



Navigating Criminal Sentencing in Kansas

- **Francis Givens, J.D., KSSC Special Projects Manager**
- **May 15th, 2026**
- **Kansas Supreme Court Spring In-House CLE**

Overview

KSGA overview

Criminal history scoring

Primary crime determination

Probation overview

SB 123 Updates

2026 Commission Members

Honorable Benjamin Sexton, Chair

Chief District Judge, 8th Judicial District

Honorable Stacey Donovan, Vice Chair

District Judge, 7th Judicial District

Honorable Stephen Hill

Kansas Court of Appeals

Jessica Glendening

Chief Public Defender, 7th Judicial District

Kellie Warren

Kansas Senate

Jeff Zmuda

Secretary of Corrections

David B. Haley

Kansas Senate

Mark Keating

Kansas Prisoner Review Board

Bob Lewis

Kansas House of Representatives

Tobias Schlingensiepen

Kansas House of Representatives

Jessica Domme

Attorney General's Office

Mark A. Dupree, Sr.

Wyandotte County District Attorney

Vacant

Private Attorney

Pam Weigand

Douglas County Criminal Justice

Services Coordinator

Jermaine Wilson

Public Member

Patricia Colloton

Public Member

Spence Koehn

Office of Judicial Administration

Duties and Responsibilities

Legislative

- Gatekeepers of Guidelines - Recommend legislative and administrative changes to the Governor and Legislature
- Prison Bed Space Impacts - Track and review all relevant criminal bills that are introduced and provide prison bed space impacts

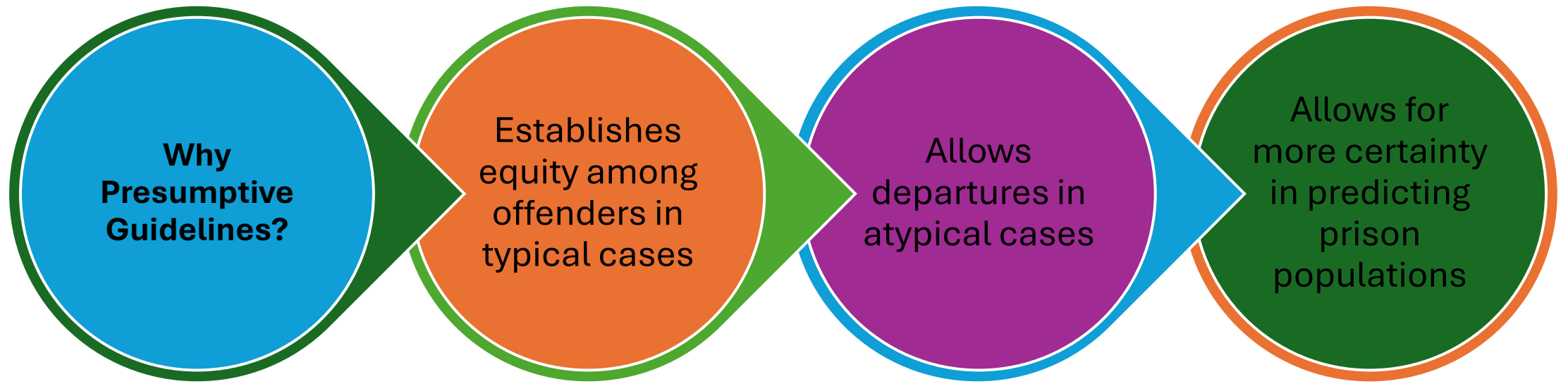
State Statistical Analysis Center for Criminal Justice

Maintain database of sentencing journal entries, PSIs and probation revocation journal entries

- Kansas Sentencing Application (KSApp)

Annual prison bed population and inmate classification projections for KDOC

2003 SB 123 (SB 123/123+/RAFT) substance abuse treatment program to eligible offenders



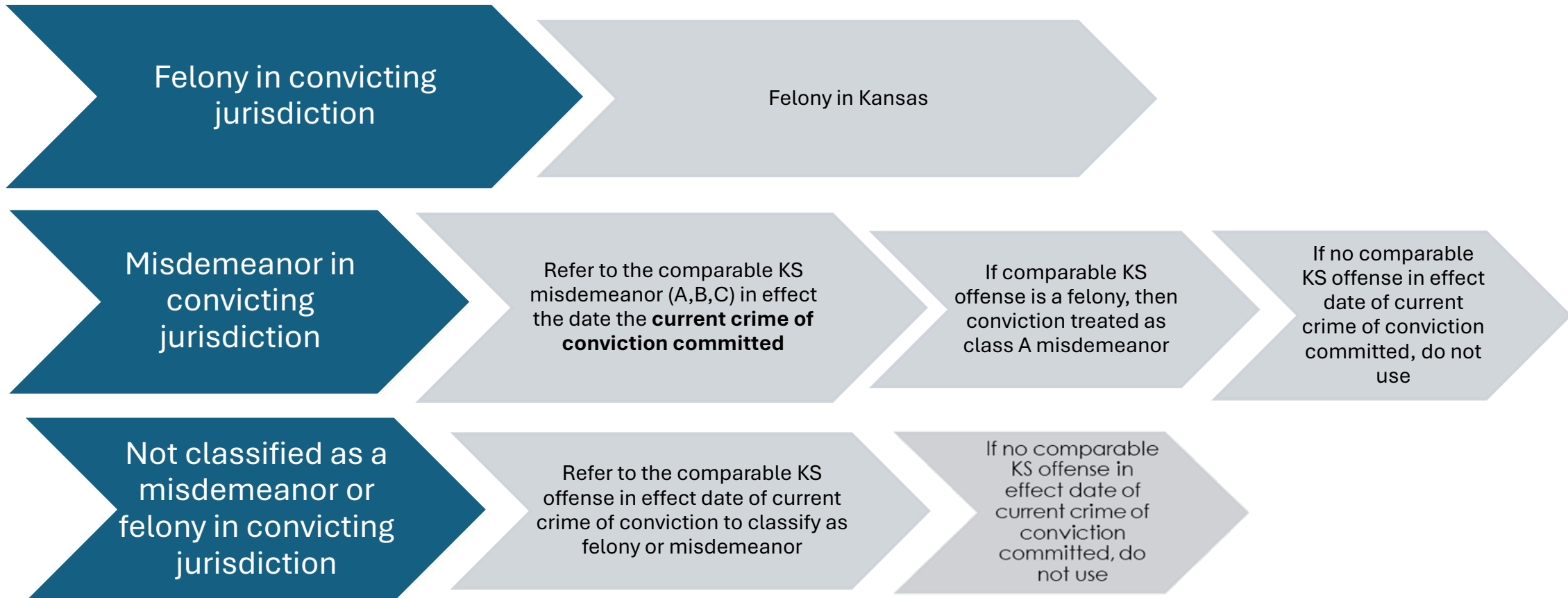
Criminal History Classification

Can the prior conviction be used?

Felony or misdemeanor?

Person or nonperson?

OUT OF STATE CONVICTION: FELONY OR MISDEMEANOR IN KANSAS?



See K.S.A. 2025 Supp. 21-6811(e)(2)

Person felony

- An out-of-state conviction or adjudication for the commission **of a felony offense**, or an attempt, conspiracy or criminal solicitation to commit a felony offense, **shall be classified as a person felony if one or more** of the following circumstances is present as defined by the convicting jurisdiction in the elements of the out-of-state offense:
 - (a) Death or killing of any human being;
 - (b) threatening or causing fear of bodily or physical harm or violence, causing terror, physically intimidating or harassing any person;
 - (c) bodily harm or injury, physical neglect or abuse, restraint, confinement or touching of any person, without regard to degree;
 - (d) the presence of a person, other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance;
 - (e) possessing, viewing, depicting, distributing, recording or transmitting an image of any person;
 - (f) lewd fondling or touching, sexual intercourse or sodomy with or by any person or an unlawful sexual act involving a child under the age of consent;
 - (g) being armed with, using, displaying or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or
 - (h) entering or remaining within any residence, dwelling or habitation.

K.S.A. 2025 Supp. 21-6811(e)(3)(B)

Juvenile Adjudications Are NOT Convictions!

- *State v. Crawford*, 39 Kan. App.2d 897, 185 P.3d 315 (Ct. App. 2008) addressed whether an adult sentence could be consecutive to a juvenile sanction.
 - Judge applied Rule 9 to run the current sentence consecutive to prior sentence because the defendant committed a new felony while he was on juvenile probation
 - The rule of *expressio unius est exclusio alterius* (the inclusion of one thing implies the exclusion of another) governs in situations where a trial court utilizes juvenile adjudications for sentencing purposes.
 - Based on the legislature's exclusion of specific language listing juvenile adjudications, we conclude that body meant to exclude juvenile adjudications from cases calling for consecutive adult sentences. The court here had no authority to impose a consecutive sentence.

When it comes to
Special Rules, make
sure to look at the
specific statute!



Criminal Threat

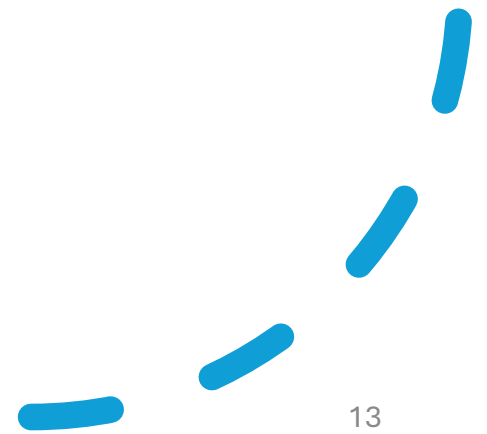
- The Kansas Supreme Court found that the provision in the Kansas criminal threat statute, K.S.A. 2018 Supp. 21-5415(a)(1), that allows for a criminal conviction if a person makes a threat in reckless disregard of causing fear is unconstitutionally overbroad. See *State v. Boettger*, 310 Kan. 800, 801, 450 P.3d 805 (2019).
- Then, *Counterman v. Colorado* was decided....
- In *State v. Phipps*, the Kansas Court of Appeals held that *Counterman v. Colorado* effectively overrules *State v. Boettger*. See *State v. Phipps*, 63 Kan.App.2d 698, 707, 539 P.3d 227. (Kan. App. 2023)(review granted January 29, 2024).

Kansas Supreme Court has now said....

- Our Legislature's direction was clear. If a prior conviction arose under a statute "that has since been determined unconstitutional by an appellate court," it cannot be counted in a criminal history score. Nothing in the plain language of the statute qualifies this limitation by considering subsequent repudiations of an appellate court's holding that a statute is unconstitutional.
- As applied here, *Boettger*, 310 Kan. at 822, held that the portion of K.S.A. 2018 Supp. 21-5415 criminalizing reckless criminal threat is unconstitutional. This holding further invalidated the corresponding portion of K.S.A. 2003 Supp. 21-3419, under which Smith's 2003 conviction arose. And while the parties argue at length as to whether *Counterman v. Colorado*, 600 U.S. 66, 81-82, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023), effectively overruled *Boettger*, this consideration is irrelevant under the plain language of K.S.A. 21-6810(d)(9), which asks only whether an appellate court "has since" ruled the statute unconstitutional—not whether that holding remains good law.


What if the
prior
conviction's
classification
has
changed?

The classification of a prior conviction will be made in accordance with the law applicable at the time of the current crime of conviction. See *State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015).

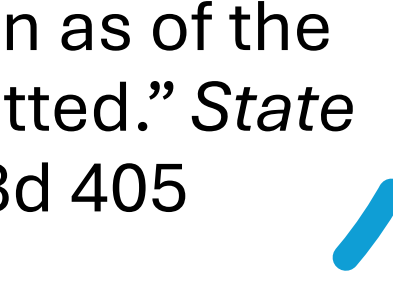


State v. Terrell

- Current conviction of Aggravated Escape
- Prior conviction of failure to register
- Registration offense was a nonperson felony when defendant was convicted of it, but was a person felony when he was convicted of aggravated escape
(underlying offense for which he had to register for was rape which made it a PF)
- District Court classified failure to register conviction as person felony under *Keel*
- See *State v. Terrell*, 315 Kan. 68, 504 P.3d 405 (2022).



Under the KSGA, all prior convictions, whether out-of-state, pre-guidelines, or amended post-guidelines, are to be classified as person or nonperson as of the time the new crime is committed. The Court specifically said, “We conclude that the better understanding of the statutory sentencing scheme requires that all prior convictions, whether out-of-state, pre-guidelines, or amended post-guidelines, be classified as person or nonperson as of the time the new infraction is committed.” *State v. Terrell*, 315 Kan. 68, 75, 504 P.3d 405 (2022).





Primary Crime Determination

- When there is more than one conviction, the sentencing court must establish the base sentence for the primary crime.
- Generally, the crime with the highest severity ranking is the primary crime.
- Presumptive imprisonment crime is primary over a presumptive nonimprisonment crime.

See K.S.A. 2025 Supp. 21-6819(b)(2).

What should be listed as the primary crime when there is an off-grid and grid felony in the same case?

When an off-grid crime is part of a multiple count case, the primary on-grid crime should be used for determining the base guideline sentence, using full criminal history. See K.S.A. 2025 Supp. 21-6819(b)(2). Additionally, if the sentences are consecutive, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and postrelease term is based on the off-grid sentence. *Id.*

What is the primary crime when an offender is convicted of crimes sentenced on the nondrug and drug grids?

When the offender is convicted of crimes sentenced on nondrug and drug grids, and when the crimes simultaneously have a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime. Additionally, in sentencing with the drug grid and nondrug, both crimes having the same presumption of probation or imprisonment, the primary crime shall be the crime with the longest sentence term. See K.S.A. 2025 Supp. 21-6819(b)(2).


What is the primary crime
when there is a nongrid and
a grid crime?

Probation in Kansas



Length of probation

- Probation for misdemeanor cases shall not exceed two years, subject to renewal and extension for additional fixed periods of two years. See K.S.A. 2025 Supp. 21-6608(a).
- Felonies are based off SL and found in K.S.A. 2025 Supp. 21-6608(c).
- With three exceptions, the total period in all cases shall not exceed 60 months or the maximum period of the prison sentence that could be imposed, whichever is longer. K.S.A. 2025 Supp. 21-6608(c).
 - The first exception is that the sentencing court may modify or extend the period of supervision, pursuant to a modification hearing and a judicial finding of necessity, up to a maximum of 5 years or the maximum period of the prison sentence that could be imposed, whichever is longer. K.S.A. 2025 Supp. 21-6608(c)(8).
 - Second, if the defendant is convicted of nonsupport of a child, the period may be extended as long as the responsibility for support continues. K.S.A. 2025 Supp. 21-6608(c)(7).
 - Third, if the defendant is ordered to pay full or partial restitution, the period may be extended as long as the amount of restitution ordered has not been paid. K.S.A. 2025 Supp. 21-6608(c)(7). Other unpaid assessments, such as costs, BIDS fee reimbursements, and lab fees are not restitution, and thus the fact that such may remain unpaid does not justify a probation extension under the statute. *State v. Hoffman*, 45 Kan. App. 2d 272, 246 P.3d 992 (2011).



The extension of probation is not considered a modification of a sentence under Kansas law. *State v. Jackson*, 66 Kan. App. 2d 84, 90, 577 P.3d 631 (2025).



Multiple Probation Sentences

Multiple Probation Sentences in individual cases with multiple nonprison sentences, the nonprison (probation) terms shall not be aggregated or served consecutively. If the underlying prison sentences for a nonprison sentence are ordered to run consecutively and the nonprison term is revoked, the offender will serve the prison terms consecutively. K.S.A. 2025 Supp. 21-6819(b)(8).

The Court of Appeals recently held that a district court does not have the authority to impose consecutive terms of probation on a defendant convicted of multiple felonies in two or more cases handled in a joint sentencing hearing. See *State v. Oathout*, 65 Kan.App.2d 851, 851, 573 P.3d 751 (2025).

What options does the court
have when an offender has
violated their probation?

Nongrid felonies and misdemeanors

Except as otherwise provided, if the original crime of conviction was a misdemeanor or a felony specified in K.S.A. . 21-6804(i), and amendments thereto, and a violation is established, the court may:

(i) Continue or modify the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and **impose confinement in a county jail not to exceed 60 days**. If an offender is serving multiple probation terms concurrently, any confinement periods imposed shall be imposed concurrently;

(ii) impose an intermediate sanction of confinement in a county jail, to be imposed as a **two-day or three-day consecutive period**. The total of all such sanctions imposed pursuant to this subparagraph and subsection (b)(4) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h); or

[Additional 18 days allowed in subsection (h) allowing for 36 days total.]

(iii) revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence that might originally have been imposed.

No requirement that defendant served previous sanction

On Grid Felonies

Except as otherwise provided, if the original crime of conviction was a felony, other than a felony specified in K.S.A. 21-6804(i), and amendments thereto, and a violation is established, the court may impose the following sanctions:

(A) Continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction;

(B) continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and an intermediate sanction of confinement in a county jail to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsection (b)(4) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h); or

(C) if the violator already had a sanction imposed pursuant to subsection (c)(1)(B) related to the crime for which the original supervision was imposed, revocation of the probation, assignment to a community corrections services program, suspension of sentence or nonprison sanction and requiring such violator to serve the sentence imposed, or any lesser sentence and, if imposition of sentence was suspended, imposition of any sentence that might originally have been imposed.

K.S.A.2025 Supp. 22-3716(c)(1)

60-day sanction

- ***State v. Chardon***

- Defendant entitled to jail credit towards underlying PV sanction time (not just underlying sentence) for time in jail awaiting hearing/disposition on the 60-day jail credit.
- In *Chardon*, where a defendant was in jail for 65 days awaiting disposition of a probation violation, the Court found that the defendant should have been credited the 65 days towards his 60-day sanction because the 60-day sanction is “separate and distinct” from the intermediate sanctions where the legislature made it clear that the sentence cannot be served by prior confinement credit. See *State v. Chardon*, No. 119,464, 2019 WL 3977828 (Kan. App.2019)(unpublished opinion).

60-day sanction continued

- ***State v. Allen***
- 60-day jail sanctions must be served concurrently on multiple cases.
- *In Allen*, a defendant was on probation for two separate cases and was ordered to two 60-day jail sanctions to run consecutively by two different judges, the Court found that the defendant could only be ordered to serve 60 days because the statute is clear that the sanctions must be run concurrently. See *State v. Allen*, 55 Kan. App. 2d 87, 407 P.3d 661 (2017).

Revocation Without Sanction

The court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (c)(1) without having previously imposed a sanction pursuant to subsection (c)(1) if:


(A) The court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction;

(B) the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction was originally granted as the result of a dispositional departure granted by the sentencing court pursuant to K.S.A. 21-6815, and amendments thereto;

(C) the offender commits a new felony or misdemeanor while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction; or

(D) the offender absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction.

K.S.A. 22-3716(c)(7)



**REVOCAION
WITHOUT PREVIOUS
SANCTION: PUBLIC
SAFETY/OFFENDER
WELFARE**

The court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction; K.S.A. 22-3716(c)(7)(A)

PUBLIC
SAFETY/OFFENDER
WELFARE FINDING

Implicit comments are not enough. See *State v. Clapp*, 308 Kan. 976, 425 P.3d 605 (2018).

- Referenced prior weapons cases, defendant's dangerous criminal history and dishonesty with ISO.
- 60-day jail sanction to be suspended when defendant went to inpatient treatment ordered at original sentencing, sentenced to 180 days prison at first PV hearing, revoked at second PV hearing.
- COA upheld revocation and also considered language used at first PV hearing.
- The Supreme Court stated, "we discern the district court's remarks to Clapp were akin to the reasoning historically relied upon by district courts in exercising unfettered discretion to revoke probation for any violation and impose an underlying prison sentence." *Id.* at 991.



**PUBLIC
SAFETY/OFFENDER
WELFARE
CONTINUED**

- Broad statements about continued drug usage and past behavior are likely not enough. See *State v. Duran*, No. 119,303 2019 WL 2554125 (Kan.App. 2019)(unpublished opinion).
- Defendant committed a new crime while on probation.
- Judge gave defendant the choice between probation and prison during dual violation/sentencing hearing.
- Stated “no tolerance policy” while on probation, defendant would be revoked for any violation.
- Defendant tested positive for methamphetamine 3 days after he was released.
- Judge revoked him making comments about the offender’s welfare/public safety.

District Court stated: “I understand your desire not to go to prison. I understand the rationalization that you justify your desire to not go to prison despite your long-term addiction. But I’m going to find that reinstatement of probation is not in your best interest, would not be in your welfare because you are likely to obtain new probation violation matters based on repeat behaviors, as you’ve already shown in the prior probation warrants. Drug usage, weapon possession. You have the possibility of incurring new charges. Public safety’s impacted in a negative way because of the demonstrated history and the, again, possibility that you would have possession and possibly use of weaponry in the future. You would certainly be fueling the drug economy, which is illegal in and of itself.” *Id.* at 765.

COA: “... “if courts are allowed to make an offender welfare finding based on the likelihood that a person addicted to drugs is going to relapse, then (c)(9) would swallow up the graduated sanctions system.” Likewise, if courts can make an offender welfare finding because a person might violate his or her probation again, the exception will swallow the rule. And if courts can base their public safety findings on such generalized conclusions that a defendant’s continued drug usage fuels the drug economy, all probation revocations for drug usage could result in such a finding and the bypassing of intermediate sanctions.” *State v. Duran*, No. 119,303 2019 WL 2554125 (Kan.App. 2019)(unpublished opinion).



PUBLIC
SAFETY/OFFENDER
WELFARE
CONTINUED

State v. Duran, No. 119,303 2019 WL 2554125 (Kan.App. 2019)(unpublished opinion).

“Broad generalizations that equally could apply to all similar cases are not sufficiently particularized to meet the requirements of K.S.A. 2018 Supp. 22-3716(c)(9)(A).” *Id.* at 767.

“A district court’s finding under K.S.A. 2018 Supp. 22-3716(c)(9)(A) that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by imposing intermediate sanctions for a probation violation is not specific enough to bypass intermediate sanctions if an appellate court must infer from the judge’s finding the particularized reasons why public safety would be jeopardized or the offender’s welfare would not be served.” *Id.*

**STATE V. MARSHALL,
NO. 127,768, 2025 WL
2267356
(KAN. APP.
2025)(UNPUBLISHED
OPINION).**

- Pled no contest to 2 counts of aggravated sexual battery, dispositional departure to probation (dispositional departure exception not relied on in PV hearing).
- State alleged that Marshall admitted to using illegal drugs multiple times (including within three days of sentencing), missed therapy and treatment appointments, did not report as directed within a week of starting probation, and lost his job. The State further claimed Marshall had not completed the required risk assessment and, to date, had not provided proof of scheduling the assessment.
- At PV hearing, Marshall admitted to most of the violations.
- Defendant was revoked with no prior sanction.
- COA found that the district court made the necessary particularized findings.
- **Put another way, to bypass intermediate sanctions under K.S.A. 22-3716(c)(7)(A), the district court must identify the relevant factors that are specific to the defendant, describe how these factors jeopardize public safety, and explain why these harms would not be resolved if the defendant were to serve an intermediate sanction.**

STATE V. MARSHALL

- After reviewing the record, we are convinced that the district court made sufficiently particularized findings to justify bypassing intermediate sanctions under [K.S.A. 22-3716\(c\)\(7\)\(A\)](#) in this case. The district court first identified factors specific to Marshall and explained how those factors jeopardized public safety. It noted his Level 4A score on the original psychosexual evaluation—reflecting a risk of recidivism twice that of the average individual convicted of a sexually motivated offense. The court observed that Marshall's drug use was “tied into” the commission of his underlying offenses. It then emphasized that Marshall had “disregarded” multiple court orders—he had continued to use drugs and had failed to complete the updated risk assessment, attend treatment and therapy, and report to his probation officer—all measures the court made clear were necessary to “alleviate [its] concerns” about the threat Marshall posed to the public's safety. Finally, relying on the psychologist's expert testimony, the court found that Marshall's noncompliance signaled a higher risk that he would reoffend.
- The court then found that a brief jail sanction would not decrease the likelihood of future harm because Marshall had “no intent to get any help for [these] underlying issues.” In the court's view, even if an intermediate sanction were imposed, Marshall would likely continue to delay treatment, persist in his drug use, and remain at risk of reoffending. The court expressly found that “any sanction” short of revocation would not make “any difference.”
- *State v. Marshall*, No. 127,768, 2025 WL 2267356 at *3 (Kan. App. 2025)(unpublished opinion).

REVOCACTION WITHOUT PREVIOUS SANCTION

New misdemeanor or felony

State v. Williams, No. 112,228, 2015 WL 5613253
(Kan.App.2015)(unpublished opinion)

- Defendant picks up murder charge while on probation
- Bound over at preliminary hearing (first degree murder and criminal possession of firearm)
- At PV hearing, judge took judicial notice that defendant had been bound over & commented that another judge found PC to bind defendant over
- Court commented that he reviewed that hearing and ruling made; found sufficient evidence for violation but didn't state which standard he used
- Defendant revoked
- COA reversed stating, "a district court may not impose a probable cause standard in place of the preponderance of the evidence standard. Since the mere fact that Williams was bound over for trial under the probable cause standard was insufficient evidence to revoke Williams' probation, and it appears the wrong legal standard was employed to determine whether Williams violated his probation, we reverse the district court's order revoking probation and remand the matter for a new probation revocation hearing." *Id.* at *8.

REVOCAATION WITHOUT PREVIOUS SANCTION

Absconding

K.S.A. 22-3716(c)(7)(D) Offender absconds from supervision while offender is on probation assignment to a community correctional services program, suspension of sentence or nonprison sanction

Absconding defined in *State v. Dooley*

“the State must show, and the district court must find, that the probation violator engaged in some course of action (or inaction) with the conscious intent to hide from or otherwise evade the legal process, such as intentionally avoiding probation supervision by hiding within or secretly leaving the jurisdiction.” *State v. Dooley*, 308 Kan. 641, 423 P.3d 469 (2018).

ABSCONDING CONTINUED

Dooley applied in *State v. Walker*

Defendant was on probation and parole in Kansas

A year of non-reporting, went to Texas without notifying P.O., record not clear how he returned to KS or how long he was in TX

Revoked as an absconder and new misdemeanor in district court (box checked on J.E.)

COA stated:

“There were no facts before the district court to conclude Walker absconded from supervision because **no evidence suggested he was hiding within or secretly leaving the jurisdiction to evade legal process**. No one testified about Walker's whereabouts during his nearly year-long nonreporting period. The affidavits filed with the district court show Walker did not notify his ISO he was leaving Kansas until he was already in Texas in July 2016. However, the affidavits are silent about whether Walker left Kansas to evade legal process.” *State v. Walker*, No. 118,411, 2018 WL 6005242 (Kan.App. 2018) (unpublished opinion).

→ Court noted that no one testified about defendant's whereabouts

→ Make a clear record of offender's whereabouts and why it is believed the offender has absconded.



ABSCONDING CONTINUED

- Defendant reported to P.O. once; provided a local KS address and phone number
- Oatis tried to call P.O. twice in 2012, but no caller ID; P.O called the number he had been given with no response
- P.O. learned that Oatis was living in Illinois & had been charged with crimes there
- At violation hearing in 2018, Oatis was revoked as an absconder
- COA stated:
- “The evidence shows that after two phone calls, Oatis left the state and did not try to contact the CSO. Then for over five years, Oatis made no attempt to contact his probation officer. He purposely chose to evade the legal process of the district court by secretly leaving the jurisdiction.” State v. Oatis, No. 120,014, 2019 WL 4230102 at *3 (Kan.App. 2019) (unpublished opinion).
- “Based on the evidence, a reasonable person could conclude that Oatis did more than just fail to report. See State v. Anhorn, No. 111,903, 2015 WL 3632493, at *3 (Kan. App. 2015) (unpublished opinion) (failing to report for three months, leaving the state without telling the probation officer or providing a forwarding address, and being arrested out of state provides substantial evidence that a probationer departed secretly and thus absconded using the Huckey standard). Oatis' secret move to Illinois and his consistent flouting of the conditions of his probation for over five years show his intent to evade the legal process.” Id. at *4.

PV Sanctions – hearing waived

- (4) Except as otherwise provided, if the defendant waives the right to a hearing, the following sanctions may be imposed without further order of the court:
- (A) If the defendant was on probation at the time of the violation, the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h); and
- (B) if the defendant was assigned to a community correctional services program at the time of the violation, the defendant's community corrections officer, with the concurrence of the community corrections director, may impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h).

K.S.A. 22-3716(b)(4)

State v. McRoberts, 65 Kan.App.2d 481, 567 P.3d 905 (2025).

- McRoberts initially entered diversion; diversion revoked & defendant placed on probation
- While on probation, her PO imposed a two-day jail sanction (no court hearing)
- A few months later, with no other sanctions, state moved to revoke probation
- 31 different probation violations mentioned in motion
- Defendant's probation is revoked & she's sent to prison
- Note: Defendant committed traffic misdemeanors while on probation, however, judge specifically stated that this was not the reason for revocation, but rather the quick dip was the reason
- Defendant appealed arguing that the judge could not legally revoke her probation because the court needed to impose a quick dip, not PO

State v. McRoberts, 65 Kan.App.2d 481, 567 P.3d 905 (2025).

- At revocation hearing, McRoberts stipulated she committed misdemeanors on probation, yet the district court judge did not cite the "new crime exception" in K.S.A. 22-3716(c)(7)(C) at the hearing.
- COA states that this implicit finding has been enough to revoke on the exception in the past, however, judge here made it clear that he was not using the exception to revoke.
- A sanction imposed under subparagraph (c)(1)(B) (by the court) is distinct from a sanction imposed under subsection (b)(4) (by the probation officer).
- K.S.A. 2021 Supp. 22-3716(c)(1)(C) permits a court to revoke if "the violator already had a sanction imposed pursuant to subsection (c)(1)(B)." And (c)(1)(B) speaks only to sanctions that "the court may impose."
- COA held that a prior two- or three-day jail sanction imposed by a probation officer under K.S.A. 2021 Supp. 22-3716(b)(4)(A) cannot satisfy the requirement that such a jail sanction be "imposed pursuant to subsection (c)(1)(B)" before the district court can revoke probation under K.S.A. 2021 Supp. 22-3716(c)(1)(C).
- *Note: The Kansas Supreme Court granted a petition for review in *State v. Whiteford*, No. 127,393, 2025 WL 1720587 (Kan. App. 2025), *rev. granted* October 29, 2025.




Early release from probation

In addition to the provisions of subsection (a), a defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court. The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests. K.S.A. 21-6608(d).

Which PVJE should
be used?

SB 123 Programs

SB 123 FROM START TO FINISH

1. Client is convicted of qualifying offense or enters into diversion agreement (RAFT).
2. CSO conducts risk/needs assessment and score meets criteria.
3. CSO conducts SASSI screening and client is found to have high probability of substance use disorder (SUD).
4. CSO/ISO refers client to certified provider for clinical SUD assessment, resulting in a recommendation for treatment or education (may occur pre or postsentence).
5. After sentencing or diversion begins, CSO/ISO collaborates with provider to start client in recommended level of care.
6. Client has access to 18 months of funding from first date in treatment.
 -  They are not required to stay in treatment the full 18 months and there is no minimum length of service.
7. Client moves up and down the continuum of care as clinically indicated throughout their time in treatment.
8. Treatment provider determines when client is appropriate for discharge from treatment, with collaboration from supervision officer.
9. Client is discharged from supervision.

Felony conviction of K.S.A. 21-5705 or K.S.A. 21-5706 or certain nondrug felonies (SB 123/SB 123+ Eligibility)

Eligible

Kansas Resident

AND

Meets assessment criteria for participation as determined by Kansas Sentencing Commission

AND

Lawfully present in U.S. ✓

AND

Drug offense classified as 5C-5I (mandatory) OR 5A or 5B with only severity level 8-10 prior person felonies if convicted of K.S.A. 21-5706 [Possession] (discretionary; court finding) ✓

OR

Drug offense classified as 4E-4I if convicted of K.S.A. 21-5705 [Distribution] (discretionary; court finding) ✓

OR

Nondrug, nonperson offenses severity levels 10C-10I, 9C-9I, 8C-8I, or 7C-7I (mandatory) OR 10A, 10B, 9A, 9B, 8A, 8B, 7A or 7B and with only severity level 8-10 prior person felonies (discretionary; court finding) ✓

Not Eligible

3rd or subsequent conviction of K.S.A. 21-5706 [Possession] (Special Rule #26) ✗

OR

Current conviction of **Attempt, Conspiracy, or Solicitation to Commit** K.S.A. 21-5705 or K.S.A. 21-5706 ✗

OR

Prior conviction(s) of unlawful **manufacturing, cultivation, or distribution** of controlled substances or receiving proceeds therefrom ✗

SB 123+ Changes Effective July 1, 2026: [HB 2192](#)

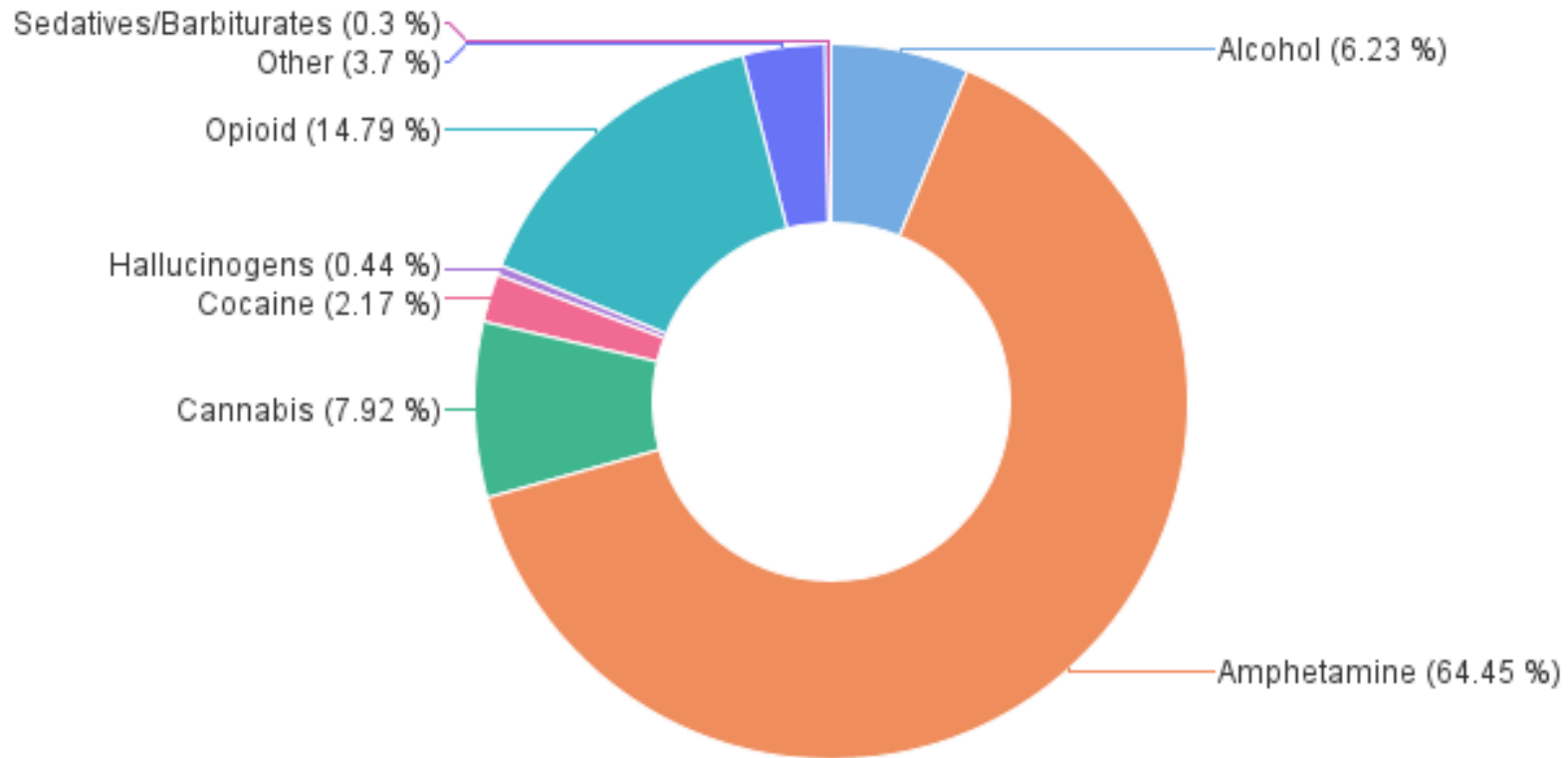
- Special Rule 27
 - BURGLARY WITH TWO OR MORE PRIOR CONVICTIONS FOR THEFT, BURGLARY OR AGGRAVATED BURGLARY The sentence for a violation of burglary, K.S.A. 2025 Supp. 21-5807(a), when the offender has any combination of two or more prior convictions of theft, (K.S.A. 21-3701, prior to its repeal), burglary (K.S.A. 21-3715, prior to its repeal), aggravated burglary (K.S.A. 21-3716, prior to its repeal), theft of property as defined in K.S.A. 2025 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2025 Supp. 21-5807, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. Such sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2025 Supp. 21-6804(p). There is no indication in the statute it would include priors that are substantially similar offenses from another state.
- Special Rule 29
 - FELONY THEFT WITH THREE OR MORE PRIOR CONVICTIONS FOR A FELONY THEFT, BURGLARY, OR AGGRAVATED BURGLARY The sentence for a violation of theft of property, K.S.A. 2025 Supp. 21-5801, when the offender has any combination of three or more prior felony convictions for theft (K.S.A. 21-3701, prior to its repeal), burglary (K.S.A. 21-3715, prior to its repeal), aggravated burglary (K.S.A. 21-3716, prior to its repeal), theft of property as defined in K.S.A. 2025 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2025 Supp. 21-5807, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. K.S.A. 2025 Supp. 21-6804(p). There is no indication in the statute it would include priors that are substantially similar offenses from another state.
- Special Rule 47
 - RESIDENTIAL BURGLARY WITH CRIMINAL HISTORY C, D, OR E CRIMINAL HISTORY This may be imposed by K.S.A. 2025 Supp. 21-5807 for the crime of residential burglary. The law creates a special sentencing rule for burglary of a dwelling to make the sentence presumptive imprisonment if the offender has a criminal history score of 7C (one previous person felony and one previous nonperson felony), 7D (one previous person felony), or 7E (three or more nonperson felonies). K.S.A. 2025 Supp. 21-6804(x).

SB 123+ Changes Effective July 1, 2026: [HB 2192](#)

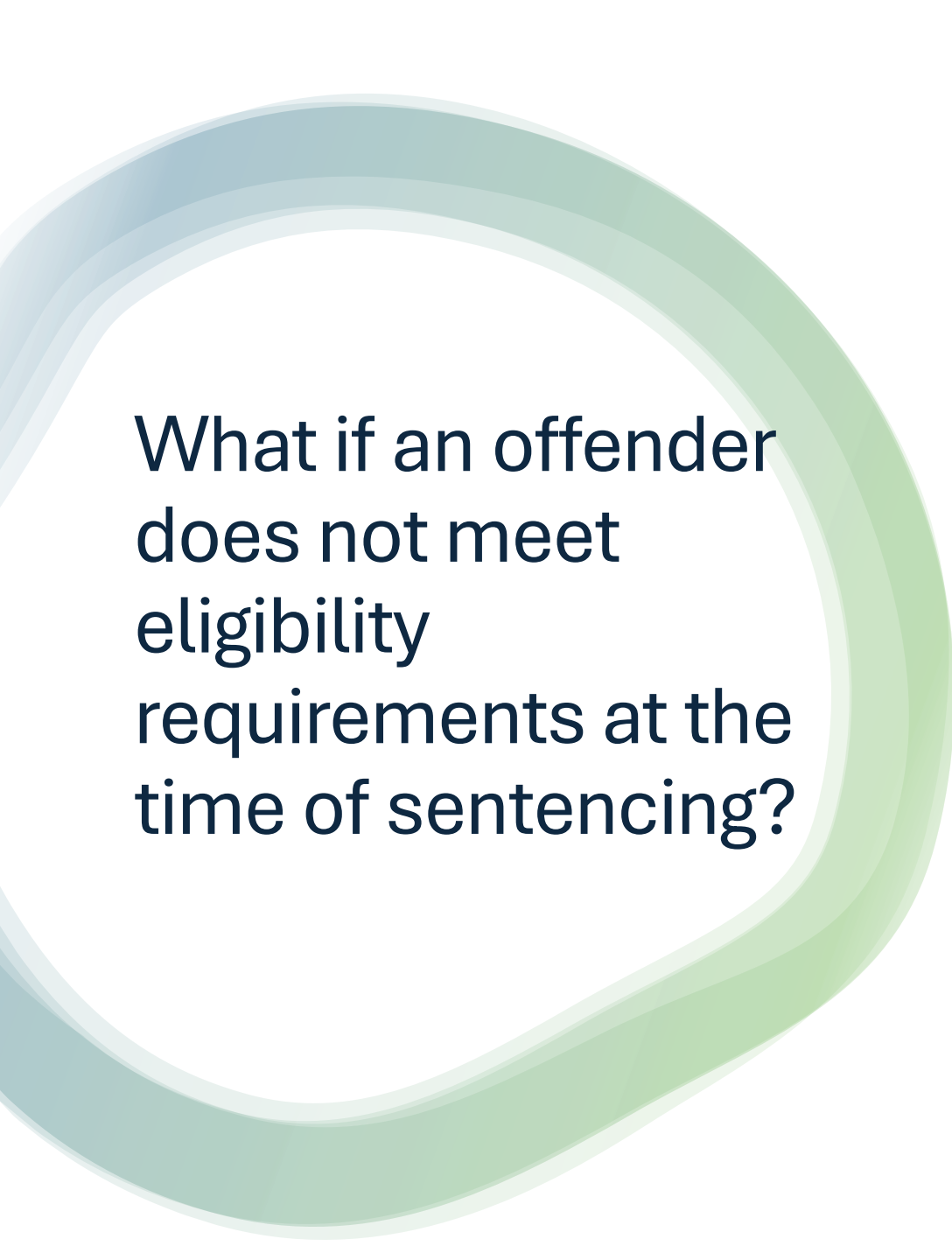
- Special Rule 30
 - SUBSTANCE ABUSE UNDERLYING FACTOR* The court may make findings that substance abuse is the underlying factor in the commission of crimes under special rules #27 and #29 above and place the offender in an intensive treatment program for at least 4 months if the state substance abuse facility is likely to be more effective than prison in reducing the risk of offender recidivism, serve community safety interests and promote offender reformation; return to court upon successful completion. K.S.A. 2025 Supp. 21-6804(p). *While this option is authorized by statute, it has never been funded and is not, therefore, an available option.
- Special Rule 31
 - THIRD OR SUBSEQUENT CRIMINAL DEPRIVATION OF A MOTOR VEHICLE The sentence for a third or subsequent violation of criminal deprivation of property that is a motor vehicle pursuant to K.S.A. 2025 Supp. 21-5803(b) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2025 Supp. 21-6804(n).
- Special Rule 37
 - SECOND OR SUBSEQUENT IDENTITY THEFT OR IDENTITY FRAUD The sentence for a violation of identity theft or identity fraud as defined in K.S.A. 2025 Supp. 21-6107, or any attempt or conspiracy to commit such offense, shall be presumptive prison when the offender has a prior conviction for a violation of identity theft under K.S.A. 21-4018, prior to its repeal, or identity theft or identity fraud under this statute, or any attempt or conspiracy to commit such offense. K.S.A. 2025 Supp. 21-6804(u). There is no indication in the statute it would include priors that are substantially similar offenses from another state. Such sentence is not considered a departure and is not subject to appeal.

FY 2025 SB 123 Spending By Diagnosis

Total Paid Amount by Diagnosis



If an offender is ineligible for SB 123 (i.e. SR 26), does that automatically make them ineligible for SB 123+?



What if an offender does not meet eligibility requirements at the time of sentencing?

The court may order an offender who otherwise does not meet the assessment score requirements of subsection (c) to undergo **one additional drug abuse assessment** while such offender is on probation. Such offender may be ordered to undergo drug abuse treatment pursuant to subsection (a) if such offender is determined to meet the requirements of subsection (c). **The cost of such assessment shall be paid by such offender.** K.S.A. 2025 Supp. 21-6824(i).

Discharge from SB 123/SB 123+

- Offenders in drug abuse treatment programs shall be discharged from such program if the offender:
 - (A) Is convicted of a new felony; or
 - (B) has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding.

K.S.A. 2025 Supp. 21-6824(f)(1)

SB 123 Revocation/No Prior Sanction

- Defendant pled guilty to Possession of Meth
- Criminal History 5-B
- Revoked with no prior sanction
- Drug treatment under K.S.A. 2021 Supp. 21-6824(c) is a dispositional departure. K.S.A. 2021 Supp. 21-6824(e); *State v. Kling*, No. 127,105, 2024 WL 4524289, at *2-3 (Kan. App. 2024) (unpublished opinion), rev. denied 321 Kan. 793 (2025). The district court did not need to impose intermediate sanctions before revoking probation. And, given Fergel's 27 prior convictions as well as his behavior on probation, the district court's decision to revoke was not unreasonable. *State v. Fergel*, No. 129,162, 2026 WL 972514 at *2 (Kan. App. 2026)(unpublished opinion).

*Note: this was not a mandatory SB 123 case.

In a case where the defendant was revoked from probation after he failed to participate in the required drug treatment program under SB 123, the COA found that the defendant was still entitled to the sanction structure as set forth in K.S.A. 22-3716 even though his conduct also fell under K.S.A. 21-6604(n)(2). *State v. Schmidt*, Nos. 128,219, 128,220, 2025 WL 1602560 at *2 (Kan. App. June 6, 2025)(unpublished opinion) review denied (Sept. 9, 2025).

*Note: this was a mandatory SB 123 case.



RAFT Program Eligibility

K.S.A. 21-5706 only

5C-5I

No prior felony convictions of manufacture, cultivation or distribution, or unlawful acts involving proceeds from certain drug crimes

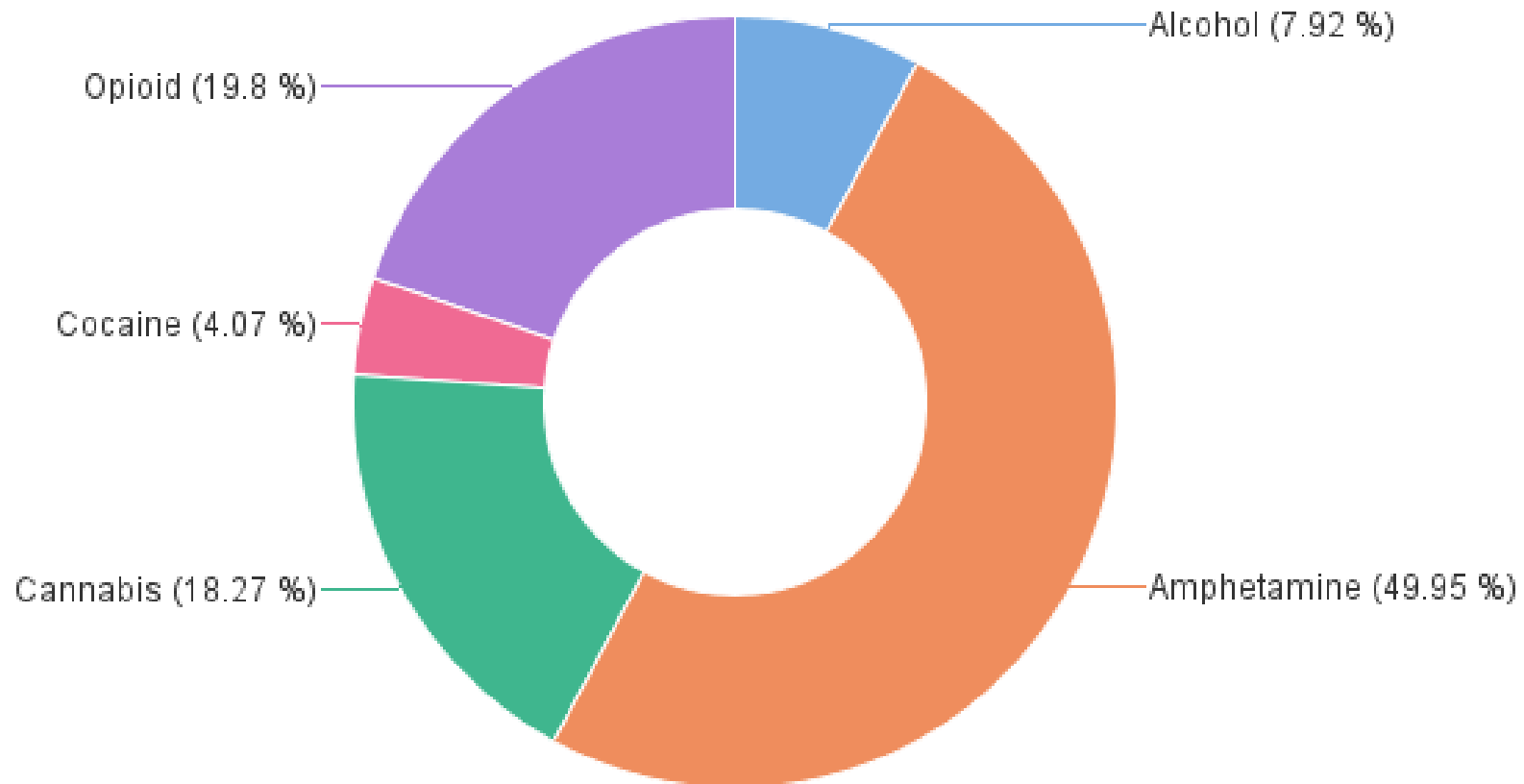
**Includes any substantially similar offense from another jurisdiction.*

See K.S.A. 2025 Supp. 21-6825(a)

Once the eligibility criteria is met, the offender is eligible for all services currently offered under the SB 123 program through KSSC.

FY 2025 RAFT SPENDING BY DIAGNOSIS

Total Paid Amount by Diagnosis



Discharge from the RAFT Program

- RAFT divertees shall be discharged from the program if the divertee:
 - (A) Is convicted of a new felony; or
 - (B) has a pattern of intentional conduct that demonstrates the divertee's refusal to comply with or participate in the treatment program in the opinion of the county or district attorney.
- (2) Divertees who are discharged from such program pursuant to paragraph (1) shall be subject to the revocation provisions of the divertee's diversion agreement.

See K.S.A. 2025 Supp. 21-6825(e)(1)

Can an offender
qualify for SB
123 treatment
after being
revoked from
RAFT?

Nothing in case law...yet

However, because the offender will fall into grid blocks 5-C-5-I of the sentencing guidelines, then the plain language of K.S.A. 21-6824 mandates SB123 drug treatment if offender qualifies.
Offender would still need to meet the risk/needs criteria.

Questions?



KSApp Questions

Payton.Fenwick@ks.gov



Desk Reference Manual



Training

Francis.givens@ks.gov



Assistance With
Questions

KSSCArtorney@ks.gov

KSSC Resources