

Impact Analysis Workshop

National Association of Sentencing Commissions
2010 Annual Conference
Point Clear, Alabama

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Code Revision Commission

August 10, 2010
10:15 am to 12:30 pm

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INTRODUCTION TO IMPACT ANALYSIS

Conducting impact analysis is neither a new process nor confined to the criminal justice arena. Impact analysis is frequently used in a number of disciplines including: environmental impacts, social policy impacts or risk impacts. Regardless of the type of impact analysis performed, the underlying concept is the same. An impact analysis is intended to measure the change that will occur as the result of the implementation of a new law, policy, procedure or rule. That definition appears to be very simple and straight forward, however, most impact analysis are neither. Performing a comprehensive impact analysis can be both very complicated and time consuming depending on the complexity of the policy, availability of data, the types of analysis performed and time span involved.

Used effectively, an impact analysis can identify both the short and long term effects of a law or policy change in terms of implementation resources required such as, prison or jail bed needs, correctional staffing requirements, community based supervision caseloads, court processing time, and law enforcement needs. Utilizing an impact analysis enables a jurisdiction to have a data driven projection of the costs involved prior to the enactment of a new law or policy change instead of dealing with cost issues on the backend after the change has been enacted.

In the most simplistic terms, an Impact Analysis involves five basic steps:

1. Define the extent of the change proposed.
2. Identify the key differences between the proposed change and the current policy or law.
3. Determine the potential impact of the key differences identified in #2.
4. Prioritize the impacts identified in #3 by resources required, time frame involved and necessary operational changes.
5. Make a decision based on the results identified in #4.

Defining the proposed change can include the creation of a new offense, expansion or clarification of a current offense, enactment of a mandatory minimum penalty, elevation of a misdemeanor offense to a felony classification, an increase in the penalty for either a misdemeanor or felony offense, or a change to a correctional or supervision policy such as reduced good time credits or modified revocation policies. This list is not meant to be fully

inclusive but rather to demonstrate the varied changes that can precipitate a request or need for an impact analysis.

Impact analysis is most often completed on a proposed new policy to be implemented as of a specific date. However, some proposed changes may be enacted retroactively, which involves measuring the impact of a new policy going back to a specific date, as well as into the future. Lastly, as with most projected policy changes there are intended results and the potential for unintended results. A comprehensive impact analysis will attempt to identify the unintended results and incorporate them into the analysis. For example, if a penalty is increased significantly for a specific offense, what is the likelihood that the proposed legislation could result in changes in charging or plea bargaining practices?

Data is crucial to both the detail and accuracy of the impact analysis. The more complete and specific the data available to you, the more comprehensive and accurate impact analysis will be. To determine the impact of a policy or law change, it is necessary to have data that measures or captures the impact of current policy or operating procedures. This baseline data is what the proposed policy or law changes are measured against.

When baseline data is incomplete or not available, then assumptions have to be made as to certain practices. For example, if there is no data available on the number of probation revocations that result in incarceration in a state correctional facility, then an assumption based on information provided by probation officers or national trends on revocation rates could be used in the impact analysis. When baseline data is not available or incomplete, the number of assumptions incorporated into the impact analysis is increased. The greater the number of assumptions used, the higher the probability of error in the impact analysis. Impact analysis commonly utilizes data from correctional facilities, supervision agencies, law enforcement agencies, sentencing commissions, and courts. But data from insurance companies, prosecutors, treatment facilities and emergency rooms can also be beneficial in conducting impact analysis on criminal justice policy.

In determining the potential impact of the key differences, it is important to consider both short and long term impacts, whether you are measuring the amount of resources, staffing, correctional space or court processing time. In most cases, with the exception of retroactive application of a policy change, there will be a lag time until the effects of the policy change is realized. If a penalty that increases the period of incarceration for an offense is proposed, the impact on the number of prison beds required will not be felt until the proposed period of incarceration exceeds the current period of incarceration. If a new offense is enacted, the impact on law enforcement may be immediate; however, there may be several months lag period before the impact is felt by the courts and an even longer period before there is an impact on correctional facilities.

An impact analysis may include an estimated increase in total operating costs to correctional facilities, the courts, supervision agencies and law enforcement of a proposed law or policy

change. More frequently, an impact analysis will target a specific agency or function, such as correctional institutions, probation, or parole. Impact analysis involves measuring the impact over a period of time, most frequently five to ten years, to allow sufficient opportunity to measure the complete impact of a proposed change. Finally, depending on the jurisdiction, an impact analysis can examine the impact on prison or jail beds only, staffing levels only, operating costs only or a combination of prison or jail beds, staffing levels and operating costs.

Besides the analytic nature of an impact analysis, there is also a political nature. In some jurisdictions, impact analyses are required by law to be completed for proposed legislation that has the potential to impact prison population or other criminal justice functions. In other jurisdictions, the impact analysis can be requested by the legislature, a sentencing commission, the governor or the budget office. It is also common that the initial impact analysis will be revised to reflect amendments or modifications to the original legislation or proposed policy change. In addition, as proposed bills make their way through the legislative process, bills are combined and impact analyses are completed on several policy changes simultaneously within a single piece of legislation. A very simple proposed law or policy change can evolve into a very lengthy and complex impact analysis, which is often associated with Omnibus Crime Bills.

This workshop is intended to provide participants with the opportunity to learn the basic structure and process of developing an impact analysis. It is designed to be interactive and provide participants with hands-on experience with reviewing legislation, deciphering what it means and identifying the specific policy change proposed. In addition, the role of assumptions and selecting the data necessary to measure or project the impact of the proposed policy change and techniques for calculating the impact will be discussed. Given the time frame of the workshop, it will not be possible to cover all areas of impact analysis in detail, but the presenters will be available throughout the conference to talk with participants individually.

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Creating Effective Impact Statements



August 10, 2010



Helen Pedigo, Executive Director
Kansas Sentencing Commission

785/296-0923

Topics

- How did this task get assigned to us?
- How is an impact statement prepared?
- What information is useful to policy-makers?
- How does the Legislative process effect the impact statement?

How Did This Task Get Assigned to Us?

- Statute
- Executive Order
- Informal Agreement
- Legislative Request

**Kansas Sentencing Commission
Duties**

K. S. A. 74-9101 (b)(8) prepare and submit fiscal impact and correctional resource statement as provided in K.S.A. 74-9106, and amendments thereto;

**Kansas Sentencing Commission
Duties**

K. S. A. 74-9106. When requested by the chairperson of a special or standing committee of the legislature, a fiscal impact and correctional resource statement shall be provided for bills amending any current crime or creating a new crime under the laws of the state of Kansas.

**Kansas Sentencing Commission
Duties**

K. S. A. 74-9106 (continued). The Kansas sentencing commission shall provide to the committee or committees to which such bill was referred a statement explaining the fiscal impact and effect on the utilization of correctional resources of such bill.

Kansas Sentencing Commission Duties

K. S. A. 74-9106 (continued). The fiscal impact and correctional resources statement shall include a reliable estimate in dollars of the anticipated expenditures and change in utilization of correctional resources necessary to carry out the provisions of the bill. It shall also include a statement as to the immediate effect and, if determinable or reasonably foreseeable, the long-range effect of the measure.

Kansas Sentencing Commission Duties

K. S. A. 74-9106 (continued). Every agency and department of the state is directed to fully cooperate with the commission in preparation of any such statement. No comment or opinion shall be included in such statement regarding the merits of the measure for which the statement is prepared.

How is an Impact Statement Prepared?

Understand the Legislation

- Look at the plain language.
- How does this legislation interface with existing statutes?
- What is the targeted policy change?
- Who does it apply to?
- Similar language exist in other statutes?
- Subjects outside criminal area – licensure, agriculture

Understand the Legislation

Items to Note:

- Creates, Amends, Repeals
- Effective Date
- Retroactivity
- May v. Shall
- Imprisonment – Where?

Understand the Legislation

Items to Note:

- Probation v. Parole v. Postrelease
- Consecutive v. Concurrent
- Restriction v. Suspension
- Definitions
- Special Rule, Special Finding
- Applicable to Juvenile Adjudications?

Understand the Legislation

What if you can't figure it out?

Call someone - drafter, proponent,
others affected

Language clarification may be
necessary

SENATE BILL No. 306
To amend the Code of Criminal Justice

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14 (3) causing or permitting a child under the age of 18 years to be in
15 an environment where such child has access to: (A) Any illegally possessed
16 controlled substance as defined in this section, or (B) any hypodermic
17 syringe, needles or other objects used or intended for use in parenterally
18 injecting any illegally possessed controlled substance into the human body.

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15 (o) "Park property" means any publicly owned playground, swim-
16 ming pool or community center and any other publicly owned property
17 set aside for any recreational use. If the property meets the above defi-
18 nition at the time of any alleged criminal act, the actual use of that prop-
19 erty at the time alleged shall not be a defense to the crime charged or the
20 sentence imposed.

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30 (s) "Presence of a minor" means:

31 (1) A minor is within close proximity to the illegal activity

32 (2) the illegal activity is conducted in a place where minors can rea-
33 sonably be expected to be present, or

34 (3) in the minor's dwelling.

35 This definition shall not be construed as requiring that a defendant
36 actually be aware of the presence of a minor or a minor actually be aware
37 of the illegal activity.

Understand Your Audience

For what purpose are you preparing the impact statement?

- Required as part of fiscal note
- Special Request
- Supplemental to testimony
- "Necessary evil" to policy discussion

Understand Your Audience

What is the reader's level of understanding?

- Explain enough, but not too much
- The bottom line is at the top
- This isn't smoke and mirrors - include a technical analysis

Understand Your Audience

What information is useful to the reader?

Will the bill, if enacted, do what the proponent intends?

What is the impact (\$, people, beds, staffing)?

Understand Your Audience

With what main point should the reader leave?

Is it clear that this bill does what is intended by the proponent?

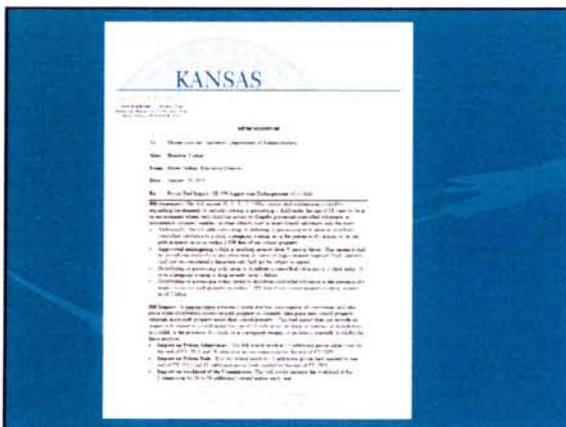
Is the policy change philosophically palatable?

Is the policy change affordable?

Understand Your Audience

Distribution

- Requestor
- Division of Budget
- Committee – Let them know you are available to discuss
- Other Stakeholders





Bill Summary: The bill amends K. S. A. 31-3605, aggravated endangering a child by expanding the elements to include creating or permitting a child under the age of 18 years to be in an environment where such child has access to illegally possessed controlled substance, or hypodermic syringe, needle, or other objects used to inject illegal substances into the body. Additionally, the bill adds cultivating, distributing or possessing with intent to distribute controlled substance to a child, a pregnant woman, or to the presence of a minor, or on any park property or on or within 1,000 feet of any school property.

- Aggravated endangering a child is a second-degree felony. The sentence shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.
- Distributing or possessing with intent to distribute a controlled substance to a child under 18 or to a pregnant woman is a first-degree felony.
- Distributing or possessing with intent to distribute controlled substance in the presence of a minor, or on any park property or within 1,000 feet of any school property is a first-degree felony.

Key Appropriations

- Projected prison admissions for the target offenders are estimated to increase by an annual percentage of 2%, which is the same percentage used in testimony to the Justice prison commission. The total number of projected prison admissions for the target offenders is estimated to be 15% and average level (D) and D1 to D4 is estimated to be 90%, two-year credit and good time is estimated to be 10%.
- It is estimated that the number of convictions of drug distributions on the park property will be the same as current drug distributions within 1,000 feet of a school.
- It is estimated that the sentence of a first-degree felony will be added to the term of drug distribution in the presence of a minor.
- It is estimated that the effective date is July 1, 2025.

Fundings

- By FY 2025, 28 offenders were convicted of the crime of aggravated endangering a child.
 - 27 (96%) were sentenced to prison and
 - 1 (3%) was sentenced to probation.
- By FY 2025, 15 offenders were convicted of distribution or possession with intent to distribute controlled substance within 1,000 feet of school. Of this number:
 - 14 (93%) were sentenced to prison and
 - 1 (7%) was sentenced to probation.

Impact Assessment

- Current Policy: If current policy remains unchanged,
 - by FY 2011, 16 prison beds would be needed and
 - by FY 2020, 19 prison beds would be needed.
- Impact: If the number of convictions of drug distributions on the park property are the same as current drug distributions within 1,000 feet of a school and the sentence of a first-degree felony is added to the term of drug distribution in the presence of a minor:
 - by FY 2011, 79 prison beds would be needed and
 - by FY 2020, 140 prison beds would be needed.

Summary:

- Impact on Prison Admissions: This bill would result in 23 additional prison admissions by the end of FY 2011 and 26 additional prison admissions by the end of FY 2020.
- Impact on Prison Beds: This bill would result in 63 additional prison beds needed by the end of FY 2011 and 121 additional prison beds needed by the end of FY 2020.

Fiscal Year	Prison Admissions Impact by Scenario		Additional Prison Admissions
	Current Policy	Proposed	
2011	15	38	23
2012	15	38	23
2013	15	38	23
2014	15	38	23
2015	15	38	23
2016	15	38	23
2017	15	38	23
2018	15	38	23
2019	15	38	23
2020	15	41	26

Fiscal Year	Prison Bed Impact Assessment		Additional Prison Beds Needed
	Current Policy	Proposed	
2011	16	79	63
2012	16	79	63
2013	16	79	63
2014	16	79	63
2015	16	79	63
2016	16	79	63
2017	16	79	63
2018	16	79	63
2019	16	79	63
2020	16	102	86

- Impact on workload of the Commission: This bill would increase the workload of the Commission by 23 to 10 additional criminal cases each year.

What Happened in the Example?

No additional elements or causes of action were added to the crime of aggravated endangering a child.
Severity level remains at 9, but a violation of this crime shall be served consecutively to any other term of imprisonment.
Distribution to a minor was added as an enhancement. Presence of a minor, pregnant person and park enhancements were not added.

AMENDED IMPACT ASSESSMENT

Maintain Credibility and Objectivity When People Around You are Losing Their Heads

Agency and personal reputations are on the line.

Re: Fiscal Note SB 144 Kansas Sentencing Commission Department of Corrections Merge

Bill Summary: This bill would merge the operations of the Kansas Sentencing Commission with the Kansas Department of Corrections, striking the position of the Kansas Sentencing Commission Executive Director and moving other positions to the Department.

Impact on Workload of the Commission: This bill will have an impact on the workload of the formal entity of the Commission, which would cease operations. The Department of Corrections will incur more workload with regard to felony sentencing, in general, as well as prison population projections, sentencing policy recommendations, prison bed impacts, and administration of the SB 113 payment system. The Department, rather than the members of the Kansas Sentencing Commission, will determine the role and impact played by this unit under the direction and control of the Department.

Impact on Costs: The value that is lost in this merge is the value of a separate independent entity objectively projecting prison populations, as well as an independent think tank made up of state and local criminal justice professionals from all three branches of State government. It is doubtful that the State of Kansas will achieve any real savings as a result of this merge, as the figures of up to \$152,000 used in the study are not actual known savings, except for the position reduction. The only known savings, as a result of this legislation, is the reduction of one position, that of the Kansas Sentencing Commission Executive Director.

Summary

Get as much information about the bill and the issue as you reasonably can prior to drafting the bill summary

Tailor the impact statement to the audience

Amend the statement as necessary

Creating Effective
Impact Statements

August 10, 2010



Helen Pedigo, Executive Director
Kansas Sentencing Commission

785/296-0923

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Session of 2010

SENATE BILL No. 399

By Committee on Judiciary

1-20

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to aggravated endangering a child; controlled substances; amend-
11 ing K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10 and
12 21-36a13 and repealing the existing sections.

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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2009 Supp. 21-3608a is hereby amended to read
16 as follows: 21-3608a. (a) Aggravated endangering a child is:

17 (1) Intentionally causing or permitting a child under the age of 18
18 years to be placed in a situation in which the child's life, body or health
19 is injured or endangered;

20 (2) recklessly causing or permitting a child under the age of 18 years
21 to be placed in a situation in which the child's life, body or health is
22 injured or endangered;

23 (3) *causing or permitting a child under the age of 18 years to be in*
24 *an environment where such child has access to: (A) Any illegally possessed*
25 *controlled substance, as defined in this section; or (B) any hypodermic*
26 *syringes, needles or other objects used or intended for use in parenterally*
27 *injecting any illegally possessed controlled substance into the human body;*

28 ~~(3)~~ (4) causing or permitting such child to be in an environment
29 where a person is selling, offering for sale or having in such person's
30 possession with intent to sell, deliver, distribute, prescribe, administer,
31 dispense, *cultivate, attempt to cultivate*, manufacture or attempt to man-
32 ufacture any ~~methamphetamine as defined by subsection (d)(3) or (f)(1)~~
33 ~~of K.S.A. 65-4107 controlled substance in violation of K.S.A. 2009 Supp.~~
34 ~~21-36a03 or subsection (a) of 21-36a05~~, and amendments thereto; or

35 (4) (5) causing or permitting such child to be in an environment
36 where drug paraphernalia ~~or volatile, toxic or flammable chemicals, prod-~~
37 ~~ucts, chemicals, compounds, mixtures or preparations~~ are stored for the
38 purpose of manufacturing or attempting to manufacture any ~~metham-~~
39 ~~phetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107~~
40 ~~controlled substance in violation of K.S.A. 2009 Supp. 21-36a09~~, and
41 amendments thereto.

42 (b) Aggravated endangering a child is a severity level 9, person felony.
43 *The sentence for a violation of this section shall be served consecutively*

1 *to any other term or terms of imprisonment imposed. Such sentence shall*
2 *not be considered a departure and shall not be subject to appeal.*

3 (c) As used in this section:

4 (1) "Manufacture" shall have the meaning ascribed to that term in
5 K.S.A. 2009 Supp. 21-36a01, and amendments thereto; ~~and~~

6 (2) "drug paraphernalia" shall have the meaning ascribed to that term
7 in K.S.A. 2009 Supp. 21-36a01, and amendments thereto; *and*

8 (3) "controlled substance" means: (A) *Any drug, substance, or im-*
9 *mediate precursor included in any of the schedules designated in K.S.A.*
10 *65-4105, 65-4107, 65-4109 and 65-4111, and amendments thereto; and*
11 *(B) any controlled substance analog, as defined in K.S.A. 2009 Supp. 21-*
12 *36a01, and amendments thereto.*

13 (d) This section shall be part of and supplemental to the Kansas crim-
14 inal code.

15 Sec. 2. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read as
16 follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-
17 36a17, and amendments thereto:

18 (a) "Controlled substance" means any drug, substance or immediate
19 precursor included in any of the schedules designated in K.S.A. 65-4105,
20 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

21 (b) (1) "Controlled substance analog" means a substance that is in-
22 tended for human consumption, and:

23 (A) The chemical structure of which is substantially similar to the
24 chemical structure of a controlled substance listed in or added to the
25 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
26 thereto;

27 (B) which has a stimulant, depressant or hallucinogenic effect on the
28 central nervous system substantially similar to the stimulant, depressant
29 or hallucinogenic effect on the central nervous system of a controlled
30 substance included in the schedules designated in K.S.A. 65-4105 or 65-
31 4107, and amendments thereto; or

32 (C) with respect to a particular individual, which the individual rep-
33 represents or intends to have a stimulant, depressant or hallucinogenic effect
34 on the central nervous system substantially similar to the stimulant, de-
35 pressant or hallucinogenic effect on the central nervous system of a con-
36 trolled substance included in the schedules designated in K.S.A. 65-4105
37 or 65-4107, and amendments thereto.

38 (2) "Controlled substance analog" does not include:

39 (A) A controlled substance;

40 (B) a substance for which there is an approved new drug application;
41 or

42 (C) a substance with respect to which an exemption is in effect for
43 investigational use by a particular person under section 505 of the federal

1 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
2 respect to the substance is permitted by the exemption.

3 (c) "Cultivate" means the planting or promotion of growth of five or
4 more plants which contain or can produce controlled substances.

5 (d) "Distribute" means the actual, constructive or attempted transfer
6 from one person to another of some item whether or not there is an
7 agency relationship. "Distribute" includes, but is not limited to, sale, offer
8 for sale or any act that causes some item to be transferred from one person
9 to another. "Distribute" does not include acts of administering, dispens-
10 ing or prescribing a controlled substance as authorized by the pharmacy
11 act of the state of Kansas, the uniform controlled substances act, or oth-
12 erwise authorized by law.

13 (e) "Drug" means:

14 (1) Substances recognized as drugs in the official United States phar-
15 macopoeia, official homeopathic pharmacopoeia of the United States or
16 official national formulary or any supplement to any of them;

17 (2) substances intended for use in the diagnosis, cure, mitigation,
18 treatment or prevention of disease in man or animals;

19 (3) substances, other than food, intended to affect the structure or
20 any function of the body of man or animals; and

21 (4) substances intended for use as a component of any article speci-
22 fied in paragraph (1), (2) or (3). It does not include devices or their
23 components, parts or accessories.

24 (f) "Drug paraphernalia" means all equipment and materials of any
25 kind which are used, or primarily intended or designed for use in planting,
26 propagating, cultivating, growing, harvesting, manufacturing, compound-
27 ing, converting, producing, processing, preparing, testing, analyzing,
28 packaging, repackaging, storing, containing, concealing, injecting, ingest-
29 ing, inhaling or otherwise introducing into the human body a controlled
30 substance and in violation of this act. "Drug paraphernalia" shall include,
31 but is not limited to:

32 (1) Kits used or intended for use in planting, propagating, cultivating,
33 growing or harvesting any species of plant which is a controlled substance
34 or from which a controlled substance can be derived;

35 (2) kits used or intended for use in manufacturing, compounding,
36 converting, producing, processing or preparing controlled substances;

37 (3) isomerization devices used or intended for use in increasing the
38 potency of any species of plant which is a controlled substance;

39 (4) testing equipment used or intended for use in identifying or in
40 analyzing the strength, effectiveness or purity of controlled substances;

41 (5) scales and balances used or intended for use in weighing or meas-
42 uring controlled substances;

43 (6) diluents and adulterants, including, but not limited to, quinine

- 1 hydrochloride, mannitol, mannite, dextrose and lactose, which are used
2 or intended for use in cutting controlled substances;
- 3 (7) separation gins and sifters used or intended for use in removing
4 twigs and seeds from or otherwise cleaning or refining marijuana;
- 5 (8) blenders, bowls, containers, spoons and mixing devices used or
6 intended for use in compounding controlled substances;
- 7 (9) capsules, balloons, envelopes, bags and other containers used or
8 intended for use in packaging small quantities of controlled substances;
- 9 (10) containers and other objects used or intended for use in storing
10 or concealing controlled substances;
- 11 (11) hypodermic syringes, needles and other objects used or intended
12 for use in parenterally injecting controlled substances into the human
13 body;
- 14 (12) objects used or primarily intended or designed for use in in-
15 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
16 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine
17 into the human body, such as:
- 18 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
19 or without screens, permanent screens, hashish heads or punctured metal
20 bowls;
- 21 (B) water pipes, bongs or smoking pipes designed to draw smoke
22 through water or another cooling device;
- 23 (C) carburetion pipes, glass or other heat resistant tubes or any other
24 device used or intended to be used, designed to be used to cause vapor-
25 ization of a controlled substance for inhalation;
- 26 (D) smoking and carburetion masks;
- 27 (E) roach clips, objects used to hold burning material, such as a ma-
28 rijuana cigarette, that has become too small or too short to be held in the
29 hand;
- 30 (F) miniature cocaine spoons and cocaine vials;
- 31 (G) chamber smoking pipes;
- 32 (H) carburetor smoking pipes;
- 33 (I) electric smoking pipes;
- 34 (J) air-driven smoking pipes;
- 35 (K) chillums;
- 36 (L) bongs;
- 37 (M) ice pipes or chillers;
- 38 (N) any smoking pipe manufactured to disguise its intended purpose;
- 39 (O) wired cigarette papers; or
- 40 (P) cocaine freebase kits.
- 41 (g) "Immediate precursor" means a substance which the board of
42 pharmacy has found to be and by rules and regulations designates as being
43 the principal compound commonly used or produced primarily for use

1 and which is an immediate chemical intermediary used or likely to be
2 used in the manufacture of a controlled substance, the control of which
3 is necessary to prevent, curtail or limit manufacture.

4 (h) "Isomer" means all enantiomers and diastereomers.

5 (i) "Manufacture" means the production, preparation, propagation,
6 compounding, conversion or processing of a controlled substance either
7 directly or indirectly or by extraction from substances of natural origin or
8 independently by means of chemical synthesis or by a combination of
9 extraction and chemical synthesis and includes any packaging or repack-
10 aging of the substance or labeling or relabeling of its container. "Manu-
11 facture" does not include the preparation or compounding of a controlled
12 substance by an individual for the individual's own lawful use or the prep-
13 aration, compounding, packaging or labeling of a controlled substance:

14 (1) By a practitioner or the practitioner's agent pursuant to a lawful
15 order of a practitioner as an incident to the practitioner's administering
16 or dispensing of a controlled substance in the course of the practitioner's
17 professional practice; or

18 (2) by a practitioner or by the practitioner's authorized agent under
19 such practitioner's supervision for the purpose of or as an incident to
20 research, teaching or chemical analysis or by a pharmacist or medical care
21 facility as an incident to dispensing of a controlled substance.

22 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
23 whether growing or not, the seeds thereof, the resin extracted from any
24 part of the plant and every compound, manufacture, salt, derivative, mix-
25 ture or preparation of the plant, its seeds or resin. "Marijuana" does not
26 include the mature stalks of the plant, fiber produced from the stalks, oil
27 or cake made from the seeds of the plant, any other compound, manu-
28 facture, salt, derivative, mixture or preparation of the mature stalks, ex-
29 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed
30 of the plant which is incapable of germination.

31 (k) "*Minor*" means a person under 18 years of age.

32 (l) "Narcotic drug" means any of the following whether produced
33 directly or indirectly by extraction from substances of vegetable origin or
34 independently by means of chemical synthesis or by a combination of
35 extraction and chemical synthesis:

36 (1) Opium and opiate and any salt, compound, derivative or prepa-
37 ration of opium or opiate;

38 (2) any salt, compound, isomer, derivative or preparation thereof
39 which is chemically equivalent or identical with any of the substances
40 referred to in paragraph (1) but not including the isoquinoline alkaloids
41 of opium;

42 (3) opium poppy and poppy straw;

43 (4) coca leaves and any salt, compound, derivative or preparation of

- 1 coca leaves and any salt, compound, isomer, derivative or preparation
2 thereof which is chemically equivalent or identical with any of these sub-
3 stances, but not including decocainized coca leaves or extractions of coca
4 leaves which do not contain cocaine or ecgonine.
- 5 (†) (m) "Opiate" means any substance having an addiction-forming or
6 addiction-sustaining liability similar to morphine or being capable of con-
7 version into a drug having addiction-forming or addiction-sustaining lia-
8 bility. "Opiate" does not include, unless specifically designated as con-
9 trolled under K.S.A. 65-4102, and amendments thereto, the
10 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
11 (dextromethorphan). "Opiate" does include its racemic and levorotatory
12 forms.
- 13 (†) (n) "Opium poppy" means the plant of the species *Papaver som-*
14 *niferum* L. except its seeds.
- 15 (†) (o) "*Park property*" means any publicly owned playground, swim-
16 ming pool or community center and any other publicly owned property
17 set aside for any recreational use. If the property meets the above defi-
18 nition at the time of any alleged criminal act, the actual use of that prop-
19 erty at the time alleged shall not be a defense to the crime charged or the
20 sentence imposed.
- 21 (p) "Person" means individual, corporation, government or govern-
22 mental subdivision or agency, business trust, estate, trust, partnership,
23 association or any other legal entity.
- 24 (†) (q) "Poppy straw" means all parts, except the seeds, of the opium
25 poppy, after mowing.
- 26 (†) (r) "Possession" means having joint or exclusive control over an
27 item with knowledge of and intent to have such control or knowingly
28 keeping some item in a place where the person has some measure of
29 access and right of control.
- 30 (†) (s) "*Presence of a minor*" means:
31 (1) A minor is within close proximity to the illegal activity;
32 (2) the illegal activity is conducted in a place where minors can rea-
33 sonably be expected to be present; or
34 (3) in the minor's dwelling.
35 This definition shall not be construed as requiring that a defendant
36 actually be aware of the presence of a minor or a minor actually be aware
37 of the illegal activity.
- 38 (t) "School property" means property upon which is located a struc-
39 ture used by a unified school district or an accredited nonpublic school
40 for student instruction or attendance or extracurricular activities of pupils
41 enrolled in kindergarten or any of the grades one through 12. This defi-
42 nition shall not be construed as requiring that school be in session or that
43 classes are actually being held at the time of the offense or that children

1 must be present within the structure or on the property during the time
2 of any alleged criminal act. If the structure or property meets the above
3 definition, the actual use of that structure or property at the time alleged
4 shall not be a defense to the crime charged or the sentence imposed.

5 (†) (u) "Simulated controlled substance" means any product which
6 identifies itself by a common name or slang term associated with a con-
7 trolled substance and which indicates on its label or accompanying pro-
8 motional material that the product simulates the effect of a controlled
9 substance.

10 Sec. 3. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as
11 follows: 21-36a05. (a) It shall be unlawful for any person to cultivate,
12 distribute or possess with the intent to distribute any of the following
13 controlled substances or controlled substance analogs thereof:

14 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
15 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
16 thereto;

17 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
18 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
19 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

20 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
21 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
22 65-4109, and amendments thereto;

23 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
24 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
25 4109, and amendments thereto;

26 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
27 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
28 thereto; or

29 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
30 4109, and amendments thereto.

31 (b) It shall be unlawful for any person to distribute or possess with
32 the intent to distribute a controlled substance or a controlled substance
33 analog designated in K.S.A. 65-4113, and amendments thereto.

34 (c) (1) Violation of subsection (a) is a drug severity level 3 felony,
35 except that:

36 (A) ~~Violation of subsection (a) on or within 1,000 feet of any school~~
37 ~~property is a drug severity level 2 felony; Violation of subsection (a) is a~~
38 ~~drug severity level 1 felony if the substance was distributed to or possessed~~
39 ~~with intent to distribute to a child under 18 years of age or to a person~~
40 ~~whom the offender knew or reasonably should have known to be pregnant;~~

41 (B) *violation of subsection (a) is a drug severity level 2 felony if that*
42 *person is 18 or more years of age and the violation occurs in the presence*
43 *of a minor, on any park property or on or within 1,000 feet of any school*

1 *property;*
2 ~~(B)~~ (C) violation of subsection (a)(1) is a drug severity level 2 felony
3 if that person has one prior conviction under subsection (a)(1), under
4 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
5 from another jurisdiction; and
6 ~~(C)~~ (D) violation of subsection (a)(1) is a drug severity level 1 felony
7 if that person has two prior convictions under subsection (a)(1), under
8 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
9 from another jurisdiction.
10 (2) Violation of subsection (b) is a class A nonperson misdemeanor,
11 except that, violation of subsection (b) is a drug severity level 4 felony if
12 the substance was distributed to or possessed with the intent to distribute
13 to a child under 18 years of age.
14 (d) It shall not be a defense to charges arising under this section that
15 the defendant was acting in an agency relationship on behalf of any other
16 party in a transaction involving a controlled substance.
17 Sec. 4. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as
18 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
19 market, label, distribute or possess with the intent to distribute:
20 (1) Any product containing ephedrine, pseudoephedrine, red phos-
21 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-
22 surized ammonia or phenylpropanolamine or their salts, isomers or salts
23 of isomers if the person knows or reasonably should know that the pur-
24 chaser will use the product to manufacture a controlled substance; or
25 (2) any product containing ephedrine, pseudoephedrine or phenyl-
26 propanolamine, or their salts, isomers or salts of isomers for indication of
27 stimulation, mental alertness, weight loss, appetite control, energy or
28 other indications not approved pursuant to the pertinent federal over-
29 the-counter drug final monograph or tentative final monograph or ap-
30 proved new drug application.
31 (b) It shall be unlawful for any person to market, distribute or man-
32 ufacture with intent to distribute any drug paraphernalia, knowing or
33 under circumstances where one reasonably should know that it will be
34 used to manufacture or distribute a controlled substance in violation of
35 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.
36 (c) It shall be unlawful for any person to distribute, possess with in-
37 tent to distribute or manufacture with intent to distribute any drug par-
38 aphernalia, knowing or under circumstances where one reasonably should
39 know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-
40 36a01 through 21-36a17, and amendments thereto, except subsection (b)
41 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.
42 (d) It shall be unlawful for any person to distribute, possess with
43 intent to distribute or manufacture with intent to distribute any drug

1 paraphernalia, knowing, or under circumstances where one reasonably
2 should know, that it will be used as such in violation of subsection (b) of
3 K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

4 (e) (1) Violation of subsection (a) is a drug severity level 2 felony;

5 (2) violation of subsection (b) is a drug severity level 4 felony;

6 (3) violation of subsection (c) is a *severity* level 9, nonperson felony,
7 except that violation of subsection (c) is a drug severity level 4 felony if
8 that person:

9 (A) Distributes or causes drug paraphernalia to be distributed to a
10 ~~person~~ *child* under 18 years of age ~~or within 1,000 feet or to a person~~
11 ~~whom the offender knew or reasonably should have known to be pregnant;~~
12 *or*

13 (B) *is 18 or more years of age and distributes or causes drug para-*
14 *phernalia to be distributed in the presence of a minor, on any park prop-*
15 *erty or on or within 1,000 feet of any school property;*

16 (4) violation of subsection (d) is a class A nonperson misdemeanor,
17 except that violation of subsection (d) is a ~~non~~ *drug* severity level 9, non-
18 person felony if that person:

19 (A) Distributes or causes drug paraphernalia to be distributed to a
20 ~~person~~ *child* under 18 years of age ~~or within 1,000 feet or to a person~~
21 ~~whom the offender knew or reasonably should have known to be pregnant;~~
22 *or*

23 (B) *is 18 or more years of age and distributes or causes drug para-*
24 *phernalia to be distributed in the presence of a minor, on any park prop-*
25 *erty or on or within 1,000 feet of any school property.*

26 (f) For persons arrested and charged under subsection (a), bail shall
27 be at least \$50,000 cash or surety, unless the court determines, on the
28 record, that the defendant is not likely to re-offend, the court imposes
29 pretrial supervision or the defendant agrees to participate in a licensed
30 or certified drug treatment program.

31 (g) As used in this section, "or under circumstances where one rea-
32 sonably should know" that an item will be used in violation of this section,
33 shall include, but not be limited to, the following:

34 (1) Actual knowledge from prior experience or statements by
35 customers;

36 (2) inappropriate or impractical design for alleged legitimate use;

37 (3) receipt of packaging material, advertising information or other
38 manufacturer supplied information regarding the item's use as drug par-
39 aphernalia; or

40 (4) receipt of a written warning from a law enforcement or prose-
41 cutorial agency having jurisdiction that the item has been previously de-
42 termined to have been designed specifically for use as drug paraphernalia.

43 Sec. 5. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as

1 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,
2 possess with the intent to distribute, or manufacture with the intent to
3 distribute any simulated controlled substance.

4 (b) It shall be unlawful for any person to use or possess with intent
5 to use any simulated controlled substance.

6 (c) (1) Violation of subsection (a) is a nondrug severity level 9, non-
7 person felony, except that violation of subsection (a) is a nondrug severity
8 level 7, nonperson felony if that person is 18 or more years of age and
9 the violation occurs *in the presence of a minor, on any park property or*
10 *on or within 1,000 feet of any school property;*

11 (2) violation of subsection (b) is a class A nonperson misdemeanor.

12 Sec. 6. K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10
13 and 21-36a13 are hereby repealed.

14 Sec. 7. This act shall take effect and be in force from and after its
15 publication in the statute book.



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chair
 Honorable Richard M. Smith, Vice Chair
 Helen Pedigo, Executive Director

MARK PARKINSON, GOVERNOR

MEMORANDUM

To: Duane Goossen, Secretary, Department of Administration

Attn: Brendan Yorkey

From: Helen Pedigo, Executive Director

Date: January 29, 2010

Re: Prison Bed Impact, SB 399 Aggravated Endangerment of a Child

Bill Summary: This bill amends K. S. A. 21-3608a, aggravated endangering a child by expanding the elements to include causing or permitting a child under the age of 18 years to be in an environment where such child has access to illegally possessed controlled substance, or hypodermic syringes, needles, or other objects used to inject illegal substances into the body.

- Additionally, the bill adds cultivating, distributing or possessing with intent to distribute controlled substance to a child, a pregnant woman, or in the presence of a minor, or on any park property or on or within 1,000 feet of any school property.
- Aggravated endangering a child is nondrug severity level 9, person felony. The sentence shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.
- Distributing or possessing with intent to distribute a controlled substance to a child under 18 or to a pregnant woman is drug severity level 1 felony.
- Distributing or possessing within intent to distribute controlled substance in the presence of a minor, or on any park property or within 1,000 feet of any school property is drug severity level 2 felony.

Bill Impact: A conservative estimate is made that the same number of convictions will take place when distribution occurs on park property as currently take place near school property, although more park property exists than school property. This bed impact does not include an impact with regard to a child under the age of 18 with access to drugs or needles, or distribution to a child, in the presence of a child, or to a pregnant woman, as no data is currently available for these analyses.

- **Impact on Prison Admissions:** This bill would result in 13 additional prison admissions by the end of FY 2011 and 20 additional prison admissions by the end of FY 2020.
- **Impact on Prison Beds:** This bill would result in 13 additional prison beds needed by the end of FY 2011 and 82 additional prison beds needed by the end of FY 2020.
- **Impact on workload of the Commission:** This bill would increase the workload of the Commission by 24 to 30 additional journal entries each year.

Key Assumptions

- Projected prison admissions for the target offenders are assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2009 by the Kansas Sentencing Commission.
- The percentage of sentence served in prison for severity levels D1 to D2 is assumed to be 85% and severity level N9 and D3 to D4 is assumed to be 80%, less jail credit and good time, which is consistent with the projections released in August 2009.
- It is assumed that the numbers of convictions of drug distributions on the park property will be the same as current drug distributions within 1,000 feet of a school.
- It is assumed that the sentence of endangering a child will be added to the term of drug distributions or possessions imposed if such crime is charged.
- It is assumed that the effective date is July 1, 2010.

Findings

- In FY 2009, 28 offenders were convicted of the crime of aggravated endangering a child. Of this number,
 - 2(7.1%) were sentenced to prison and
 - 26(92.9%) were sentenced to probation.
- In FY 2009, 24 offenders were convicted of the crime of distributing or possessing with intent to distribute controlled substance within 1,000 feet of school. Of this number,
 - 14(58.3%) were sentenced to prison and
 - 10(41.7%) were sentenced to probation.

Impact Assessment

- **Current Policy:** If current policy remains unchanged,
 - by FY 2011, 16 prison beds would be needed and
 - by FY 2020, 58 prison beds would be needed.
- **Impact:** If the numbers of convictions of drug distributions on the park property are the same as current drug distributions within 1,000 feet of a school and the sentence of endangering a child is added to the term,
 - by FY 2011, 29 prison beds would be needed and
 - by FY 2020, 140 prison beds would be needed.

Summary

- **Impact on Prison Admissions:** This bill would result in 13 additional prison admissions by the end of FY 2011 and 20 additional prison admissions by the end of FY 2020.
- **Impact on Prison Beds:** This bill would result in 13 additional prison beds needed by the end of FY 2011 and 82 additional prison beds needed by the end of FY 2020.

Prison Admission Impact Assessment

Fiscal Year	Current Policy Remain Unchanged	If SB 399 Implemented	Additional Prison Admission
2011	16	29	13
2012	17	29	12
2013	17	30	13
2014	17	30	13
2015	18	31	13
2016	18	32	14
2017	18	32	14
2018	19	33	14
2019	19	33	14
2020	20	34	14

Prison Bed Impact Assessment

Fiscal Year	Current Policy Remain Unchanged	If SB 399 Implemented	Additional Prison Beds Needed
2011	16	29	13
2012	29	58	29
2013	41	87	46
2014	49	109	60
2015	51	120	69
2016	55	123	68
2017	53	126	73
2018	54	133	79
2019	57	136	79
2020	58	140	82

- **Impact on workload of the Commission:** This bill would increase the workload of the Commission by 24 to 30 additional journal entries each year.

*As Amended by Senate Committee**Session of 2010***SENATE BILL No. 399**

By Committee on Judiciary

1-20

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
 11 ing to aggravated endangering a child; controlled substances; amend-
 12 ing K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10 and
 13 21-36a13 and repealing the existing sections.

14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2009 Supp. 21-3608a is hereby amended to read
 17 as follows: 21-3608a. (a) Aggravated endangering a child is:

18 (1) Intentionally causing or permitting a child under the age of 18
 19 years to be placed in a situation in which the child's life, body or health
 20 is injured or endangered;

21 (2) recklessly causing or permitting a child under the age of 18 years
 22 to be placed in a situation in which the child's life, body or health is
 23 injured or endangered;

24 ~~(3) causing or permitting a child under the age of 18 years to be in~~
 25 ~~an environment where such child has access to: (A) Any illegally possessed~~
 26 ~~controlled substance, as defined in this section, or (B) any hypodermic~~
 27 ~~syringes, needles or other objects used or intended for use in parenterally~~
 28 ~~injecting any illegally possessed controlled substance into the human body;~~

29 ~~(3) (4)~~ (3) causing or permitting such child to be in an environment
 30 where a person is selling, offering for sale or having in such person's
 31 possession with intent to sell, deliver, distribute, prescribe, administer,
 32 dispense, cultivate, attempt to cultivate, manufacture or attempt to man-
 33 ufacture any methamphetamine as defined by subsection (d)(3) or (f)(1)
 34 of K.S.A. 65-4107 controlled substance in violation of K.S.A. 2009 Supp.
 35 21-36a03 or subsection (a) of 21-36a05, and amendments thereto; or

36 ~~(4) (5)~~ (4) causing or permitting such child to be in an environment
 37 where drug paraphernalia or volatile, toxic or flammable chemicals, prod-
 38 ucts, chemicals, compounds, mixtures or preparations are stored for the
 39 purpose of manufacturing or attempting to manufacture any metham-
 40 phetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107
 41 controlled substance in violation of K.S.A. 2009 Supp. 21-36a09, and
 42 amendments thereto.

43 (b) Aggravated endangering a child is a severity level 9, person felony.

1 *The sentence for a violation of this section shall be served consecutively*
2 *to any other term or terms of imprisonment imposed. Such sentence shall*
3 *not be considered a departure and shall not be subject to appeal.*

4 (c) As used in this section:

5 (1) "Manufacture" shall have the meaning ascribed to that term in
6 K.S.A. 2009 Supp. 21-36a01, and amendments thereto; ~~and~~

7 (2) "drug paraphernalia" shall have the meaning ascribed to that term
8 in K.S.A. 2009 Supp. 21-36a01, and amendments thereto; *and*

9 (3) "*controlled substance*" means: (A) *Any drug, substance, or im-*
10 *mediate precursor included in any of the schedules designated in K.S.A.*
11 *65-4105, 65-4107, 65-4109 and 65-4111, and amendments thereto; and*
12 *(B) any controlled substance analog, as defined in K.S.A. 2009 Supp. 21-*
13 *36a01, and amendments thereto.*

14 (d) This section shall be part of and supplemental to the Kansas crim-
15 inal code.

16 Sec. 2. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read as
17 follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-
18 36a17, and amendments thereto:

19 (a) "Controlled substance" means any drug, substance or immediate
20 precursor included in any of the schedules designated in K.S.A. 65-4105,
21 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

22 (b) (1) "Controlled substance analog" means a substance that is in-
23 tended for human consumption, and:

24 (A) The chemical structure of which is substantially similar to the
25 chemical structure of a controlled substance listed in or added to the
26 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
27 thereto;

28 (B) which has a stimulant, depressant or hallucinogenic effect on the
29 central nervous system substantially similar to the stimulant, depressant
30 or hallucinogenic effect on the central nervous system of a controlled
31 substance included in the schedules designated in K.S.A. 65-4105 or 65-
32 4107, and amendments thereto; or

33 (C) with respect to a particular individual, which the individual rep-
34 represents or intends to have a stimulant, depressant or hallucinogenic effect
35 on the central nervous system substantially similar to the stimulant, de-
36 pressant or hallucinogenic effect on the central nervous system of a con-
37 trolled substance included in the schedules designated in K.S.A. 65-4105
38 or 65-4107, and amendments thereto.

39 (2) "Controlled substance analog" does not include:

40 (A) A controlled substance;

41 (B) a substance for which there is an approved new drug application;
42 or

43 (C) a substance with respect to which an exemption is in effect for

1 investigational use by a particular person under section 505 of the federal
2 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
3 respect to the substance is permitted by the exemption.

4 (c) "Cultivate" means the planting or promotion of growth of five or
5 more plants which contain or can produce controlled substances.

6 (d) "Distribute" means the actual, constructive or attempted transfer
7 from one person to another of some item whether or not there is an
8 agency relationship. "Distribute" includes, but is not limited to, sale, offer
9 for sale or any act that causes some item to be transferred from one person
10 to another. "Distribute" does not include acts of administering, dispens-
11 ing or prescribing a controlled substance as authorized by the pharmacy
12 act of the state of Kansas, the uniform controlled substances act, or oth-
13 erwise authorized by law.

14 (e) "Drug" means:

15 (1) Substances recognized as drugs in the official United States phar-
16 macopoeia, official homeopathic pharmacopoeia of the United States or
17 official national formulary or any supplement to any of them;

18 (2) substances intended for use in the diagnosis, cure, mitigation,
19 treatment or prevention of disease in man or animals;

20 (3) substances, other than food, intended to affect the structure or
21 any function of the body of man or animals; and

22 (4) substances intended for use as a component of any article speci-
23 fied in paragraph (1), (2) or (3). It does not include devices or their
24 components, parts or accessories.

25 (f) "Drug paraphernalia" means all equipment and materials of any
26 kind which are used, or primarily intended or designed for use in planting,
27 propagating, cultivating, growing, harvesting, manufacturing, compound-
28 ing, converting, producing, processing, preparing, testing, analyzing,
29 packaging, repackaging, storing, containing, concealing, injecting, ingest-
30 ing, inhaling or otherwise introducing into the human body a controlled
31 substance and in violation of this act. "Drug paraphernalia" shall include,
32 but is not limited to:

33 (1) Kits used or intended for use in planting, propagating, cultivating,
34 growing or harvesting any species of plant which is a controlled substance
35 or from which a controlled substance can be derived;

36 (2) kits used or intended for use in manufacturing, compounding,
37 converting, producing, processing or preparing controlled substances;

38 (3) isomerization devices used or intended for use in increasing the
39 potency of any species of plant which is a controlled substance;

40 (4) testing equipment used or intended for use in identifying or in
41 analyzing the strength, effectiveness or purity of controlled substances;

42 (5) scales and balances used or intended for use in weighing or meas-
43 uring controlled substances;

- 1 (6) diluents and adulterants, including, but not limited to, quinine
- 2 hydrochloride, mannitol, mannite, dextrose and lactose, which are used
- 3 or intended for use in cutting controlled substances;
- 4 (7) separation gins and sifters used or intended for use in removing
- 5 twigs and seeds from or otherwise cleaning or refining marijuana;
- 6 (8) blenders, bowls, containers, spoons and mixing devices used or
- 7 intended for use in compounding controlled substances;
- 8 (9) capsules, balloons, envelopes, bags and other containers used or
- 9 intended for use in packaging small quantities of controlled substances;
- 10 (10) containers and other objects used or intended for use in storing
- 11 or concealing controlled substances;
- 12 (11) hypodermic syringes, needles and other objects used or intended
- 13 for use in parenterally injecting controlled substances into the human
- 14 body;
- 15 (12) objects used or primarily intended or designed for use in in-
- 16 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
- 17 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine
- 18 into the human body, such as:
- 19 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
- 20 or without screens, permanent screens, hashish heads or punctured metal
- 21 bowls;
- 22 (B) water pipes, bongs or smoking pipes designed to draw smoke
- 23 through water or another cooling device;
- 24 (C) carburetion pipes, glass or other heat resistant tubes or any other
- 25 device used or intended to be used, designed to be used to cause vapor-
- 26 ization of a controlled substance for inhalation;
- 27 (D) smoking and carburetion masks;
- 28 (E) roach clips, objects used to hold burning material, such as a ma-
- 29 rijuana cigarette, that has become too small or too short to be held in the
- 30 hand;
- 31 (F) miniature cocaine spoons and cocaine vials;
- 32 (G) chamber smoking pipes;
- 33 (H) carburetor smoking pipes;
- 34 (I) electric smoking pipes;
- 35 (J) air-driven smoking pipes;
- 36 (K) chillums;
- 37 (L) bongs;
- 38 (M) ice pipes or chillers;
- 39 (N) any smoking pipe manufactured to disguise its intended purpose;
- 40 (O) wired cigarette papers; or
- 41 (P) cocaine freebase kits.
- 42 (g) "Immediate precursor" means a substance which the board of
- 43 pharmacy has found to be and by rules and regulations designates as being

- 1 the principal compound commonly used or produced primarily for use
2 and which is an immediate chemical intermediary used or likely to be
3 used in the manufacture of a controlled substance, the control of which
4 is necessary to prevent, curtail or limit manufacture.
- 5 (h) "Isomer" means all enantiomers and diastereomers.
- 6 (i) "Manufacture" means the production, preparation, propagation,
7 compounding, conversion or processing of a controlled substance either
8 directly or indirectly or by extraction from substances of natural origin or
9 independently by means of chemical synthesis or by a combination of
10 extraction and chemical synthesis and includes any packaging or repack-
11 aging of the substance or labeling or relabeling of its container. "Manu-
12 facture" does not include the preparation or compounding of a controlled
13 substance by an individual for the individual's own lawful use or the prep-
14 aration, compounding, packaging or labeling of a controlled substance:
- 15 (1) By a practitioner or the practitioner's agent pursuant to a lawful
16 order of a practitioner as an incident to the practitioner's administering
17 or dispensing of a controlled substance in the course of the practitioner's
18 professional practice; or
- 19 (2) by a practitioner or by the practitioner's authorized agent under
20 such practitioner's supervision for the purpose of or as an incident to
21 research, teaching or chemical analysis or by a pharmacist or medical care
22 facility as an incident to dispensing of a controlled substance.
- 23 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
24 whether growing or not, the seeds thereof, the resin extracted from any
25 part of the plant and every compound, manufacture, salt, derivative, mix-
26 ture or preparation of the plant, its seeds or resin. "Marijuana" does not
27 include the mature stalks of the plant, fiber produced from the stalks, oil
28 or cake made from the seeds of the plant, any other compound, manu-
29 facture, salt, derivative, mixture or preparation of the mature stalks, ex-
30 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed
31 of the plant which is incapable of germination.
- 32 (k) "*Minor*" means a person under 18 years of age.
- 33 (l) "Narcotic drug" means any of the following whether produced
34 directly or indirectly by extraction from substances of vegetable origin or
35 independently by means of chemical synthesis or by a combination of
36 extraction and chemical synthesis:
- 37 (1) Opium and opiate and any salt, compound, derivative or prepa-
38 ration of opium or opiate;
- 39 (2) any salt, compound, isomer, derivative or preparation thereof
40 which is chemically equivalent or identical with any of the substances
41 referred to in paragraph (1) but not including the isoquinoline alkaloids
42 of opium;
- 43 (3) opium poppy and poppy straw;

1 (4) coca leaves and any salt, compound, derivative or preparation of
2 coca leaves and any salt, compound, isomer, derivative or preparation
3 thereof which is chemically equivalent or identical with any of these sub-
4 stances, but not including decocainized coca leaves or extractions of coca
5 leaves which do not contain cocaine or ecgonine.

6 (†)(m) "Opiate" means any substance having an addiction-forming or
7 addiction-sustaining liability similar to morphine or being capable of con-
8 version into a drug having addiction-forming or addiction-sustaining lia-
9 bility. "Opiate" does not include, unless specifically designated as con-
10 trolled under K.S.A. 65-4102, and amendments thereto, the
11 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
12 (dextromethorphan). "Opiate" does include its racemic and levorotatory
13 forms.

14 (‡)(n) "Opium poppy" means the plant of the species *Papaver som-*
15 *niferum* l. except its seeds.

16 (‡)(o) "*Park property*" means any publicly owned playground, swim-
17 ming pool or community center and any other publicly owned property
18 set aside for any recreational use. If the property meets the above defi-
19 nition at the time of any alleged criminal act, the actual use of that prop-
20 erty at the time alleged shall not be a defense to the crime charged or the
21 sentence imposed.

22 (p) "Person" means individual, corporation, government or govern-
23 mental subdivision or agency, business trust, estate, trust, partnership,
24 association or any other legal entity.

25 (†)(q) "Poppy straw" means all parts, except the seeds, of the opium
26 poppy, after mowing.

27 (†)(r) "Possession" means having joint or exclusive control over an
28 item with knowledge of and intent to have such control or knowingly
29 keeping some item in a place where the person has some measure of
30 access and right of control.

31 (q)(s) "*Presence of a minor*" means:

32 ~~—(1) A minor is within close proximity to the illegal activity;~~

33 ~~—(2) the illegal activity is conducted in a place where minors can rea-~~
34 ~~sonably be expected to be present; or~~

35 ~~—(3) in the minor's dwelling.~~

36 ~~—This definition shall not be construed as requiring that a defendant~~
37 ~~actually be aware of the presence of a minor or a minor actually be aware~~
38 ~~of the illegal activity.~~

39 ~~—(t)(s) "School property" means property upon which is located a~~
40 ~~structure used by a unified school district or an accredited nonpublic~~
41 ~~school for student instruction or attendance or extracurricular activities~~
42 ~~of pupils enrolled in kindergarten or any of the grades one through 12.~~
43 ~~This definition shall not be construed as requiring that school be in session~~

1 or that classes are actually being held at the time of the offense or that
2 children must be present within the structure or on the property during
3 the time of any alleged criminal act. If the structure or property meets
4 the above definition, the actual use of that structure or property at the
5 time alleged shall not be a defense to the crime charged or the sentence
6 imposed.

7 ~~(r)~~ ~~(t)~~ **(t)** “Simulated controlled substance” means any product which
8 identifies itself by a common name or slang term associated with a con-
9 trolled substance and which indicates on its label or accompanying pro-
10 motional material that the product simulates the effect of a controlled
11 substance.

12 Sec. 3. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as
13 follows: 21-36a05. (a) It shall be unlawful for any person to cultivate,
14 distribute or possess with the intent to distribute any of the following
15 controlled substances or controlled substance analogs thereof:

16 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
17 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
18 thereto;

19 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
20 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
21 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

22 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
23 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
24 65-4109, and amendments thereto;

25 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
26 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
27 4109, and amendments thereto;

28 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
29 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
30 thereto; or

31 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
32 4109, and amendments thereto.

33 (b) It shall be unlawful for any person to distribute or possess with
34 the intent to distribute a controlled substance or a controlled substance
35 analog designated in K.S.A. 65-4113, and amendments thereto.

36 (c) (1) Violation of subsection (a) is a drug severity level 3 felony,
37 except that:

38 ~~(A) Violation of subsection (a) on or within 1,000 feet of any school~~
39 ~~property is a drug severity level 2 felony; Violation of subsection (a) is a~~
40 ~~drug severity level 1 felony if 2 felony if the trier of fact makes a~~
41 ~~finding that the offender is 18 or more years of age and the substance~~
42 ~~was distributed to or possessed with intent to distribute to a child under~~
43 ~~18 years of age minor or to a person whom the offender knew or reason-~~

1 *ably should have known to be pregnant;*
2 (B) *violation of subsection (a) is a drug severity level 2 felony if that*
3 *person the trier of fact makes a finding that the offender is 18 or more*
4 *years of age and the violation occurs in the presence of a minor, occurred*
5 *on any park property or on or within 1,000 feet of any school property;*
6
7 ~~(B)~~ (C) violation of subsection (a)(1) is a drug severity level 2 felony
8 if that person has one prior conviction under subsection (a)(1), under
9 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
10 from another jurisdiction; and
11 ~~(C)~~ (D) violation of subsection (a)(1) is a drug severity level 1 felony
12 if that person has two prior convictions under subsection (a)(1), under
13 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
14 from another jurisdiction.
15 (2) Violation of subsection (b) is a class A nonperson misdemeanor,
16 except that, violation of subsection (b) is a drug severity level 4 felony if
17 the substance was distributed to or possessed with the intent to distribute
18 to a child under 18 years of age.
19 (d) It shall not be a defense to charges arising under this section that
20 the defendant was acting in an agency relationship on behalf of any other
21 party in a transaction involving a controlled substance.
22 Sec. 4. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as
23 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
24 market, label, distribute or possess with the intent to distribute:
25 (1) Any product containing ephedrine, pseudoephedrine, red phos-
26 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-
27 surized ammonia or phenylpropanolamine or their salts, isomers or salts
28 of isomers if the person knows or reasonably should know that the pur-
29 chaser will use the product to manufacture a controlled substance; or
30 (2) any product containing ephedrine, pseudoephedrine or phenyl-
31 propanolamine, or their salts, isomers or salts of isomers for indication of
32 stimulation, mental alertness, weight loss, appetite control, energy or
33 other indications not approved pursuant to the pertinent federal over-
34 the-counter drug final monograph or tentative final monograph or ap-
35 proved new drug application.
36 (b) It shall be unlawful for any person to market, distribute or man-
37 ufacture with intent to distribute any drug paraphernalia, knowing or
38 under circumstances where one reasonably should know that it will be
39 used to manufacture or distribute a controlled substance in violation of
40 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.
41 (c) It shall be unlawful for any person to distribute, possess with in-
42 tent to distribute or manufacture with intent to distribute any drug par-
43 aphernalia, knowing or under circumstances where one reasonably should

1 know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-
 2 36a01 through 21-36a17, and amendments thereto, except subsection (b)
 3 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

4 (d) It shall be unlawful for any person to distribute, possess with
 5 intent to distribute or manufacture with intent to distribute any drug
 6 paraphernalia, knowing, or under circumstances where one reasonably
 7 should know, that it will be used as such in violation of subsection (b) of
 8 K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

9 (e) (1) Violation of subsection (a) is a drug severity level 2 felony;

10 (2) violation of subsection (b) is a drug severity level 4 felony;

11 (3) violation of subsection (c) is a *severity* level 9, nonperson felony,
 12 except that violation of subsection (c) is a drug severity level 4 felony if
 13 ~~that person~~ **the trier of fact makes a finding that the offender is 18**
 14 **or more years of age and that the offender:**

15 (A) ~~Distributes or causes~~ **Distributed or caused** drug paraphernalia
 16 to be distributed to a ~~person child~~ under 18 years of age ~~minor~~ or within
 17 ~~1,000 feet or to a person whom the offender knew or reasonably should~~
 18 ~~have known to be pregnant; or~~

19 (B) ~~is 18 or more years of age and distributes or causes distributed~~
 20 ~~or caused drug paraphernalia to be distributed in the presence of a mi-~~
 21 ~~nor; on any park property or on or within 1,000 feet of any school~~
 22 ~~property;~~

23 (4) violation of subsection (d) is a class A nonperson misdemeanor,
 24 except that violation of subsection (d) is a ~~non~~drug severity level 9, non-
 25 person felony if ~~that person~~ **the trier of fact makes a finding that the**
 26 **offender is 18 or more years of age and that the offender:**

27 (A) ~~Distributes or causes~~ **Distributed or caused** drug paraphernalia
 28 to be distributed to a ~~person child~~ under 18 years of age ~~minor~~ or within
 29 ~~1,000 feet or to a person whom the offender knew or reasonably should~~
 30 ~~have known to be pregnant; or~~

31 (B) ~~is 18 or more years of age and distributes or causes distributed~~
 32 ~~or caused drug paraphernalia to be distributed in the presence of a mi-~~
 33 ~~nor; on any park property or on or within 1,000 feet of any school~~
 34 ~~property.~~

35 (f) For persons arrested and charged under subsection (a), bail shall
 36 be at least \$50,000 cash or surety, unless the court determines, on the
 37 record, that the defendant is not likely to re-offend, the court imposes
 38 pretrial supervision or the defendant agrees to participate in a licensed
 39 or certified drug treatment program.

40 (g) As used in this section, "or under circumstances where one rea-
 41 sonably should know" that an item will be used in violation of this section,
 42 shall include, but not be limited to, the following:

43 (1) Actual knowledge from prior experience or statements by

1 customers;

2 (2) inappropriate or impractical design for alleged legitimate use;

3 (3) receipt of packaging material, advertising information or other

4 manufacturer supplied information regarding the item's use as drug par-

5 aphernalia; or

6 (4) receipt of a written warning from a law enforcement or prose-

7 cutorial agency having jurisdiction that the item has been previously de-

8 termined to have been designed specifically for use as drug paraphernalia.

9 Sec. 5. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as

10 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,

11 possess with the intent to distribute, or manufacture with the intent to

12 distribute any simulated controlled substance.

13 (b) It shall be unlawful for any person to use or possess with intent

14 to use any simulated controlled substance.

15 (c) (1) Violation of subsection (a) is a nondrug severity level 9, non-

16 person felony, except that violation of subsection (a) is a nondrug severity

17 level 7, nonperson felony if ~~that person~~ ***the trier of fact makes a finding***

18 ***that the offender*** is 18 or more years of age and the violation ~~occurs in~~

19 ***the presence of a minor; occurred on any park property or on or within***

20 1,000 feet of any school property;

21 (2) violation of subsection (b) is a class A nonperson misdemeanor.

22 Sec. 6. K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10

23 and 21-36a13 are hereby repealed.

24 Sec. 7. This act shall take effect and be in force from and after its

25 publication in the statute book.



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chair
 Honorable Richard M. Smith, Vice Chair
 Helen Pedigo, Executive Director

MARK PARKINSON, GOVERNOR

MEMORANDUM

To: Senator Derek Schmidt

From: Helen Pedigo, Executive Director

Date: March 8, 2010

Re: Prison Bed Impact, SB 399 Aggravated Endangerment of a Child as Amended by Senate Committee with ONLY Sentencing Enhancement for Sale to a Child and Consecutive Sentencing for Endangering a Child

Bill Summary: As it presently exists, the bill would provide several amendments to existing law. However, his bed impact addresses ONLY the following issues:

- Adding cultivating, distributing or possessing with intent to distribute a controlled substance to a minor to the enhancement of within 1,000 feet of school property under K. S. A. 21-36a05, resulting in an amendment from a severity level 3 drug felony to a severity level 2 drug felony.
- Adding a special rule indicating that the sentence for K. S. A. 21-3608a, aggravated endangering a child, a nondrug severity level 9, person felony, would be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

Bill Impact: The bed impact for special rule indicating that the sentence for K. S. A. 21-3608a, aggravated endangering a child, a nondrug severity level 9, person felony, would be served consecutively to any other term or terms of imprisonment imposed would result in zero additional beds needed in FY 2011 and 10 additional beds needed in FY 2020.

Note: This bed impact does not include an impact with regard to distribution to a minor, as no data is currently available for this analysis. In FY 2009, 714 convictions were reported for the crime of distribution or possession with intent to distribute a controlled substance, of which 164 (23.0%) were sentenced to prison, 549 (76.9%) to probation and 1 (0.1%) to jail. Some percentage of these convictions would be enhanced from a severity level 3, drug felony to a severity level 2, drug felony, with the penalty enhancement for distribution to a minor. However, no data exists to identify such percentage.

Key Assumptions

- Projected prison admissions for the target offenders are assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2009 by the Kansas Sentencing Commission.

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- The percentage of sentences served in prison for severity level D2 is assumed to be 85% and severity levels N9 and D3 is assumed to be 80%, less jail credit and good time, which is consistent with the projections released in August 2009.
- It is assumed that the sentence of endangering a child will be added to the term of drug distributions or possessions imposed if such crime is convicted.
- It is assumed that the effective date is July 1, 2010.

Findings

- In FY 2009, 28 offenders were convicted of the crime of aggravated endangering a child. Of this number,
 - 2(7.1%) were sentenced to prison and
 - 26(92.9%) were sentenced to probation.
- In FY 2009, 24 offenders were convicted of the crime of distributing or possessing with intent to distribute a controlled substance within 1,000 feet of school. Of this number,
 - 14(58.3%) were sentenced to prison and
 - 10(41.7%) were sentenced to probation.
- In FY 2009, 714 offenders were convicted of the crime of distributing or possessing with intent to distribute a controlled substance. Of this number,
 - 164 (23.0%) were sentenced to prison
 - 549 (76.9%) were sentenced to probation and
 - 1 (0.1%) was sentenced to jail.

Impact Assessment

- **Current Policy:** If current policy remains unchanged,
 - by FY 2011, 16 prison beds would be needed and
 - by FY 2020, 58 prison beds would be needed.
- **Impact:** If the sentence of endangering a child is added to the term,
 - by FY 2011, 16 prison beds would be needed and
 - by FY 2020, 68 prison beds would be needed.

Summary

- **Impact on Prison Admissions:** This bill would result in no additional prison admissions.
- **Impact on Prison Beds:** This bill would result in 0 additional prison beds needed by the end of FY 2011 and 10 additional prison beds needed by the end of FY 2020.

Prison Bed Impact Assessment

Fiscal Year	Current Policy	Impact	Additional Prison Beds Needed
2011	16	16	0
2012	29	29	0
2013	41	43	2
2014	49	52	3
2015	51	56	5
2016	55	58	3
2017	53	60	7
2018	54	60	6
2019	57	65	8
2020	58	68	10

- **Impact on workload of the Commission:** This bill would have minimal impact on the journal entry workload of the Commission.

HOUSE BILL No. 2435

AN ACT concerning crimes, punishment and criminal procedure; relating to attempt, conspiracy and criminal solicitation to commit certain crimes; aggravated endangering a child; controlled substances; amending K.S.A. 21-3301, 21-3302, 21-3303, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516 and 21-4643 and K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10, 21-36a13, 21-4642 and 21-4704 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-3301 is hereby amended to read as follows: 21-3301. (a) An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.

(b) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.

(c) (1) An attempt to commit an off-grid felony shall be ranked at nondrug severity level 1. An attempt to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for an attempt to commit a nondrug felony shall be level 10.

(2) The provisions of this subsection shall not apply to a violation of attempting to commit the crime of:

(A) *Aggravated trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;*

(B) *terrorism pursuant to as defined in K.S.A. 21-3449, and amendments thereto; or of;*

(C) *illegal use of weapons of mass destruction pursuant to as defined in K.S.A. 21-3450, and amendments thereto;*

(D) *rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto, if the offender is 18 years of age or older;*

(E) *aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto, if the offender is 18 years of age or older;*

(F) *aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto, if the offender is 18 years of age or older;*

(G) *promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age; or*

(H) *sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto, if the offender is 18 years of age or older.*

(d) (1) An attempt to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(2) *The provisions of this subsection shall not apply to a violation of attempting to commit a violation of K.S.A. 2009 Supp. 21-36a03, and amendments thereto.*

(e) An attempt to commit a class A person misdemeanor is a class B person misdemeanor. An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor.

(f) An attempt to commit a class B or C misdemeanor is a class C misdemeanor.

Sec. 2. K.S.A. 21-3302 is hereby amended to read as follows: 21-3302. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the

appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be level 10.

(2) The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of:

(A) *Aggravated trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;*

(B) *terrorism pursuant to as defined in K.S.A. 21-3449, and amendments thereto, or of;*

(C) *illegal use of weapons of mass destruction pursuant to as defined in K.S.A. 21-3450, and amendments thereto;*

(D) *rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto, if the offender is 18 years of age or older;*

(E) *aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto, if the offender is 18 years of age or older;*

(F) *aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto, if the offender is 18 years of age or older;*

(G) *promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age; or*

(H) *sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto, if the offender is 18 years of age or older.*

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Sec. 3. K.S.A. 21-3303 is hereby amended to read as follows: 21-3303. (a) Criminal solicitation is commanding, encouraging or requesting another person to commit a felony, attempt to commit a felony or aid and abet in the commission or attempted commission of a felony for the purpose of promoting or facilitating the felony.

(b) It is immaterial under subsection (a) that the actor fails to communicate with the person solicited to commit a felony if the person's conduct was designed to effect a communication.

(c) It is an affirmative defense that the actor, after soliciting another person to commit a felony, persuaded that person not to do so or otherwise prevented the commission of the felony, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purposes.

(d) (1) Criminal solicitation to commit an off-grid felony shall be ranked at nondrug severity level 3. Criminal solicitation to commit any other nondrug felony shall be ranked on the nondrug scale at three severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for criminal solicitation to commit a nondrug felony shall be level 10.

(2) The provisions of this subsection shall not apply to a violation of criminal solicitation to commit the crime of:

(A) *Aggravated trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;*

(B) *terrorism pursuant to as defined in K.S.A. 21-3449, and amendments thereto, or of;*

(C) *illegal use of weapons of mass destruction pursuant to as defined in K.S.A. 21-3450, and amendments thereto;*

(D) *rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto, if the offender is 18 years of age or older;*

(E) *aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto, if the offender is 18 years of age or older;*

(F) *aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto, if the offender is 18 years of age or older;*

(G) *promoting prostitution, as defined in K.S.A. 21-3513, and amend-*

ments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age; or

(H) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto, if the offender is 18 years of age or older.

(e) Criminal solicitation to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

Sec. 4. K.S.A. 21-3447 is hereby amended to read as follows: 21-3447. (a) Aggravated trafficking is:

(1) Trafficking, as defined in K.S.A. 21-3446, and amendments thereto:

(A) Involving the commission or attempted commission of kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;

(B) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(C) resulting in a death; or

(2) recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(b) Except as provided further, aggravated trafficking is a severity level 1, person felony. When the offender is 18 years of age or older, aggravated trafficking or attempt, conspiracy or criminal solicitation to commit aggravated trafficking, if the victim is less than 14 years of age, is an off-grid person felony.

(c) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

(1) Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated trafficking pursuant to this section;

(2) subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated trafficking pursuant to this section; and

(3) subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated trafficking pursuant to this section.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 5. K.S.A. 21-3449 is hereby amended to read as follows: 21-3449. (a) Terrorism is the commission of, the attempt to commit or the conspiracy to commit any felony with the intent to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of any unit of government.

(b) Terrorism or attempt, conspiracy or criminal solicitation to commit terrorism is an off-grid person felony.

(c) The provisions of subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of terrorism pursuant to this section. The provisions of subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of terrorism pursuant to this section. The provisions of subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of terrorism pursuant to this section.

Sec. 6. K.S.A. 21-3450 is hereby amended to read as follows: 21-3450. (a) The illegal use of weapons of mass destruction is:

(1) Intentionally, knowingly and without lawful authority, developing, producing, stockpiling, transferring, acquiring, retaining or possessing any:

(A) Biological agent, toxin or delivery system for use as a weapon;

(B) chemical weapon; or

(C) nuclear materials or nuclear byproduct materials for use as a weapon;

(2) knowingly assisting a foreign state or any organization to do any such activities as specified in paragraph (1); or

(3) ~~attempting, threatening or conspiring~~ to do any such activities as specified in paragraph (1) or (2).

(b) Illegal use of weapons of mass destruction *or attempt, conspiracy or criminal solicitation to commit illegal use of weapons of mass destruction* is an off-grid person felony.

(c) The provisions of subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of illegal use of weapons of mass destruction pursuant to this section.

(d) The following shall not be prohibited under the provisions of this section:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm;

(4) any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment; or

(5) any individual self-defense device, including those using a pepper spray or chemical mace.

(e) As used in this section:

(1) "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

(A) Death, disease or other biological malfunction in a human, an animal, a plant or another living organism;

(B) deterioration of food, water, equipment, supplies or material of any kind; or

(C) deleterious alteration of the environment;

(2) "chemical weapon" means the following together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this section, as long as the type and quantity is consistent with such a purpose;

(B) a munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device; or

(C) any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B);

(3) "key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system;

(4) "delivery system" means:

(A) Any apparatus, equipment, device or means of delivery specifically designed to deliver or disseminate a biological agent, toxin or vector; or

(B) any vector;

(5) "for use as a weapon" does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin or delivery system for prophylactic, protective or other peaceful purposes;

(6) "nuclear material" means material containing any:

(A) Plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) enriched uranium, defined as uranium that contains the isotope

233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(7) "nuclear byproduct material" means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(8) "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system;

(9) "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(10) "toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(A) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(B) any poisonous isomer or biological product, homolog or derivative of such a substance; and

(11) "vector" means a living organism or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

Sec. 7. K.S.A. 21-3502 is hereby amended to read as follows: 21-3502. (a) Rape is: (1) Sexual intercourse with a person who does not consent to the sexual intercourse, under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(2) sexual intercourse with a child who is under 14 years of age;

(3) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b) It shall be a defense to a prosecution of rape under subsection (a)(2) that the child was married to the accused at the time of the offense.

(c) Except as provided further, rape as described in subsection (a)(1) or (2) is a severity level 1, person felony. Rape as described in subsection (a)(2) or attempt, conspiracy or criminal solicitation to commit rape as described in subsection (a)(2), when the offender is 18 years of age or older, is an off-grid person felony. Rape as described in subsection (a)(3) or (4) is a severity level 2, person felony.

(d) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of rape as described in subsection (a)(2);

(2) subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of rape as described in subsection (a)(2); and

(3) subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of rape as described in subsection (a)(2).

Sec. 8. K.S.A. 21-3504 is hereby amended to read as follows: 21-3504. (a) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of aggravated indecent liberties with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A) that the child was married to the accused at the time of the offense.

(c) Except as provided further, aggravated indecent liberties with a child as described in subsections (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony. When the offender is 18 years of age or older, aggravated indecent liberties with a child as described in subsection (a)(3) or *attempt, conspiracy or criminal solicitation to commit aggravated indecent liberties with a child as described in subsection (a)(3)* is an off-grid person felony.

(d) *If the offender is 18 years of age or older, the provisions of:*

(1) *Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated indecent liberties with a child as described in subsection (a)(3);*

(2) *subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated indecent liberties with a child as described in subsection (a)(3); and*

(3) *subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated indecent liberties with a child as described in subsection (a)(3).*

Sec. 9. K.S.A. 21-3506 is hereby amended to read as follows: 21-3506. (a) Aggravated criminal sodomy is:

(1) Sodomy with a child who is under 14 years of age;

(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or

(3) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal, under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender.

(b) It shall be a defense to a prosecution of aggravated criminal sodomy under subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Except as provided further, aggravated criminal sodomy is a severity level 1, person felony. Aggravated criminal sodomy as described in subsection (a)(1) or (a)(2) or *attempt, conspiracy or criminal solicitation to commit aggravated criminal sodomy as described in subsection (a)(1) or (a)(2)*, when the offender is 18 years of age or older, is an off-grid person felony.

(d) *If the offender is 18 years of age or older, the provisions of:*

(1) *Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall*

not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as described in subsection (a)(1) or (a)(2);

(2) subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as described in subsection (a)(1) or (a)(2); and

(3) subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated criminal sodomy as described in subsection (a)(1) or (a)(2).

Sec. 10. K.S.A. 21-3513 is hereby amended to read as follows: 21-3513. (a) Promoting prostitution is:

(1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance, or management thereof;

(2) permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

(3) procuring a prostitute for a house of prostitution;

(4) inducing another to become a prostitute;

(5) soliciting a patron for a prostitute or for a house of prostitution;

(6) procuring a prostitute for a patron;

(7) procuring transportation for, paying for the transportation of, or transporting a person within this state with the intention of assisting or promoting that person's engaging in prostitution; or

(8) being employed to perform any act which is prohibited by this section.

(b) (1) Promoting prostitution is a class A person misdemeanor when the prostitute is 16 or more years of age.

(2) Promoting prostitution when the prostitute is 16 or more years of age is a severity level 7, person felony if committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution.

(3) Except as provided in paragraph (4), promoting prostitution is a severity level 6, person felony when the prostitute is under 16 years of age.

(4) Promoting prostitution or attempt, conspiracy or criminal solicitation to commit promoting prostitution is an off-grid person felony when the offender is 18 years of age or older and the prostitute is less than 14 years of age.

(d) *If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:*

(1) Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of promoting prostitution as described in subsection (b)(4);

(2) subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of promoting prostitution as described in subsection (b)(4); and

(3) subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of promoting prostitution as described in subsection (b)(4).

Sec. 11. K.S.A. 21-3516 is hereby amended to read as follows: 21-3516. (a) Sexual exploitation of a child is:

(1) Except as provided in subsection (a)(5), employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct for the purpose of promoting any performance;

(2) possessing any visual depiction, including any photograph, film, video picture, digital or computer generated image or picture, whether made or produced by electronic, mechanical or other means, where such visual depiction of a child under 18 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2);

(4) except as provided in subsection (a)(6), promoting any perform-

ance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance;

(5) employing, using, persuading, inducing, enticing or coercing a child under 14 years of age to engage in sexually explicit conduct for the purpose of promoting any performance; or

(6) promoting any performance that includes sexually explicit conduct by a child under 14 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person.

(2) "Promoting" means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) "Performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) "Nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Except as provided further, sexual exploitation of a child is a severity level 5, person felony. Sexual exploitation of a child as described in subsection (a)(5) or (a)(6) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as described in subsection (a)(5) or (a)(6) when the offender is 18 years of age or older is an off-grid person felony.

(d) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(5) or (a)(6);

(2) subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(5) or (a)(6); and

(3) subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(5) or (a)(6).

(e) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 12. K.S.A. 2009 Supp. 21-3608a is hereby amended to read as follows: 21-3608a. (a) Aggravated endangering a child is:

(1) Intentionally causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;

(2) recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;

(3) causing or permitting such child to be in an environment where a person is selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(4) causing or permitting such child to be in an environment where drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any meth-

amphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(b) Aggravated endangering a child is a severity level 9, person felony. *The sentence for a violation of this section shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(c) As used in this section:

(1) "Manufacture" shall have the meaning ascribed to that term in K.S.A. 2009 Supp. 21-36a01, and amendments thereto; and

(2) "drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 2009 Supp. 21-36a01, and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 13. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read as follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto:

(a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application;

or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(e) "Drug" means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) "Drug paraphernalia" means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting,

propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act. "Drug paraphernalia" shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) "Immediate precursor" means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) "Isomer" means all enantiomers and diastereomers.

(i) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or

independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. "Manufacture" does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) "*Minor*" means a person under 18 years of age.

(~~k~~) (l) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(~~m~~) (m) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

(~~m~~) (n) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

(~~n~~) (o) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(~~o~~) (p) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(~~p~~) (q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(~~q~~) (r) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the

time alleged shall not be a defense to the crime charged or the sentence imposed.

(s) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 14. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:

(A) Violation of subsection (a) ~~on or within 1,000 feet of any school property~~ is a drug severity level 2 felony *if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or on or within 1,000 feet of any school property;*

(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.

(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 15. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as follows: 21-36a10. (a) It shall be unlawful for any person to advertise, market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropranolamine or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance; or

(2) any product containing ephedrine, pseudoephedrine or phenylpropranolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(b) It shall be unlawful for any person to market, distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance in violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, except subsection (b) of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

(e) (1) Violation of subsection (a) is a drug severity level 2 felony;

(2) violation of subsection (b) is a drug severity level 4 felony;

(3) violation of subsection (c) is a severity level 9, nonperson felony, except that violation of subsection (c) is a drug severity level 4 felony if ~~that person distributes or causes~~ *the trier of fact makes a finding that the offender is 18 or more years of age and the offender distributed or caused drug paraphernalia to be distributed to a person under 18 years of age minor or on or within 1,000 feet of any school property;*

(4) violation of subsection (d) is a class A nonperson misdemeanor, except that violation of subsection (d) is a ~~nondrug~~ severity level 9, nonperson felony if ~~that person distributes or causes~~ *the trier of fact makes a finding that the offender is 18 or more years of age and the offender distributed or caused drug paraphernalia to be distributed to a person under 18 years of age minor or on or within 1,000 feet of any school property.*

(f) For persons arrested and charged under subsection (a), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

Sec. 16. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as follows: 21-36a13. (a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.

(c) (1) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, except that violation of subsection (a) is a nondrug severity level 7, nonperson felony if ~~that person~~ *the trier of fact makes a finding that the offender is 18 or more years of age and the violation occurs occurred on or within 1,000 feet of any school property; and*

(2) violation of subsection (b) is a class A nonperson misdemeanor.

Sec. 17. K.S.A. 2009 Supp. 21-4642 is hereby amended to read as follows: 21-4642. (a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community

correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in paragraphs (3)(A) through 3(J) or (3)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted on at least two prior conviction events of any sexually violent crime of two or more sexually violent crimes.

(2) "Prior conviction event" means one or more felony convictions of a sexually violent crime occurring on the same day and within a single court. These convictions may result from multiple counts within an information or from more than one information. If a person crosses a county line and commits a felony as part of the same criminal act or acts, such felony, if such person is convicted, shall be considered part of the prior conviction event.

~~(3)~~ "Sexually violent crime" means:

- (A) Rape, K.S.A. 21-3502, and amendments thereto;
- (B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;
- (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;
- (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;
- (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;
- (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;
- (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;
- (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;
- (I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;
- (J) aggravated incest, K.S.A. 21-3603, and amendments thereto;
- (K) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;
- (L) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or
- (M) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

Sec. 18. K.S.A. 21-4643 is hereby amended to read as follows: 21-4643. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in paragraph (2):

- (A) Aggravated trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the victim is less than 14 years of age;
- (B) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;
- (C) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto;

(D) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto;

(E) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age;

(F) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto; and

(G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in paragraphs (A) through (F).

(2) The provision of paragraph (1) requiring a mandatory minimum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 21-4642, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to the effective date of this act which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under K.S.A. 21-3522, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 21-3522, and amendments thereto.

(2) The provision of paragraph (1) requiring a mandatory minimum term of imprisonment of not less than 40 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 21-4642, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(c) When a person is sentenced pursuant to subsection (a) or (b), such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years, 40 years or be sentenced as determined in subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits.

(d) On or after July 1, 2006, for a first time conviction of an offense listed in paragraph (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the sentencing guidelines act, K.S.A. 21-4701 et seq., and amendments thereto, and, *subject to the provisions of K.S.A. 21-4719, and amendments thereto*, no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder. As used in this subsection, mitigating circumstances shall include, but are not limited to, the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.

(3) The victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.

(4) The defendant acted under extreme distress or under the substantial domination of another person.

(5) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

(6) The age of the defendant at the time of the crime.

(e) The provisions of K.S.A. 21-3301, 21-3302 and 21-3303, and amendments thereto, shall not apply to any defendant sentenced pursuant to this section.

Sec. 19. K.S.A. 2009 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

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		
I	653	620	592	618	586	554	285	272	258	267	253	240	246	234	221	226	214	203	203	195	184	186	176	166	165	155	147
II	493	467	442	460	438	416	216	205	194	200	190	181	184	174	165	168	160	152	154	146	138	138	131	123	123	117	109
III	247	233	221	228	216	206	107	102	96	100	94	89	92	88	82	83	79	74	77	72	68	71	66	61	61	59	55
IV	172	162	154	162	154	144	75	71	68	69	66	62	64	60	57	59	56	52	52	50	47	48	45	42	43	41	38
V	136	130	122	128	120	114	60	57	53	55	52	50	51	49	46	47	44	41	43	41	38						
VI	46	43	40	41	39	37	38	36	34	36	34	32	32	30	28	29	27	25									
VII	34	32	30	31	29	27																					
VIII	23	21	19	20	19	18																					
IX	17	16	15	15	14	13																					
X	13	12	11	12	11	10																					

LEGEND
Presumptive Probation
None
Presumptive Imprisonment

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. 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. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments

thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: (A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (ii) at the time of the conviction under paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the conviction under paragraph (B) (i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in paragraph (2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (d) of K.S.A. 21-3812, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks

5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism, such program is available and the offender can be admitted to such program within a reasonable period of time; or

(2) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence pursuant to this section shall not be considered a departure and shall not be subject to appeal.

(n) The sentence for a third or subsequent violation of subsection (b) of K.S.A. 21-3705, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments thereto, shall apply to a defendant sentenced under this subsection.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716 and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed

in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) The sentence for a violation of subsection (a)(2) of K.S.A. 21-3413, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(r) (1) *If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.*

(2) *The sentence imposed pursuant to paragraph (1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(3) *As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.*

Sec. 20. K.S.A. 21-3301, 21-3302, 21-3303, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516 and 21-4643 and K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10, 21-36a13, 21-4642 and 21-4704 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chair
 Honorable Richard M. Smith, Vice Chair
 Helen Pedigo, Executive Director

MARK PARKINSON, GOVERNOR

MEMORANDUM

To: Duane Goossen, Secretary, Department of Administration

Attn: Sheena Ward

From: Helen Pedigo, Executive Director

Date: March 16, 2010

Re: Prison Bed Impact, HB 2435 Raising Penalty to Off-grid for Attempt, Conspiracy or Solicitation of Certain Sex Crimes when Offender is 18 or Older and Victim is Younger than 14 Years as amended by SCOW

Impact Assessment

- **Impact of Prison Admissions:** This amended bill would result in no additional prison admissions regarding the attempt, conspiracy and solicitation provisions as well as the drug sale enhancement to a minor and consecutive sentence for endangering a child. This bill would have a potential increase of prison admissions with regard to drug distributions to a minor. However, the amount of increase cannot be determined because there is no data upon which to base an impact. This bed impact does not include an impact with regard to distribution to a minor, as no data is currently available for this analysis.
- **Impact of Prison Beds:** This amended bill would result in no additional prison beds needed in FY 2011 and 10 additional prison beds in FY 2020 regarding the attempt, conspiracy and solicitation provisions as well as the consecutive sentence for endangering a child. This bill would have a potential increase of prison beds with regard to drug distributions to a minor. However, the amount of increase cannot be determined because there is no data to base upon an impact.
- **Impact on workload of the Commission:** This amended bill would minimal impact on the journal entry workload of the Commission.

Bill Summary

This bill would, effective upon publication in the Kansas Register:

- Increase the penalty from severity level 1, 2, or 3 to off-grid for an attempt (currently severity level 1, according to *State v. Horn*), conspiracy (currently severity level 2,

according to *State v. Horn*), or solicitation (currently severity level 3, according to *State v. Horn*) of a sex crime when the offender is 18 or older and the victim is younger than 14 years of age, for the following crimes:

- K. S. A. 21-3447 aggravated trafficking, if victim is less than 14, offender is 18 or older;
- K. S. A. 21-3502(a)(2) Rape, if victim is less than 14, offender is 18 or older;
- K. S. A. 21-3504(a)(3) Aggravated indecent liberties, if victim is less than 14, offender is 18 or older;
- K. S. A. 21-3506(a)(1) or (a)(2) Aggravated criminal sodomy, if victim is less than 14, offender is 18 or older;
- K. S. A. 21-3513 Promoting prostitution, if victim is less than 14, offender is 18 or older; and
- K. S. A. 21-3516(a)(5) or (a)(6) Sexual exploitation of a child, if victim is less than 14, offender is 18 or older.
-
- Remove the 6-month sentence reduction for an attempted drug manufacture K. S. A. 21-36a03.
- Amend the definition of “aggravated habitual sex offender” FROM:
 - “one who has been convicted of a sexually violent crime and prior to that conviction, has been convicted on a least two prior conviction events of any sexually violent crime” TO
 - “one who has been convicted of a sexually violent crime and prior to that conviction, has been convicted of two or more sexually violent crimes”.
- Add cultivating, distributing or possessing with intent to distribute a controlled substance to a minor to the enhancement of within 1,000 feet of school property under K. S. A. 21-36a05, resulting in an amendment from a severity level 3 drug felony to a severity level 2 drug felony; and.
- Add a special rule indicating that the sentence for K. S. A. 21-3608a, aggravated endangering a child, a nondrug severity level 9, person felony, would be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

Key Assumptions

- Projected prison admissions for the target offenders are assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2009 by the Kansas Sentencing Commission.
- The percentage of sentence served in prison for severity level D2 is assumed to 85% and severity levels N9 and D3 is assumed to be 80%, less jail credit and good time, which is consistent with the projections released in August 2009.
- It is assumed that the sentence of endangering a child will be added to the term of drug distributions or possessions imposed if such crime is charged.
- It is assumed that the effective date is publication in the Kansas Register.

Findings

- In FY 2009, 67 offenders were convicted of the crimes under Jessica Law. Of this number,
 - 27 offenders were convicted of the crime of rape of a child less 14 and the

- offenders were 18 or older [K.S.A. 21-3502(a)(2)]. 1 of these convictions was an attempt and was sentenced as offgrid;
- 32 offenders were convicted of the crime of aggravated indecent liberties with a child less than 14 and the offenders were 18 or older [K.S.A. 21-3504(a)(3)]. 4 of these convictions were attempts, with 3 sentenced as offgrid, and 1 sentenced as a nondrug severity level 1 person felony with a prison sentence of 155 months;
 - 8 offenders were convicted of the crime of aggravated criminal sodomy of a child less than 14 and the offenders were 18 or older [K.S.A. 21-35069(a)(1)]. None of these convictions were attempts, and all were sentenced as offgrid.
- In FY 2009, 4 offenders were convicted of the crime of attempted manufacture of a controlled substance. Of this number, 3 were sentenced prison and 1 was sentenced to probation.
 - In FY 2009, 28 offenders were convicted of the crime of aggravated endangering a child. Of this number,
 - 2(7.1%) were sentenced to prison and
 - 26(92.9%) were sentenced to probation.
 - In FY 2009, 24 offenders were convicted of the crime of distributing or possessing with intent to distribute a controlled substance within 1,000 feet of school. Of this number,
 - 14(58.3%) were sentenced to prison and
 - 10(41.7%) were sentenced to probation.
 - In FY 2009, 714 offenders were convicted of the crime of distributing or possessing with intent to distribute a controlled substance. Of this number,
 - 164 (23.0%) were sentenced to prison
 - 549 (76.9%) were sentenced to probation and
 - 1 (0.1%) was sentenced to jail.

This bed impact does not include an impact with regard to distribution to a minor, as no data is currently available for this analysis. In FY 2009, 714 convictions were reported for the crime of distribution or possession with intent to distribute a controlled substance, of which 164 (23.0%) were sentenced to prison, 549 (76.9%) to probation and 1 (0.1%) to jail. Some percentage of these convictions would be enhanced from a severity level 3, drug felony to a severity level 2, drug felony, with the penalty enhancement for distribution to a minor. However, no data exists to identify such percentage.

Impact Assessment

- **Current Policy:** If current policy remains unchanged,
 - by FY 2011, 16 prison beds would be needed and
 - by FY 2020, 58 prison beds would be needed.
- **Impact:** If the sentence of endangering a child is added to the term,
 - by FY 2011, 16 prison beds would be needed and
 - by FY 2020, 68 prison beds would be needed.
- **Impact of Prison Admissions:** This amended bill would result in no additional prison admissions regarding the attempt, conspiracy and solicitation provisions as well as the drug sale enhancement to a minor and consecutive sentence for endangering a child. This bill would have a potential increase of prison admissions with regard to drug distributions to a minor. However, the amount of increase cannot be determined because there is no data upon which to base an impact.

- Impact of Prison Beds:** This amended bill would result in no additional prison beds needed in FY 2011 and 10 additional prison beds in FY 2020 regarding the attempt, conspiracy and solicitation provisions as well as the consecutive sentence for endangering a child. This bill would have a potential increase of prison beds with regard to drug distributions to a minor. However, the amount of increase cannot be determined because there is no data to base upon an impact.

Prison Bed Impact Assessment

Fiscal Year	Current Policy	Impact	Additional Prison Beds Needed
2011	16	16	0
2012	29	29	0
2013	41	43	2
2014	49	52	3
2015	51	56	5
2016	55	58	3
2017	53	60	7
2018	54	60	6
2019	57	65	8
2020	58	68	10

- Impact on workload of the Commission:** This amended bill would have minimal impact on the journal entry workload of the Commission.

3

Prison and Sentencing Impact Model



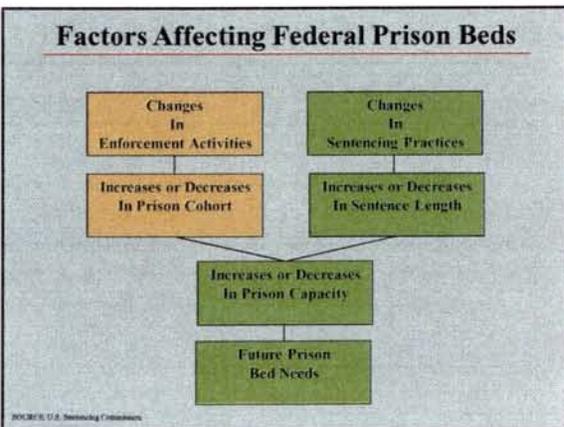
2010 NASC Conference
Lou Reedt Sc.D.

Purposes of the Model

Isolate and measure the impact of amendments on:
Offender Sentences
Prison Resources

Audience:
Commissioners
Congress
Congressional Budget Office
Bureau of Prisons

SOURCE: U.S. Sentencing Commission



Model Assumptions

The prison and sentencing impact model assumes:

- Proportional Re-Sentencing of Cases
- Application of Statutory Minimum and Maximum Constraints
- Good Conduct Time Accrual
- Offender Life Expectancy
- Random Application of Characteristic
- Hypothetical Steady State Prison System

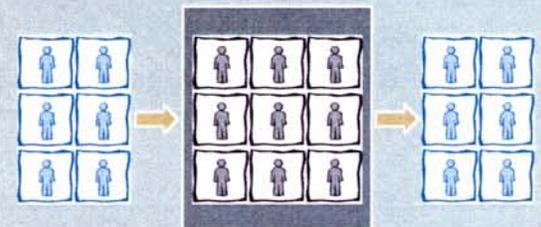
SOURCE: U.S. Sentencing Commission

Prison Beds

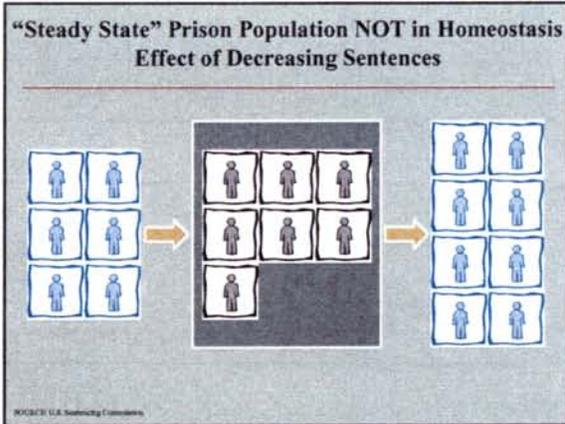


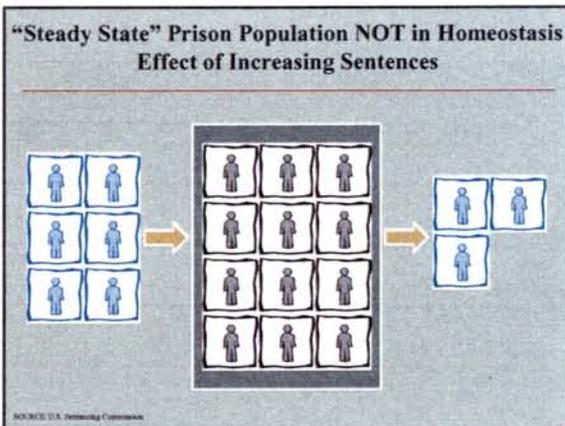
SOURCE: U.S. Sentencing Commission

Model Assumes Homeostasis



SOURCE: U.S. Sentencing Commission





Spot and Re-Spot

- **Prison/Sentencing Impact Model is based on proportional resentencing of cases.**
 - The position of the sentence relative to the guideline range (location and extent), will be maintained in the resentencing.
 - An offender originally sentenced within the guideline range will be resentenced within the new guideline range.
 - An offender originally sentenced below the guideline range will be resentenced below the new guideline range.
 - An offender originally sentenced above the guideline range will be resentenced above the new guideline range.
 - Every single case (with the specified criteria) has a new, proportional sentence calculated by the model.

SOURCE: U.S. Sentencing Commission

Spot and Re-Spot

- In essence, the Prison/Sentencing Impact Model identifies cases with given criteria, replaces that criteria with the new specification(s), and calculates a new sentence for each offender that is proportional to the old sentence's position relative to the guideline range.
 - This is known as 'Spot' and 'Re-Spot'.
- **Spot**
 - The current sentence's position relative to the guideline range.
- **Re-Spot**
 - The proportional resentencing relative to the new guideline range.

SOURCE: U.S. Sentencing Commission

Spot and Re-Spot

SPOT	RE-SPOT
Actual Offense Level 19	New Offense Level 22
Criminal History Category I	Criminal History Category I
<div style="display: flex; justify-content: space-between; width: 100%;"> 30 37 </div> <div style="display: flex; justify-content: space-between; width: 100%; margin-top: 5px;"> 32 </div>	<div style="display: flex; justify-content: space-between; width: 100%;"> 41 51 </div> <div style="display: flex; justify-content: space-between; width: 100%; margin-top: 5px;"> 44 </div>

SOURCE: U.S. Sentencing Commission

Spot and Re-Spot Formulas

Current Position Formula (Spot):

$$P = \frac{\text{Sentence} - \text{Guideline Minimum}}{\text{Guideline Maximum} - \text{Guideline Minimum}}$$

New Position Formula (Re-Spot):

$$\text{New Sentence} = \text{New Guideline Minimum} + ((\text{New Guideline Maximum} - \text{New Guideline Minimum}) * P)$$

SOURCE: U.S. Sentencing Commission

Re-Spotting a Within Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 37 months
 GL Min = 37 months
 GL Max = 46 months

$$P = \frac{37 - 37}{46 - 37} = \frac{0}{9} \Rightarrow P = 0$$

SOURCE: U.S. Sentencing Commission

Re-Spotting a Within Range Case

New Position Formula (Re-Spot):

$$S' = GL' Min + ((GL' Max - GL' Min) * P)$$

Example: GL' Min = 51 months
 GL' Max = 63 months
 P = 0

$$S' = 51 + ((63 - 51) * 0) = 51 + (12 * 0) = 51 + 0$$

New Sentence = 51 months

SOURCE: U.S. Sentencing Commission

Re-Spotting a Below Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 24 months
 GL Min = 37 months
 GL Max = 46 months

$$P = \frac{24 - 37}{46 - 37} = \frac{-13}{9} \Rightarrow P = -1.44$$

SOURCE: U.S. Sentencing Commission

Re-Spotting a Below Range Case

New Position Formula (Re-Spot):

$$S' = GL' \text{ Min} + ((GL' \text{ Max} - GL' \text{ Min}) * P)$$

Example: GL' Min = 51 months
 GL' Max = 63 months
 P = -1.44

$$S' = 51 + ((63-51)*-1.44) = 51 + (12*-1.44) = 51 + (-17.28)$$

New Sentence = 34 months

SOURCE: U.S. Sentencing Commission

Re-Spotting an Above Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL' \text{ Min}}{GL' \text{ Max} - GL' \text{ Min}}$$

Example: Sentence = 52 months
 GL' Min = 37 months
 GL' Max = 46 months

$$P = \frac{52 - 37}{46 - 37} = \frac{15}{9} \Rightarrow P = 1.67$$

SOURCE: U.S. Sentencing Commission

Re-Spotting an Above Range Case

New Position Formula (Re-Spot):

$$S' = GL' \text{ Min} + ((GL' \text{ Max} - GL' \text{ Min}) * P)$$

Example: GL' Min = 51 months
 GL' Max = 63 months
 P = 1.67

$$S' = 51 + ((63-51)*1.67) = 51 + (12*1.67) = 51 + 20.04$$

New Sentence = 71 months

SOURCE: U.S. Sentencing Commission

Checking Validity Within the Model

- **Programming Validity**
 - Is the SAS Code doing what we want it to do?
 - Look for errors in log
 - Multiple people check all new code
- **Face Validity**
 - Are the results about what you would expect?
 - Are sentencing "going in the right direction"?
 - Is the magnitude of the change reasonable?
 - Is the number of cases changing reasonable?
- **Predictive Validity**
 - Are past predictions accurate?
 - Have past results "come true"?
 - Using a past datafile, can you predict current results?

SOURCE: U.S. Sentencing Commission

Model Weaknesses

- **Data Intense**
 - Requires large number of person-specific variables
- **Model Complexity**
 - Unintended consequences of changes in the SAS code
- **Assumptions**
 - Judicial decision making; Good conduct time accrual; Life expectancy; Data availability of currently irrelevant information
- **Isolation from Real World**
 - Cohort dependent; Changes/trends in enforcement; Changes/trends in offense prevalence

SOURCE: U.S. Sentencing Commission

Model Strengths

- **Re-Sentences Person**
 - Permits comparison of subtle changes (limited only by the data)
 - Can evaluate impact on subsets of offenders (demographic, specific offense characteristics, criminal history, etc.)
- **Steady State isolates impact to guideline change only**
- **Determines the year in which the guideline change will be experienced on a case-by-case basis**
 - Evaluates impact on a year-by-year basis

SOURCE: U.S. Sentencing Commission

**Crack Reduction
Historical Background**

- Drug Quantity Table at §2D1.1 establishes a Base Offense Level based on drug type and drug weight.
 - BOL corresponded to a guideline range **above** the statutory mandatory minimum.
 - Example: 5 grams of crack cocaine
 - Statutory Mandatory Minimum: **60 months**
 - Base Offense Level: 26
 - Guideline Range (CHC I): **63 – 78**
- May 1, 2007 – Amendment 706 submitted to Congress
 - Proposed modifications to the drug quantity thresholds so base offense levels for crack cocaine offenses would correspond to guideline ranges that **included** statutory mandatory minimum penalties.

SOURCE: U.S. Sentencing Commission

**Crack Reduction
Historical Background**

- November 1, 2007 – Guidelines Manual
 - Amendment 706 effective for cases sentenced under the 2007 manual.
 - Example: 5 grams of crack cocaine
 - Statutory Mandatory Minimum: **60 months**
 - Base Offense Level: 24
 - Guideline Range (CHC I): **51 – 63**
 - The Base Offense Level for crack cocaine offenses is two levels lower than in previous manuals.

SOURCE: U.S. Sentencing Commission

Drug Quantity Table (USSG §2D1.1(c))¹

CRACK COCAINE		
Drug Amount	Original BOL	New BOL
500mg – 1g	16	14
1g – 2g	18	16
2g – 3g	20	18
3g – 4g	22	20
4g – 5g	24	22
5g – 20g	26	24
20g – 35g	28	26
35g – 50g	30	28

[Back to Application](#)

¹ Selected portions of the Drug Quantity Table for crack cocaine offenses only. Original BOL refers to the Base Offense Level application for Guidelines Manuals in effect prior to November 1, 2007. New BOL refers to the Base Offense Level application for Guidelines Manuals in effect November 1, 2007 and later.

SOURCE: U.S. Sentencing Commission

Crack Reduction Prison & Sentencing Impact

- Prison and Sentencing Impact Model was used to recalculate the relevant guideline range based on the amendment to the Drug Quantity Table and compares the recalculated offense levels to the existing offense level.
- The model then reassigns any Chapter Three adjustments and outside the range sentences that currently exist in each case.
- The model re-spots the new sentence in the new guideline range to a location equivalent to the location in the guideline range of the current sentence.

SOURCE: U.S. Sentencing Commission

Example #1 – Crack Reduction

▪ *An offender sells a total of 4.2 grams of crack cocaine. During the course of the offense, he is armed with a gun. The offender pleads guilty to the offense.*

Original §2D1.1 Application:

Base Offense Level (BOL)	§2D1.1(c)(8)	24
Specific Offense Characteristic (SOC)	§2D1.1(b)(1)	2
Acceptance of Responsibility	§3E1.1(a)/(b)	-3
Final Offense Level (FOL)		23
Criminal History Category (CHC)		I
Guideline Range (GL Min/GL Max)		46 - 57

SOURCE: U.S. Sentencing Commission

Example #1 – Crack Reduction

▪ *An offender sells a total of 4.2 grams of crack cocaine. During the course of the offense, he is armed with a gun. The offender pleads guilty to the offense.*

New §2D1.1 Application:

<u>Base Offense Level (BOL)</u>	§2D1.1(c)(9)	22
Specific Offense Characteristic (SOC)	§2D1.1(b)(1)	2
Acceptance of Responsibility	§3E1.1(a)/(b)	-3
Final Offense Level (FOL)		21
Criminal History Category (CHC)		I
<u>Guideline Range (GL Min/GL Max)</u>		37 - 46

Skip to Spot

SOURCE: U.S. Sentencing Commission

Sentencing Table¹

SENTENCING TABLE
(in months of imprisonment)

Criminal History Category (Criminal History Points)

Offense Level	I (0 or 1)	II (2 or 3)	III (4 - 6)	IV (7 - 9)	V (10 - 12)	VI (13+)
20	33 - 41	37 - 46	41 - 51	51 - 63	63 - 78	70 - 87
21	37 - 46	41 - 51	46 - 57	57 - 71	70 - 87	77 - 96
22	41 - 51	46 - 57	51 - 63	63 - 78	77 - 96	84 - 105
23	46 - 57	51 - 63	57 - 71	70 - 87	84 - 105	92 - 115
24	51 - 63	57 - 71	63 - 78	77 - 96	92 - 115	100 - 125
25	57 - 71	63 - 78	70 - 87	84 - 105	100 - 125	110 - 137
26	63 - 78	70 - 87	78 - 97	92 - 115	110 - 137	120 - 150

[Back to Application](#)

¹ Selected portions of the Sentencing Table. See Chapter 5, Part A of the 2009 Guidelines Manual for the complete Sentencing Table.
SOURCE: U.S. Sentencing Commission

Example #1 – Crack Reduction Re-Spotting a Within Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 50 months
GL Min = 46 months
GL Max = 57 months

$$P = \frac{50 - 46}{57 - 46} = \frac{4}{11} \Rightarrow P = .36$$

SOURCE: U.S. Sentencing Commission

Example #1 – Crack Reduction Re-Spotting a Within Range Case

New Position Formula (Re-Spot):

$$S' = GL' Min + ((GL' Max - GL' Min) * P)$$

Example: GL' Min = 37 months
GL' Max = 46 months
P = .36

$$S' = 37 + ((46 - 37) * .36) = 37 + (9 * .36) = 37 + 3.24$$

New Sentence = 40 months

SOURCE: U.S. Sentencing Commission

**Example #1 – Crack Reduction
Re-Spotting a Below Range Case**

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 43 months
GL Min = 46 months
GL Max = 57 months

$$P = \frac{43 - 46}{57 - 46} = \frac{-3}{11} \Rightarrow P = -.27$$

SOURCE: U.S. Sentencing Commission

**Example #1 – Crack Reduction
Re-Spotting a Below Range Case**

New Position Formula (Re-Spot):

$$S' = GL' Min + ((GL' Max - GL' Min) * P)$$

Example: GL' Min = 37 months
GL' Max = 46 months
P = -.27

$$S' = 37 + ((46 - 37) * -.27) = 37 + (9 * -.27) = 37 + (-2.43)$$

New Sentence = 35 months

SOURCE: U.S. Sentencing Commission

**Example #1 – Crack Reduction
Re-Spotting an Above Range Case**

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 60 months
GL Min = 46 months
GL Max = 57 months

$$P = \frac{60 - 46}{57 - 46} = \frac{14}{11} \Rightarrow P = 1.27$$

SOURCE: U.S. Sentencing Commission

**Example #1 – Crack Reduction
Re-Spotting an Above Range Case**

New Position Formula (Re-Spot):

$$S' = GL' \text{ Min} + ((GL' \text{ Max} - GL' \text{ Min}) * P)$$

Example: GL' Min = 37 months
GL' Max = 46 months
P = 1.27

$$S' = 37 + ((46-37)*1.27) = 37 + (9*1.27) = 37 + 11.43$$

New Sentence = 48 months

SOURCE: U.S. Sentencing Commission

**SENTENCING IMPACT AND PRISON IMPACT MODEL OF
APRIL 27, 2007 CRACK COCAINE AMENDMENT¹**
(Amends the Drug Quantity Table and Drug Equivalency Table in USSG §2D1.1)

Estimated Sentence Change				
CRACK COCAINE AMENDMENT	Percent of Cases Affected	All Cases: Current Avg. Sentence (in months)	All Cases: Estimated New Avg. Sentence (in months)	Percent Change
	69.7%	121	106	12.4%

Estimated Reduction in Prison Beds							
CRACK COCAINE AMENDMENT	1 Year	2 Years	3 Years	4 Years	5 Years	10 Years	15 Years
	-20	-101	-307	-542	-894	-2,623	-3,808

¹This model assumes no change to the current statutory mandatory minimum sentencing thresholds for crack cocaine offenses.
SOURCE: U.S. Sentencing Commission, Prison Impact Model, FY2006 datafile.

Example #2 – Small N, Big Impact

- When only a small number of cases meet the criteria for a guideline change, it's tempting to think the impact will be small as well.
- The Prison and Sentencing Impact Model shows, however, that the assumption of Small N, Small Impact is not always true.
- For example, increasing penalties for a very small number of cases resulted in the following impact analysis.

SOURCE: U.S. Sentencing Commission

**SENTENCING IMPACT AND PRISON IMPACT MODEL
SMALL N, BIG IMPACT**

Estimated Sentence Change				
HYPOTHETICAL AMENDMENT	Estimated Proportion of Cases Affected	Current Sentence (in months)	Estimated New Sentence (in months)	Percent Increase to Sentence
	1.5%	74	166	124.3%

Estimated Increase in Prison Beds ¹								
HYPOTHETICAL AMENDMENT	1 Year	2 Years	3 Years	4 Years	5 Years	10 Years	15 Years	20 Years
	65	175	366	738	1,172	3,814	5,298	5,378

¹ Cumulative number added to prison beds.
SOURCE: U.S. Sentencing Commission

Example #3 – Random Sample Impact

- **Question:** A 2-level enhancement is given if prior convictions involved a knife. What is the impact if this enhancement was amended to add a 4-level enhancement if prior convictions involved a gun?
- **Problem:** Specific information about weapon involvement in prior convictions is not available in the standard dataset.
- **However,** a random sample of cases from a special coding project includes information on the weapon involvement in prior convictions.
- **Solution:** Random Sample Impact

SOURCE: U.S. Sentencing Commission

Example #3 – Random Sample Impact

- **Random Sample Impact**
 - Sample data indicates that 40% of cases currently receiving the 2-level enhancement for possession of a knife in a prior conviction also have a gun in a prior conviction.
 - Therefore, 40% of cases with the existing 2-level enhancement would change to a 4-level enhancement.
 - In the full dataset, the model randomly identifies 40% of all cases receiving the 2-level enhancement, eliminates it, and applies a 4-level enhancement in its place.

SOURCE: U.S. Sentencing Commission

Example #3 – Random Sample Impact

Case Number	Current SOC	New SOC	Current Sentence	New Sentence
1	+2	+2	100	100
2	+2	+2	65	65
3	+2	+4	100	124
4	+2	+2	87	87
5	+2	+4	70	87
6	+2	+2	92	92
7	+2	+2	70	70
8	+2	+3	87	100
9	+2	+4	92	114
10	+2	+2	84	84
Average Sentence			85	93

SOURCE: U.S. Sentencing Commission

Prison/Sentencing Impact & Retroactivity

- The Commission is statutorily authorized to determine whether a guideline amendment that reduces the sentencing range may be retroactively applied.
- One of the tools used to help the Commission make decisions about retroactivity is the Prison and Sentencing Impact model.
 - Allows the Commissioners to estimate the impact of an amendment should the Commission vote to make that amendment retroactive.
 - Allows a year-by-year analysis of the impact of retroactivity.
 - Allows the Commissioners to see what affected cases look like before a change is made to inform decisions.

SOURCE: U.S. Sentencing Commission

Prison/Sentencing Impact & Retroactivity

- The 2007 Crack Amendment reduced sentencing ranges and therefore was eligible to be considered for retroactivity.
- The Prison/Sentencing Impact Model was run for offenders who appeared to be eligible to seek a reduced sentence.
 - The offenders were hypothetically resentenced as if the amended guideline had been in effect in the year in which they were sentenced.
 - A new release date for each offender was calculated using the new sentences to determine when each offender would be eligible for release.
- The model allowed the Commissioners to estimate the impact of retroactivity prior to its implementation.

SOURCE: U.S. Sentencing Commission

Crack Reduction Retroactivity & Prison Impact

- The model predicted the average sentence reduction for eligible offenders would be 27 months.
 - See http://www.ussc.gov/general/Impact_Analysis_20071003_3b.pdf for more information on the Commission's Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive.
- For crack retroactivity motions decided through May 19, 2010, the average sentence reduction for offenders whose motions were granted was 26 months.
 - See http://www.ussc.gov/USSC_Crack_Retroactivity_Report_2010_May.pdf for more information on Preliminary Crack Cocaine Retroactivity Data.

SOURCE: U.S. Sentencing Commission



4



**Prison and Sentencing Impact Worksheets
NASC Conference 2010**

Example #1 – Crack Reduction

An offender sells a total of 4.2 grams of crack cocaine. During the course of the offense, he is armed with a gun. The offender pleads guilty to the offense.

Original §2D1.1 Application:

Base Offense Level (BOL)	§2D1.1(c)(8)	24
Specific Offense Characteristic (SOC)	§2D1.1(b)(1)	2
Acceptance of Responsibility	§3E1.1(a)/(b)	-3
Final Offense Level (FOL)		23
Criminal History Category (CHC)		I
Guideline Range (GL Min/GL Max)		46-57

New §2D1.1 Application:

Base Offense Level (BOL)	§2D1.1(c)(8)	_____
Specific Offense Characteristic (SOC)	§2D1.1(b)(1)	2
Acceptance of Responsibility	§3E1.1(a)/(b)	-3
Final Offense Level (FOL)		_____
Criminal History Category (CHC)		I
Guideline Range (GL Min/GL Max)		_____



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CRACK COCAINE		
Drug Amount	Original BOL	New BOL
500mg – 1g	16	14
1g – 2g	18	16
2g – 3g	20	18
3g – 4g	22	20
4g – 5g	24	22
5g – 20g	26	24
20g – 35g	28	26
35g – 50g	30	28

**SENTENCING TABLE
(in months of imprisonment)**

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4 - 6)	IV (7 - 9)	V (10 - 12)	VI (13+)
21	37 – 46	41 – 51	46 – 57	57 – 71	70 – 87	77 - 96
23	46 – 57	51 – 63	57 – 71	70 – 87	84 - 105	92 - 115
25	57 – 71	63 – 78	70 – 87	84 - 105	100 - 125	110 - 137



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Example #1 – Crack Reduction
Re-Spotting a Within Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 50 months
GL Min = 46 months
GL Max = 57 months

P =

New Position Formula (Re-Spot):

$$S' = GL' Min + ((GL' Max - GL' Min) * P)$$

Example: GL' Min = 37 months
GL' Max = 46 months
P = _____

S' =

New Sentence = _____



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Example #1 – Crack Reduction
Re-Spotting a Below Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL\ Min}{GL\ Max - GL\ Min}$$

Example: Sentence = 43 months
GL Min = 46 months
GL Max = 57 months

P =

New Position Formula (Re-Spot):

$$S' = GL' Min + ((GL' Max - GL' Min) * P)$$

Example: GL' Min = 37 months
GL' Max = 46 months
P = _____

S' =

New Sentence = _____



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Example #1 – Crack Reduction
Re-Spotting an Above Range Case

Current Position Formula (Spot):

$$P = \frac{S - GL \text{ Min}}{GL \text{ Max} - GL \text{ Min}}$$

Example: Sentence = 60 months
GL Min = 46 months
GL Max = 57 months

P =

New Position Formula (Re-Spot):

$$S' = GL' \text{ Min} + ((GL' \text{ Max} - GL' \text{ Min}) * P)$$

Example: GL' Min = 37 months
GL' Max = 46 months
P = _____

S' =

New Sentence = _____

