

**House Corrections and Juvenile Justice Committee
February 15, 2022**

**House Bill 2673
Testimony of the Kansas Association of Criminal Defense Lawyers
Proponent**

Dear Chairman Owens and Members of the Committee:

The Legislature passed the current drug grid almost ten years ago in S. Sub. for Sub. for HB 2318. The grid has not been modified since that time. **We support HB 2673, which would adopt recommendations from the Kansas Sentencing Commission and the Kansas Criminal Justice Reform Commission—two groups that have studied the grids, sentencing trends, other data, and evidence-based practices for years.**¹

We could discuss at length why we are in favor of this proposal, but other proponents with more knowledge will cover that. Instead, I want to address arguments that you might hear in opposition (judging from arguments made in past years on bills with broader proposed changes than those in HB 2673).

We do not dispute that drug addiction can lead people to commit property crimes or violent crimes. But the Legislature should not make policy for all people based on what some people do, especially when ones who commit other crimes can be charged and punished for what they have done. In other words, if people commit crimes in order to get drugs or while on drugs, or while possessing for personal use or possessing with intent to distribute/distributing the lowest levels of drugs (the latter being the group who might fall into the grid boxes at issue here), then they can be charged and punished accordingly. Having grid boxes be presumptive prison rather than border boxes or presumptive probation is not a deterrent to simple drug possession, which is what this argument seems to be suggesting.

It is important to note that people can fall into criminal history categories A through D on the drug grid without having committed “violent” crimes. There may have been a time when “person” felony equated with “violent” crime, but that is no longer the case. For example, from 2007 to 2016, it was a person felony for a person subject to the drug registry to be in noncompliance with any part of it.² In other words, for almost ten years, if a person registered because of a nonperson drug offense, noncompliance with registration requirements was nevertheless a person felony. Thus, we have people who fall into A-D boxes who have no prior convictions for a “violent” offense or do not have multiple convictions for a “violent” offense.

¹ <http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/KCJRC-final-report-Dec-2021.pdf>

² See HB 2463 (2016).

On a related note, it is important to keep in mind that adult person felonies never decay—they will always be counted in someone’s criminal history score. So we often see people who fall into A through D boxes but they have not had a “violent” offense for decades, yet that person is presumptive prison for simple possession of drugs. Recently an opponent asserted that “[a] drug offender with a history of violent (person) crimes is placing themselves in a position to be more likely to reoffend,” but gave no explanation, citation, or other source for this.³

In the past, opponents have mentioned that severity level 4 and 5 drug grid offenses include not just simple possession or lowest-level possession with intent/distribution, but also distributing drug paraphernalia to a minor or on school property and conducting financial transactions involving drug crime proceeds. But convictions for those offenses are rare.⁴ The Legislature should not disregard current-day data and best practices to deny around 1,000 people a justified policy change in order to keep it away from a few people. The Legislature could address this by making a sentencing rule saying that the presumption doesn’t apply to people convicted of those three offenses.⁵

Another previous opponent has mentioned the high rate of recidivism across all categories of people who have drug convictions.⁶ Although they use this as a reason not to change the grid, this is evidence that what we have been doing for 10 years in its current form, and years before that under a different grid—i.e. putting people in prison for substantial amounts of time—is clearly not working.

We encourage this Committee to pass out favorably the recommendations made by a broad range of participants in our criminal justice system.

Sincerely,
Jennifer Roth
KACDL Legislative Committee co-chair
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http://www.kslegislature.org/li/b2021_22/committees/ctte_h_corr_juv_jus_1/documents/testimony/20210210_12.pdf

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http://www.kslegislature.org/li/b2021_22/committees/ctte_h_corr_juv_jus_1/documents/testimony/20210210_12.pdf. The Kansas Sentencing Commission annual reports do not appear to break down the data into that level of detail, but I might have missed something or it might be available somewhere else on their website.

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http://www.kslegislature.org/li/b2021_22/committees/ctte_h_corr_juv_jus_1/documents/testimony/20210210_07.pdf

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http://www.kslegislature.org/li/b2021_22/committees/ctte_h_corr_juv_jus_1/documents/testimony/20210210_13.pdf

Drug sentencing grid after July 1, 2012 (still current today)

SENTENCING RANGE- DRUG OFFENSES

Categories→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

Presumptive Probation
 Border Box
 Presumptive Imprisonment

*Fines not to exceed \$500,000 (SL1-SL2), \$300,000 (SL3-SL4), \$100,000 (SL5)
 *Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.

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

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

KSG Desk Reference Manual 2021
 Appendix E

Proposed grid in HB 2673

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III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment