

Creating Effective Impact Statements

August 10, 2010



Helen Pedigo, Executive Director
Kansas Sentencing Commission

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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. 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.

13

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*

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;*

32 ~~manufacture any methamphetamine as defined by subsection (d)(6) 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)(6) 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 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 decocatinized coca leaves or extractions of coca
 4 leaves which do not contain cocaine or ecgonine.
 5 $\Leftrightarrow(m)$ "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 li-
 8 ability. "Opiate" does not include, unless specifically designated as con-
 9 trolled under K.S.A. 65-4102, and amendments thereto, the

15 $\Leftrightarrow(o)$ "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.

22 association or any other legal entity"

24 $\Leftrightarrow(q)$ "Poppy straw" means all parts, except the seeds, of the opium
 25 residue after maceration

30 $\Leftrightarrow(s)$ "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.

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)~~ (u) "Simulated controlled substance" means any product which

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:

- 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;

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;~~

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:

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

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**An Impact Statement
Should be Useful to Policy
Makers**

Understand Your Audience

For whom are you preparing the impact statement?

- Legis. Comm./Chair/Leadership
- Commission Members
- Governor
- Other Agencies
- General Public

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



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.

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- 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.

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.



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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

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.

How Does the Legislative Process Affect the Statement?

Be prepared and available to:

- Testify
- Defend the Credibility and Accuracy of the Impact Assessment
- Clarify Statements (zero impact – within 10 year projection period)
- Explain Technical Issues or Limitations of the Assessment

How Does the Legislative Process Affect the Statement?

Amended Statement May Be Necessary:

- Legislative Amendment
- Language Misunderstanding (eliminate early, if possible)
- Clarification (zero impact – within 10 year projection period)

The background is a solid teal color. In the lower half, there is a faint, semi-transparent graphic of two hands shaking, rendered in a lighter shade of teal. The text is centered in the upper half of the image.

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

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, this bill 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.

- 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.

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

Agency and personal reputations are
on the line.



Re: Fiscal Note, SB 344 Kansas Sentencing Commission Department of Corrections Merger

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 journal entry 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 123 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 merger 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 merger, 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

1. Get as much information about the bill and the issue as you reasonably can prior to drafting the bill summary
2. Tailor the impact statement to the audience
3. Amend the statement as necessary

Creating Effective Impact Statements

August 10, 2010



Helen Pedigo, Executive Director
Kansas Sentencing Commission

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