

SENATE JUDICIARY COMMITTEE  
**Senator Kellie Warren, Chair**

**KANSAS SENTENCING COMMISSION**  
**Scott M. Schultz, Executive Director**  
**March 10, 2025**

**Proponent Testimony – HB 2312**

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission (KSSC). This bill amends K.S.A. 21-6824, commonly known as the SB 123 Substance Abuse Treatment program, in two ways. This initiative has been administered by the KSSC since its passage in 2003.

**SB 123+ Substance Abuse Treatment**

1. Nondrug felony offenses became eligible for SB 123 substance abuse treatment in 2023, which allows offenders with low-level (nondrug severity levels 7-10) felony convictions to be eligible for state-paid treatment, much like their drug possession and small sale counterparts (drug severity levels 4-5). This new expansion is called SB 123+. Currently, there are no limitations on the number of times an offender can participate in SB 123+. Drug offenders in SB 123 treatment are limited to two instances as special sentencing rule #26 (third possession of controlled substances) requires presumptive prison at sentencing. The bill clarifies eligibility for SB 123+ participants and limits participation if special sentencing rules apply to their case. Specifically, if special sentencing rules 27, 29, 31, 37, or 47 apply to the offender at sentencing, they would not be eligible for SB 123+ treatment. See Attachments 1 and 2 for special rule definitions and FY 2024 frequency of special rule application to SB 123 cases. The KSSC has received several inquiries from practitioners about whether special rules application preempt SB 123+ mandatory treatment. This legislation clarifies that SB 123+ is preempted if the special rules apply to their case at sentencing. If no backstop is placed on SB 123+ eligibility, offenders theoretically could receive SB 123+ treatment unlimited times.

**RAFT Diversion**

2. The KSSC also administers the Recovery from Addiction Funded Treatment (RAFT) program that provides state-paid treatment to eligible offenders who enter into diversion agreements with state prosecutors. This expansion of SB 123 occurred in 2021. Currently, the statute only allows the Office of Judicial Administrations' court services officers to perform the requisite assessments for RAFT and SB 123 post-conviction offenders. This bill amends language in K.S.A. 75-52,144 to allow community corrections officers to perform those assessments if they have entered a MOU with

prosecutors to supervise divertees. K.S.A. 21-6825(d) already provides that court services or community corrections may supervise diversion. The amended bill language merely allows community corrections to complete the assessments if they are certified to do so.

I appreciate your time and attention to the KSSC testimony and request your support. I would be happy to answer questions. Thank you.

**HABITUAL OR REPEAT OFFENSES APPLY:**

- 5 ☐ **Persistent Sex Offender** - presumed prison – double the maximum duration. K.S.A. 21-6804(j)
- 12 ☐ **2<sup>nd</sup> or Subs. Manufacture of a Controlled Substance Conviction** – if previous conviction is for methamphetamine or analog, presumed prison, twice the maximum duration. K.S.A. 21-6805(e)
- 26 ☐ **3<sup>rd</sup> or Subs. Felony Drug Possession** - presumed prison. K.S.A. 21-6805(f)(1)
- 13 ☐ **Residential Burglary with a Prior Residential, Nonresidential or Agg. Burglary Conviction or any attempt or conspiracy convictions of these priors** – presumed prison. K.S.A. 21-6804(l)
- 47 ☐ **Residential Burglary with Criminal History Score 7C, 7D, or 7E** - presumptive prison. K.S.A. 21-6804(x)
- 27 ☐ **Burglary With Two or More Prior Convictions for Theft, Burglary, or Agg. Burglary** – presumed prison. K.S.A. 21-6804(p)
- 29 ☐ **Felony Theft With Three or More Prior Convictions for a Felony Theft, Burglary, or Agg. Burglary** – presumed prison. K.S.A. 21-6804(p)
- 30 \*\* **For #27 or #29, Substance Abuse Underlying Factor, Treatment More Effective to Reduce Reoffense Risk and Community Safety Served** – KDOC Intensive Substance Abuse Treatment Program, Return to Court Upon Successful Completion. K.S.A. 21-6804(p)
- 31 ☐ **3<sup>rd</sup> or Subs. Criminal Deprivation of a Motor Vehicle** – presumptive prison. K.S.A. 21-6804(n)
- 16 ☐ **2<sup>nd</sup> Forgery**, criminal history I – C, sentenced pursuant to sentencing requirements of K.S.A. 21-5823, term of imprisonment not in KDOC. Criminal history A or B, - sentenced for SL 8, NPF. K.S.A. 21-6804(i)
- 17 ☐ **3<sup>rd</sup> or Subs. Forgery**, criminal history I – C, sentenced pursuant to sentencing requirements of K.S.A. 21-5823, term of imprisonment not in KDOC. Criminal history A or B, - sentenced for SL 8, NPF. K.S.A. 21-6804(i)
- 9 ☐ **Crime Committed While Incarcerated, on Probation, Parole, Conditional Release, or Postrelease Supervision for a Felony** – new sentence shall be imposed consecutively. K.S.A. 21-6606(c). If new crime is a felony, court may impose prison even if presumption is nonprison. K.S.A. 21-6604(f)(1)
- 40 ☐ **Felony Committed After Early Discharge When Offender Would Have Been On Probation or Postrelease Supervision for a Felony** If committed after early discharge pursuant to K.S.A. 21-6608(d), or K.S.A. 22-3717(d)(2), may impose prison even if presumed nonprison. K.S.A. 21-6604(f)(2)
- 28 ☐ **Felony Committed While Incarcerated in a Juvenile Correctional Facility for an Offense That Would be a Felony if Committed by an Adult** – presumed prison. K.S.A. 21-6604(f)(3)
- 10 ☐ **Crime Committed While on Felony Bond** – new sentence imposed consecutively. K.S.A. 21-6606(d), 21-6604(f)(4). If new crime is a felony, court may impose prison even if presumption is nonprison, K.S.A. 21-6604(f)(4)
- 37 ☐ **2<sup>nd</sup> or Subs. Identity Theft or Identity Fraud** – presumed prison. K.S.A. 21-6804(u)

Source: Kansas Sentencing Guidelines Desk Reference Manual 2024, Appendix B, *Kansas Sentencing Guidelines Journal Entry of Sentencing* (highlight added)

**List of Special Rules Applied To SB 123 Drug Treatment Probation – FY 2024**

<b>Special Sentencing Rule</b>	<b>Frequency</b>
<b>#9</b> - Crime Committed While Incarcerated, on Probation, Parole, Conditional Release, or Postrelease Supervision for a Felony	153
<b>#10</b> – Crime committed while on felony bond	124
<b>#26</b> - 3 <sup>rd</sup> or Subs. Felony Drug Possession	1
<b>#27</b> - Burglary with Two or More Prior Convictions for Theft, Burglary, or Agg. Burglary	1
<b>#29</b> - Felony Theft with Three or More Prior Convictions for a Felony Theft, Burglary, or Agg. Burglary	3
<b>#37</b> - 2 <sup>nd</sup> or Subs. Identity Theft or Identity Fraud	2
<b>#40</b> - Felony Committed After Early Discharge When Offender Would Have Been On Probation or Postrelease Supervision for a Felony	2
<b>Total</b>	<b>286</b>

**Note:** 29.4% of SB 123 cases had a special rule applied compared to 44.5% of all sentences.