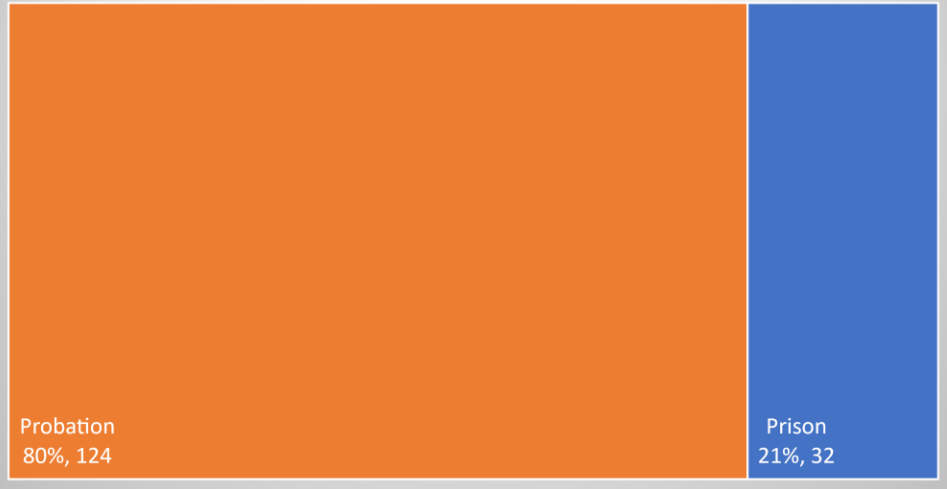
### Drug Severity Level 4 Sentences - FY 19



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 294 offenders, **only 10% receive prison.**

Drug levels 3-H and 3-I crimes require presumptive imprisonment on the current drug grid. The reality is of 156 offenders, **only 21% receive prison.**

### Drug Severity Level 3 Sentences - FY 19



The proposal to modify the presumptive probation boxes on the drug grid accurately reflects the current sentencing practice of prosecutors, defense counsel, and the district courts in the state. Adopting the proposal reduces the need for departure motions for these crimes. The offenders are still subject to up to 36 months of probation and can be revoked to prison if they fail to comply with the terms and conditions of their supervision.

#### Expansion of SB 123

K.S.A. 2020 Supp. 21-6824, commonly referred to as the 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.

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 cover 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 **121** offenders to SB 123, totaling **\$378,292** in FY 2022.

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.

**PROPOSED - SENTENCING RANGE- DRUG OFFENSES ATTACHMENT 1**

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.

Levels	Distribute or Possess w/ intent to Distribute			Manufacture (all)	Cultivate	Dosage Units	Postrelease	Probation	Good Time
	Cocaine	Meth & Heroin	Marijuana						
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	36	36	15%
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	36	36	15%
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	36	36	**20%
IV	< 3.5 g	< 1 g	< 25 g			<10	24	*≤ 18	20%
V	Possession	Possession	Possession-3rd offense				12	*≤12	20%

\* ≤ 18 months for 2003 SB123 offenders  
 \*\* Retroactive application for offense committed on or after July 1, 2012  
 \*\*\* Severity Level increases one level if on or w/in 1000 ft of any school property

## CURRENT - SENTENCING RANGE- DRUG OFFENSES

Categories→	A	B	C	D	E	F	G	H	I
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Presumptive Probation
Border Box
Presumptive Imprisonment

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•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.

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