

September 2011

Recent Commission Actions

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Honorable Ernest L. Johnson, Chairman

Hon. Ernest L. Johnson, Chair
Hon. Richard M. Smith, Vice Chair



The Kansas Sentencing Commission held its most recent meeting August 25, 2011. The Commission took action in two major areas of our many statutory responsibilities.

First, the Commission approved our FY 2012 prison population projections. Those projections and the accompanying report have been submitted to Governor Brownback. [Click here](#) for the link to the projections and the report: As noted in a separate section below, we of the Commission are grateful to all those who served on this year's Consensus Group. Special thanks also go to the following: Dave Rigin (KSC member who chairs the Prison Review Board), who chaired the last session of the Consensus Group, presented the resulting projections to the Commission, then helped prepare the report that accompanies the projections; Kunlun Chang (KSC Director of Research), who oversees the generation of the projections and the preparation of the report; and those of the Commission staff who worked diligently with Dave and Kunlun to help prepare and finalize our projections and report.

Second, the Commission took actions regarding our 2011 forms for the PSI and Journal Entry of Judgment to accommodate the 2011 legislative session amendments to the Kansas offender registration act. House Substitute for Senate Bill 37 contains those amendments and can be found in its entirety here: [House Substitute for Senate Bill 37](#). The amended act expands the list of offenses of conviction which make one a statutory "offender" subject to registration. It increases the frequency of registration from 3 times per year to 4 times per year. It also increases the

minimum duration of the registration period from, generally, 10 years under the prior act to, depending on the offense, 15 years, 25 years, or lifetime.

Of specific concern for this note, and for the Commission in drafting its forms, is the statutory directive to sentencing courts in new K.S.A. 22-4904. Under the old Act the court was required to inform the offender granted probation of the various requirements of registration, but the offender was then directed to the sheriff to implement the actual registration. Legislators were concerned that there was a gap between the court's informing the offender to register and the offender's actual registration, such that offenders required to register were not doing so, even initially. Under the new Act the court sentencing an offender subject to the Act must not only inform the offender of the registration requirements but also, when that offender is granted some form of probation, see that the initial registration forms are completed. The directives to sentencing courts are set out in pertinent part in the following:

Sec. 4. K.S.A. 2010 Supp. 22-4904 is hereby amended to read as follows:

22-4904 (a) **At the time of sentencing** or disposition for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, **the court shall:**

(1) Inform any offender, on the

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2011 Legislative Summary:
Bills relating to crimes and/or sentencing, [click here](#)



2003 Senate Bill 123 (K.S.A. 21-4729

Provides for community supervision (in Lieu of incarceration) and mandatory substance abuse treatment for a defined target population on non-violent adult drug offenders who have been convicted of a drug offense under K.S.A. 2011 Supp 21-5706.

GOAL: To provide community intervention and the opportunity for treatment to certain offenders with substance abuse problems in order to address more effectively the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

SB123 questions—

Please email Jan Brasher, janb@sentencing.ks.gov or Jennifer Dalton, jenniferd@sentencing.ks.gov or call with any questions.

2011 Legislative Summary

2011 Criminal Recodification update

2010 HB 2668, the criminal code recodification bill, takes effect July 1, 2011.

Almost all existing statutes between K.S.A. 2010 Supp. 21-3101 and K.S.A. 2010 Supp. 21-4801 have been renumbered. Other major changes include:

Aggravated offenses are no longer issued a separate statute number. Instead, the “regular” offense is defined in the (a) subsection of the statute, and the aggravated offense is defined in the (b) subsection of the statute.

Throughout the code, “intentionally” has usually been replaced with “knowingly.”

Similar crimes have been grouped together into a single statute. For example, the new battery statute, K.S.A. 21-5413, includes

the following formerly separate crimes: battery, battery against a law enforcement officer, aggravated bat- ters, aggravated battery against a law enforcement officer, battery against a school employee and battery against a mental health employee.

We have provided a letter to explain the changes that will occur to the criminal statutes... [Details](#)

A “crosswalk reference workbook” has been created to help assist with the changes for both the Felony and Misdemeanor listings. To reference these workbooks [click here](#) and chose which listing you want under the

**“2011 Criminal
Recodification section.”**

Senate Bill 123 News

Kansas Court of Appeals ...

held that offenders convicted of attempted drug possession do NOT qualify for SB123. See [State v. Perry-Coutcher](#). As a result, the Sentencing Commission has determined that it has no legal authority to pay for SB 123 treatment for such offenders beyond June 6, 2011.

SB 123 Update Conference
September 29, 2011
[Click here for details](#)

*Jayhawk Tower– Topeka Ks
Florentine Room
10 am– noon*



**A Friendly Reminder-
SB 123 Offender
Reimbursement- \$300**

As it is noted on the PSI, and the JE, (where costs are proposed and ordered) -
Please try to collect at least \$300.

Thank you for your efforts.



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Case Law Updates— August

- **[STATE v. Neal](#)** - August 5, 2011 - Sedgwick District Court - Trial court's obligation to address claims in a motion to correct illegal sentence; defendant claimed that criminal history score was improperly increased when allegedly uncounseled misdemeanors were aggregated and counted as a person felony. No. 100,366 (Criminal History)
- **[STATE v. Duong](#)** - August 12, 2011 - Sedgwick District Court - In Jessica's Law sentencing the trial court departed to a guidelines sentence, but erroneously imposed lifetime electronic monitoring as condition of postrelease supervision; since such monitoring is a parole condition, trial court did not have the statutory power to impose that sanction. No. 101,700 (Jessica's Law)
- **[STATE v. Denmark-Wagner](#)** - August 12, 2011 - Pratt District Court - Lifetime supervision imposed for off-grid felony murder erroneous; offender registration act and "deadly weapon" provision. No. 102,234 (Offender Reg. and General issues)
- **[STATE v. Mendoza](#)** - Seward District Court - No. 102,502 - & - **[STATE v. Pace](#)** - Labette District Court - No. 103,822 - August 19, 2011 - Syllabus 1. "A defendant who is sentenced under Jessica's Law, K.S.A. 21-4643, is subject to a mandatory minimum term of imprisonment of not less than 25 years before becoming eligible for parole. 2. K.S.A. 2008 Supp. 22-3717(u) does not provide authority for a sentencing court to order electronic monitoring as a condition of parole." (Jessica's Law)

Journal Entry of Judgment (JE) News

There have been **NEW** changes to the 2011 JE, Probation Revocation, and the Presentence Investigation (PSI) forms.

It is important for us to keep you informed and provide you with forms containing the most current changes.

The JE and PSI have been provided with many separate documents all together for years. We have separated the JE and the PSI forms to provide individualized documents for times when no extra forms are needed (example: Special Rules page, Addition Offenses, Offender Registrations, etc.)

Separating these documents will also provide options when extra forms are all you need.

To access the form(s) of your choice...

[Click here](#)

Revised Forms 8/2011:

- Journal Entry of Judgment (JE)
- Probation Revocation
- Presentence Investigation (PSI)

Due to the many **NEW** changes made in the forms— there are **hi-lighted versions** to show what, where and how things changed:



Did you know...

You can E-mail your Journal Entry (JE), Probation Revocation, or PSI forms to us as an alternative to mailing them?

Just like everyone these days, we are always looking for ways to cut costs. Save paper and postage!

E-mail to:

chrisc@sentencing.ks.gov

2012 Prison Population Projection Report

In an attempt to formulate the most accurate assumptions, the Sentencing Commission utilizes a Prison Population Consensus Group to review and establish the final set of assumptions that are utilized in building the simulation model. Members of the Consensus Group represent various criminal justice agencies which play a role in processing an individual through the criminal justice system. Members contribute their agencies' expertise regarding formal and informal procedures and provide relevant information and data on specific issues or practices which may affect prison population.

Thank you for your contribution.

[Click here to view the report.](#)



Kansas Criminal Justice System Resource Directory

A Message to Entities Referenced in the Kansas Criminal Justice System Resource Directory-

The staff of the Kansas Sentencing Commission hopes the 2011 Resource Directory will be a valuable aid to you and your staff. Every effort has been made to ensure complete and accurate information. In order to maintain maximum efficacy of this directory, please keep us apprised of updates by emailing changes to: office@sentencing.ks.gov.

If **your** information in this **Resource Directory** has changed, please use this **revision form** to let us know.

Thank you to those who help us keep your information accurate!



Kansas Sentencing Guidelines Desk Reference Manual (DRM)



The Kansas Sentencing Commission Desk Reference Manual ...

provides general instructions for application of the provisions of the Kansas Sentencing Guidelines Act (KSGA) K.S.A. 21-4701 *et seq.* The Manual contains features that we hope will not only inform users of the latest developments in sentencing law 2010, but also help to facilitate more efficient understanding and application of the law.

2010 Desk Reference Manual (DRM)

Order yours now!

(Please send payment with the order form.)

The 2011 DRM is currently under construction.

There have been **NEW** changes to the 2011 forms; Journal Entry of Judgment, Presentence Investigation (PSI) and the Probation Revocation and they are currently available on our website... [to access forms](#).

We will continue to provide you with information and changes as necessary.

We strive to get the completed manual to the printer early to mid September.

Thank you for your continued patience!



To remove your name from our mailing list, please [click here](#).
 Questions or comments? E-mail us at sentencing@sentencing.ks.gov
 We welcome your questions – call us at 785-296-0923



Offender Registration Requirement K.S.A. 2011 Supp. 22-4902

Under the new Act the court sentencing an offender subject to the Act must not only inform the offender of the registration requirements but also, when that offender is granted some form of probation, see that the initial registration forms are completed.

To get forms - [click here](#)

record, of the procedure to register and the requirements of K.S.A. 22-4905, and amendments thereto;

(2) if the offender is released on probation, receiving a suspended sentence, sentenced to community corrections or released on postrelease supervision:

(A) Complete the initial registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;

(B) require the offender to read and sign the registration form, which shall include a statement that the requirements provided in this subsection have been explained to the offender; and

(C) order the offender to report within three business days to the registering law enforcement agency in the county or tribal land of conviction or adjudication and to the registering law enforcement agency in any place where the offender resides, maintains employment or attends school, to complete the registration form with all information and any updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;

(3) if the offender is to remain in custody until sentencing, direct the correctional facility to complete the initial registration form within three business days for submission to the Kansas bureau of investigation, as set forth in subsection (b); and

(4) ensure the age of the victim is documented in the journal entry of conviction or adjudication.

The Commission has modified the PSI so that the writer can identify for the court and parties any count which subjects the offender to registration. In addition, the Commission has approved an Offender Registration Supplement page which is to be included in any case where a count requires registration. On that page the writer will check the applicable offense box so the court and parties can be quickly informed of the duration of the reporting requirement the court will announce at sentencing. Finally, Chris Mechler, our court services officer member, is working with local court services officers to assure that the forms required for the initial registration for a probationer will be available to the court and parties for completion at sentencing.

Likewise, the Commission has modified the Journal Entry of Judgment, Registration Supplement. On the first page of the form the court can mark the box by the offense requiring registration, broken down by category (e.g., sex offender, violent offender, drug offender, etc.). On the second page, which is essentially the same as the PSI registration supplement page, the court can mark the box reflecting the duration of the registration requirement imposed.

The supplements referred to are all up on our website.

Please contact me directly, or Jennifer Roth (our public defender member), or the Commission generally if you have any questions about these forms or suggestions to improve them. Jennifer and staff members Carrie Krusor, Trish Beck, and Brenda Harmon expended a great amount of thought and energy reviewing the new Act and integrating its provisions into these forms. We hope these forms will assist you in implementing the Act's requirements.



ERNEST L. JOHNSON
CHAIRMAN, KSC