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Author: Don Stemen, Andres F. Rengifo

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Alternative Sentencing Policies for Drug Offenders: Evaluating the Effectiveness of Kansas Senate Bill 123

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Don Stemen, Principal Investigator
Loyola University Chicago

Andres F. Rengifo, Principal Investigator
University of Missouri, Saint Louis

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Introduction

The number of individuals arrested, convicted, and imprisoned for drug possession in the United States has grown substantially over the last thirty years, with drug possessors accounting for an increasing share of criminal justice resources. Approximately 1.4 million arrests for drug possession were reported in 2008, representing roughly 10 percent of all arrests in the United States and a 210 percent increase in drug possession arrests since 1982 (Federal Bureau of Investigation, 1983, 2009). By 2004, 161,000 persons were convicted annually of felony drug possession in state courts, up from 58,000 persons in 1986 (Durose & Langan, 2007; Langan, 1989). These increases in arrests and convictions have fueled a significant increase in the number of prison admissions for drug possession, with persons convicted of drug possession now representing roughly 15 percent of all commitments to state prisons, up from just 1.3 percent in 1983 (Bureau of Justice Statistics, 1986, 2006).

As state incarceration rates continued to surge through the late 1990s, policymakers and corrections administrators encountered growing fiscal constraints and social scrutiny that weakened the systematic use of incarceration as a response to low-level drug offenders (Jacobson, 2005; Tonry, 1996). Many local jurisdictions reacted to these trends by strengthening existing drug court and prosecutorial diversion programs (see, e.g., King, 2007; MacKenzie, 2006; Petersilia, 1998). Some states, like Michigan and New York, responded by repealing mandatory prison sentences for most drug offenses (Wool & Stemen, 2004). Arizona, California, and Kansas, however, went one step further and implemented mandatory probation sentences for individuals convicted of simple drug possession – reforms that essentially prohibited the use of prison for certain drug offenders and enhanced community-based treatment and supervision (see Arizona’s Proposition 200 codified at Arizona Revised Statutes §13-901.01;

California's Proposition 36 codified at California Penal Code §1210; Kansas' Senate Bill 123 codified at Kansas Statutes Annotated §21-4729).

Like other intermediate sanctions focused on prison diversion, Arizona's Proposition 200 (Arizona Revised Statutes §13-901.01), California's Proposition 36 (California Penal Code §1210), and Kansas' Senate Bill 123 (Kansas Statutes Annotated §21-4729) were largely motivated by a system level goal of reducing overall prison populations (see, e.g. Petersilia & Turner, 1990a, 1993; for goals of specific legislation, see Drug Medicalization, Prevention and Control Act of 1996; Kansas Senate Judiciary Committee, 2003; Substance Abuse and Crime Prevention Act of 2000). At the same time, the reforms elevated the primacy of treatment and emphasized the need to achieve an individual level goal of reducing the recidivism rates and substance abuse problems of program participants.¹ These goals are complementary. The system level goal of reducing prison populations is generally achieved by both diverting individuals from prison at sentencing and reducing returns to prison following revocation or reconviction (the product of achieving individual level goals and, at the least, changes in organizational responses to technical violations).

Although the system and individual level objectives are substantively interrelated, in practice they may not be closely aligned. On the one hand, an initiative can effectively divert offenders from prison at sentencing, but that does not ensure that those offenders will have lower recidivism rates than their counterparts in other community-based supervision schemes since supervision practices may not differ across programs or treatment may not be effective at changing behavior (Blomberg, 2003; Tonry, 1996; Tonry and Lynch, 1996). On the other hand,

¹ Initiatives may refer to additional objectives at the systemic or individual-level including for example, reducing the prevalence of substance abuse, improving the social functioning of offenders, or enhancing the allocation of supervision or treatment resources. Here we focus on what we consider to be the primary objectives of such initiatives (public safety and use of costly prison space).

offenders in drug diversion programs may have lower recidivism rates and perform better than offenders in other forms of community-based supervision, but that does not necessarily translate into reductions in prison populations if few offenders are actually diverted from prison or if the reductions in recidivism rates are relatively small (Blomberg, 2003; Tonry, 1996; Tonry and Lynch, 1996).

Indeed, research has shown that intermediate sanctions focused on prison diversion generally have limited diversionary impacts, largely because poorly-defined eligibility requirements or the discretionary decision-making of courtroom actors often leads to low numbers of prison-bound offenders being sentenced to the intermediate sanction (Petersilia, 1998; Petersilia & Turner, 1993; Tonry, 1996). Research has also found that such initiatives have limited individual level impacts, primarily because they increase levels of supervision for program participants, increasing the likelihood that probation officers will observe violations, or because they lack any significant treatment focus and fail to adequately address the potential underlying causes of criminal or substance abusing behavior (Petersilia, 1997; Petersilia & Turner, 1993; Tonry, 1996). The Arizona, California, and Kansas initiatives, however, have the potential to overcome some of the challenges confronted by previous intermediate sanction efforts. These new initiatives create mandatory sentencing requirements, which may increase actual diversion; they also create enhanced protocols for treatment interventions and restrictions on revocation practices, which may ensure revocation rates below those of other sanctions.

A dearth of research exists, however, evaluating simultaneously the system and individual level impacts of such mandatory intermediate sanction/treatment efforts. Only California's Proposition 36 – a voter-initiated measure that created mandatory 12-month probation sentences with treatment for non-violent individuals convicted of drug possession and drug-related

offenses – has received consistent scholarly attention. Evaluations of Proposition 36 have found mixed results, showing that Proposition 36 reduced overall admissions to prison and incarceration costs but had little impact on recidivism rates of program participants (Auerhahn, 2004; Ehlers & Ziedenberg, 2006; Farabee, Hser, Anglin, & Huang, 2004; Longshore et al., 2004; Longshore et al., 2005; Urada et al., 2008). In the end, Proposition 36 may have succumbed to some of the design and implementation issues that have weakened other intermediate sanctions focused on prison diversion. For example, under Proposition 36, the definition of eligible “drug-related” offenses was left largely to local actors, which prevented consistent targeting of participants (Longshore et al., 2004). While the imposition of a Proposition 36 sentence was mandatory on judges, defendants could opt-out of the sentence and receive either a prison sentence or an alternative community-based sentence, which diminished overall diversion impacts (Longshore et al., 2004). Finally, revocation practices and the enforcement of treatment participation were not uniform across the state, which may have limited Proposition 36’s impact on recidivism rates (Urada et al., 2008). As such, it remains unclear if other state-wide mandatory intermediate sanction/treatment efforts can overcome these problems and simultaneously achieve the intended system and individual level impacts.

To address some of these and other limitations of the research on state-wide drug treatment initiatives and to provide a more comprehensive policy focus on their context, processes, and impacts, we undertook a NIJ-sponsored evaluation of Kansas’ Senate Bill 123 (SB 123). Enacted in 2003, SB 123 created mandatory community-based supervision and drug treatment for nonviolent offenders convicted of a first or second offense of simple drug possession (Kansas Statutes Annotated §21-4729). Unlike Proposition 36, SB 123 clearly defined eligible offenders in terms of offense of conviction and prior criminal history, created a mandatory sentence

requiring judges to impose a community-based sentence with treatment and requiring offenders to accept that sentence and treatment, and articulated clear rules limiting the use of revocation for violations of the SB 123 sentence. These factors had the potential to overcome many of the deficiencies that undermined the impact of previous state-wide intermediate sanction efforts – ensuring diversion at the sentencing, reducing recidivism rates for targeted offenders, and, as a result, reducing overall prison populations.

This study examines SB 123’s combined impact on diversion, recidivism rates, and overall prison populations. It then explores the impact of SB 123 on the work routines of criminal justice system actors and the process of implementing SB 123. The goal is to provide an assessment of the functioning and impact of SB 123 in Kansas and a set of recommendations for the effective implementation of similar mandatory diversion/treatment programs in other states.

Intermediate Sanctions and Compulsory Drug Treatment

When properly targeted at large groups of prison-bound offenders, intermediate sanctions are intended to redirect substantial numbers of individuals from prison – reducing both prison crowding and populations – while providing a lower-cost alternative to incarceration (Morris & Tonry, 1990). Yet, these programs are also often described as being more effective at reducing recidivism than either traditional probation or incarceration (see, e.g., Petersilia, 1998). In order to politically justify diverting offenders from prison, proponents of intermediate sanctions often argue that offenders will not only be subjected to more control under the intermediate sanction than under traditional probation, but will also receive services or supports that will reduce criminal offending and increase public safety in the long term. Thus, to be viable, intermediate sanctions focused on prison diversion must not only achieve a system level goal

(diversion/reduced prison populations) but also an individual level goal (reduced recidivism).. SB 123 achieves this latter goal through the use of compulsory drug treatment.

The use of compulsory drug treatment has long been a key component of U.S. drug policy (for reviews see Anglin & Hser, 1991; Inciardi, 1988; Maddux, 1988). Such approaches have included, at one extreme, the civil commitment of drug offenders in residential facilities and, at the other, the imposition of treatment as a condition of prosecutorial diversion, probation, or a drug court sentence (Anglin & Hser, 1991). In the former case, compliance with treatment protocols is enforced through secure confinement and physical control over the offender; in the latter, compliance is enforced through enhanced community-based supervision (Farabee, Prendergast, & Anglin, 1998). The enhanced supervision of offenders on community-based supervision reflects a broader set of recent innovations in intermediate sanctions seeking to increase levels of offender accountability (Petersilia & Turner, 1993). As such, a number of these initiatives—e.g., intensive supervision programs (ISP), halfway houses, day reporting centers—do not consider drug treatment as part of their core components. Instead, they focus on the control and surveillance of offenders with treatment and other needs-oriented interventions generated through ancillary protocols.

Research indicates that such forms of compulsory drug treatment have a positive impact on a number of key offender outcomes (Peyton & Gossweiler, 2001; White & Gorman, 2000). The use of civil commitment, for example, has been shown to significantly reduce both drug use and criminal behavior (Anglin & Hser, 1991). In some studies, treatment linked to probation conditions decreased the likelihood of technical violations of probation and future criminality (Huebner, & Cobbina, 2007; Sinha, Easton, & Kemp, 2003; Vito, Wilson, & Klein, 1986). Studies of drug courts and prosecutorial diversion programs have shown comparable results

(Gottfredson, Najaka, & Kearley, 2003; Harrell, 1998; Harrell & Cavanaugh, 1995; Young, Fluellen, & Belenko, 2004). Research has also shown that compulsory compliance with treatment can be as effective as voluntary compliance with treatment (Hall, 1997; Wild, Roberts, & Cooper, 2002). Moreover, compulsory treatment can improve retention in treatment (Hiller, Knight, Broome, & Simpson, 1998; Leukefeld & Tims, 1988; Young, 2002; Young & Belenko, 2002), and higher retention rates have been found to improve offender outcomes (Anglin, 1988; Lang & Belenko, 2000; Simpson, Joe, and Brown, 1997; Young, Fluellen, & Belenko, 2004).

One limitation of prior research, however, has been its inability to clearly distinguish the compulsory nature of different drug treatment approaches (Farabee, Prendergast, & Anglin, 1998). Studies generally have considered the degree to which *compliance* with treatment is compulsory once an offender enters treatment, but have failed to consider the degree to which *entry* into treatment is compulsory. Further, prior research has overlooked the impact that differences in the compulsory nature of treatment entry – particularly the discretion allowed justice system actors in determining entry – may have on offender outcomes. Some reviews have suggested that the impact of drug treatment programs is limited by both net-widening effects and low participation rates (Anglin, Longshore, & Turner, 1999; Huebner & Cobbina, 2007; Klein, Miller, Noble, & Speiglmann, 2004), indicating that the discretion allowed to justice system actors may result in either treatment sentences for offenders not targeted for treatment or non-treatment sentences for some offenders targeted for treatment.

Programs like SB 123 (and Arizona’s Proposition 200 and California’s Proposition 36) attempt to ensure consistency in the application of treatment and to overcome some of these implementation challenges by making the imposition of treatment compulsory on justice officials. These programs essentially create a mandatory sentencing law requiring judges to

sentence eligible nonviolent drug possessors to community supervision and drug treatment in lieu of incarceration. But, mandatory treatment – like any other mandatory sentencing policy – may encounter problems of circumvention by justice officials who see non-incarcerative treatment sentences as too lenient for particular offenders (Tonry, 1996) or may lead to significant increases in the number of people sentenced under the policy as more defendants are willing to plead down (from drug sale to simple drug possession in the case of SB 123) to receive the non-prison sentence. In turn, such schemes may be less effective than other treatment approaches due to the relative absence of criteria for assessing offenders' amenability to treatment prior to sentence. Conversely, mandating that justice officials send all eligible offenders to treatment may be more effective by enhancing the access and delivery of services to a greater number of offenders.

Beyond these individual-level effects, many reviewers suggest that diversion programs may have limited effects on system-level outcomes as well (Anglin, Longshore, & Turner, 1999; Huebner & Cobbina, 2007; Klein, Miller, Noble, & Speiglmann, 2004; Padgett, Bales, and Blomberg, 2006; Taxman and Elis, 1999). Indeed, most research has shown that intermediate sanctions generally result in very little actual diversion from prison (Petersilia & Turner, 1993; Tonry, 1996), largely because the programs target very few offenders or because the programs involve offenders who would not have received a prison sanction in the absence of the program. Both outcomes could be due, in part, to a problem with the configuration of eligibility criteria for program participation and retention. Narrow eligibility requirements have been cited in several evaluations as a factor limiting the diversionary potential of intermediate sanction programs (see, e.g., Petersilia, 1998). In these instances, large numbers of inmates are deemed ineligible, thus, reducing the diversionary effect of the programs. In other instances, the eligibility criteria may

be too broad and general, thus resulting in a blurred target population and front-end net-widening effects (Anglin, Longshore, & Turner, 1999; Huebner & Cobbina, 2007; Klein, Miller, Noble, & Speigman, 2004; Padgett, Bales, & Blomberg, 2006). The potential for “front-end” net-widening increases when justice officials retain discretion over the allocation of a given sentence and circumvent the diversion program by placing individuals who are not targeted for diversion into the program; in the case of most diversionary approaches, this means the imposition of more severe sanctions for low-risk drug offenders and, in turn, a failure to divert prison-bound drug offenders (Tonry 1996; Tonry and Lynch, 1996).

This is likely because, while mandatory diversion programs may overcome front-end net-widening, they do not necessarily prevent *back-end* net-widening (Merritt, Fain, and Turner, 2006; Tonry, 1996). Diversion programs have the potential to increase the likelihood of a prison sentence for a technical violation due to stricter conditions, control, and surveillance under the diversion sentence (Padgett, Bales, and Blomberg, 2006; Tonry, 1996; Tonry and Lynch, 1996). Because such back-end net-widening results in higher failure rates and additional returns to prison, it may affect both individual and system outcomes – increasing recidivism rates and prison populations, respectively (Tonry, 1996). The diversion efforts in Kansas, in many respects, elevated the primacy of treatment within the intermediate sanction program and created protocols that had the potential to hold revocation rates in check. SB 123 altered revocation practices for offenders sentenced under the program, introducing graduated sanctions and creating a presumptive non-revocation sanction for violations of supervision conditions. Failure from SB 123 was defined broadly as “a pattern of intentional noncompliance” with treatment or supervision requirements. Positive drug tests or even subsequent convictions for possession

were not automatic triggers for termination of treatment, removal from SB 123, or revocation of the community corrections sentence.

The dual mandatory nature of Kansas' SB 123 was aimed at reducing both front-end and back-end net-widening by limiting the discretion of judges, offenders, and supervising officers. By making the imposition of a non-prison sentence mandatory and by requiring offenders to enter into treatment, SB 123 sought to ensure diversion from prison. By creating a continuum of mandatory drug treatment and providing significant funding for such treatment, SB 123 also sought to ensure reduced recidivism and improved offender performance. These goals, and the creation of the program itself, were driven by several resource and fiscal constraints in the state.

The Policy Context of Kansas Senate Bill 123

Prison Capacity, Corrections Costs, and Presumptive Sentencing Guidelines

By nearly every metric, the size of the nation's criminal justice system swelled in the past thirty years; and the trends in Kansas were no different than the rest of the country. Between 1980 and 1989, the prison population in Kansas grew 147 percent (Glaze & Bonczar, 2009; Snell, 1995). Over the course of just ten years, the state added over 3,600 inmates to the prison population, increasing the population from just 2,494 inmates to 6,172 inmates; it took Kansas eighteen years to add another 3,000 inmates. During this period of growth, policymakers responded by expanding prison capacity. Kansas added 2,200 beds to the prison system between 1985 and 1990, yet still could not keep pace with prison populations and the rapid influx of inmates quickly put strains on existing institutional capacities (Kansas Department of Corrections, 2001). Following five years of sustained growth, Kansas prisons were operating 34 percent above capacity through the late-1980s (Kansas Department of Corrections, 2001). In

1989, a federal court order was issued directing the state to develop a long-term plan to address capacity issues (Kansas Legislative Research Department, 2009).

These concerns shaped a number of strategies seeking to modify the structure of sentencing and release decisions in Kansas. One of these strategies was the creation of the Kansas Sentencing Commission (KSC) in 1989. Enabling legislation directed the KSC to develop a sentencing guidelines system that would take into account correctional capacities (See L. 1989, Ch. 225, Sec. 1). In 1993, based on the KSC's recommendations, Kansas abolished discretionary parole release and enacted a set of presumptive sentencing guidelines, with the explicit goal of moderating prison growth and controlling correctional resources (K.S.A. §21-4701 to -4728). The sentencing guidelines also sought to reserve incarceration for violent offenders, offsetting an increase in the severity of sentences for violent crimes with a greater use of probation for low-level offenses (Gottlieb, 1991; Rich, 2002).

The sentencing guidelines system ultimately developed consists of two separate, two-dimensional grids—one for drug offenses and one for non-drug offenses—that provide both dispositional and durational sentence recommendations based on the offense of conviction and the defendant's criminal history (see Appendix B for the drug sentencing grid). Drug offenses are divided into four levels based on the severity of the offense; Severity Level ID includes the most severe drug offenses (e.g. manufacture) and Severity Level IVD includes the least severe drug offenses (e.g. possession). Criminal history is divided into nine categories based on the number and type (person versus nonperson offenses) of prior convictions; Criminal History Score A includes the most serious criminal histories (three or more felony person offenses) and Criminal History Score I includes the least serious criminal histories (one prior misdemeanor offense or no record). Thus, the drug sentencing grid consists of thirty-six cells. Each cell

provides a presumptive disposition (prison or probation) and three potential sentence lengths – a presumptive sentence, a mitigated sentence, and an aggravated sentence. As a presumptive sentencing guidelines system, judges in Kansas are required to impose the presumptive disposition and duration of sentence prescribed by the guidelines but may “depart” from the recommended sentence (i.e. impose a sentence of a different disposition or duration) based on “substantial and compelling” reasons. Sentences that do not adhere to the presumptive sentence recommendations of the guidelines may be appealed by either the defendant or the prosecution.

In the short-term, sentencing guidelines appeared to mitigate the system’s expansion and triggered a greater volume of community-based sentences (Fabelo, 2004). Following the rapid growth in prison populations in the 1980s, Kansas experienced a slow-down in prison growth in the early 1990s. Between 1990 and 1994, the prison population in Kansas grew just 1.7 percent annually (compared to 7.2 percent annual growth over the previous five-year span) (Kansas Department of Corrections, 2001). This lull in growth, however, was not sustained. In the long-term, Kansas’s guidelines could not counteract other drivers of prison expansion, notably increases in the number of persons admitted to prison for technical violations of probation or parole. Beginning in 1995, Kansas’s prison population grew at an annual rate of roughly 5 percent before peaking in 2004 (Kansas Department of Corrections, 2005). During this period, the KDOC continued to expand capacity to meet demand.

Beginning in 2000, however, Kansas faced continued budget constraints. Between fiscal years 2000 and 2001, the state had the sixth smallest growth in general fund expenditures in the country (1.4 percent, well below the national average of 8.3 percent) (National Association of State Budget Officers, 2001:30). From 2001 to 2004, the state’s expenditures exceeded revenues in every fiscal year (National Association of State Budget Officers, 2001, 2004). The KDOC also

faced a growing divide between the size of budget requests and the amount of funds approved by the legislature, which provided some indication that budget restrictions would continue to increase over time. Given the downturn in state revenues, prison expansion was not considered during this period, despite a continued increase in prison populations. By the early 2000s the strategy for dealing with increased demand shifted from a passive adaptation of expansion to a proactive strategy aimed at better controlling the feeders of prison growth. As the prison population approached capacity, the KSC was required by statute to explore alternatives for reducing the rate of prison population growth, either by reducing admissions to prison or by adjusting sentencing lengths for specific groups of offenders (KSA 74-9101(15)).

Analyses by the KSC showed that the rise in prison populations was driven partially by growth in the number of incarcerated drug possessors. Between 1993 and 2000, the number of inmates incarcerated for simple drug possession had increased 70 percent; by the end of 2000, 1,018 drug possessors were incarcerated in Kansas prisons, representing just over 19 percent of the inmate population (Kansas Department of Corrections, 2006). Moreover, most people being sent to prison for drug possession had originally been sentenced to probation but were remanded to prison for violating the conditions of their supervision – a pattern that underscored the need for adequate and effective supervision and treatment interventions for such offenders to reduce recidivism and violations.

The KSC analyses complimented an earlier analysis by the Legislative Division of Post Audit (Kansas Legislative Division of Post Audit, 1995). In a 1995 audit of the Kansas sentencing guidelines, the Legislative Division of Post Audit reporters noted that sentences for repeat drug possession under the 1993 guidelines seemed disproportionate to the severity of the crime. As the audit noted, the 1993 Kansas guidelines system “ensure[d] that all repeat drug

offenders will be sentenced to prison, unless a judge issues a dispositional departure...In some instances, sentences for drug crimes under the sentencing guidelines are much harsher than sentences for non-drug crimes.” The audit found that, under the 1993 guidelines, a person convicted for a third time of simple possession of cocaine would receive a presumptive prison sentence of 146 months while a person convicted for a third time of robbery would receive only 60 months. While the 1995 audit noted the disproportionate sentences for possession of cocaine and robbery, the same logic and disproportionality held between most drug offenses (including possession and sale of opiates or narcotics and manufacture of any controlled substance) and many nondrug offenses. For example, a person convicted for a third time of forcible rape would receive a presumptive prison sentence of 137 months while a person convicted for a third time of simple possession of cocaine would receive a sentence of 146 months.

The disproportionality problem arose from the way convictions for drug offenses were originally treated under the 1993 sentencing guidelines. For most offenses, subsequent convictions for the same offense remained at the same severity level; for example, robbery was a Severity Level V offense for a first conviction or any subsequent conviction under the original guidelines. This was not true for drug possession; under the 1993 guidelines, the first conviction for simple possession was a Severity Level IVD offense, but a second conviction was a Severity Level IID offense and a third conviction was a Severity Level ID offense. Thus, subsequent convictions for drug possession quickly moved an offender up the severity scale and into grid cells with presumptive prison sentences, rather than moving the offender across the criminal history scale and into grid cells that retained the presumptive probation sentences.

In response to the rising prison populations and analyses of sentences for drug offenses, the KSC proposed legislation that would both divert nonviolent drug possessors from prison and

institute a comprehensive regimen of drug treatment options in the community aimed at increasing the likelihood of offender success while on probation. In 2003, the legislature enacted these recommendations as Senate Bill 123 (SB 123) (codified at Kansas Statutes Annotated §21-4729) (for all statutes pertaining to SB 123, see Appendix A).

The Content of SB 123

SB 123 created mandatory community-based supervision and substance abuse treatment for individuals convicted of a first or second offense of simple drug possession (codified at Kansas Statutes Annotated §21-4729). Under SB 123, judges must sentence first- or second-time drug possessors who have no prior convictions for a violent offense or for a drug sale or manufacture offense to up to eighteen months of community corrections supervision and drug treatment.

SB 123 cured many of the proportionality problems encountered among repeat drug offenses. First, SB 123 repealed the provisions increasing the severity of second and subsequent drug possession convictions; under the revisions enacted as part of SB 123, all convictions for drug possession were designated at the same severity level. Second, SB 123 altered the presumptive sentences for drug possession, deviating from the presumptive sentences for similar offenses within the guidelines. Under SB 123, the presumptive sentence for a first or second offense of drug possession is up to eighteen months probation; offenders convicted of a third drug possession offense, if previously sentenced to drug treatment, receive a mandatory 20 month prison term.² As a result of SB 123, the presumptive sentence for a first offense of drug possession increased from up to twelve months of probation to up to eighteen months of probation; but the presumptive sentence for a second offense of drug possession decreased from

² While designed as mandatory, SB 123 was originally interpreted to give judges some limited ability depart from SB 123 and sentence eligible offenders to a non-SB 123 sentence if the judge provided reasons for imposing such an alternative sentence. In 2009, the Kansas Supreme Court held that SB 123 was, indeed, mandatory for those who qualify, finding that a district court does not have discretion to sentence an offender otherwise qualifying for SB 123 to imprisonment (*State v. Andelt*, No. 98,665, 98,699, Kan. Supr., October 9, 2009).

forty-nine months in prison to up to eighteen months of probation and for a third offense of drug possession from 146 months in prison to twenty months in prison.

SB 123 also significantly altered the nature and conditions of supervision by mandating a particular form of probation – community corrections supervision. Prior to SB 123, judges had discretion to sentence probationers to court services supervision (with few conditions and minimal supervision) or community corrections supervision (with multiple conditions and more intense supervision). Under SB 123, the use of court services or prison as sentencing options for eligible drug possessors was essentially prohibited by statute – instead, eligible offenders are mandated to community corrections supervision. Lastly, SB 123 altered revocation practices for offenders sentenced under the program, introducing graduated sanctions and creating a presumptive non-revocation sanction for violations of supervision conditions.

As a community corrections sentence, SB 123 requires participants to abide by the same supervision conditions as any community corrections probationer. And, in most jurisdictions, SB 123 participants and standard community corrections probationers are supervised by the same community corrections officers. As such, the content of supervision under SB 123 is comparable if not identical to standard community corrections. The primary difference is the provision of mandatory substance abuse treatment under SB 123. As with any diversion program focused on drug treatment, SB 123 relied on the effectiveness of treatment to reduce recidivism and called for the expenditure of additional funds on the provision of treatment; the Legislature supported the delivery of enhanced drug treatment and other ancillary interventions for offenders sentenced under SB 123 by appropriating roughly \$5.7 million per year for drug treatment services (Kansas Sentencing Commission, 2004).

SB 123 was designed to rely on the existing network of primarily private community-based drug treatment providers in the state, which offered any combination of detoxification, drug education, out-patient treatment, in-patient treatment, and relapse prevention, among other treatment modalities defined by statute. Providers seeking to work with SB 123 offenders were then required to acquire certification from the KDOC. This certification involved formal training for individual counselors in cognitive behavioral therapies and approval of drug treatment plans submitted by the provider, which detailed the modalities of treatment offered, the specific content of those modalities, and the mechanisms for incorporating cognitive therapies into existing treatment modalities.

To ensure that participants received appropriate treatment, SB 123 called for a two-pronged assessment of safety risk and substance abuse needs. Following conviction, SB 123 offenders are placed under the supervision of a community corrections officer who chooses a local drug treatment provider to conduct a drug abuse assessment guided by the American Society of Addiction Medicine (ASAM) criteria. Based on the assessment score, the provider then gives a recommendation for a particular treatment modality. The supervising community corrections officer chooses an appropriate drug treatment provider that offers the recommended treatment modality and generally meets with a counselor at the chosen provider agency to determine initial treatment modality and to discuss the offender's planned supervision and treatment regimen for the duration of the program period.

As designed, SB 123 intended more frequent interactions between community corrections officers and counselors. Routine "team meetings" were recommended to ensure that community corrections officers and drug treatment counselors collaborated on the treatment plans for individual offenders and quickly addressed problems offenders encountered in meeting treatment

or supervision conditions. Failure from SB 123 was defined broadly as “a pattern of intentional noncompliance” with treatment or supervision requirements. Positive drug tests or even subsequent convictions for possession were not automatic triggers for termination of treatment, removal from SB 123, or revocation of the community corrections sentence. Individual community corrections officers, drug treatment counselors, and sentencing judges were left with the discretion to determine what factors rose to the level of noncompliance to justify revocation of an SB 123 sentence. Judges also retained discretion to release an offender from SB 123 for completion of treatment prior to the end of the sentence imposed or to revoke an offender from SB 123 for noncompliance with either treatment or the conditions of the community corrections sentence. When revoked, offenders originally sentenced to SB 123 could be sent to prison for the remaining fraction of their sentence, moved to standard community corrections, or remain on SB 123.

In addition to the new lines of communication between community corrections officers and drug treatment counselors at the ground level, SB 123 also created new levels of oversight within the state and involved new agencies in the provision of drug treatment to offenders. Under SB 123, all drug treatment providers must be trained and certified by the KDOC in providing treatment to offenders, which involves providers incorporating cognitive behavioral therapy into all drug treatment programming for offenders; the KDOC also approves providers’ service plans for delivering treatment under SB 123, verifies the licenses of individual counselors treating SB 123 offenders, and audits providers to ensure the quality of treatment services across the state. Community corrections officers certify invoices from treatment providers for services provided to offenders and submit these invoices to the KSC for payment. The KSC then oversees the funds appropriated by the state for SB 123 drug treatment, administers all payments made to

treatment providers for services delivered, and is responsible for monitoring and reporting on offender admission to and discharge from the program.

The Policy Implications of SB 123

SB 123 emerged with the explicit goal of reducing prison populations by generating reductions in the number of drug possession offenders entering prison. As such, the program largely focused on a systemic goal—reducing the pressure on prison populations linked to drug possessors. This was accomplished, in the first instance, by creating a mandatory non-prison sentence to divert prison-bound drug possessors at sentencing. Achieving this systemic goal was also partially dependant on improving outcomes for participating offenders; as such, the program also specified an individual-level goal – reducing recidivism – which affected the size of prison populations through the influx of admissions to prison due to revocations and new offenses. Extending the presumptive probation period from twelve months to up to eighteen months complimented this individual-level goal by creating a significant window of time for treatment to be initiated and take effect.

The creation of a state-wide mandatory drug diversion program like SB 123 is confronted with a number of potential challenges. First, there is an inherent tension in achieving both system- and individual-level goals when implementation is left to local agencies. It is unclear whether local agencies shared the same systemic concerns held by the state and articulated in the legislation. Systemic concerns of local jurisdictions are generally limited to concerns over jail populations and probation caseloads, while the systemic concerns of state agencies were focused on prison populations and corrections expenditures. Because community corrections districts do not necessarily see the “system” in the same way or do not see addressing state-level problems as a legitimate goal, they may fail to implement the program properly or may place too much

emphasis on evaluating and ensuring individual impacts at the expense of these larger systemic goals. In addition, the creation of a mandatory non-prison sanction may negatively impact certain community corrections districts, for example, if offenders are required to go to jail instead of prison for a revocation or if community corrections districts do not have the staff capacity to handle the potential influx of new probationers or the new intensive supervision that SB 123 mandated. In response to these tensions, local actors may actively circumvent the law when it does not agree with local practices for either sentencing drug possessors or supervising drug possessors; these actions could ultimately undermine the system- and individual-level impacts SB 123 was trying to achieve.

Second, a state-wide mandate may amplify disparities in supervision and treatment across community corrections districts and mitigate or enhance tensions between local community corrections departments and the state. By emphasizing a shift in the way community corrections would work with drug treatment providers, the functioning of SB 123 became dependant on both the number of providers available in any given local community and the relationships between community corrections departments and those providers. In most of the state's thirty-one community corrections districts, several potential drug treatment providers were available at the time SB 123 was enacted. In the Eastern, more populated part of the state, this resulted in the certification of multiple drug treatment providers in each community corrections district. However, in the Western, less populated part of the state, this resulted in the certification of few providers and as few as one provider in many districts. This pattern was further reinforced by the structural absence of providers in less populated areas of the state.

Finally, the creation of SB 123 was driven by a systemic concern over prison population growth and corrections spending. It was justified politically, however, on its ability to improve

public safety through reduced recidivism. But, what if the program achieves only one of these goals? Moreover, as a state-wide effort, SB 123 sought to increase treatment, change supervision practices, and improve public safety across the entire state. But, what if it achieves these goals in only a few jurisdictions in the state? How do policymakers ultimately evaluate the success of SB 123?

Report Overview

This evaluation documents the first five years of implementation and operation of SB 123 (November 2003-November 2008), examining individual-level and system-level outcomes over time and across community corrections districts and judicial actors. Our observations and recommendations are based on the analysis of administrative data tracking individual-level interventions and outcomes as well as interviews with SB 123-eligible offenders (on SB 123 or other forms of probation), community corrections officers and managers, and other courtroom actors (judges, prosecutors, public defenders, court services directors). Drawing on these data, we first examine the structure of SB 123 – goals, funding, oversight – and assess the extent to which this initiative impacted different elements of the correctional system in Kansas. We derive policy recommendations aimed at informing the development of sentencing and corrections policies in other states that seek to reconfigure the nature and scope of the penal response to low-level drug offenders.

This report is organized into seven chapters. Chapter 1 provides an overview of the study and documents our methodology, instruments, and analyses. Chapter 2 examines patterns in sentencing practices before and after implementation of SB 123. It explores the extent to which the sanctioning of drug possessors across the state changed with the implementation of SB 123 and documents issues of eligibility for SB 123. Chapter 3 studies the operation of SB 123,

focusing on the nature, volume, and concentration of treatment and supervision interventions for program participants. It discusses issues of treatment availability and alignment with other interventions (assessments, supervision interventions) and explores the patterning of interventions over time and across community corrections districts. Chapter 4 assesses the individual-level impacts of SB 123 using administrative data from the Kansas Department of Corrections and the Kansas Sentencing Commission. Specifically, this chapter tracks various indicators of recidivism and offender non-compliance at different time periods (12 and 24 months). Chapter 5 studies the system level impacts of SB 123 in terms of prison populations. It contrasts anticipated impacts of SB 123 as articulated in legislation with the patterns of sentencing and revocations for the SB 123 population. Chapter 6 summarizes views from practitioners regarding the relative success and operation of SB 123 and provides an overview of the different domains of policy implementation (local vs. state, urban vs. rural). Finally, Chapter 7 considers the views of individuals sentenced to SB 123 regarding their individual success and interactions with community corrections officers and providers; the chapter contrasts the views of SB 123 offenders with those of similar individuals sentenced to non-SB 123 sanctions in order to gauge the extent to which SB 123 changed supervision for drug offenders. Our conclusion summarizes our findings across key substantive areas and suggests avenues for the implementation and evaluation of similar programs in other jurisdictions.

Chapter 1: Methodology

This study evaluates the individual- and system-level impacts of Kansas Senate Bill 123 through the first five years of program implementation and operation (November 2003 – November 2008). As such, our research design specified two sets of analyses. The first set of analyses focused on assessing the relative impact of SB 123 on individuals sanctioned under the statute, comparing their rates of criminal recidivism with rates derived from a series of comparison groups of similar offenders. We complemented this perspective with a more in-depth, qualitative examination of the experiences of individuals while under community supervision, with a particular focus on differences and similarities for SB 123 and non-SB 123 offenders. The second set of analyses focused on the system-level impacts of SB 123, examining changes in the use of incarceration and community-based sanctions for low-level drug possessors, variation in supervision practices for this population including realignment in the volume and type of supervision and treatment interventions across jurisdictions and over time, and variation in the nature of interactions between criminal justice actors at the state and local levels.

Our individual-level analyses were guided by the following substantive questions:

1. Does SB 123 reduce criminal recidivism among program participants relative to similar offenders sentenced to other programs? Do patterns of success and failure differ across different measures of criminal recidivism and follow-up periods? Is there an association between treatment compliance and successful completion of probation conditions?
2. Are there differences in case management strategies between SB 123 offenders and similar offenders sentenced to other programs (volume and type of interventions, referrals)?

3. Do SB 123 offenders receive the services that they need? Are they satisfied with the services they receive? What degree of alignment is there between supervising officers and counselors about “best practices” for SB 123 clients?

Our system-level analyses addressed the following research questions:

1. What institutional and procedural changes were necessary to successfully implement SB 123? Were these changes planned or were they generated during the implementation process?
2. What are the strengths and weaknesses of the current operation of SB 123?
3. To what extent did SB 123 effectively reduce the flow of SB 123-eligible offenders to prisons at sentencing or through revocations and reconvictions leading to incarceration?
4. Do system- and individual-level impacts vary over time and across community corrections districts? What are the sources of such variation?

The following sections describe in detail the data collected for each of the two substantive research areas – the individual-level and system-level impact of SB 123. We also document the rationale and protocols that guided our analytical plans as well as their known limitations.

Individual-Level Impacts

To assess the individual-level impact of SB 123, the study undertook two distinct sub-sets of analyses: 1) an analysis of recidivism rates using a series of quantitative data derived from administrative case management systems and 2) an analysis of the experiences of drug possessors supervised by community corrections using qualitative data derived from structured interviews with offenders. Each of these approaches is addressed in turn below.

Analysis of Recidivism Rates

Data. The analyses of recidivism rates drew on two sources of data. First, we collected individual-level administrative data in the form of journal entries and revocation forms assembled by the Kansas Sentencing Commission (KSC) from county courtrooms. The KSC records contained information of all felony convictions and probation revocation proceedings in the state between November 1, 2001 and October 31, 2008. These data identified unique individuals, cases, and jurisdictions and featured a number of substantive data fields: offender demographics (age, race, gender, ethnicity, citizenship status, criminal history), case characteristics (judge, type of counsel, county of conviction, date of conviction, date of sentence), offense information (current offense of conviction, date of offense), and sentence information (plea/trial status, type of sentence, sentence length, additional sentence conditions, departure status and reasons, and jail credits); the probation revocations module also included reasons for the revocation filing, revocation filing and hearing dates, type of revocation sanction, and new supervision conditions. These data were employed to generate our study and comparison groups and to track patterns of success and failure of these offenders.

Second, we extracted additional administrative data from the Kansas Department of Corrections (KDOC) case management system for all offenders sentenced to SB 123, community corrections, or prison between November 1, 2001 and October 31, 2008. These records matched supervision and treatment interventions to individual probationers under the jurisdiction of parole and local community corrections agencies and included both individual- and event-level records. Substantive data fields included: offender demographics (age, race, gender, ethnicity, criminal history), case characteristics (county of conviction, date of conviction, date of sentence), offense information (current offense of conviction, date of offense), sentence information (type

of sentence, sentence length), supervision information (supervision level, termination date, termination reason), intervention information (type of intervention, start and end date of intervention, intervention termination reason, service provider), and a number of individual-level assessment scores (Level of Service Inventory-Revised (LSI-R) at intake and reassessments, Adult Substance Abuse Subtle Screening Inventory (SASSI) assessment for course of treatment, and Addiction Severity Index (ASI) for drug addiction).³ These data on case management events, strategies, and supervision/treatment processes were used to describe the model of service delivery for SB 123 offenders and, whenever possible, relative differences for similar offenders supervised by community corrections or parole. While some of these comparisons were effectively implemented in the study, others were severely limited given that case management information for other low-level drug offenders sentenced to prison or probation under court services supervision was inconsistently reported, not available, or was not comparable to the information contained in the KDOC community corrections case management system.⁴

The KSC data and KDOC data were used to create several measures of recidivism, including reconviction, revocation, and revocation filing (see *Measures* below). To create a measure of re-arrest, we collected additional data from the Kansas Bureau of Investigation (KBI) for all offenders convicted of drug possession between November 1, 2001 and October 31, 2008. These data contained information on arrest dates and arrest offenses and included the complete arrest history for all persons in our study (i.e. including arrests occurring prior to the start date of

³ The Level of Service Inventory-Revised (LSI-R) assesses individuals' risk across a series of scales. The Adult Substance Abuse Subtle Screening Inventory (SASSI) identifies high or low probability of substance dependence disorder. The Addiction Severity Index (ASI) identifies aspects of the life of patients that may contribute to their substance-abuse problems.

⁴ More specifically, because local court services agencies rely on a largely decentralized, independent set of databases to track their own supervision processes, we could not compile comparable intervention and referral activity; low level drug offenders released from prison before and after SB 123 implementation were tracked using a separate KDOC database to learn about their time served, release dates, and parole supervision.

the study – November 1, 2001). As such, we also used the KBI data as a proxy to determine eligibility for an SB 123 sentence (see *Sample* below).

Data across all three datasets and across all years were matched using a series of unique identifiers. A common unique identifier for identifying individuals did not exist across all three datasets; in addition, identifiers within any single dataset were often missing or incorrectly entered. As such, three separate unique identifiers were created for each individual based on the first four letters of an individual's last name and either the last four digits of their social security number, the last four digits of their state ID number, or the month and date of their birth date. These three identifiers were then used to track individuals within each dataset and to match individuals across datasets.

Sample. To assess the relative individual-level impact of SB 123 on recidivism rates, we tracked all “SB 123-eligible” individuals convicted between November 1, 2001 to October 31, 2008 (pre- and post-program implementation) who were flagged by the KSC journal entries as sentenced to SB 123, standard community corrections, court services, or prison. We then reconfigured the KSC, KDOC, and KBI datasets in different ways to address our study questions on the individual-level impacts of SB 123.

Our analyses focused on the assessment of the likelihood of recidivism for these various groups of offenders using varying specifications of recidivism (see *Measures* below) and two different follow-up periods (12 months vs. 24 months of risk of failure in the community). Models examined failure and success rates among SB 123 offenders and between SB 123 and similar “SB 123-eligible” offenders sentenced to non-SB 123 alternatives (i.e., standard supervision by community corrections, court services, or prison).

Per statute (KSA §21-4729), “SB 123-eligible” was determined by the top, most serious offense of conviction – first or second offense of drug possession – and prior criminal history – no prior convictions for a violent/person offense or a drug sale/manufacture offense. Kansas categorizes offenders’ criminal histories according to a nine-category scale. Offenders with criminal histories in categories E through I have no prior convictions for a violent offense; as such, offenders convicted of a first or second offense of drug possession with criminal histories in this range were defined as “SB 123-eligible;” offenders with criminal histories A through D have prior convictions for violent/person offenses and were deemed to be “SB 123-ineligible” for the baseline sample employed in the individual-level analyses. Because the criminal history scale included in the KSC journal entry records does not identify whether individuals had a prior conviction for a drug sale or manufacture offense (which would disqualify them from SB 123) we relied on prior arrest records provided by the KBI to refine our eligibility criteria. As such, we further specified that offenders would be deemed “SB 123-ineligible” if they had a prior arrest record under K.S.A. §65-4142, §65-4159, §65-4161, §65-4163 or §65-4164 (i.e., drug sale or drug manufacture offenses). The use of prior arrests likely overstates the number of people who have prior convictions for drug sale or manufacture; as such, we created samples that did not rely on this eligibility criteria.

Next we explored variation in model estimates of recidivism linked to varying specifications of the study sample. Our baseline sample (Sample 1) included offenders sentenced pre- and post-SB 123 implementation who met the basic requirements for SB 123– conviction for a first or second offense of drug possession and criminal history score E through I; this sample included individuals sentenced after November 1, 2001 and before October 31, 2007 (the sample end date was set at October 31, 2007 to allow at least 12 months of risk of failure in the

community, see below). This sample provides the most general, over-inclusive selection criteria for SB 123 eligibility. These criteria do not take into consideration the actual dates of SB 123 operation and only rely on the data elements included in the KSC journal entry form (criminal history and offense of conviction). Subsequent reconfigurations of the data sought to further narrow our sample. Sample 2 includes only individuals sentenced after SB 123 implementation (i.e. after November 1, 2003), but relies on the same eligibility criteria of Sample 1 (conviction offense and criminal history). Sample 2 aims to better recreate the operation of SB 123 by assessing contemporaneous sanctioning alternatives for offenders. This additional eligibility criterion was implemented to minimize the potential bias of history effects (e.g. policy changes, changes in enforcement and revocation practices, changes in resources, or data consistency and quality that coincided with the implementation of SB 123 and affected all offenders). Finally, Sample 3 is the most restrictive sample and best approximates the eligibility criteria outlined by SB 123. Sample 3 includes only those individuals who meet the basic requirements of conviction offense and criminal history and were sentenced after SB 123 implementation (i.e. after November 1, 2003), but who also have no prior arrests for drug sale or manufacture and are residents of Kansas. Table 1-1 below summarizes these sample configurations.

Table 1-1. Specification of the Study Samples

	Sample		
Selection criteria	1	2	3
<i>Current Offense</i> : First or second drug possession			
<i>Criminal History</i> : Scores E-I			
<i>Study period</i> : Post SB 123 implementation (> Nov 1, 2003)			
<i>Prior arrests</i> : No priors for drug sale or manufacture			
<i>Residency</i> : Kansas resident			

We specified various measures of recidivism, including re-arrest, incarceration due to a new conviction, incarceration due to a probation revocation, and revocation filing (regardless of

new disposition). These outcomes allowed us to assess in a more comprehensive manner patterns of offender performance among SB 123 offenders and between SB 123 and similar offenders receiving other sanctions. Measures of recidivism were tracked for two different follow-up periods, 12 and 24 months of “risk of failure” up to October 31, 2008 (five-year mark of SB 123 implementation). Risk of failure was calculated using the sentence date for SB 123-eligible individuals sentenced to probation (community corrections or court services) and from the release date for individuals sentenced to prison. Sample sizes varied due to differences in the length of the follow-up period and criteria to define SB 123-eligibility. To generate estimates on the likelihood of recidivism at 12 months we included all SB 123-eligible offenders with at least 12 months of risk exposure in the community. As such, the most recent cohort of such offenders was sentenced (or released from prison) on or before October 31, 2007. For our 24-month follow-up the most recent cohort of sentenced offenders was sentenced (or released from prison) on or before October 31, 2006. Table 1-2 provides the sample sizes for each of the three samples described above for each of the two follow-up periods.

Table 1-2. Sample Sizes for Study Samples

	12-Month Follow-up			24-Month Follow-up		
	Sample 1	Sample 2	Sample 3	Sample 1	Sample 2	Sample 3
Total	8,886	6,095	4,582	7,299	4,508	3,327
SB 123	3,806	3,806	2,970	2,730	2,730	2,097
Community Corrections	2,071	1,187	799	1,774	890	586
Court Services	2,490	847	672	2,322	679	530
Prison	517	254	140	472	209	114

These study samples were further reduced once covariates were introduced into analytic models due to missing data for some covariates (listwise deletion was employed). The final sample sizes are reported in the respective chapters. Our study samples are somewhat different from those reported by the KSC both in terms of overall size but also in terms of breakdown by

type of disposition. Unlike the KSC, our samples only count individuals once (at the earliest drug possession conviction in the study period), and we impose a baseline for SB 123 eligibility (current offense, criminal history) before exploring dispositions by type. Overall, we include 3,806 offenders in our sample sentenced to SB 123 between November 1, 2003 and October 31, 2007 (Sample 1), whereas the KSC reports over 5,200 offenders sentenced to SB 123 during this period (Kansas Sentencing Commission, 2008).

Measures. The analyses of individual-level impacts of SB 123 focused on various measures of criminal recidivism. These included revocation leading to incarceration, a new conviction leading to incarceration, revocation filings (regardless of new disposition), and re-arrests (regardless of disposition). This range of recidivism measures allowed us to examine individual-level outcomes that had a more direct system-level impact within corrections (e.g., failures leading to incarceration) as well as those more generally linked to patterns of non-compliance with supervision conditions (revocation filings regardless of disposition) or those reflecting a more general measure of anti-social behavior (re-arrest). Each of these measures of recidivism was assessed at both 12 and 24 months of risk in the community for all samples described above. For individuals sentenced to SB 123, community corrections, or court services, time at risk in the community was calculated beginning on the sentencing date; for those sentenced to prison, time at risk in the community controlled for time incarcerated by calculating risk beginning on the date the individual was released from prison. Other measures of recidivism linked to compliance with treatment or relapse were not available across all comparison groups or were inconsistently reported in the various KDOC databases employed for this research. As such, we explore broader approaches to success and failure on SB 123 using our interviews with SB 123-eligible offenders and reports from local stakeholders and courtroom actors.

All measures of criminal recidivism were operationalized as dichotomous variables (1=failure, 0=no failure) reflecting the presence/absence of such events by the end of the given follow-up period. All recidivism events were tracked through October 31, 2008 using the KSC, KDOC and KBI datasets. Revocation leading to incarceration was determined using revocation data contained in the KSC datasets; an offender was coded as having a revocation leading to incarceration if they had a revocation hearing after their sentencing date and the disposition of the hearing was “probation revoked, defendant ordered to serve orig (*sic*) sentence.” Reconviction leading to incarceration was determined using journal entry data contained in the KSC datasets; an offender was coded as having a reconviction leading to incarceration if they had a sentencing hearing after their original sentencing date and the sentence imposed was “prison.” Revocation filing was determined using revocation data contained in the KSC datasets; an offender was coded as having a revocation filing if they had any revocation hearing after their sentencing date. Finally, re-arrest was determined using arrest data contained in the KBI dataset; an offender was coded as having a new arrest if they had any arrest after their sentencing date.

Our key independent variable – type of sentence – identified whether offenders were sentenced to prison or probation (SB 123, standard community corrections, or court services). We included a number of individual-level covariates in our analyses. We employed an indicator of criminal history tracking the seriousness of the criminal history of offenders prior to conviction (categorical, from 1=least serious or category I, to 5=most serious or category E) and an indicator of additional charges at the time of conviction (1=yes, 0=no). We also included information on demographic attributes of offenders, namely, age (in years), race (1=Non-White, 0=White), and ethnicity (1=Hispanic, 0=Non-Hispanic), and a variable capturing whether the county of conviction was urban or rural (1=urban, or population over 100,000 residents, 0=rural

or semi-rural). These variables have been consistently included in government reports and research articles to contextualize individual-level patterns of success and failure while on supervision by the criminal justice system. The latter urban/rural variable was included to account for potential differences in access to treatment, supervision practices, and opportunities to re-offend that may exist between urban and rural areas and that were not captured in administrative data. Information on the current offense was not included as a covariate because all offenders were convicted of a first or second drug possession offense.

Our ability to examine additional covariates of recidivism was limited by the type and quality of available administrative data. Challenges with the scope, uniformity and consistency of the data were particularly critical when estimating covariates of offender performance across types of sanctions. For example, while assessment scores capturing levels of risk or substance abuse were available for many of the SB 123 offenders, these fields were not captured for the majority of offenders being released from prison or on court services supervision. Some fields were not entered because assessment tools had not been implemented at the time of the probation sentence (e.g., LSI-R scores were inconsistently reported before 2005). We argue that the impact of these omitted variables for the present study is relatively minimal, as the imposition of an SB 123 sentence, by statute is not dictated by levels of risk/need but rather by the combination of current offense and criminal history score.

Analytical Strategy. The estimation of SB 123 effects was based on the comparison of recidivism rates of offenders in a series of matched samples using the sample frame described above. As noted above, across all groups and samples we further restricted our analyses to only include individuals with 12 or 24 months of risk exposure in the community.

The impact of SB 123 interventions on offender performance was analyzed using standard statistical procedures to examine categorical data. These methods included logistic regression models applied to the various study samples that matched in different ways the operation and statutory requirements of SB 123; the results generated by these routines were complemented by a series of regression models aimed at better simulating the characteristics of a quasi-experimental research design. Relying on propensity score matching, we generated a number of matched samples of offenders who received SB 123 (the treatment effect) and paired them with a set of “equivalent” offenders who received standard probation (community corrections or court services) post-implementation of SB 123 (i.e. after November 1, 2003 – Samples 2 and 3). Individual offenders constitute the unit of analysis across models and estimation techniques (see Appendix C).

Examination of Offender Experiences

Data. To gain a broader perspective on the impact of SB 123 on individuals, we supplemented our quantitative analyses with data derived from a series of structured interviews with 76 SB 123-eligible offenders sentenced to either SB 123 (43) or standard community corrections throughout the state (33). The protocols aimed at eliciting the offenders’ views about access and delivery of services and supervision interventions while on probation, their perception of relative access and effectiveness of treatment, their motivation and readiness to change, and their interactions with both supervising officers and drug treatment counselors.

Sample. We distributed recruitment letters in three community corrections districts across the state (2 urban and 1 rural) to 150 individuals who were convicted of drug possession and were being supervised by community corrections at the last stage of our fieldwork (Spring 2010). From these 150 potential respondents, 93 individuals agreed to participate in the study

and 76 ultimately participated, for a response rate of roughly 82 percent. Overall, 57 percent of those participating were SB 123 offenders, 55 percent were male, and 66 percent were from urban community corrections districts.

Analytical strategy. To analyze these data we classified responses according to a number of themes, corresponding to our structured interview schedules. Overall, we focused on five areas derived from the data: treatment planning and access to treatment; interactions with counselors and community corrections officers, treatment received, obstacles to treatment, expectations and goals of treatment and evaluations of success. We looked for general patterns of agreement across these areas and evaluated differences based on SB 123 versus non-SB 123 sentence, gender, and urban/rural community corrections district.

System-level impacts

To assess the system-level impact of SB 123 we combined quantitative and qualitative sources of data and analytical techniques. The first approach used quantitative sentencing and revocation data maintained by KSC to examine changes in sentencing patterns and admissions to prison. The second approach relied on quantitative supervision data maintained by KDOC to assess changes in supervision practices and treatment referrals. The third approach relied on interviews with key stakeholders to assess the impact of SB 123 on work routines, interactions among stakeholders, and opinions about the functioning of SB 123. As above, each of these approaches is described in separate sections below.

Examining Trends in Sentencing and Prison Admissions

Data. The analyses of sentencing patterns and admissions to prison drew on the same journal entry and revocation administrative data maintained by KSC as described above. As noted above, the KSC records contained information of all felony convictions and probation

revocation proceedings in the state between November 1, 2001 and October 31, 2008. These data were employed to generate our treatment and comparison groups, to determine the distribution of sentences over time and across jurisdictions, and to determine revocation and reconviction rates for offenders in both groups. KDOC case management data (described above) was also used to determine revocations from parole following a sentence to prison.

Sample. Consistent with the specification of the study samples described above (Table 1-1), we defined the baseline SB 123-eligible sample as individuals convicted of a first or second offense of drug possession who had a criminal history score E through I (Sample 1) and who were sentenced between November 1, 2001 and October 31, 2006; the 2006 end date was used since we employed 24 month recidivism rates to determine prison admissions due to revocation or reconviction (see *Analytical Strategy* below). We further specified two separate samples reconfigured for the system-level analyses: Sample A was our most broadly-defined sample, with no additional restrictions based on prior arrest records; Sample B narrowed eligibility to the SB 123-eligible offenders with no prior arrests for drug sale or drug manufacture. These two samples are similar to Samples 2 and 3 employed for the individual-level analyses but include both pre- and post-implementation offenders because the focus of the system-level analysis is on changes pre- and post-implementation. Discarding SB 123-eligible offenders with disqualifying prior arrests, these figures decreased significantly (2,081 pre-implementation and 3,327 post-implementation). Table 1-3 provides the sample sizes for each of the samples.

Table 1-3. Sample Sizes for System-Level Analyses

	Sample A Pre- and post SB 123 implementation	Sample B Pre and post SB 123- Implementation, no prior arrests for drug sale or drug manufacture
Total	2,791	4,508
SB 123	--	2,730
Community Corrections	884	890
Court Services	1,643	679
Prison	264	209

Analytical Strategy. Our system-level analyses focused on the impact of SB 123 on prison populations. As such, we drew on the individual-level KSC records to describe the impact of SB 123 on the flow of low-level drug possessors to prison at sentencing and through recidivism events (i.e., incarcerations for new crimes or revocations). We specify the follow-up period of these failures at 24 months to better assess the long-term impacts of SB 123 and associated processes (net-widening, delivery and impact of treatment). Our focus on prison admissions as a system-level outcome is consistent with one of the key driving concerns of legislators when passing SB 123.

To assess the system-level impact of SB 123, the analyses fit a series of algorithms seeking to estimate the number of prison admissions avoided due to SB 123. This process involved determining the number of admissions avoided at sentencing and the number of admissions avoided at incarcerations linked to revocations or reconvicitions.

To generate our baseline flow of prison-bound SB 123-eligible offenders we first determined the percentage of individuals in Samples A and B who received a prison sentence at sentencing during the twenty-four months pre-implementation (November 1, 2001 – October 31, 2003) and used this figure to calculate the expected number of prison sentences imposed at sentencing for this subpopulation during the thirty-six months post-implementation. We then calculated the

actual number of prison sentences imposed as sentencing for all SB 123-eligible offenders during the thirty-six months post-implementation (November 1, 2003 – October 31, 2006). The difference between the expected and the actual number of prison sentences post-implementation represented the estimated number of prison admissions avoided *at sentencing* (diverted) due to SB 123.

We estimated recidivism rates and the expected number of prison admissions due to recidivism using the actual revocation and reconviction rates pre- and post-implementation for each comparison group and the actual rates for individuals sentenced to SB 123. We used both pre- and post-implementation rates in separate models for the comparison groups to create a range of possible impacts on prison populations and to account for the possible effects of history and non-equivalency on outcomes. As noted in Chapter 4, recidivism rates for all groups were declining during the post-implementation period; as such, using only pre-implementation rates may have overstated the actual change in prison admissions linked to SB 123.

To estimate the flow of prison-bound offenders incarcerated during or after their supervision period, we first determined the percentage of SB 123-eligible offenders that were committed to prison due to a revocation or a reconviction during the twenty-four months pre SB 123-implementation within each comparison group (community corrections, court services, or prison). We used this figure to calculate the expected number of prison admissions due to recidivism during the thirty-six months post-implementation by multiplying the pre-implementation recidivism rates by the expected number of persons within each comparison group (as calculated above). Similarly, we calculated the actual number of individuals revoked or reconvicted from the study and comparison groups during the thirty-six months post-implementation. The difference between the expected and the actual number of prison

admissions due to recidivism represented the estimated number of prison admissions avoided *due to recidivism* linked to SB 123. This routine was replicated using post-implementation recidivism rates for all groups and samples.

To estimate prison bed savings, we considered the average time served for SB 123-eligible offenders sentenced to prison pre-implementation both as new court commitments and following revocation and reconviction. Figures were extracted from the actual individual-level records compiled by the KSC and cross-checked for consistency with other documents by the KSC and the KDOC. We calculated the estimated number of beds saved *at sentencing* by multiplying the estimated number of prison admissions avoided *at sentencing* (as calculated above) by the average time served for SB 123-eligible offenders sentenced to prison as new court commitments (see, e.g., Tonry, 1996); we reproduced this approach for revocations, multiplying the estimated number of prison admissions avoided *due to recidivism* (as calculated above) by the average time served for SB 123-eligible offenders sentenced to prison following a revocation. For example, if the average prison sentence is 1 year, then each admission avoided represents 1 prison bed saved; if the average sentence is 6 months, then each admission avoided represents .5 prison beds saved. Combined, these two figures represent the estimated total bed savings due to SB 123.

Examining Changes in Supervision Practices and Treatment Referrals

Data. The analyses of supervision practices and treatment referrals drew on the case management system maintained by KDOC described in the individual-level analyses above. As noted above, the KDOC records contained information of all individuals supervised by community corrections between November 1, 2003 and October 31, 2008. These data were employed to determine the distribution of supervision interventions and treatment referrals over time and across jurisdictions.

Sample. To determine the impact of SB 123 on supervision and treatment practices, we examined information on all individuals sentenced to SB 123 during the first five years of program operation (November 1, 2003 to October 31, 2008). Unlike the samples described above, this group included all individuals receiving an SB 123 sentence regardless of criminal history score. Since the goal was to examine the actual practices surrounding SB 123 supervision and treatment, we did not limit the examination only to SB 123-eligible offenders, as we did in the other analyses. Using this definition, a total of 5,060 individuals were sentenced to SB 123 during the study period.

Measures. As noted in the section detailing individual-level analyses, the KDOC data include information on modalities of treatment imposed, delivery of services by modality and provider, and supervision and program conditions imposed. While cases were selected based on sentencing date between November 1, 2003 and October 31, 2008, interventions were reported through December 31, 2008 (the final date of data collection).

The interventions listed in the KDOC case management systems are divided by the KDOC case management system into twelve categories: additional interventions, cognitive interventions, day reporting centers, education, increased supervision, mental health, restrictions, risk reduction & reentry services, SB123 substance abuse, sex offender, structured living, and substance abuse (non-SB 123 substance abuse). These interventions were reclassified into two general categories of substance abuse treatment interventions (SB123 substance abuse and substance abuse) and supervision interventions (additional interventions, cognitive interventions, day reporting centers, education, increased supervision, mental health, restrictions, risk reduction and reentry services, sex offender restrictions, and structured living).

The KDOC case management system provides further specifications of interventions, dividing them into seventy-six specific types of interventions (e.g. anger management, curfew, etc.). Using these predefined data entry options, we further divided supervision interventions into two broad categories: 1) *restrictive* supervision interventions which included day reporting, community service hours, conditional violator program, curfew, electronic monitoring and GPS, high risk referral, house arrest, increased reporting, increased UAs, intensive supervision, contact restrictions, revocation referrals, surveillance, travel restrictions, and verbal reprimands; and 2) *supportive* supervision interventions which included anger management, cognitive therapies, educational programming, DV evaluations and counseling, employment services, life skills counseling, and mental health evaluations and treatment.⁵ In turn, we divided substance abuse treatment interventions into eight categories: intermediate residential, intensive outpatient, outpatient group, outpatient individual/family, drug education, reintegration, relapse, and other (e.g. day treatment, detox, social detox, and therapeutic community).

Analytical Strategy. The analysis of treatment and supervision interventions relied on univariate and bivariate descriptive statistics to describe trends in interventions over time and across community corrections districts.

Examining Experiences of Stakeholders

Data. To gain a broader perspective on the impact of SB 123 on the operation of the criminal justice system at the state and local levels, we supplemented our quantitative analyses with data derived from a series of interviews with courtroom actors – judges, prosecutors, public defenders – as well as managers and staff from community corrections agencies throughout the state. Because these actors were ultimately responsible for carrying out the central provisions of SB 123, it was critical to examine the range and nature of their expectations regarding the main

⁵ An additional 801 supervision interventions were listed simply as “other” in the KDOC case management system.

goals of the initiative, their concerns about workloads and oversight, as well as their perceptions of the impact of SB 123 on their work routines, decision-making processes, and other protocols attached to their function in the criminal justice system of Kansas.

To gather these data, we visited four community corrections districts in the state (two urban, two rural) during the Spring/Summer of 2009-2010. In each of these visits we conducted group interviews with supervising community corrections officers and one-on-one interviews with community corrections directors. In some sites we also interviewed other key local actors such as managers of community-based treatment providers, drug counselors, and officers and staff of court services and KDOC parole services. During Spring/Summer of 2009-2010 we also conducted telephone interviews with judges, county attorneys, public defenders, and community corrections directors. For both focus groups and telephone interviews we followed a semi-structured format aimed to elicit information about the actors' general opinions about SB 123, perceptions of overall objectives and effectiveness of the program, obstacles and impact on work routines. During the site visits these topics were explored more systematically emphasizing supervision-related protocols (e.g., development of case plans, interactions with providers, performance evaluation, revocation process).

Sample. The focus groups relied on purposive samples of community corrections officers and treatment providers in each site. Overall, the focus groups included a total of 21 community corrections officers and 12 treatment providers. One additional focus group was conducted with 5 court services officers.

For the telephone interviews with judges, prosecutors, public defenders, and community corrections directors, a list of potential research subjects was developed using public records (internet, official publications). This list included a total of 185 individuals: 31 chief judges, 108

chief prosecutors, 15 public defenders, and 31 community corrections directors. Each participant was contacted and asked to participate; participants were contacted at least three times before efforts at contact were ceased or the individual refused to participate. A total of 86 individuals ultimately participated for a response rate of 46 percent; this included 17 judges (55 percent response rate), 37 prosecutors (34 percent response rate), 6 public defenders (40 percent response rate), and 25 community corrections directors (81 percent response rate).

Analytical strategy. The feedback we received from stakeholders was recorded as field notes and cross-checked for consistency. To analyze these data we classified field notes by type of agency, substantive question, and context (urban/rural). This process led to the configuration of a number of themes, some of which coincided with our questioning routes (e.g., SB 123 eligibility issues). Others emerged from the interviews themselves (e.g., differences in supervision practices across rural and urban settings).

Overall, we focused on four themes derived from the data. First, we explored the range of perceptions by courtroom actors and community corrections personnel regarding the objectives of SB 123 and the criteria to assess the success of the initiative. The second theme focused on issues of eligibility for SB 123 participation. Our third theme expanded on SB 123-related practices and protocols for supervision interventions and treatment referrals. Supervising officers and managers summarized their reactions to the new tools implemented in parallel to SB 123 (LSI-R, Motivational interviewing, cognitive therapies) and described the nature and scope of their interactions with courtroom actors. We focused on the revocation process for SB 123 offenders and related it to the broader management of offenders on supervision in the context of other policies such as the KDOC risk reduction initiative. A final theme emerged from the

qualitative interviews on the interactions between SB 123 and the context of community corrections agencies and local criminal justice agencies and communities.

Chapter 2: Sentencing Practices

Since 1994, Kansas has employed sentencing guidelines to set presumptive sentences for felony offenses based on offense of conviction and an offender's criminal history. Prior to the implementation of SB 123 in 2003, the presumptive sentence for a nonviolent offender convicted of a first offense of drug possession was up to twelve months of probation; if a judge chose to depart from the guidelines, he or she could sentence the offender to up to twenty-two months in prison (Kansas Sentencing Commission, 2002). The presumptive sentence for a nonviolent offender convicted of a second offense of drug possession was up to sixty-two months in prison or, if the judge chose to depart from the guidelines, up to thirty-six months of probation (Kansas Sentencing Commission, 2002). Prior to SB 123, when sentencing a drug possessor to probation under the guidelines, judges also had the discretion to sentence the offender to either court services (a probation sentence with minimal conditions and supervision) or community corrections (a probation sentence with extensive conditions and supervision).

In the two years immediately prior to implementation of SB 123 (November 1, 2001 – October 31, 2003), judges adhered closely to the guidelines' prescribed sentences for non-violent drug possessors (those with criminal history scores E through I). During that period, a total of 2,791 offenders were convicted of a first or second offense of drug possession. Approximately 59 percent of these offenders (1,643 individuals) received a court services sentence of approximately twelve months; roughly 32 percent (884 individuals) received a community corrections sentence averaging fifteen months; and 9 percent (263 individuals) received a prison sentence of approximately twenty-eight months. Judges departed from the guidelines sentence in just 7 percent (199 cases) of these cases. The vast majority of departures (90 percent) were downward departures (i.e. a lesser sentence than called for in the guidelines); of those receiving downward departures, 29 percent received a shorter prison sentence, 32 percent received a

shorter probation sentence, 24 percent received a probation sentence in lieu of a recommended prison sentence, and 4.5 percent received a probation sentence that was both in lieu of a recommended prison sentence and shorter than the recommended probation sentence. Although documentation on the reasons for departures was inconsistently reported, judges generally cited plea agreements and defendant cooperation, the nature of the offense (e.g. small quantities of drugs, degree of harm), and the defendant's need for drug treatment as the primary justifications for departure sentences.

Adherence to the guidelines was relatively uniform across local jurisdictions, although some judicial districts departed from the guidelines more frequently than others. Judges in the 10th Judicial District, for example, departed from the guidelines recommendations in roughly 19 percent of the cases; similarly, judges in the 29th Judicial District departed in roughly 12 percent of the cases. These two counties accounted for roughly 19 percent of all sentences for drug possession in the state, but over 40 percent of all departures. On average, judges in the rest of the state departed from the guidelines in just 4 percent of cases

SB 123 significantly altered the statutory sentences prescribed for drug possession in Kansas, essentially prohibiting the use of court services or prison as sentencing options. Instead, SB 123 created a presumptive sentence of up to eighteen months of *community corrections* supervision (KSA §21-4729). The mandatory nature of SB 123 was an effort to ensure diversion and to overcome the problem of “front-end” net-widening often encountered by diversion programs (for a review see, e.g. Blomberg, 2003). Research on the impact of mandatory sentencing laws, however, indicates that such laws cannot ensure certainty or uniformity in sentencing due, in part, to the circumvention of such laws by courtroom actors (see Merrit, Fein, & Turner, 2006; Tonry, 1992). If actors do not agree with the mandatory sentence, they may seek to avoid the

imposition of the sentence by altering plea bargaining practices or by simply ignoring the mandatory sentence and imposing an alternative sanction (Tonry, 1992). Moreover, the structure of mandatory sentencing laws may lead to net-widening by poorly defining target populations or by significantly increasing the sentence or supervision level for the underlying offense; as a result, such schemes may lead to unintended and unforeseen changes in sentencing practices and may undercut the system-level effects – i.e. reductions in prison admissions – such programs are meant to ensure. In addition to net-widening, the implementation of initiatives in highly fragmented systems (e.g., as evidenced by Proposition 36 in California) may lead to inconsistencies in implementation and operation across jurisdictions, reflecting structural issues with resources, local-buy-in and ability of state-level actors to provide oversight.

This chapter assesses the impact of SB 123 on sentencing practices. Specifically, it examines the extent to which the implementation of SB 123 changed observed trends in types and lengths of sentences imposed for non-violent drug offenders over time and across local jurisdictions. As the results show, the implementation of SB 123 not only coincided with an increase in the number of drug possession convictions, but, more generally, it altered the sentencing of these offenders. However, the realignment of sanctions did not evolve in the intended way – drug possessors were largely diverted from court services into community corrections, rather than from prison into community corrections. As we show in Chapter 4, this front-end net-widening diminished SB 123’s impact on both individual-level recidivism rates and system-level prison populations.

Methodology

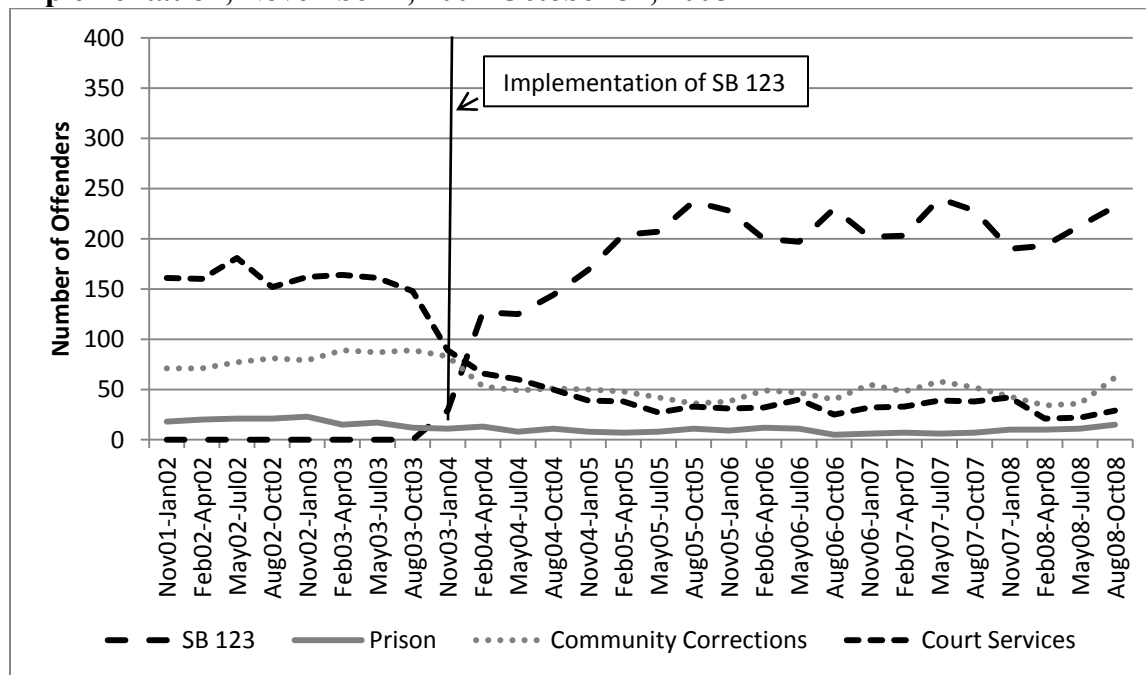
To determine the impact of SB 123 on sentencing practices, we examined KSC data reflecting the sentences for all “SB 123-eligible” individuals sentenced during the twenty-four months immediately prior to implementation of SB 123 (November 1, 2001 to October 31, 2003) and the first sixty months of program operation (November 1, 2003 to October 31, 2008) (see Chapter 1 for definitions of “SB 123-eligible” and details on source of data, sampling and analytical strategy). A total of 7,759 SB 123-eligible individuals were sentenced during the study period – 2,081 sentenced between November 1, 2001 and October 31, 2003 and 5,678 sentenced between November 1, 2003 and October 31, 2008. We rely on univariate and bivariate descriptive statistics to describe trends in sentencing patterns over time and across community corrections districts.

The Impact of SB 123 on Sentencing Practices

Front-end Net-Widening

SB 123 dramatically changed sentencing practices in Kansas; however, not in the manner initially intended. Figure 2-1 displays the percentage of SB 123-eligible offenders sentenced to court services, standard community corrections, or prison prior to implementation of SB 123 and the trend in these dispositions after implementation. As Figure 2-1 shows, most eligible offenders received a sentence of court services prior to implementation. In the two years prior to implementation, 2,081 eligible individuals were sentenced in the state. Roughly 62 percent (1,289) of these individuals were sentenced to court services, 31 percent (644) were sentenced to community corrections and just 7 percent (147) were sentenced to prison.

Figure 2-1. Sentences Imposed for SB 123-eligible Offenders Pre- and Post-Implementation, November 1, 2001-October 31, 2008



As Figure 2-1 shows, the implementation of SB 123 led to a significant decrease in the percentage of eligible offenders sentenced to court services and standard community corrections. Sentences to court services saw the steepest decline, falling from roughly 62 percent of sentences in the year immediately preceding implementation of SB 123 to just 9 percent of sentences in 2008. Sentences to standard community corrections saw a similar drop, falling from 31 percent of sentences in the year preceding implementation to roughly 16 percent of sentences in 2008. In contrast, the percentage of eligible offenders sentenced to prison declined at a slower pace after implementation of SB 123, falling from 7 percent of sentences in the year prior to implementation to 4.4 percent of sentences in 2008.

These changes in sentencing practices have resulted in a significant shift in the caseloads of court services and community corrections. Prior to implementation of SB 123, community corrections supervised roughly 34 percent of all SB 123-eligible drug possessors; after implementation, community corrections was assigned the supervision of roughly 87 percent

of such cases (via standard community corrections and supervision under SB 123). Overall, this amounted to a shift from court services to community corrections of roughly 500 individuals per year; the number of eligible drug possessors flowing to the court services caseload decreased from 635 persons per year in 2001 to 114 persons in 2008, while the number of eligible drug possessors added to the community corrections caseload (standard community corrections and SB 123) increased from 344 persons per year in 2001 to 1,003 persons in 2008 – a 192 percent increase.

The primary purpose of SB 123 was to change sentencing practices for cases involving drug possession – specifically, to reduce the use of incarceration for these individuals via the diversion of eligible offenders at sentencing and through a more careful review of revocation practices (Kansas Senate Judiciary Committee, 2003). The mandatory nature of SB 123 eligibility emphasized the critical role of diversion at sentencing to generate the anticipated reduction in prison admissions for drug possessors. However, just 7 percent of SB 123-eligible offenders were sentenced to prison prior to implementation of SB 123; after implementation, the percentage sentenced to prison declined to approximately 4 percent. The drop in the percent of eligible offenders sentenced to prison amounted to a diversion from prison of just 40 persons per year – well below the 400 persons per year initially estimated during the planning of SB 123.

These findings point to a critical problem in the implementation of SB 123. Significant “front-end” net widening (Tonry & Lynch, 1996) has occurred as less serious drug possessors have been drawn from court services – a type of supervision with minimal conditions and surveillance – and into community corrections – a type of supervision with more conditions and greater surveillance. While these offenders are receiving more treatment referrals than other drug possessors, they are also subjected to an enhanced penalty (more and longer supervision)

that they would not have otherwise received in the absence of the law. Contrary to prior research indicating that such front-end net widening is often the result of judicial discretion in the imposition of sentences, the analyses here indicate that net widening under SB 123 is due in part to the structure of the law itself, which requires the imposition of a community corrections sentence for *all* eligible offenders. The result is an overall increase in the potential for technical violations of the community sentence linked to a more intensive supervision and more oversight by a broader set of actors (providers and supervising officers).

The shift in population from court services to community corrections raises a second concern for the state. The increase in the number of drug possessors now supervised by community corrections significantly increases the costs of supervising drug possessors in the community due to the new emphasis on treatment linked to SB 123. Moreover, within community corrections districts, the influx of SB 123 offenders has impacted caseloads of individual community corrections offices and officers. Such an increase may create additional constraints on the ability of community corrections to effectively supervise SB 123 and non-SB 123 populations.

The front-end net widening is further exacerbated by significant increases in overall sentence lengths for drug possessors post-implementation. SB 123 allows judges to sentence individuals to up to eighteen months of community corrections supervision, the intent being to give individuals a significant period of time to engage in substance abuse treatment. Prior to implementation, however, most offenders received a court services sentence with an average length of just 12.3 months; those individuals sentenced to community corrections prior to implementation received an average sentence of 14.4 months. Overall, the average probation sentence for drug possession (including both court services and community corrections sentences) was 13 months prior to implementation. Following implementation, individuals

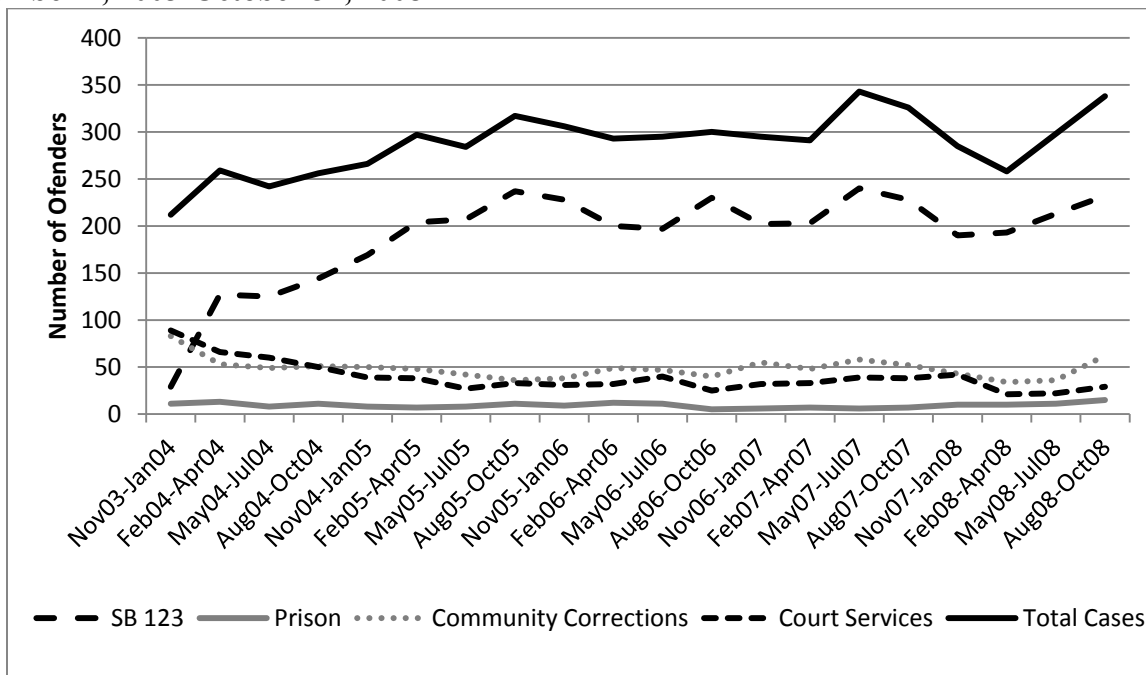
sentenced to SB 123 received an average sentence of 16.6 months – 3 months (25 percent) longer than offenders previously sentenced to court services and 2 months (14 percent) longer than offenders previously sentenced to community corrections. Overall, the average probation sentence for drug possession (including SB 123, court services, and community corrections sentences) increased to 15.4 months after to implementation – a 20 percent increase.

The Imposition of Non-SB 123 Sentences for Eligible Offenders

Although SB 123 was designed as a mandatory sentencing law, not all SB 123-eligible offenders received such a sentence after implementation (see Figure 2-1 and Figure 2-2). Over the first 60 months of implementation (November 1, 2003 – October 31, 2008), 5,643 SB 123-eligible individuals were sentenced in Kansas.⁶ A total of 3,708 of these offenders (66 percent) received SB 123 sentences; in turn, 1,947 eligible offenders were still sentenced to community corrections (967 or 17 percent), court services (785 or 14 percent), or prison (182 or 3 percent). In the first three months of implementation, just 14 percent of SB 123-eligible offenders were sentenced to SB 123. As noted in Chapter 6, interviews with community corrections officers indicate that the slow growth in SB 123 sentences was due largely to a lack of understanding of the law among courtroom actors and a lack of training immediately prior to and after implementation. As training and familiarity with the law increased, officers maintain, sentences to SB 123 increased as well, finally stabilizing at roughly 70 percent of sentences by mid-2005. These patterns are inconsistent with the program's mandate that *all* offenders without a disqualifying criminal history should receive a SB 123 sentence.

⁶ This number is different from the total number of SB 123 offenders sentenced, as reported by the Kansas Sentencing Commission. The Sentencing Commission reports every person sentenced to SB 123, regardless of eligibility for SB 123; in other words, the numbers reported by the Commission include people who are ineligible for SB 123 (as we confirm below). In contrast, we have restricted our examination only to those individuals who are eligible for SB 123.

Figure 2-2. Sentences Imposed for SB 123-eligible Offenders Post-Implementation, November 1, 2003-October 31, 2008



While designed as mandatory, SB 123 was originally interpreted to give judges some limited ability to depart from SB 123 and sentence eligible offenders to a non-SB 123 sentence if the judge provided reasons for imposing such an alternative sentence. In 2009, the Kansas Supreme Court held that SB 123 was, indeed, mandatory for those who qualify, finding that a district court does not have discretion to sentence an offender otherwise qualifying for SB 123 to imprisonment (*State v. Andelt*, No. 98,665, 98,699, Kan. Supr., October 9, 2009). Thus, in the initial years after implementation, judges often imposed non-SB 123 sentences for otherwise eligible offenders. Understanding such “departures” is important for understanding the implementation and functioning of SB 123. The non-SB 123 sentences of otherwise eligible offenders may be due to plea agreements, cooperation with law enforcement, or some other reason that may justify such as sentence. The non-SB 123 sentences also may be the result of active circumvention of the law or lack of understanding of the law among judges and other courtroom actors. We cannot fully specify this pattern because of the 1,947 non-SB 123

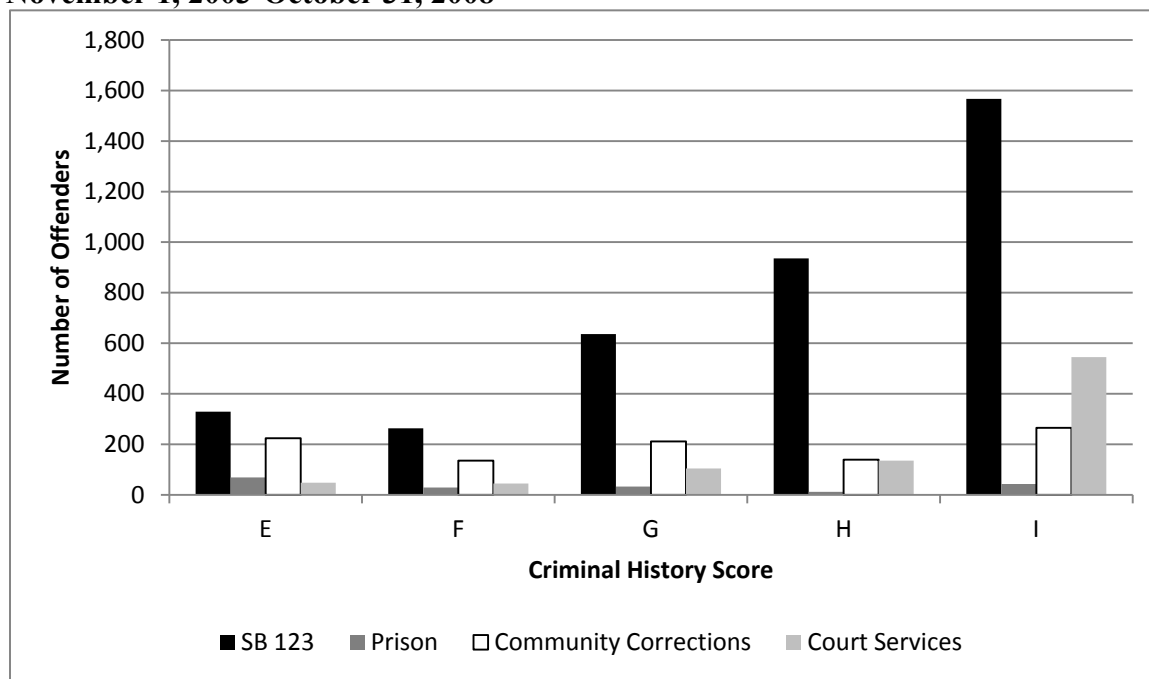
sentences imposed for SB 123-eligible offenders between November 1, 2003 and October 31, 2008, only 11 percent (220 cases) of these cases were listed as a departure; moreover, a reason for such a departure was given in just 9 percent (179 cases) of cases.

The low rate of recorded departures may be an indication of a lack of familiarity or understanding of the law or active circumvention of its statutory provisions by courtroom actors. If judges, prosecutors, and defense attorneys were unfamiliar with the law or did not fully understand the law, then the imposition of a non-SB 123 sentence for an eligible offender may have gone unnoticed and, hence, courtroom actors did not see the non-SB 123 sentences as departures.

While reasons for non-SB 123 sentences are rarely provided, evidence suggests that criminal history played some part in the imposition of non-SB 123 sentences for eligible cases. Eligible offenders with more serious criminal history scores (categories E and F which have two or more prior felony convictions for property or drug offenses) were more likely to receive a non-SB 123 sentence – roughly 48.2 percent of eligible offenders with a criminal history score of E or F received a non-SB 123 sentence compared to 30.8 percent of eligible offenders with a criminal history score of G, H, or I (Figure 2-3). For most criminal history scores, a community corrections sentence was the most frequent non-SB 123 sentence imposed; the only exception was Criminal History Scores H and I in which court services was the most frequent non-SB 123 sentence. These patterns were fairly consistent over the entire period after implementation. The higher rates of non-SB 123 sentences for eligible offenders with more serious criminal histories suggests that judges may be circumventing the law and imposing non-SB 123 sentences for those offenders who, they feel, do not deserve or are not amenable to a treatment-focused sentence. As shown in Chapter 6, some judges and prosecutors interviewed for this project expressed their

concern about the readiness for treatment and likelihood of program success of offenders nominally eligible for SB 123. From these interviews, a number of judges and prosecutors reported that they believed the main reason why offenders received non-SB 123 sentences was that Kansas did not provide treatment services for out of state offenders, therefore, these individuals would qualify under the criteria used to define eligibility in this study, but would not be included in the program. Although the exclusion of out of state residents may explain a small number of cases that were eligible for an SB 123 sentence but did not received it, these cases cannot explain the large number of non-SB 123 sentences documented above.

Figure 2-3. Sentences Imposed for SB 123-eligible Offenders Post-Implementation, November 1, 2003-October 31, 2008



Judicial district-level analyses indicate that the imposition of non-SB 123 sentences for otherwise eligible offenders is localized to a few jurisdictions, largely matching the distribution of resident populations throughout the state (Figure 2-4). In the 29th Judicial District, which has the highest concentration of SB 123-eligible offenders, just 41 percent of eligible offenders were

sentenced to SB 123 after program implementation; similarly, in the 18th Judicial District, which has the second highest concentration of SB 123-eligible offenders, 62 percent of eligible offenders were sentenced to SB 123. Overall, in the three judicial districts with the highest number of SB 123-eligible offenders, just 56 percent of eligible offenders were sentenced to SB 123; in the rest of the state, roughly 72 percent of SB 123-eligible offenders were sentenced to SB 123 during the same period. Across judicial districts the share of SB 123 sentences increased over time, stabilizing within the first eighteen months of program operation. Over time, there was also a relative convergence of SB 123 sentences across judicial districts, with a large share of urban and rural jurisdictions reporting that approximately 70 percent of eligible offenders were indeed sentenced to SB 123.

There was also a great deal of variation across judicial districts in the type of non-SB 123 sanctions imposed (Figure 2-5). In the 10th Judicial District, which has the third highest concentration of SB 123-eligible offenders, roughly 25 percent of eligible offenders who received a non-SB 123 sanction were sentenced to prison; in contrast, in the 28th Judicial District, which has the fourth highest concentration of SB 123-eligible offenders, just 5 percent of eligible offenders who received a non-SB 123 sanction were sentenced to prison. Moreover, in the 11th, 19th, 21st, and 24th Judicial Districts, which accounted for roughly 6 percent of all SB 123-eligible cases, no eligible offenders were sentenced to prison.

Figure 2-4. Number of SB 123-eligible Offenders and Number of SB 123-eligible Offenders Sentenced to SB 123, November 1, 2003-October 31, 2008, by Judicial District

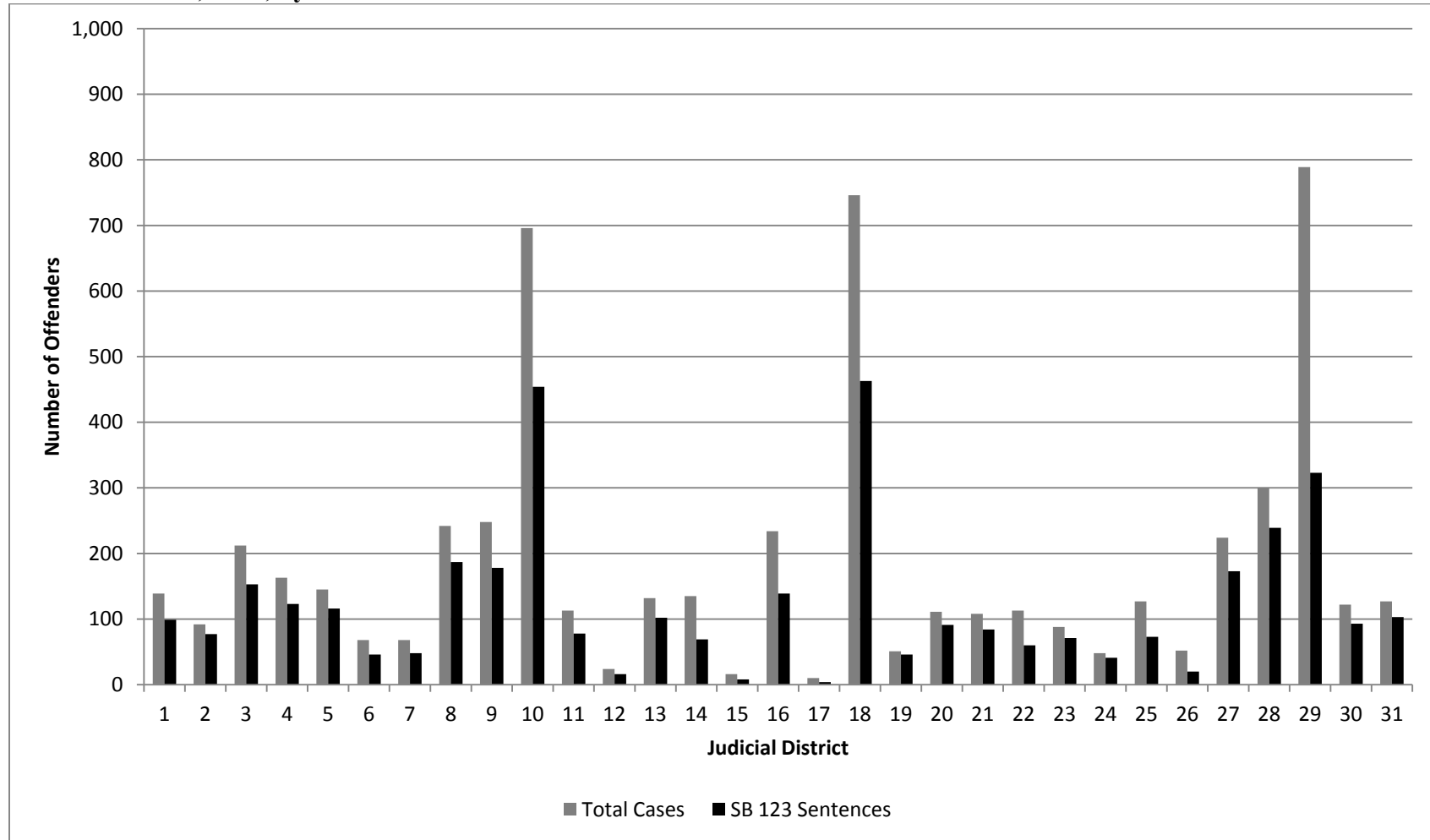
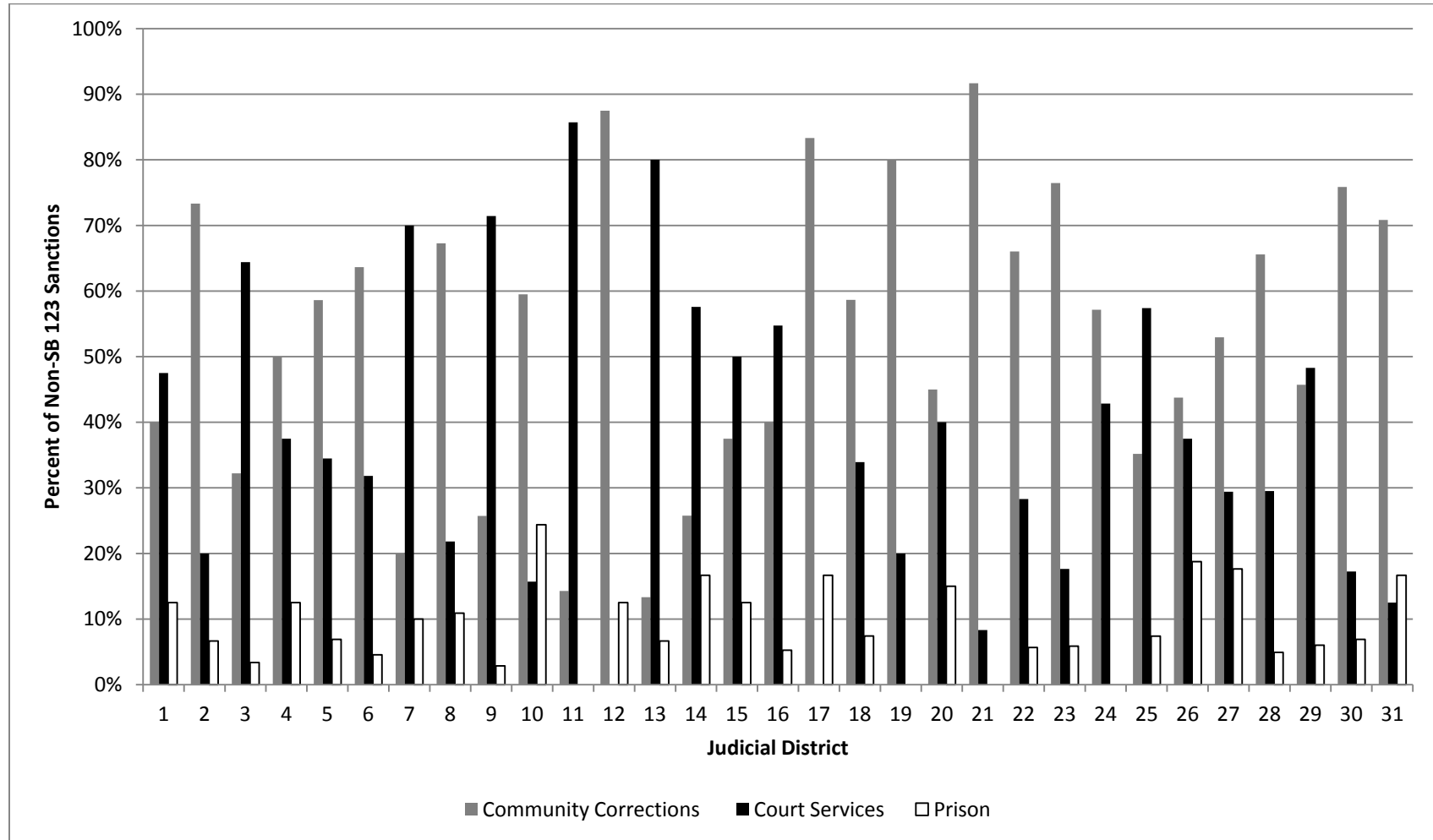


Figure 2-5. Percent of Non-SB 123 Sanctions Imposed for Eligible Offenders, November 1, 2003-October 31, 2008, by Judicial District



The Imposition of SB 123 Sentences for Ineligible Offenders

While a high percentage of eligible offenders have received non-SB 123 sentences – approximately 30 percent across the state through 2008 – several offenders *not eligible* for SB 123, nonetheless, received SB 123 sentences. Between November 1, 2003 and October 31, 2008, a total of 5,020 individuals received a SB 123 sentence. However, only 74 percent (3,708 individuals) were SB 123-eligible according to our operationalization of the SB 123 provisions for program eligibility. Thus, roughly 26 percent of SB 123 sentences (1,312 sentences) were imposed in cases in which the offender had a prior disqualifying offense. Overall, 250 SB 123 sentences (4.9 percent) involved offenders with criminal histories in criminal history categories A through D (criminal histories with prior convictions for violent offenses), 990 sentences (19.7 percent) involved offenders with prior arrests for drug sale or manufacture, and 69 sentences (1.4 percent) involved offenders with both prior disqualifying criminal history scores and arrest charges of drug sale or manufacture.⁷ Relying only on prior criminal history score, this means that 319 individuals were sentenced to SB 123 who clearly did not meet eligibility requirements – roughly 6.3 percent of all SB 123 sentences.

Of the 1,312 SB 123 sentences imposed in cases involving individuals with disqualifying prior offenses, only 16 percent (214 cases) were listed as a departure; the most frequent reasons given for a departure were “to treatment,” “plea agreement,” “old priors,” and “age of defendant.” Again, the low rate of recorded departures may be an indication of a lack of familiarity or understanding of the law or a circumvention of the law by courtroom actors. As noted in Chapter 6, interviews with courtroom actors suggest that the most prevalent rationale for the imposition of SB 123 sentences for ineligible offenders is the heightened use of plea

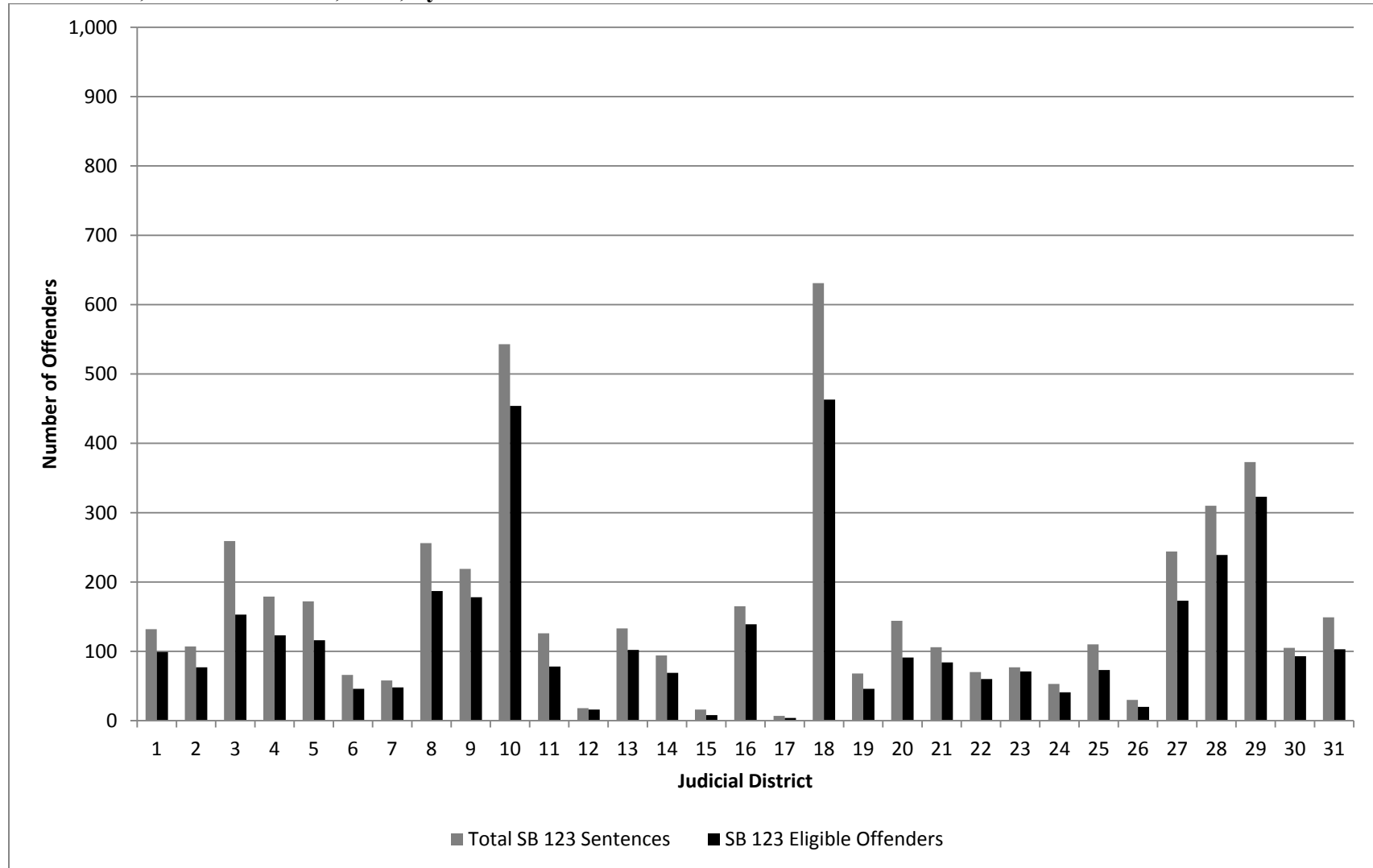
⁷ Criminal history score information was missing for four additional offenders sentenced to SB 123. As a result, it was unclear whether these individuals were eligible for SB 123. For the analyses, we defined them as ineligible.

bargaining for individuals initially charged with drug dealing or manufacture offenses. While community corrections officers, managers and providers see this as a key shortcoming in the operation of SB 123 – these individuals are seen as underperforming while on probation – some courtroom actors dismiss its significance in evaluating the overall operation of SB 123.

Courtroom actors reported plea bargaining SB 123-ineligible offenders down to possession in cases where they believed the offender would be amendable to treatment and benefit from the services provided under SB 123. Many courtroom actors reported that they believed that the criteria for inclusion under SB 123 were too narrow and the statute excluded a substantial number of offenders that genuinely suffered from substance abuse problems. However, prosecutors explained that they also circumvented the law when they felt that a distribution or manufacturing case was *weak* and they did not want the defendant to *completely walk*.

Judicial district-level analyses further indicate that the imposition of SB 123 sentences for otherwise ineligible offenders closely tracks the distribution of Kansas' resident population (Figure 2-6). In the 18th Judicial District, which has the highest concentration of SB 123 sentences, roughly 27 percent of SB 123 sentences were imposed in cases in which the defendant had a disqualifying prior offense; similarly, in the 3rd Judicial District, which has the fifth highest concentration of SB 123 sentences, over 40 percent of SB 123 sentences were imposed in cases in which the defendant had a disqualifying prior offense. These variations in sentencing patterns suggest that between-jurisdiction differences in departures may be indicative of local differences in understanding of the law or in the level of buy-in among courtroom actors. Similarly, the imposition of SB 123 sentences for ineligible offenders may indicate either a lack of understanding of the law or a circumvention of the law based on a judicial evaluation of an offender's amenability to treatment.

Figure 2-6. Number of SB 123 Sentences Imposed and Number of SB 123-ineligible Cases Receiving an SB 123 Sentence, November 1, 2003-October 31, 2008, by Judicial District



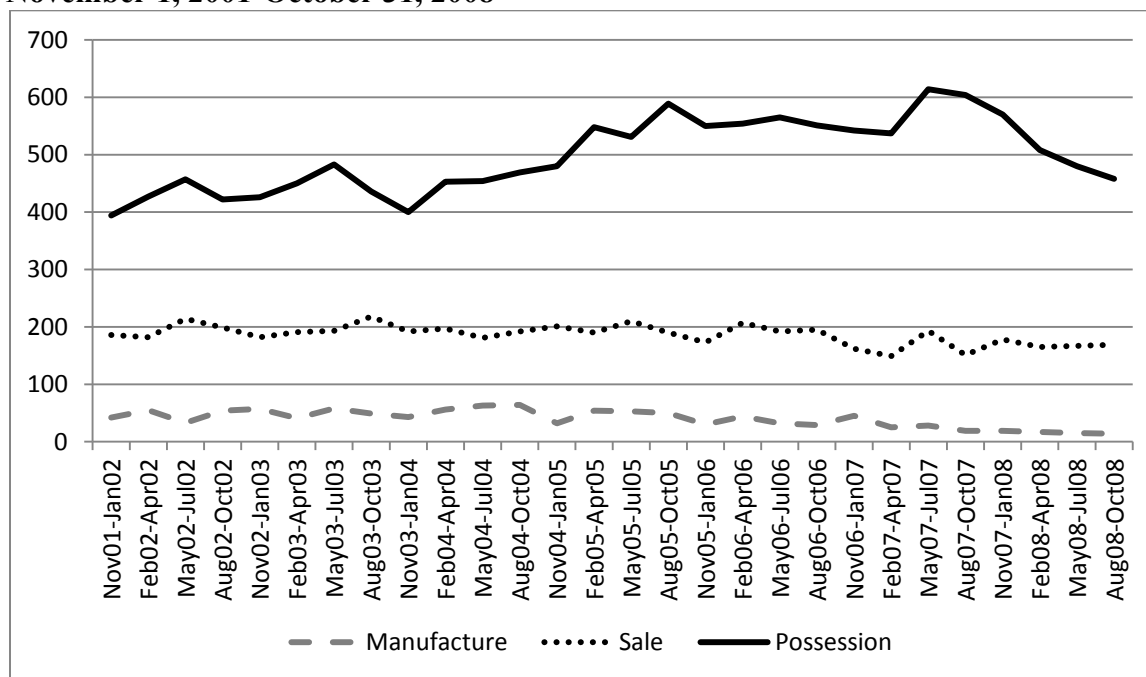
Sentences for Non-possession Offenses

One of the primary concerns among policymakers following the implementation of SB 123 was the impact of the legislation on patterns of plea bargaining. According to interviews with corrections managers and supervising officers described in Chapter 6, many drug possession convictions in Kansas are traditionally the result of “pleading down” a drug sale or manufacture offense (see also Stemen & Rengifo, 2006). This could lead to two opposite effects of SB 123 on the disposition of such cases. Given the mandatory community-based framework of SB 123, some believed that SB 123 would increase the frequency of pleas to possession charges from sale or manufacture charges—prosecutors would be more likely to offer a plea to possession and defendants would be more likely to accept a plea to possession given the guarantee of a community-based sentence under SB 123. Conversely, the implementation of SB 123 could lead to a decrease in the number of pleas to possession—prosecutors would be more hesitant to move forward with pleas given the perceived leniency associated with a community-based sentence under SB 123. Our interviews with courtroom actors and community corrections staff and managers suggest that, over time, the first of these two impacts of plea bargaining is more dominant – SB 123 has increased the frequency of pleas to possession and has accelerated the plea process. According to criminal justice stakeholders, the perceived leniency of SB 123, if an issue at all, was more likely to be expressed during the revocation proceedings, not at sentencing. It was primarily during the revocation process, when the legislation called for a more lenient approach to revocations – stipulating that failed UAs and re-arrests for drug possession were not grounds for an automatic revocation from SB 123 – that stakeholders perceived SB 123 as being too lenient; over time, this perception has led to some tension between different agencies and to some increases in revocations.

To further examine the broader impact of SB 123 on the sentencing of drug offenders in Kansas we examined trends in the disposition of offenders convicted of drug sale, manufacture, and possession who had Criminal History Scores of E through I (i.e. those who met the criminal history qualifications for SB 123).

Between July 1, 2001 and October 31, 2008 a total of 21,143 individuals were sentenced for a felony drug offense in Kansas (Figure 2-7) with the majority of these offenders – 68.5 percent – sentenced for a first- or second-offense drug possession. As Figure 2-7 indicates, the implementation of SB 123 coincided with a significant increase in sentences for drug possession (a 16 percent increase between 2001 and 2008). This pattern would suggest that in fact the implementation of SB 123 not only affected its target population but also more general courtroom processes such as conviction patterns. However, a closer examination of the data indicates that the increase in drug possession convictions was not matched with a decrease in convictions for other drug felony charges (see Figure 2-7). Further, drug possession arrests displayed increases that paralleled drug possession convictions (Figure 2-8) (Federal Bureau of Investigation, 2007) while arrests for drug sale and manufacture arrests remained stable through 2008.

Figure 2-7. Number of Offenders Convicted of Drug Manufacture, Sale, or Possession, November 1, 2001-October 31, 2008



These trends provide some indication that the increase in drug possession convictions after implementation of SB 123 was the result of changes in underlying offending and law enforcement patterns and was not the result of direct changes in the plea bargaining practices. In other words, while courtroom actors acknowledged pleading down some individuals charged with drug sale or manufacture, it does not appear that this practice changed dramatically after implementation of SB 123. It remains possible that SB 123 influenced these processes indirectly, affecting charging patterns by law enforcement or by altering the way county attorneys deal with drug possession cases. Moreover, these trends do not correspond to the findings of prior research on mandatory sentencing laws (Merritt et al., 2006), that found significant changes in charging decisions post-implementation of such laws.

Conclusions and Implications

SB 123 has been associated with significant changes in the sentencing of drug possessors in Kansas. Roughly 1,400 drug possessors per year now receive community-based drug treatment;

prior to the implementation of SB 123, these offenders likely would have received significantly less treatment (if sentenced to standard community corrections or court services). But they also would have received significantly less supervision since the majority of them would have received a court services sentence. The implementation of SB 123 diverted most of the eligible drug possessors not from prison to the community, as intended, but from one community-based program to another – from court services to community corrections. These problems appear to be due partially to the circumvention of the law by justice officials; but the primary reason for such front-end net-widening appears to be the structure of the law itself and to a lack of understanding of prior sentencing patterns and their relative impact on prison admissions.

This problem possibly could have been minimized by altering the eligibility requirements for SB 123. As it is currently structured, eligibility for SB 123 is determined entirely by a conviction for drug possession and a nonviolent criminal history. The mandatory SB 123 sentence is imposed when these eligibility requirements are met and only then is an assessment of treatment need made. Some net widening may be avoided by conducting assessments prior to sentencing and making a SB 123 sentence mandatory only for those offenders assessed to be in need of treatment. First-time offenders, offenders with minimal criminal histories, and those with minimal or no treatment needs – offenders who received court services sentences prior to SB 123 – would likely continue to receive court services sentences. Offenders with more extensive criminal histories and those with greater treatment needs – offenders who received community corrections and prison sentences prior to SB 123 – would likely receive SB 123 sentences. Nonetheless, it is unclear if such changes would overcome the apparent disconnect between prior sentencing practices and the intended outcomes under SB 123. With such a small

number of eligible offenders sentenced to prison and such a large number sentenced to court services prior to SB 123, the structure of the law may make net-widening unavoidable.

While net-widening appears to be the result of the structure of SB 123, some circumvention of the law has also occurred. Prior research has indicated that criminal justice system actors engage in some circumvention of mandatory sentencing laws, often when they do not agree with the severity of the mandatory sentence the law requires (see Tonry, 1992). Some support is found for such circumvention in the case of mandatory treatment as well. The higher rates of non-SB 123 sentences for eligible offenders with more serious criminal histories and the imposition of SB 123 sentences for ineligible offenders suggests that judges may be circumventing the law for those offenders who, they feel, do not deserve or not amenable to a treatment-focused sentence. Between-jurisdiction differences in the imposition of non-SB 123 sentences further indicate that local differences in understanding of the law or level of buy-in among courtroom actors may be occurring.

As a result, SB 123 likely increases the overall resources devoted to supervising drug possessors in the community. The higher cost associated with community corrections supervision relative to court services places economic burdens on the state that did not exist prior to implementation of SB 123. This cost is higher, not necessarily because of the increased resources devoted to drug treatment under SB 123, but because of the higher costs of supervision from the community corrections sentence associated with SB 123. Left to be examined is whether the patterns and practices described above have impacted the potential success of SB 123.

Chapter 3: Supervision and Treatment Practices

The impact of SB 123 on sentencing practices was just one of several systemic concerns of policymakers. They also sought to change the provision of supervision and drug treatment for drug possessors across the state's various criminal justice agencies and organizations. Per statute, following a sentence to SB 123, offenders are placed under the supervision of a community corrections officer who chooses a local drug treatment provider to conduct a drug abuse assessment of the offender using the Substance Abuse Screening Inventory III (SASSI III) (see American Society of Addiction Medicine, 2001). Based on the assessment score, the assessor then gives a recommendation for a particular treatment modality and the supervising officer chooses an appropriate drug treatment provider that best matches the recommended modality. Once a provider is chosen, SB 123 calls for routine "team meetings" to ensure that community corrections officers and drug treatment counselors collaborate on the treatment plans for individual offenders and can alter treatment modalities as needed. Individuals sentenced to SB 123 are then subject to the same conditions of supervision generally imposed as part of a sentence to community corrections (e.g., curfew, reporting requirements, urinalysis, etc.).

While SB 123 offenders are supervised by the same community corrections officers and receive treatment from the same counselors as offenders sentenced to non-SB 123 sanctions, SB 123, nonetheless, intended to change supervision and treatment practices for SB 123 offenders. Specifically, SB 123 encouraged a different approach by community corrections officers – one focused on an understanding of substance abuse and treatment including the prevalence of relapse, an increased use of additional non-treatment services, and a decreased use of traditional sanctions and responses to violations. In addition, community corrections officers, in partnership with counselors, were to ensure that SB 123 offenders received the treatment they needed. This was a primary concern of policymakers – ensuring that initial assessments of treatment needs

were followed by the requisite treatment modality and that, over time, offenders received neither too much nor too little treatment.

This chapter examines trends and patterns in recorded treatment and supervision practices for SB 123 offenders. Specifically, it describes the volume, evolution and distribution of treatment and supervision interventions across the state and over time, as well as the relative consistency between the assessments of substance abuse needs for SB 123 offenders and the suggested/implemented modalities of treatment.

Methodology

Data

The analyses rely on supervision data provided by the Kansas Department of Corrections (KDOC). The KDOC maintains a case management information system that stores data on supervision and program interventions for all offenders sentenced to community corrections, including those sentenced to SB 123. Supervising officers are in charge of entering all relevant information for every case, including treatment interventions and assessments. These data include information on modalities of treatment imposed, delivery of services by modality and provider, and supervision and program conditions imposed and were used to examine trends in the type of treatment delivered, to assess the use of supervision conditions and programs employed, and to gauge the use of different treatment providers.

Sample

To determine the impact of SB 123 on supervision and treatment practices, we examined information on all individuals sentenced to SB 123 during the first 60 months of program operation (November 1, 2003 to October 31, 2008). This group included all individuals receiving a SB 123 sentence regardless of criminal history score. Since the goal was to examine

the actual practices surrounding SB 123 supervision and treatment, we did not limit the examination only to SB 123-eligible offenders, as we did in the previous chapter. A total of 5,020 individuals were sentenced to SB 123 during the study period.

Analytical Strategy

The analysis of treatment and supervision interventions relied on univariate and bivariate descriptive statistics to describe trends in interventions over time and across community corrections districts.

Supervision Practices under SB 123

As a mandatory drug treatment program, SB 123 calls for a shift in the use of supervision and treatment services for drug possessors in Kansas. Community corrections officers are now asked to supervise offenders who have been sanctioned for the *primary* purpose of receiving drug treatment. This primacy of treatment led to a change in the balance of supervision and treatment interventions throughout the community corrections sentence.

As noted in Chapter 2, 5,020 SB 123 sentences were imposed during the first 60 months of the program. These 5,020 cases were linked to 27,166 recorded interventions (5.4 interventions per case on average). Approximately 72 percent of these interventions (19,516) were specific interventions associated with drug treatment (3.85 per case), while the remaining 28 percent of interventions (7,650) were events linked to changes in supervision/probation conditions or sanctions such as day reporting, increased supervision, and the imposition of certain community restrictions (1.51 per case). The ratio of treatment interventions to supervision interventions – roughly 2.5 to 1 – remained relatively constant over the study period. After rising steadily through 2006, the total number of interventions employed for SB 123 offenders stabilized at roughly 6,600 interventions per year; however, given that the total number of SB

123 offenders continued to rise during this period, this translated into a reduction in the average number of interventions per offender (Figure 3-1). As Figure 3-1 shows, the average number of treatment interventions decreased from approximately 5 treatment interventions per offender in 2004 to roughly 3 treatment interventions per offender in 2008. At the same time, supervision interventions dropped from an average of 2 supervision interventions per offender in 2003 to just 1 supervision intervention per offender in 2008.

Figure 3-1. Total Number of Supervision and Treatment Interventions Employed and the Average Number of Treatment and Supervision Interventions Employed per Offender, 2004-2008⁸

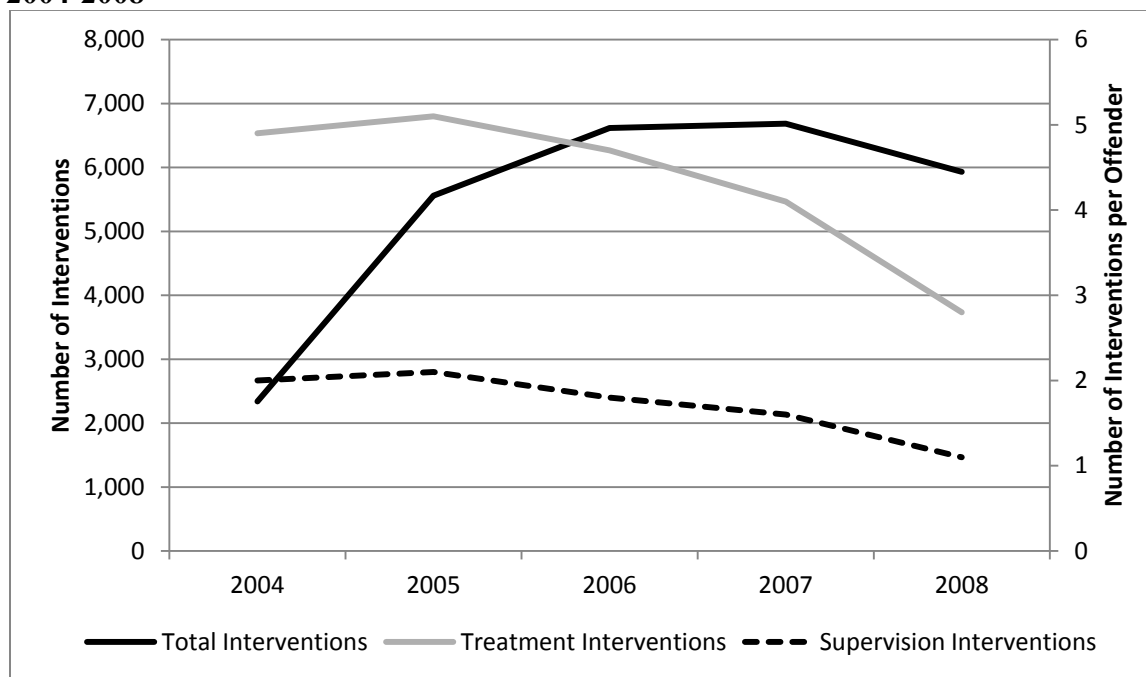


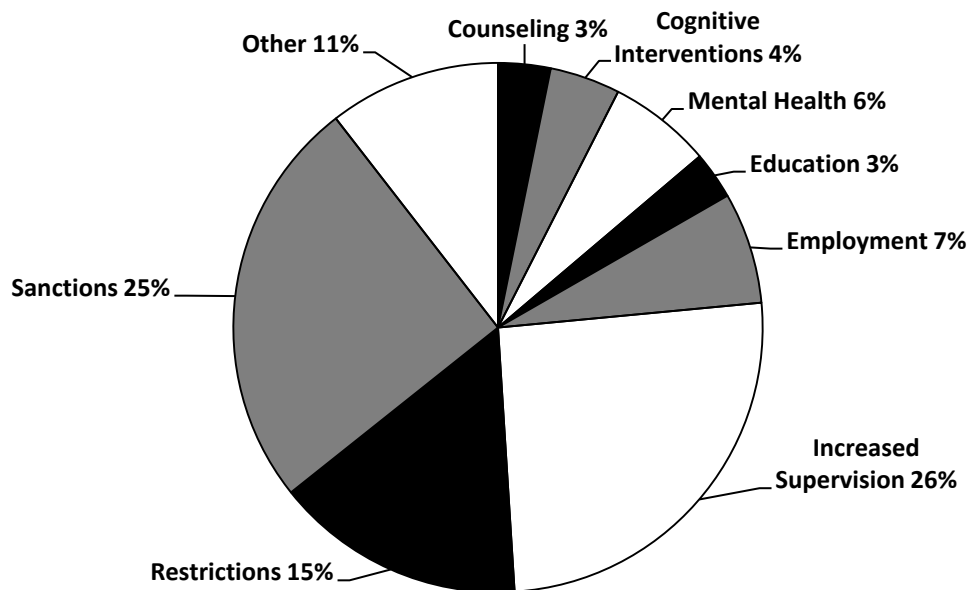
Figure 3-2 shows the distribution of the subset of supervision interventions for the study period.⁹ These interventions were reclassified into two general categories using the predefined data entry options in the KDOC case management system: 1) *restrictive* supervision

⁸ While SB 123 started on November 1, 2003, there were very few referrals to services during the first two months of the program. As a result, 2003 numbers likely misrepresent actual referral patterns during the period. Thus, this graph and those that follow show only 2004 through 2008 numbers.

⁹ While cases were selected based on sentencing date between November 1, 2003 and October 31, 2008, interventions were reported through December 31, 2008 (the final date of data collection). Some of the supervision interventions include health-related events not covered by SB 123, such as mental health evaluations; thus, mental health services reported in Figure 3-2 are not necessarily connected to the SB 123 treatment program. However, the frequency of these events is extremely low compared to more traditional indicators of supervision.

interventions which included day reporting, community service hours, conditional violator program, curfew, electronic monitoring and GPS, high risk referral, house arrest, increased reporting, increased UAs, intensive supervision, contact restrictions, revocation referrals, surveillance, travel restrictions, and verbal reprimands; and 2) *supportive* supervision interventions which included anger management, cognitive therapies, educational programming, DV evaluations and counseling, employment services, life skills counseling, and mental health evaluations and treatment.¹⁰ As Figure 3-2 indicates, restrictive supervision interventions represented the most frequently used supervision interventions (66 percent of all supervision interventions); supportive supervision interventions accounted for a relatively small portion (24 percent) of supervision interventions imposed over the course of the study period.

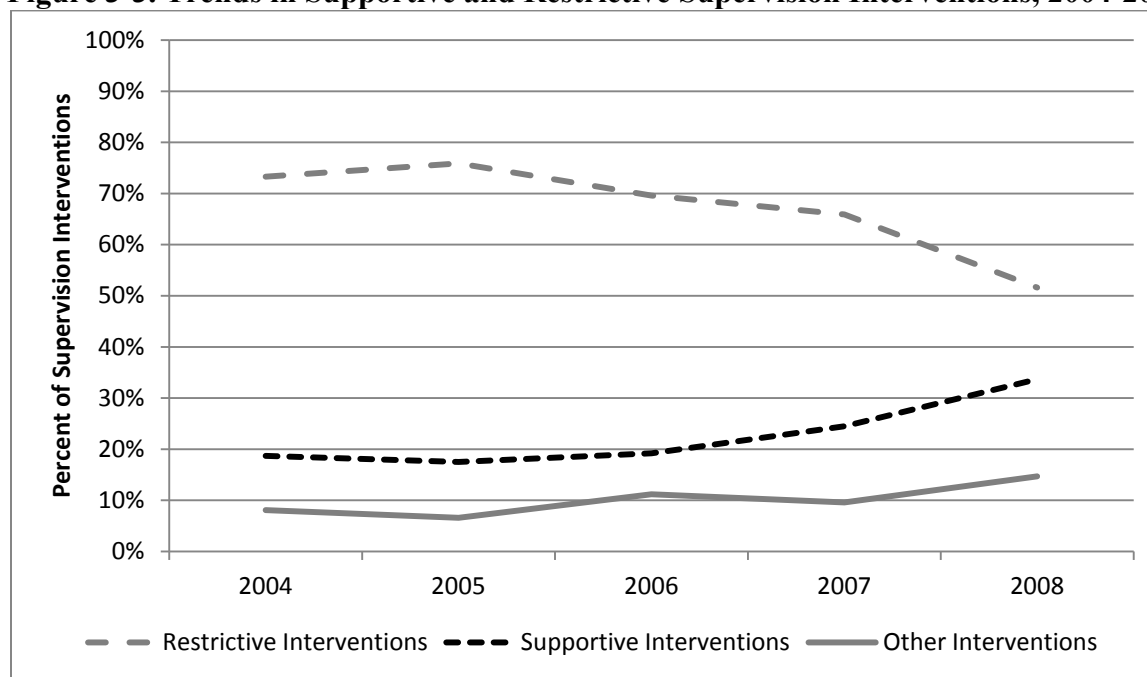
Figure 3-2. Supervision Interventions for SB 123 Clients, 2004-2008



¹⁰ An additional 801 supervision interventions were listed simply as “other” in the KDOC case management system.

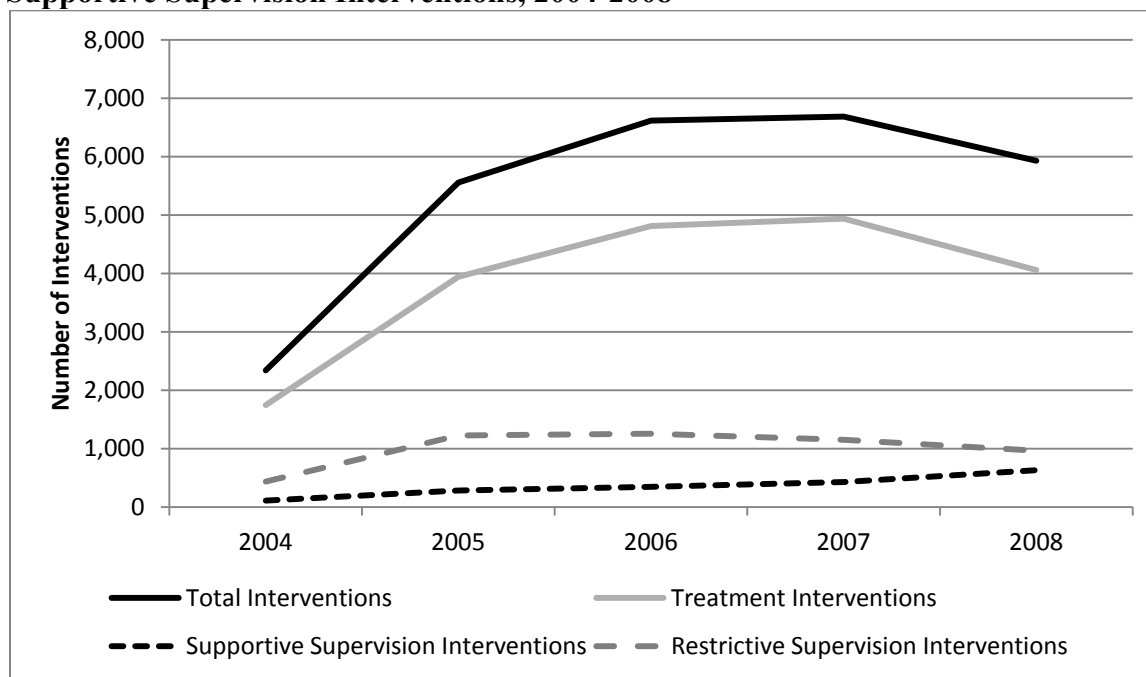
These distributions, however, changed significantly over time (Figure 3-3). In 2004, restrictive interventions accounted for over 73 percent of all supervision interventions; by 2008, restrictive interventions accounted for just 52 percent of all supervision interventions.

Figure 3-3. Trends in Supportive and Restrictive Supervision Interventions, 2004-2008



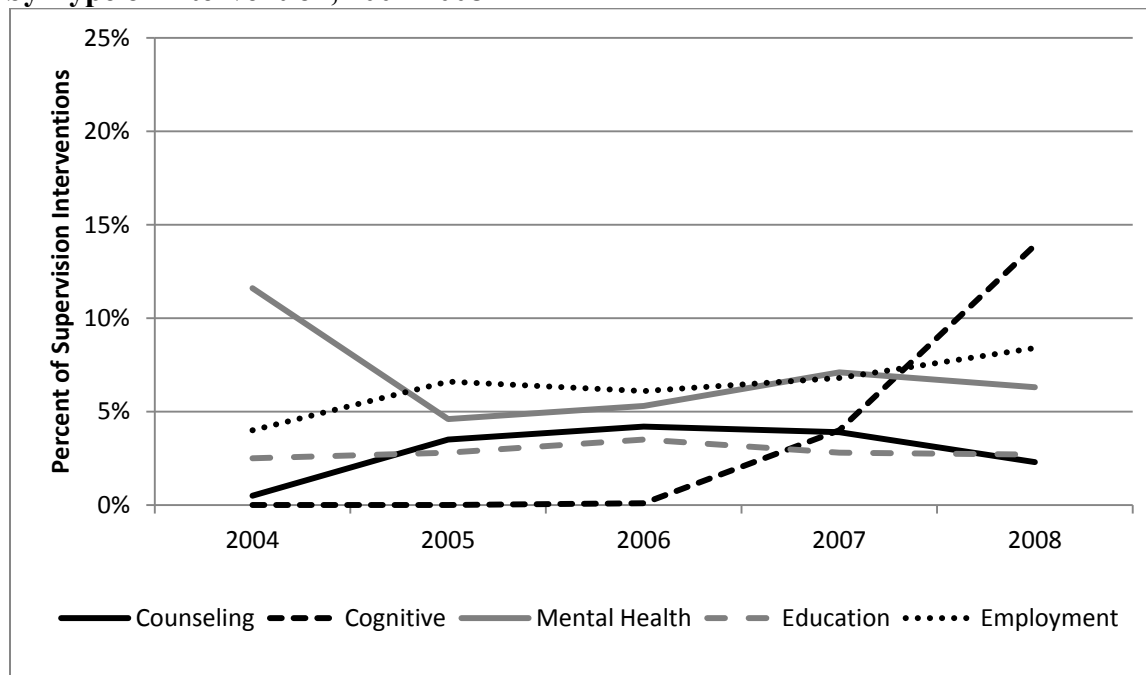
Moreover, as the number of supportive supervision interventions increased, they accounted for a greater share of all interventions employed. Supportive supervision interventions accounted for roughly 4.7 percent of all interventions employed in 2004 but accounted for over 10 percent of all interventions in 2008. At the same time, the portion of interventions accounted for by restrictive supervision interventions declined. In fact, while the total number of supervision interventions declined between 2004 and 2008, the number of supportive interventions actually increased (Figure 3-4).

Figure 3-4. Trends in Treatment Interventions, Restrictive Supervision Interventions, and Supportive Supervision Interventions, 2004-2008



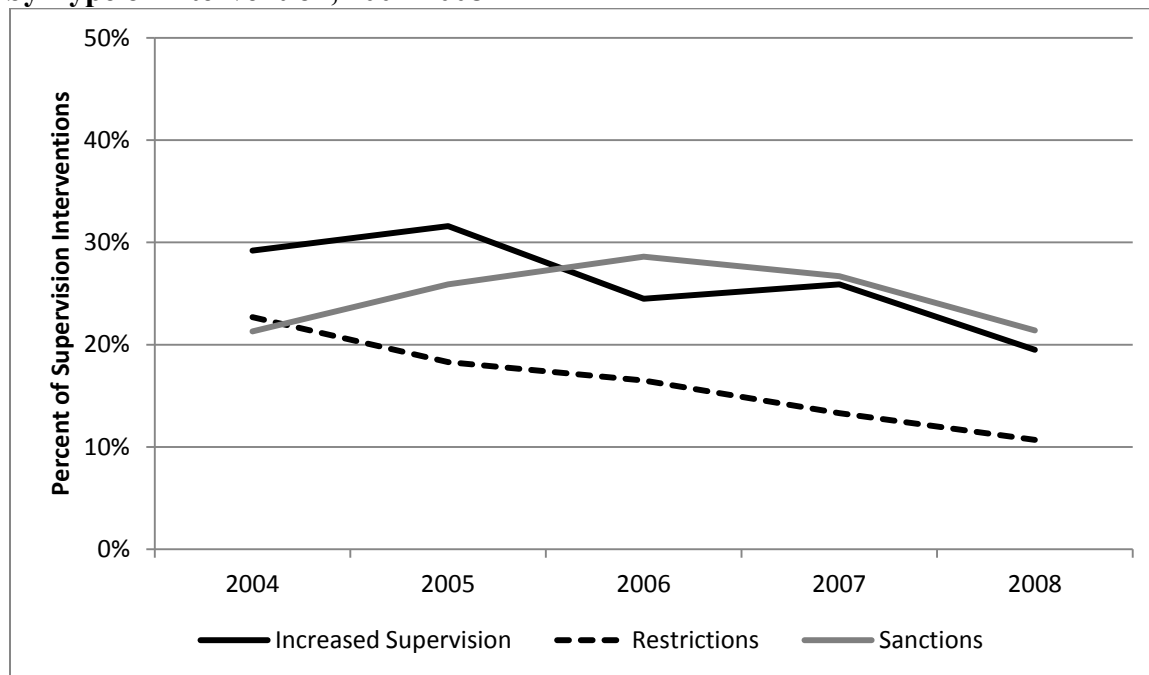
The increase in the use of supportive interventions was limited to a few specific services – primarily employment services and cognitive interventions (Figure 3-5). In 2004, there were no referrals to cognitive therapies; but by 2008, such services accounted for over 13 percent of supervision interventions. This trend underscores the importance given to cognitive-behavioral approaches under SB 123. Similarly, employment services increased from roughly 4 percent of all supervision interventions in 2004 to 8 percent of all supervision interventions in 2008. In contrast, mental health referrals showed a significant decrease, falling from roughly 11 percent of all supervision interventions in 2004 to just 6 percent of supervision interventions by 2008. Referrals to educational services and counseling remained stable throughout the study period at roughly 3 to 4 percent of all supervision interventions.

Figure 3-5. Supportive Supervision Interventions as a Percent of Supervision Interventions, by Type of Intervention, 2004-2008



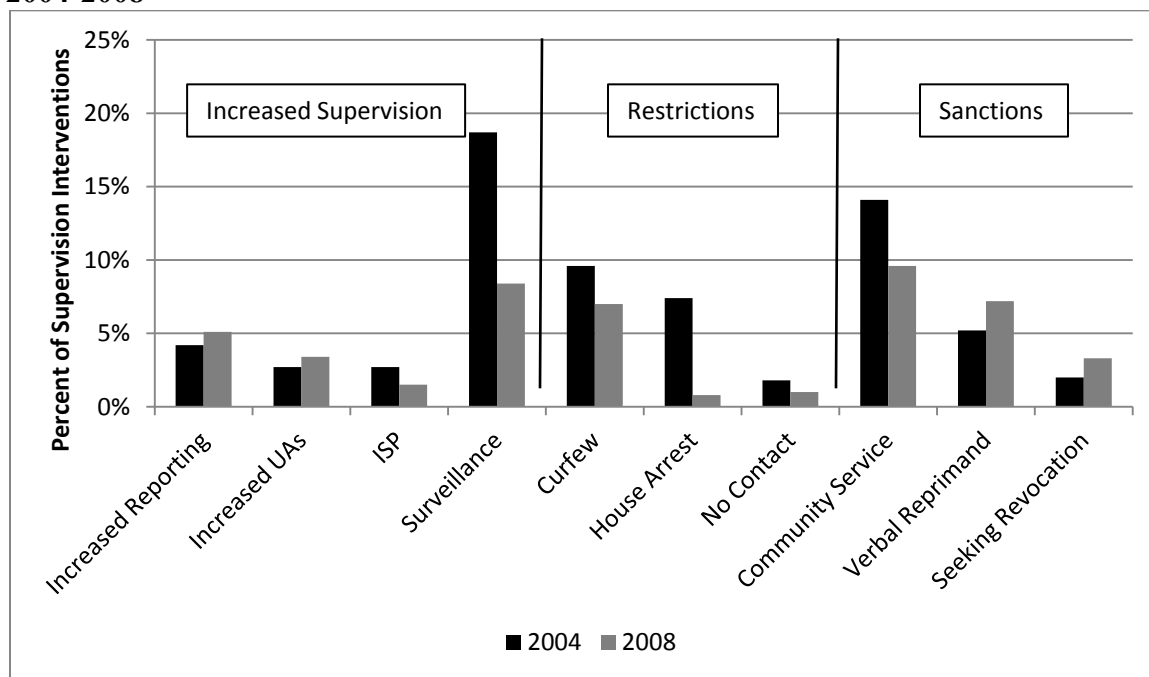
Restrictive supervision interventions – probation restrictions (curfew, association, etc.), increased surveillance, and sanctions (community service, jail, etc.) – accounted for most supervision interventions over the study period although as noted before, they were more frequent during the early stages of SB 123 implementation. As shown in Figure 3-6 increased supervision and sanctions, for example, each increased as a percentage of all supervision interventions imposed through 2005; increased supervision then declined steadily through 2008 while sanctions continued to climb through 2006 before declining. Restrictions declined steadily throughout the entire study period, dropping from nearly 24 percent of all supervision interventions in 2004 to just 10 percent of supervision interventions in 2008.

Figure 3-6. Restrictive Supervision Interventions as a Percent of Supervision Interventions, by Type of Intervention, 2004-2008



These patterns were not the same for all interventions (Figure 3-7). For example, while the use of surveillance declined between 2004 and 2008, the use of reporting and UAs actually followed an upward trend; thus, overall, the decline in the use supervision interventions came largely from reductions in the use of surveillance. Similarly, while the use of sanctions followed a bell shaped pattern returning to an overall level in 2008 similar to that in 2004, the use of verbal reprimands and revocations saw overall increases over time.

Figure 3-7. Restrictive Supervision Interventions as a Percent of Supervision Interventions, 2004-2008

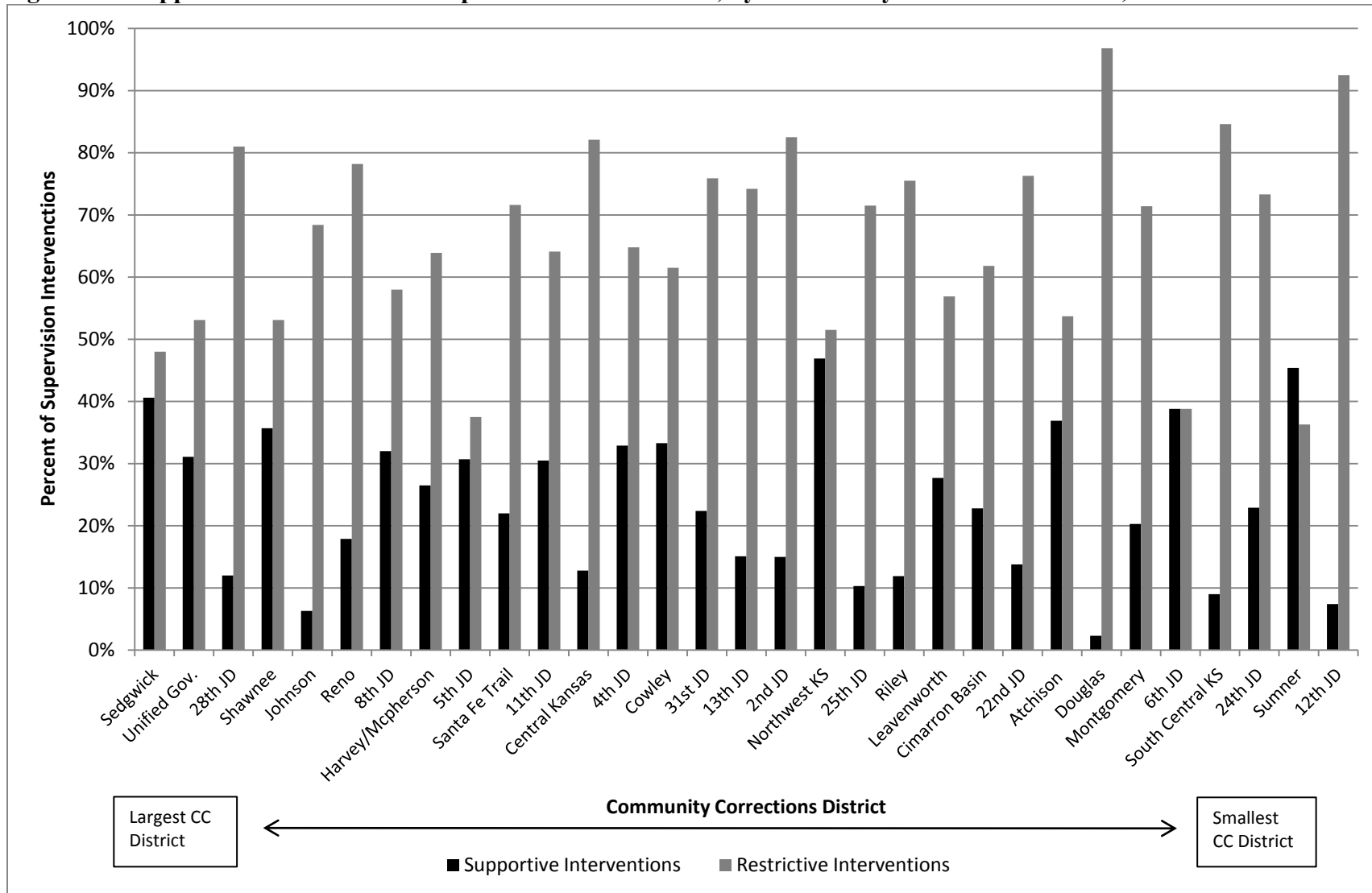


This bell-shaped trend in the reported use of sanctions and the initial rise in the use of increased supervision following the implementation of SB 123 suggest that the initial approach to supervising SB 123 clients involved fairly traditional reactions to failure – e.g., increased supervision and surveillance. However, the overall decline in the use of restrictive supervision interventions over time combined with the general upward trend in the use of supportive supervision interventions may indicate a change over time in community corrections officers’ approach to supervising SB 123 offenders. In the initial months after implementation of SB 123, officers may have relied more heavily on the traditional philosophies and mechanisms for supervising offenders in the community – responding to noncompliance with increased surveillance and sanctions. But, over time, as SB 123 became more established (e.g., greater access to treatment, better coordination of interventions between officers and counselors) these mechanisms may have changed as the primacy of treatment – a goal of SB 123 – became more dominant and officers responded to the non-treatment needs of offenders with increased

employment and education programs. This perspective was supported by a number of community corrections officers interviewed for this project. According to the officers, the implementation of SB 123 was difficult; although, over time, *things got better*, it was *easier to let go*, and to realize that *treatment counselors and other providers could act as partners*.

The general assessment of patterns in supervision interventions masks variation across community corrections districts as well (Figure 3-8). As Figure 3-8 indicates, Sedgwick County Community Corrections, with the largest concentration of SB 123 clients (approximately 15 percent of all SB 123 clients), relied heavily on supportive supervision interventions – roughly 40 percent of supervision interventions used in Sedgwick County were supportive supervision interventions. In contrast, Johnson County Community Corrections, with the fifth largest concentration of SB 123 clients (roughly 5 percent of all SB 123 clients), relied very little on supportive supervision interventions – roughly 7 percent of supervision interventions in Johnson County were supportive supervision interventions.

Figure 3-8. Supportive and Restrictive Supervision Interventions, by Community Corrections District, 2004-2008



Again, the variation across community corrections districts may point to a lack of buy-in among some specific locales. However, it may also point to differences in access to organizations outside of community corrections responsible for supportive interventions, such as mental health services, employment assistance, education, and mental health, or to differences in the recording of interventions into the case management system.

Treatment Practices under SB 123

As noted above, most of the interventions for SB 123 offenders recorded in the KDOC case management system correspond to treatment interventions (3.85 per case, approximately 72 percent of all recorded interventions). Figure 3-9 displays the distribution of these interventions over the study period. As Figure 3-9 indicates, outpatient services represented the majority of treatment interventions employed, accounting for nearly 50 percent of all treatment interventions during the study period; yet, the percentage of treatment interventions that were to outpatient services was more significant at the early stages of SB 123 implementation (at roughly 70 percent of all interventions in the early months of the program) than at the end of the study period (stabilizing at roughly 62 percent of interventions) (Figure 3-10). As Figure 3-10 indicates, outpatient group and outpatient individual/family modalities showed swift year-to-year changes before stabilizing, while intensive outpatient has remained fairly stable throughout the entire study period.

Figure 3-9 Treatment Interventions, 2004-2008

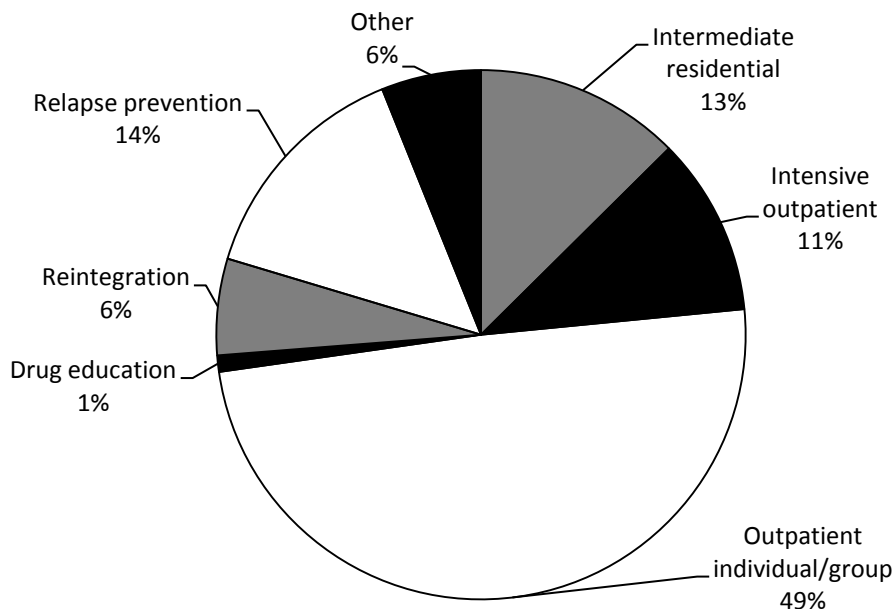
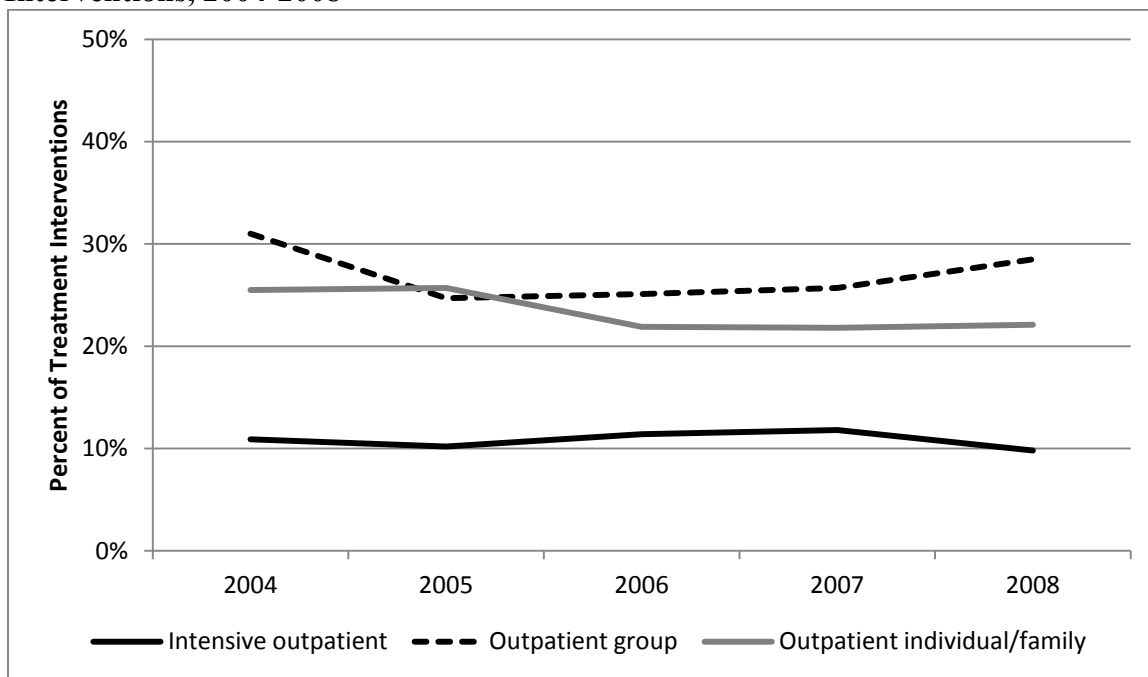


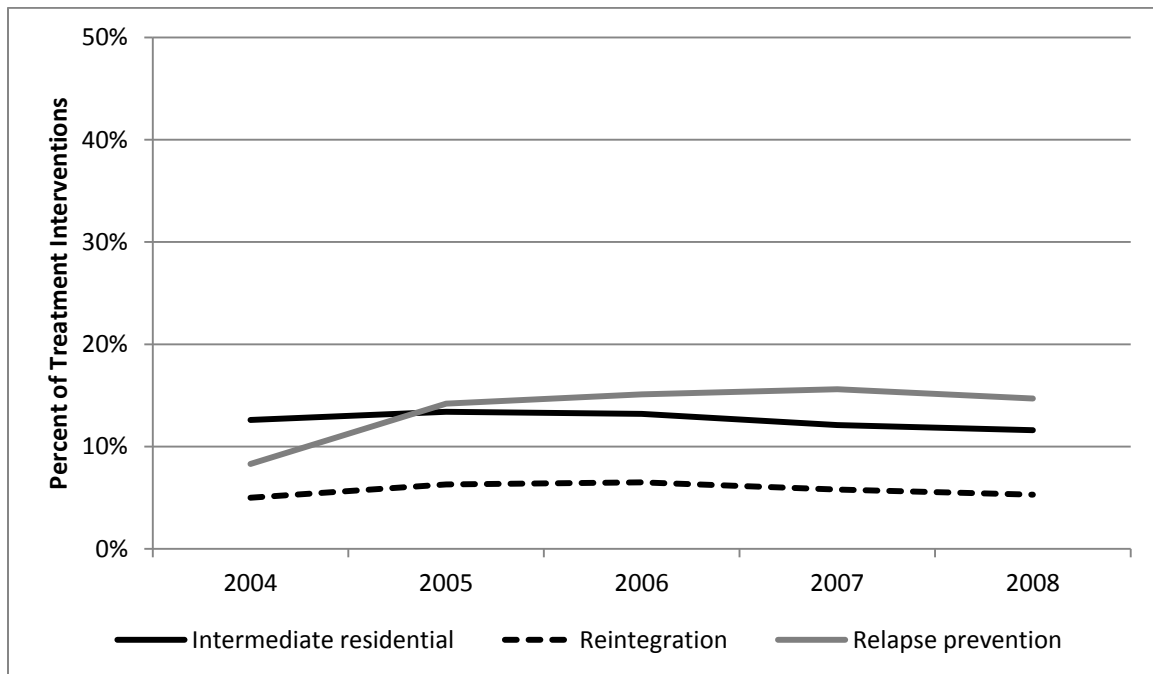
Figure 3-10. Outpatient Treatment Modalities as a Percent of Treatment Interventions, 2004-2008



As Figure 3-9 also indicates, other non-outpatient treatment modalities accounted for significantly smaller portions of overall treatment. Intermediate residential services

and relapse prevention each accounted for roughly 13 percent of all treatment interventions during the study period, while reintegration accounted for just 6 percent of treatment modalities overall. However, relapse prevention increased steadily throughout the study period as more SB 123 offenders entered and exited other treatment modalities, increasing from 8 percent of all treatment interventions in early 2004 to roughly 15 percent of interventions by 2008 (Figure 3-11). Some of these fluctuations were related to cycles in the admissions process and the delivery of services. For instance, it is expected that relapse prevention interventions will not occur during the first months of substance abuse treatment. While the frequency of these interventions would tend to stabilize as more cohorts enter into the program, this pattern is difficult to observe within a new program.

Figure 3-11. Modalities of Continuing Care as a Percent of Treatment Interventions, 2004–2008



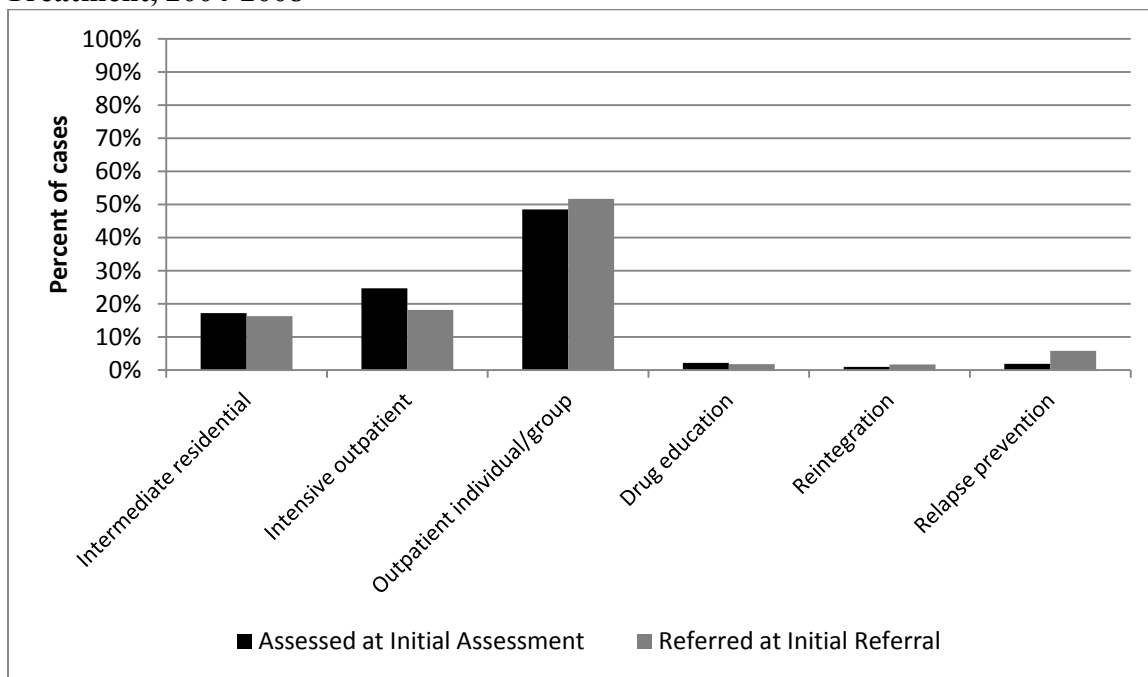
The treatment modalities utilized generally corresponded to the needs of offenders. Following implementation of SB 123, many community corrections officers

expressed concern that some offenders were not receiving the treatment they were assessed to need (Stemen and Rengifo 2006). As reported in Chapter 6, focus groups conducted with officers and managers through 2010, however, revealed that these concerns were not as prevalent as reported during the first months of program implementation. Moreover, interviews with SB 123 offenders conducted in 2010 indicate that individuals generally agree that they received the treatment that they needed (see Chapter 7). To determine the correspondence between treatment need and modality of treatment, we examined initial needs assessments conducted immediately after sentencing and initial modality of treatment into which an offender was placed. Individuals could be assessed to need several different modalities of treatment at this initial assessment. For the analyses here, the modalities recommended at assessment were rank-ordered by intensity of treatment, with intermediate residential ranked first, intensive outpatient second, outpatient individual or group third, drug education fourth, reintegration fifth, and relapse prevention sixth.

Overall, there was a strong association between the most intensive modality of treatment recommended at the initial assessment and the initial modality of treatment actually employed. For example, 17 percent of SB 123 offenders were found to need intermediate residential treatment at their initial assessment, and 16 percent received such treatment as their initial modality of treatment (Figure 3-12). Thus, while many community corrections officers and treatment providers stated during the first years of program implementation that there was a general lack of access to intermediate residential services in the state (Stemen & Rengifo, 2006), SB 123 offenders are, nonetheless, accessing such services at rates nearly identical to those indicated by initial

assessments of need. This was supported by our qualitative observations gathered through group and one-on-one interviews with officers and managers of community corrections (see Chapter 6). As Figure 3-12 indicates, similar trends were found for all other modalities of treatment. The only exceptions were intensive outpatient and relapse prevention. Since relapse prevention occurs at the later stages of treatment, and rarely at the initial referral, one may expect differences between assessed need and initial modality of treatment. The higher rate of referral for outpatient individual and group may explain some of the lower than expected rates for intensive outpatient; individuals in need of intensive outpatient may be referred to outpatient individual and group if treatment slots are not available in intensive treatment.

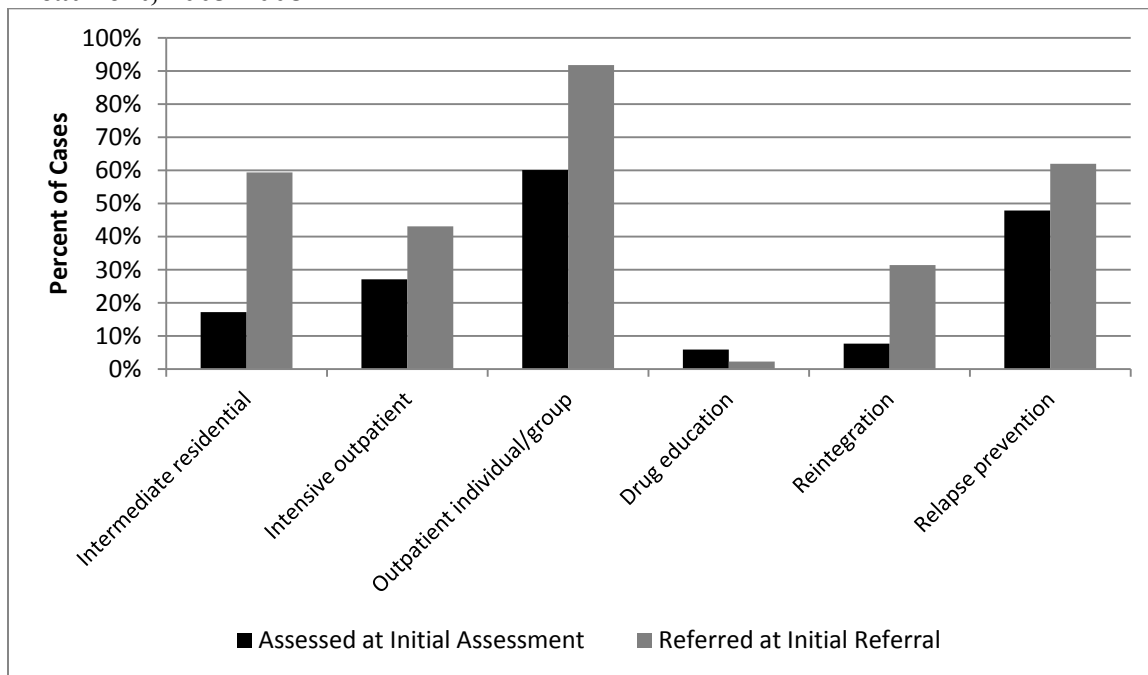
Figure 3-12. Percent of Cases Assessed and Initially Referred by Modalities of Treatment, 2004-2008



While there is a high level of agreement between the initial treatment modality recommended by the assessment and the initial modality to which an offender is referred, over time, offenders receive modalities of treatment at rates quite different from the

initial assessment (Figure 3-13). To examine the correspondence between the overall need for treatment and overall access to treatment, we did not rank-order the modalities of treatment at assessment; rather, we included all recommendations in the figures below. Also, we examined *all* referrals to treatment that an individual may have received throughout the supervision period. For example, 17 percent of SB 123 offenders were found to need inpatient treatment at their initial assessment, yet 60 percent received such treatment over the course of their sentence. Again, while many initially maintained that there was a general lack of access to intermediate residential services in the state (Stemen & Rengifo, 2006), over time SB 123 offenders are entering residential treatment at rates much higher than their initial assessments indicate. Outpatient individual, outpatient group, intensive outpatient, reintegration services, and relapse prevention show similar patterns, with a higher percentage of SB 123 offenders receiving such services over the course of their sentences than initially assessed. These trends may not necessarily be indicative of inconsistencies between assessed needs and treatment employed; rather, they may highlight the degree to which offenders needs are reassessed throughout their supervision tenure. While SB 123 has institutionalized some of these processes – for instance by implementing periodic drug assessments – it lacks a more structured feedback on the modifications to treatment plans. Furthermore, information on the proscribed and actual dosage of each treatment modality is not entered consistently in the KDOC case management system, making it impossible to account for these factors in our analyses.

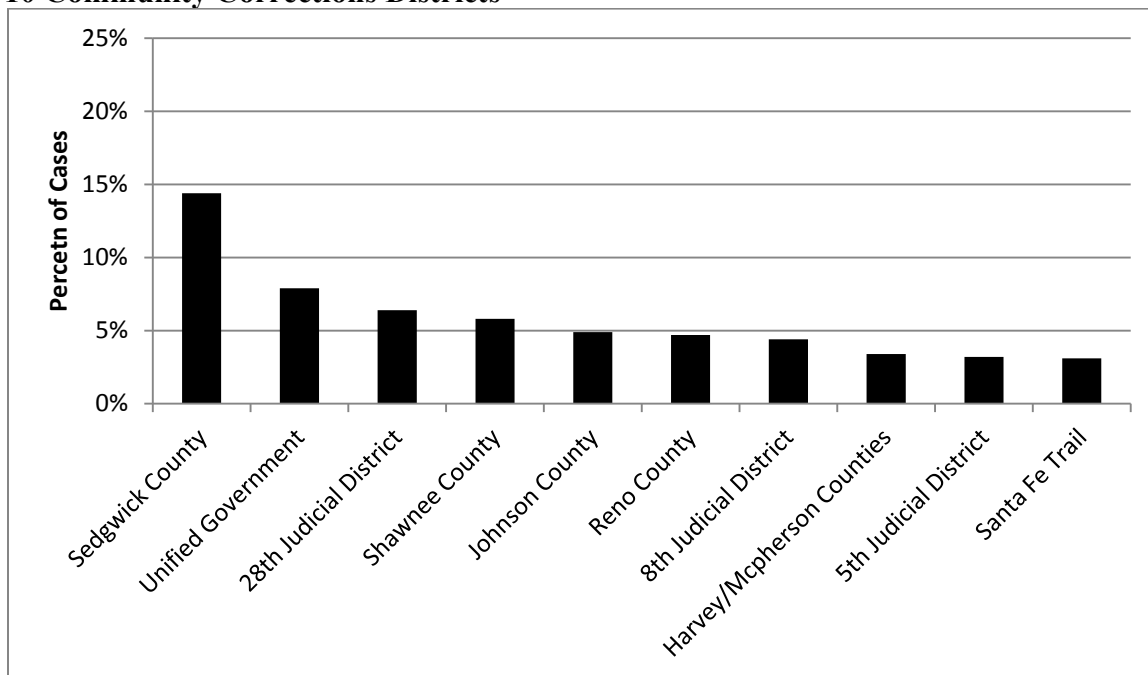
Figure 3-13. Percent of Cases Assessed and Ever Referred by Modalities of Treatment, 2003-2008



The Concentration of Supervision and Treatment Services

Although a state-wide program, SB 123 naturally impacts each community corrections district differently. Cases were distributed across all 31 community corrections districts in the state; however, roughly 60 percent of the individuals sentenced to SB 123 were localized in just ten districts (see Figure 3-14). The district with the highest concentration of SB 123 cases was Sedgwick County (14.4 percent of all offenders).

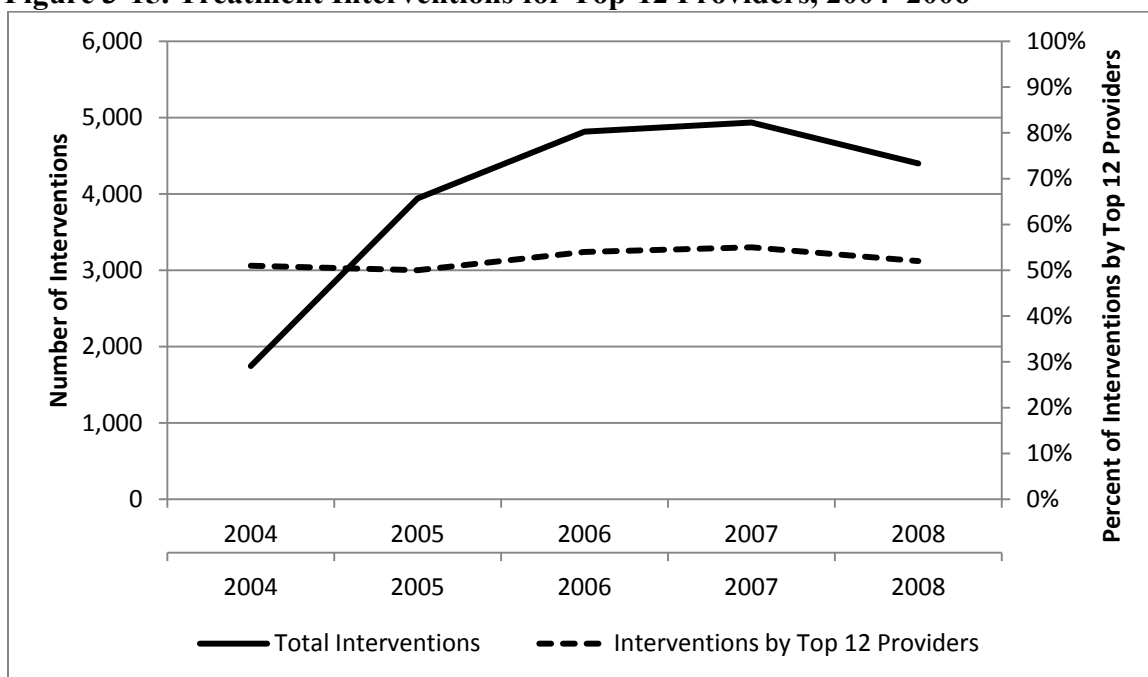
Figure 3-14. Distribution of SB 123 Cases by Community Corrections District, Top 10 Community Corrections Districts¹¹



Another major concern raised by community corrections officers has been access to treatment and the concentration of treatment in a relatively small number of treatment providers (Stemen & Rengifo, 2006). Overall, a total of 120 drug treatment providers delivered services to SB 123 offenders during the study period. Just twelve providers, however, were responsible for approximately 51 percent of all treatment interventions, with two agencies accounting for nearly 25 percent of all interventions employed; no other provider accounted for more than 5 percent of treatment. This may be due to problems of availability of treatment, difficulties in getting new providers to enter the market, and the inconsistent quality of treatment in some areas. Observed patterns in the number of providers and services offered remained fairly stable over time, despite the increasing number of SB 123 offenders sentenced during the study period (Figure 3-15).

¹¹ Note: These 10 counties represent 60 percent of all SB 123 cases. The remaining counties each have less than 2 percent of the total SB 123 cases.

Figure 3-15. Treatment Interventions for Top-12 Providers, 2004–2006



The types of interventions available appear to be concentrated in just a few service provider agencies, with concentration varying by the specific services to be delivered. Table 3-1 presents some indicators of the concentration of services by treatment modality and service provider. The modalities listed in Table 3-1 represent 97 percent of the treatment interventions recorded in the dataset. As Table 3-1 indicates, some treatment services are concentrated in just a few service provider agencies. For example, intermediate residential treatment is provided by just 15 service providers in the state; and, 4 of these 15 providers account for more than 50 percent of all such interventions. Intensive outpatient, re-integration, outpatient family, and drug education treatment show similar concentration patterns.

Table 3-1. Number of Providers by Modality of Treatment

Treatment modality	Total # interventions	# Providers with >5% cases	# Providers with >10% cases	# Providers accounting 50% interventions	Total # of providers
Outpatient - individual	3,244	1	0	17	105
Outpatient - group	3,140	1	0	14	100
Relapse prevention	1,956	2	1	11	87
Intermediate - residential	1,779	7	3	4	15
Intensive outpatient	1,614	5	1	5	54
Re-integration	761	7	1	6	25
Outpatient Family	181	3	1	1	30
Drug Education	155	2	1	5	30

Given the concentration of treatment interventions provided by just a few providers, the success of SB 123 becomes heavily dependent on the effectiveness of these providers. This concentration may be unavoidable, as SB 123 offenders remain concentrated in just a few community corrections districts and as few new providers have entered the market since the inception of SB 123. Nonetheless, the lack of diversification in the provision of treatment may indicate a long-term issue to be addressed. Moreover, prior research indicated that offenders in Kansas were often required to travel outside of their communities to receive treatment services (Stemen & Rengifo, 2006); this was echoed by several offenders, particularly those from rural jurisdictions, interviewed for the current study (see Chapter 7). The continued concentration of services in a few providers has failed to overcome this problem. In more rural areas, the availability of specialized treatment options is reduced by the lack of a significant flow of offenders. The number of SB 123 interventions appears to be insufficient in some regions to support the establishment of new providers providing unique services.

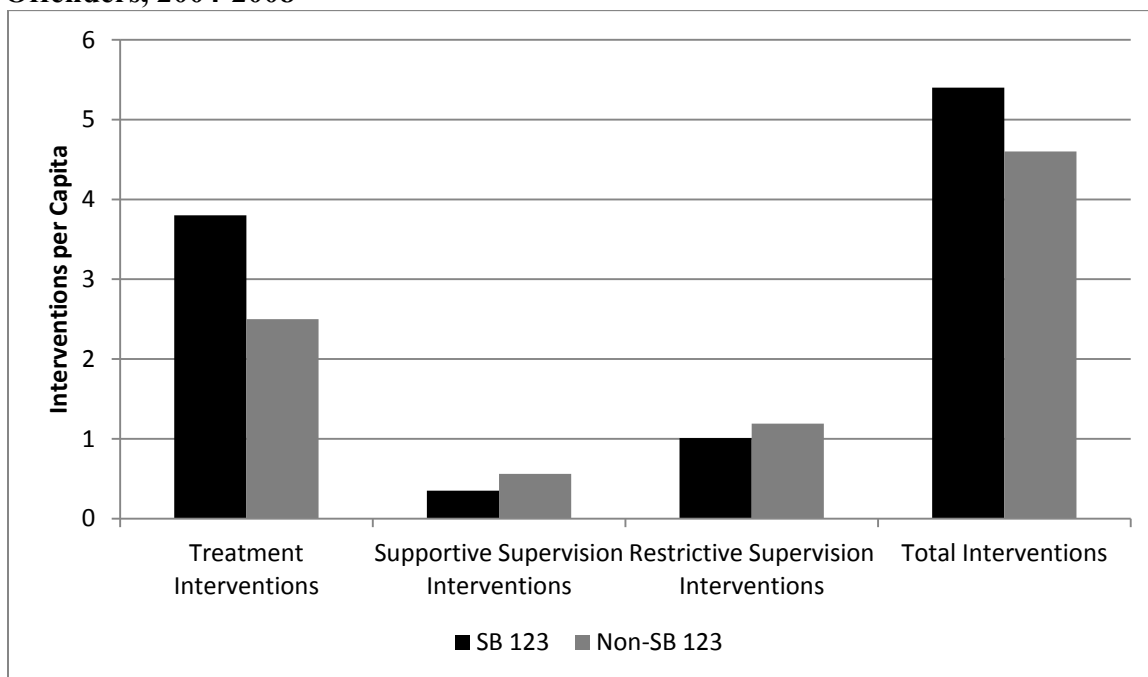
Supervision and Treatment for Non-SB 123 Offenders

While SB 123 calls for a shift in the use of supervision and treatment services for eligible drug possessors in Kansas, our interviews with community corrections officers revealed that the supervision of SB 123 offenders was, nonetheless, the same as the supervision of non-SB 123 offenders (see Chapter 6). Officers did state, however, that because of the availability of funding, the amount of treatment ultimately available to SB 123 offenders was slightly greater than that available for non-SB 123 offenders. To assess the extent of these potential similarities and differences, we examined the use of supervision and treatment interventions for drug possessors sentenced to standard community corrections (i.e. a non-SB 123 community corrections sentence).

As noted in Chapter 2, 967 SB 123-eligible individuals were sentenced to community corrections between November 1, 2003 and October 31, 2008. These 967 cases were linked to 4,405 recorded interventions, or 4.6 interventions per case on average – slightly less than the 5.4 interventions per case recorded for SB 123 offenders (Figure 3-16). Consistent with the perceptions of community corrections officers, treatment interventions accounted for a smaller percentage of interventions employed for non-SB 123 offenders. While 72 percent of interventions employed for SB 123 offenders were drug treatment interventions, just 56 percent of interventions (2,469) for non-SB 123 offenders were associated with drug treatment; this amounted to roughly 2.55 treatment interventions per case for non-SB 123 offenders compared to 3.85 treatment interventions per case for SB 123 offenders. In turn, supervision interventions accounted for a larger portion of interventions employed for non-SB 123 offenders, accounting for roughly 44 percent of interventions (1,938) compared to 28 percent of interventions for

SB 123 offenders. However, per capita, non-SB 123 offenders received nearly the same number of supportive and restrictive supervision interventions: non-SB 123 offenders received 0.50 supportive supervision interventions and 1.19 restrictive supervision interventions per offender compared to 0.35 supportive interventions and 1.01 restrictive interventions per offender for SB 123 offenders. Thus, in terms of the nature and amount of supervision interventions employed, SB 123 and non-SB 123 offenders appear to be supervised in a similar manner.

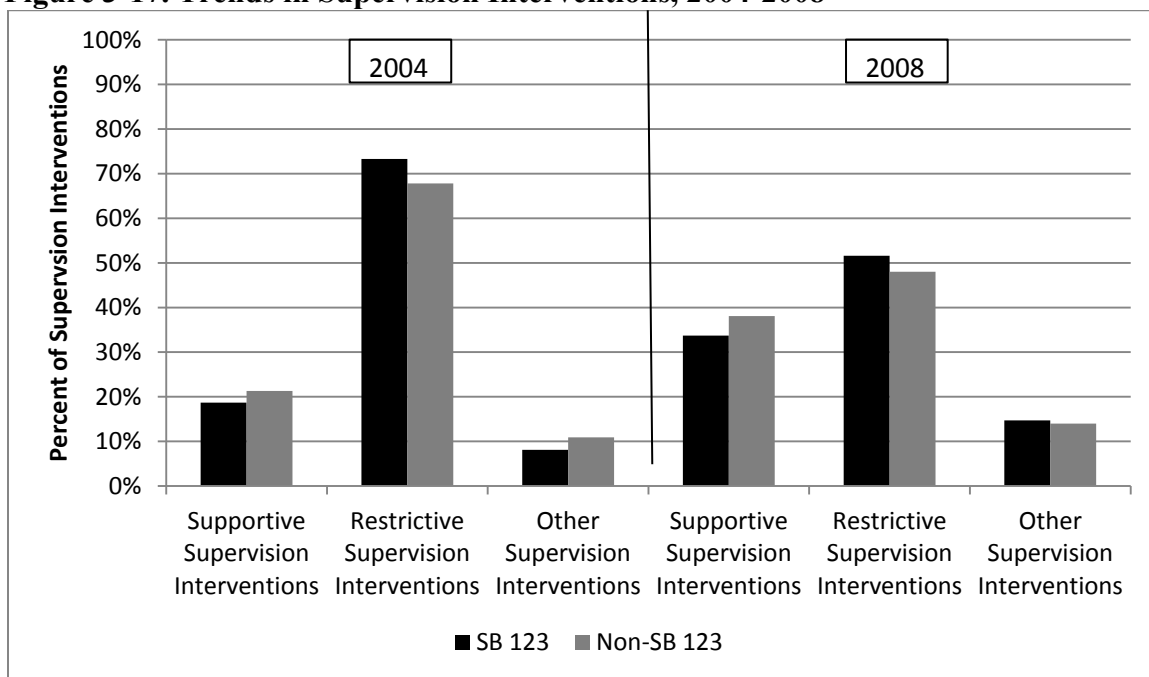
Figure 3-16. Number of Treatment Interventions, Supportive Supervision Interventions, and Restrictive Interventions per Capita for SB 123 and Non-SB 123 Offenders, 2004-2008



A closer examination of supervision interventions shows that the mix of supportive and restrictive supervision interventions was slightly different for the two groups (Figure 3-17); yet, the trends in supportive and restrictive interventions were the same for both groups (Figure 3-18 and Figure 3-19). As Figure 3-17 shows, restrictive supervision interventions accounted for the majority of supervision interventions

employed for both groups in 2004; however, they accounted for a slightly larger portion of supervision interventions for SB 123 offenders than for non-SB 123 offenders (73 percent compared to 68 percent). Over time, the restrictive interventions accounted for a smaller portion of interventions employed for both groups; although, by 2008, they still accounted for a larger portion of supervision interventions for SB 123 offenders than for non-SB 123 offenders (52 percent versus 48 percent).

Figure 3-17. Trends in Supervision Interventions, 2004-2008



As Figure 3-18 shows, there was an upward trend in the number of supportive supervision interventions employed per capita for both groups.¹² In contrast, as Figure 3-19 indicates, there was also a decrease in the number of restrictive supervision interventions employed per capita for both groups. Overall, the supervision of both groups appears to be quite similar over time.

¹² Interventions per capita were calculated by first determining the number of interventions employed in a given calendar year and dividing by the number of persons under supervision in that year. As such, the per capita estimation is not the estimated number of interventions each person received over the tenure of their supervision; rather, it is the estimated number of interventions each supervised person received in a given year.

Figure 3-18. Trends in Supportive Supervision Interventions, 2004-2008

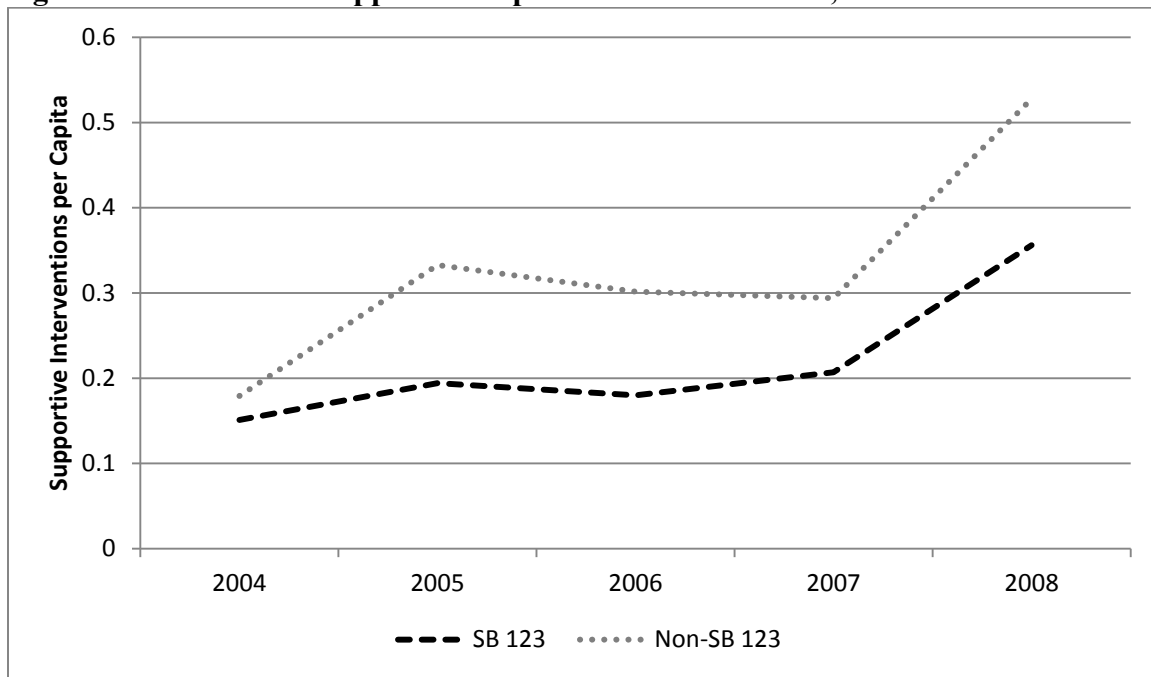
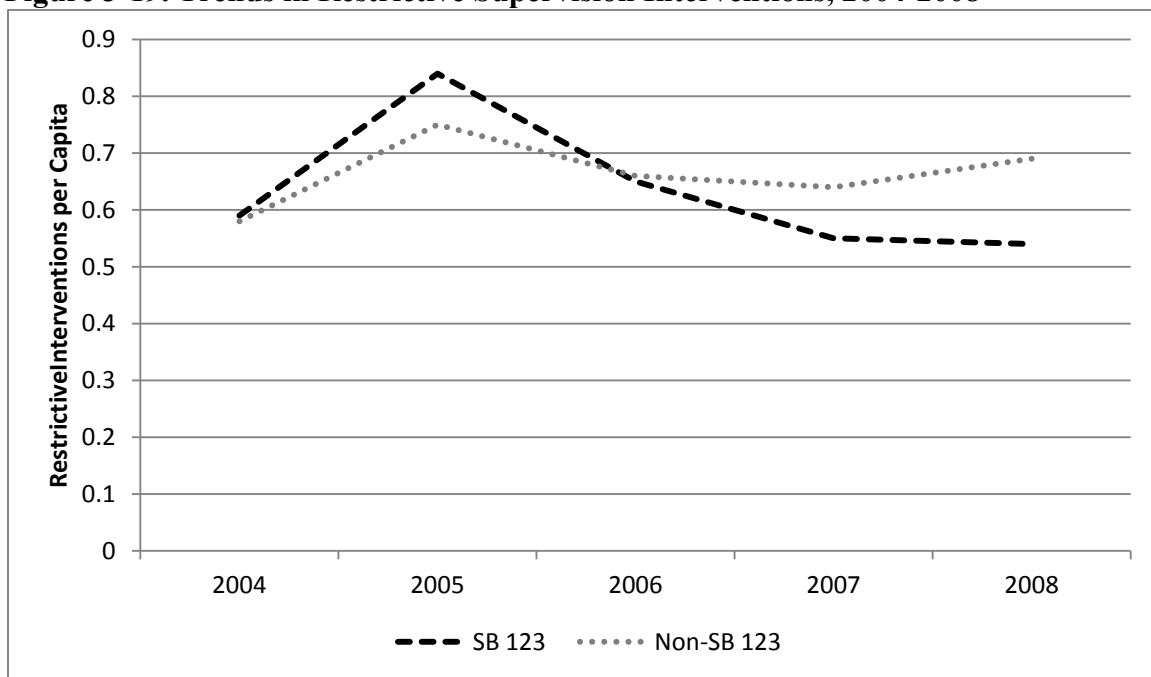


Figure 3-19. Trends in Restrictive Supervision Interventions, 2004-2008



Conclusion

SB 123 has led to significant changes in supervision and treatment in Kansas. Over the first 60 months of the program, over 19,000 substance abuse treatment

interventions were recorded for the 5,020 SB 123 offenders sentenced. While interviews with community corrections officers and drug treatment counselors in 2005 revealed that many believed SB 123 offenders rarely received the treatment that they needed, records indicate that this is not necessarily accurate; individuals generally receive the treatment modalities that they are initially assessed to need—this pattern was generally confirmed by officers, managers, and offenders interviewed in 2010. Over time, modalities such as reintegration and relapse prevention – treatment designed to ensure long-term impact of substance abuse treatment – have increased in use with nearly 21 percent of SB 123 offenders receiving reintegration services and roughly 55 percent of SB 123 offenders receiving relapse prevention services. However, the provision of substance abuse treatment remains heavily concentrated in just a few providers; just 10 percent of providers account for more than 50 of all treatment provided in the state – a pattern that has not changed over time. As such, the success of SB 123 becomes dependant on the success of these few drug treatment providers to effectively and efficiently provide drug treatment in the state.

But the success of SB 123 is also heavily influenced by the supervision practices of community corrections officers. These supervision practices have changed over time as community corrections officers have become less reliant on restrictive supervision interventions – such as curfew, travel restrictions, and increased surveillance – and have increased the use of supportive supervision interventions – such as education and employment programs. Thus, over time, SB 123 appears to have slowly influenced the assurance of the primacy of treatment in supervision. Yet, as with the provision of treatment, the supervision of SB 123 offenders is heavily concentrated in just a few

community corrections districts. Just 3 community corrections districts supervise roughly 25 percent of all SB 123 offenders in the state; overall, just 9 districts supervise 50 percent of all SB 123 offenders – a pattern that has not changed over time. As such, the success of SB 123 becomes dependant on the practices and success of these few community corrections districts in effectively and efficiently supervising SB 123 offenders in the state. Patterns of interventions in these jurisdictions show a great amount of variability in both the volume of recorded interventions and the composition of supportive/restrictive supervision and treatment-oriented interventions. These differences cannot be attributed to differences in offender populations, as SB 123 offenders are largely a homogenous group in terms of formal attributes of their criminal involvement. More likely, these differences reflect variation in supervision models, the degree of adoption of the SB 123 model for supervision, and the relative availability of community resources for treatment and other supportive interventions. It is also possible that observed differences across jurisdictions reflect differences in reporting and documentation of information in the KDOC case management system.

Left to be examined, however, is whether these patterns and practices have impacted the potential success of SB 123. The following chapter examines the success of SB 123 offenders, examining the impact of demographic, legal, treatment, and supervision differences on recidivism and re-arrest rates.

Chapter 4: The Individual-Level Impact of SB 123

Like other mandatory sentencing policies, compulsory treatment initiatives such as SB 123 confront several implementation problems, including circumvention or net-widening, that may significantly impact the policies' overall effectiveness at the individual- and system -levels. While researchers have examined the effects of mandatory sentencing policies requiring the imposition of a prison sentence (Tonry, 1996), the effects of mandatory policies requiring treatment remains relatively unexplored (Farabee, Prendergast, & Anglin, 1998). Moreover, the outcomes used to evaluate the effects of a mandatory sentence are different than the effects of a mandatory treatment sentence; on its face, the former seeks no clear impact on offender behavior while the latter, in the least, implies a desire to change offender behavior.

As discussed in the Introduction, research has shown that compulsory treatment can effectively reduce the likelihood of technical violations of probation and future criminality (Vito, Wilson, & Klein, 1986; Sinha, Easton, & Kemp, 2003; Huebner, & Cobbina, 2007; Harrell & Cavanaugh, 1995; Harrell, 1998; Gottfredson, Najaka, & Kearley, 2003; Young, Fluellen, & Belenko, 2004; Anglin, 1988; Lang & Belenko, 2000; Simpson, Joe, and Brown, 1997). But researchers have also raised the concern that diversionary treatment programs have the potential for “back-end” net-widening – subjecting more offenders to greater control and, thus, to an increased likelihood of an eventual prison sentence for technical violations of the community sentence (Tonry & Lynch, 1996). Given the significant front-end net-widening engendered by SB 123 (see Chapter 2) – with eligible offenders diverted from court services supervision to community corrections supervision – this potential for such back-end net-widening seems particularly likely. Offenders are now subjected to a heightened level of supervision than

they would have faced in the absence of SB 123 increasing the likelihood of detecting violations and seeking revocations. Moreover, while most compulsory treatment programs are very localized (implemented in one local jurisdiction), SB 123 is a state-wide program seeking to affect offender behavior in multiple, diverse jurisdictions. Thus, in addition to structural challenges associated with the mandatory nature of the initiative, SB 123 and other treatment oriented initiatives may confront a unique set of additional challenges associated with mobilization of services, alignment of interventions, and program fidelity that may ultimately affect the programs impact on individual behavior.

Finally, as a mandatory sentencing law, SB 123 relies on a narrow set of criteria to determine eligibility – namely, offense of conviction and criminal history. Under such approaches, the decision to send an offender to treatment is not based on an assessment of treatment need or amenability to treatment. It is only after the SB 123 sentence is imposed that the offender is assessed for treatment need. Consequently, treatment under such a mandatory scheme may be less effective than other treatment approaches – requiring offenders to enter treatment who are not amenable to treatment may have no impact on overall levels of substance abuse or recidivism. Conversely, mandating that offenders enter treatment may lead to higher levels of offender compliance by fostering greater participation via incentives and sanctions and may be more effective than non-mandatory schemes. The ultimate impact of mandatory treatment on offender outcomes, however, remains largely unexplored in the literature.

This chapter assesses the impact of SB 123 on the incidence of various measures of recidivism. More specifically, we compare the likelihood of re-incarceration due to a

reconviction and revocation, the likelihood of re-arrest, and the likelihood of a revocation filing (i.e. a documented technical violation) across groups of drug possessors sentenced to SB 123, regular probation (standard community corrections and court services), or prison. Estimates are calculated at two follow-up periods (12 and 24 months) using different criteria to define the sample of SB 123-eligible offenders.

Using propensity scores to match offenders across groups, we find that participation in SB 123 has a partial impact on recidivism when compared to standard community corrections: Offenders sentenced to SB 123 have lower incarceration and revocation filings at 12 months of risk in the community compared to their counterparts sentenced to standard supervision. However, long-term (24 months) we find no differences between these two groups across any of our recidivism measures, including re-arrest and incarceration. We also found that SB 123 actually increases the long-term odds of incarceration and revocation filings compared to court services. These findings highlight the need to carefully consider the unintended consequences of programs such as SB 123 that enhance treatment and supervision responses vis-à-vis the rise in the number of drug offenders in prison (Wool & Stemen, 2004).

Methodology

Data

The data for analyses of individual-level recidivism rates was compiled from a variety of sources: sentencing data provided by the Kansas Sentencing Commission (KSC), case management data provided by the Kansas Department of Corrections (KDOC), and arrest data provided by the Kansas Bureau of Investigation (KBI). An individual-level master datafile was created matching records across databases using

masked identifiers that uniquely defined each case based. A full description of the data sources and data management plan for the analyses is presented in Chapter 1.

Sample

Consistent with the analytical strategy outlined in Chapter 1, we reconfigured the administrative data compiled by the KSC and the KDOC to define our sample of SB 123-eligible offenders in different ways. Sample 1 was the least restrictive set of criteria to define SB 123 eligibility, including offenders with criminal histories E through I who were sentenced for a first or second drug possession offense between November 1, 2001 and October 31, 2007.¹³ We draw on this sample to describe aggregate measures of recidivism and to better identify history effects pre- and post-implementation of SB 123. Our multivariate models (see *Analytical Strategy* below) are based on Samples 2 and 3. Sample 2 restricted our definition of eligibility for SB 123 to not only include offense of conviction and criminal history but also sentence date, including only those offenders in the comparison groups who were sentenced to community corrections, court services, or prison after implementation of SB 123. Sample 3, the most restricted sample, was further restricted by including offense of conviction, criminal history, post-implementation sentence date as well as in-state residency and no prior conviction for drug sale or drug manufacture. These samples were created to minimize history bias (e.g., considering only cases sentenced after SB 123 implementation) and to more closely match the datasets to the statutory requirements for program participation (e.g., in-state residency, no prior

¹³ While judges have discretion to depart from the guidelines and sentence offenders with criminal histories in categories A through D to SB 123, we have, nonetheless, restricted the sample to include only those offenders who are mandated to receive a SB 123 sentence without a departure. The sample is restricted to include only those offenders convicted of a first or second offense of drug possession for similar reasons; while judges could depart from the guidelines and sentence offenders to SB 123 following a third offense of drug possession (repealed by HB 2707), these offenders are not mandated to receive a SB 123 sentence under the applicable statutes.

conviction for drug sale or manufacture).¹⁴ Across all samples, we tracked offender outcomes through October 31, 2008 (12 and 24 month follow-up periods).

Table 4-1 below summarizes the various samples employed to study individual-level impacts of SB 123 based on follow-up period (12 and 24 months), type of sanction (SB 123, community corrections, court services, and prison) as well as criteria to define eligibility (Samples 1, 2, and 3).¹⁵

Table 4-1. Sample Sizes

	12 month follow-up (sentences through 10/31/2007)				24 months follow-up (sentences through 10/31/2006)			
	SB123	CS	CC	Prison	SB123	CS	CC	Prison
Sample 1	3,818	2,539	2,134	292	2,740	2,371	1,834	240
Sample 2	3,818	864	1,219	226	2,740	696	919	174
Sample 3	2,889	655	696	117	2,035	520	537	92

Notes: CC=Community Corrections; CS=Court Services. Sample 1 includes pre and post SB 123 sentences, criminal histories E-I and current conviction for first or second drug possession. Sample 2 further restricts eligibility based on sentencing date (only post SB 123 implementation). Sample 3 is our most restrictive sample (only post SB 123 implementation sentences, no prior arrests for drug sale or manufacture, only in-state residents).

Consistent with the methodology outlined in Chapter 1, we categorize the group of SB 123-eligible offenders sentenced to SB 123 as our study group and those sentenced to any of the non-SB 123 sentences as our comparison groups.

Measures

¹⁴ Chapter 1 provides a complete description of the methodology and data employed in these analyses. Because the criminal history scale does not identify whether individuals have a prior conviction for a drug sale or manufacture offense sample 3 relies on prior arrest records to remove these offenders from the analyses.

¹⁵ Samples were further restricted so that each individual appeared in the dataset only once; for each individual, we took the earliest conviction for drug possession occurring during the study period as the controlling conviction offense (if more than one was reported during the study period). The sentence for this initial drug possession conviction determined the individual's placement in either the study group (SB 123) or the comparison groups (standard community corrections, prison or court services). For example, if an individual was convicted of drug possession in 2002 and sentenced to community corrections, this individual was placed in the corresponding comparison group in sample 1 even if sentenced to SB 123 after 2003; similarly, if an individual was convicted of drug possession for the first time in 2004 and sentenced to SB 123, this individual was placed in the study group in samples 2 or 3 even if sentenced to prison from drug possession in 2007

The analyses focused on various measures of criminal recidivism due to the fact that other outcomes such as drug addiction and social functioning were inconsistently reported over time and across subgroups of SB 123-eligible offenders. These data limitations are described in more detail in Chapter 1.

We specified five different measures of recidivism assessed at both at 12 and 24 follow-up periods in the community. First, we rely on KBI records to compute re-arrest rates (any charge) to examine general re-offending patterns and relative impact of SB 123 on public safety. Second, we use KSC journal entries to generate an overall measure of re-incarceration events at follow-up. This measure of recidivism allows us to better assess not only more serious failures of SB 123-eligible offenders but also their impact on system level outcomes and processes—particularly prison admissions. We further break down this overall measure of re-incarceration into events linked to a reconviction and those linked to a revocation.¹⁶ Our final measure of recidivism specifies a more general measure of non-compliance with supervision conditions. It focuses on any revocation filing (i.e. a request for revocation) regardless of the disposition of the revocation hearing (cases could have been disposed of unfounded, as a new probation sentences, or as a new incarceration sentence).

All five measures of recidivism were operationalized as dichotomous variables capturing whether an individual failed at some point throughout the follow-up period (=1 failure, 0=no failure). The follow-up period or time at risk of failure was calculated from the date of sentence (for individuals sentenced to SB 123, community corrections, or court services) and from date of release (for individuals sentenced to prison).

¹⁶ Reconviction measures both revocation from supervision for a new offense and a conviction for a new offense. Revocation measures only technical revocations from supervision that resulted in a term of incarceration (revocations from new offenses are counted in the re-incarceration measure).

Tables 4-2 and 4-3 show the 12 and 24 month failure rates (re-arrest, reconviction or revocation leading to incarceration, and any violation) for individuals in the treatment and comparison groups for all three samples. The recidivism rates presented in Tables 4-2 and 4-3 indicate that reconviction rates are fairly similar across all groups and all samples. However, at both 12 and 24 months, SB 123 offenders experience lower revocation rates than offenders sentenced to prison and community corrections and higher revocation rates than individuals sentenced to court services in all samples.¹⁷ At 12 months, the revocation rates for SB 123 offenders in Sample 1 are roughly half the rates of offenders sentenced to community corrections or prison. As the samples become more restrictive, these differences narrow; for Sample 3, the 12 months revocation rate for SB 123 offenders is just 6 percentage points lower than the rates for offenders sentenced to community corrections or prison. Similar patterns emerge at 24 months; however, revocation rates for SB 123 offenders in Sample 3 are nearly the same as those for offenders sentenced to prison. In contrast, at 12 months, SB 123 offenders have revocation rates that are just slightly higher than the rates of court services offenders for all three samples, ranging from 2.5 percentage points to 3.7 percentage points higher. But by 24 months, the differences between these two groups widen, particularly for

¹⁷ The reconviction and revocation rates for prisoners reported here are similar to those reported by the Kansas Department of Corrections (see Kansas Department of Corrections (2008b) *Statistical Profile Fiscal Year 2008 Offender Population*, Table 9). Slight differences between KDOC rates and our rates are likely due to differences in the types of offenders included in the calculations (KDOC rates include all offenders while ours include only drug possessors) and the reliability of recidivism tracking tools (KDOC rates are based on admissions to prison while ours are based on journal entries). Nonetheless, the similarities provide some external validity to the recidivism rates calculated here. The revocation rates for SB 123 offenders reported here are significantly lower than those reported by the Kansas Sentencing Commission (see Kansas Sentencing Commission (2008b). 2003 SB 123 Update Conference December 4, 2008, slides 108 and 109, available at <http://www.accesskansas.org/ksc/sb123/SB123TopekaUpdateConf120408.pdf>). Differences between KSC rates and our rates are likely due to differences in the unit of analysis (KSC rates are calculated based on the number of cases that fail – with individuals being able to fail on multiple cases – while our rates are calculated based on the number of individuals that fail); the use of cases as the unit of analyses will tend to overstate actual failure rates if many of the people who fail have multiple cases.

Sample 3, the most restricted sample; at 24 months, revocation rates for SB 123 offenders in Sample 3 are nearly 7 percentage points higher than court services offenders. The differences at the two follow-up periods may be explained by differences in lengths of sentences – SB 123 sentences average roughly 17 months, while court services sentences average roughly 12 months; thus, after 12 months, most court services offenders are no longer supervised and are not eligible for revocation, while SB 123 offenders continue to be supervised and are eligible for revocation.

Re-arrest rates show slightly different patterns. At both 12 and 24 months, re-arrest rates for SB 123 offenders are nearly identical to those of offenders sentenced to community corrections for all samples – at 12 months, roughly 24 percent of SB 123 offenders and community corrections offenders were re-arrested and at 24 months roughly 43 percent of each group were arrested. However, at both time points, re-arrest rates for SB 123 offenders were significantly higher than rates for offenders sentenced to either prison or court services, particularly for the most restricted sample.

Table 4-2. 12 Month Recidivism Rates, by Sample and Disposition

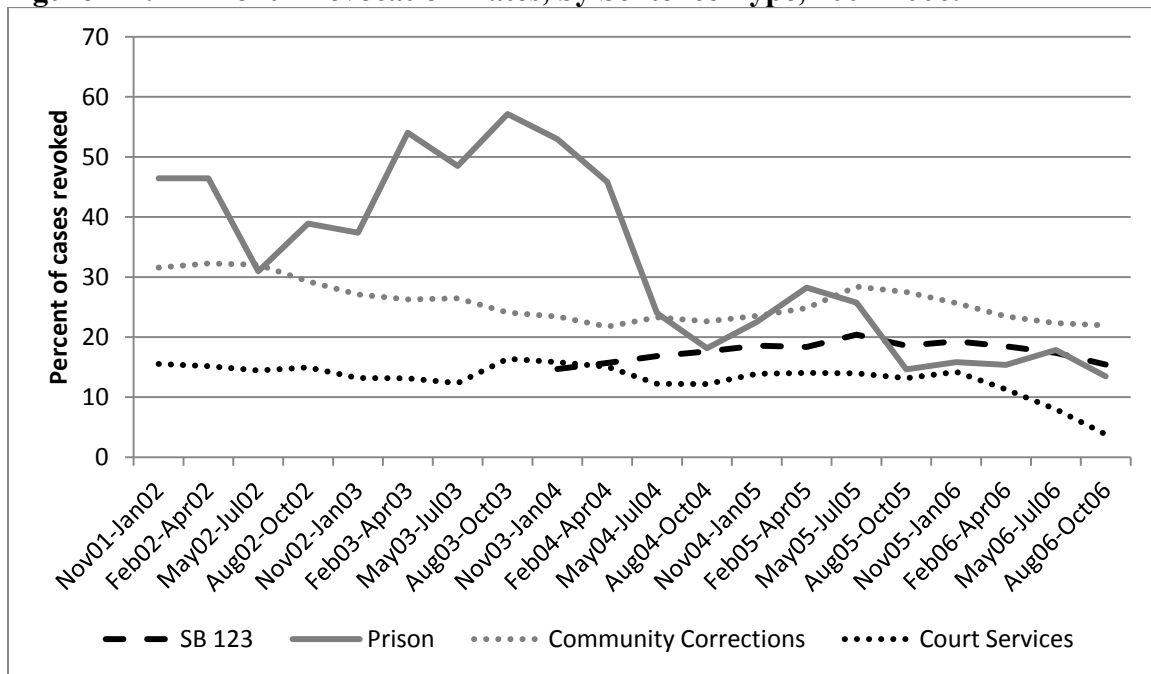
	Re-arrest	Incarceration	Reconviction leading to incarceration	Revocation leading to incarceration	Revocation filing
<i>Sample 1</i>					
SB 123	24.1	10.9	1.5	9.4	24.6
Court Services	24.2	9.4	1.5	7.9	25.6
Community Corrections	29.1	20.7	2.9	17.8	34.2
Prison	20.5	21.4	2.1	19.3	19.7
<i>Sample 2</i>					
SB 123	24.1	10.9	1.5	9.4	24.6
Court Services	20.6	7.9	1.1	6.8	23.5
Community Corrections	24.8	17.4	2.5	14.9	29.5
Prison	17.3	16.8	2.2	14.6	14.6
<i>Sample 3</i>					
SB 123	23.0	11.2	1.4	9.8	25.8
Court Services	17.1	7.0	0.9	6.1	21.7
Community Corrections	25.0	19.0	2.3	16.7	33.3
Prison	15.4	17.1	0.9	16.2	16.2

Table 4-3. 24 Month Recidivism Rates, by Sample and Disposition

	Re-arrest	Incarceration	Reconviction leading to incarceration	Revocation leading to incarceration	Revocation request
<i>Sample 1</i>					
SB 123	44.0	20.0	2.2	17.8	36.0
Court Services	36.1	16.0	2.0	14.0	32.2
Community Corrections	45.7	30.1	4.0	26.1	43.3
Prison	40.0	32.0	3.8	28.2	29.0
<i>Sample 2</i>					
SB 123	44.0	20.0	2.2	17.8	36.0
Court Services	35.8	15.2	1.6	13.6	32.4
Community Corrections	43.9	27.1	3.4	23.7	39.9
Prison	37.4	26.4	4.0	22.4	23.6
<i>Sample 3</i>					
SB 123	42.9	20.9	2.1	18.8	37.6
Court Services	30.4	13.2	1.2	12.0	29.6
Community Corrections	44.7	29.9	3.2	26.7	43.9
Prison	38.0	21.4	2.2	19.2	23.9

As Tables 4-2 and 4-3 indicate, initial analyses of Sample 1 reveal significant variation in recidivism rates over time. As Figure 4-1 shows, revocation rates for all groups, for example, declined steadily over the study period. For example, 24-month revocation rates for offenders sentenced to prison decreased from nearly 50 percent for offenders released in 2001 to just 15 percent for offenders released in 2006. This is consistent with KDOC policies seeking to reduce revocation rates for parolees (Kansas Department of Correction, 2006). Similarly, 24-month revocation rates for offenders sentenced to community corrections declined from roughly 31 percent for offenders sentenced in 2001 to roughly 23 percent for offenders sentenced in 2006.

Figure 4-1. 24-Month Revocation Rates, by Sentence Type, 2001-2006.



This variation over time presents problems for any analyses of the impact of SB 123. History effects – policy changes or procedural changes that affect both the treatment and comparison groups – may be affecting all failure rates. In other words, if community corrections officers and parole officers were changing supervision practices

for all offenders – either because of changes in policy, resources, or the composition of supervised populations – the observed changes in failure rates may be due to these changes rather than the impact of SB 123. This steady decline in recidivism rates, particularly revocation rates, indicates that some larger policy change may have been affecting the recidivism rates for all groups; as such, the analyses that follow rely on a smaller sample of offenders in the comparison groups – those sentenced after implementation of SB 123 – to control for these history effects.

Independent Variables and Covariates

Our key independent variable – type of sentence – identified whether offenders were sentenced to SB 123, community corrections, court services, or prison. We use this variable to identify our study group (SB 123) and comparison groups (any of the non-SB 123 dispositions). We also included a number of individual-level covariates in our analyses. We employed an indicator of criminal history tracking the seriousness of the criminal history of offenders prior to conviction (categorical, from 1=least serious, to 5=most serious) and an indicator of additional charges at the time of conviction (1=yes, 0=no). We also included information on demographic attributes of offenders, namely, age (in years), race (1=Non-White, 0=White), and ethnicity (1=Hispanic, 0=Non-Hispanic), and a variable capturing whether the county of conviction was urban or rural (1=urban, or population over 100,000 residents, 0=rural or semi-rural). These variables are described in more detail in Chapter 2 of this report (“Methodology”). Lastly, to account for ongoing adjustments to SB 123 after implementation and to capture general trends in revocation practices in the state, we created a dichotomous variable indicating whether the sentence

was enacted after November 1, 2005, that is, two years after implementation of SB 123 (1=more recent sentence, 0=otherwise).

Analytical Strategy

Two sets of analyses were conducted. First, the impact of SB 123 on offender outcomes was analyzed using standard statistical procedures to examine categorical data in multivariate, longitudinal settings. Specifically, our baseline estimations rely on a series of logistic regression models to estimate the effect of SB 123 relative to other sentences on our measures of recidivism at 12 and 24-month follow-up. These models predict the likelihood of supervision failure controlling for individual-level predictors such as demographic characteristics and criminal history scores. The coefficients in the resulting logistic regression models relate to odds ratios or the probability of failure, controlling for a series of predictors measured at the individual-level; a coefficient greater than 1 indicates an increased risk of failure and a coefficient less than 1 indicates a decreased risk of failure. The coefficients also indicate how much each variable increases or decreases the risk of failure; for example, if we find that being male is a significant predictor of recidivism with a coefficient of 1.25, this means that men are 25 percent more likely than women to fail, controlling for other predictors measured at the individual-level.

The second set of analyses build upon this general framework by implementing a more robust approach to the estimation of SB 123 effects. While results generated by the logistic regression models are informative, these may be biased due to the process of selection of offenders into the different sentences—that is, individuals going to prison for drug possession may be different from those receiving a community-based sentence, even

after controlling for offense of conviction and criminal history. To minimize this problem, propensity scores were used to model the selection process and reconfigure the study sample to include *similar* offenders (Rosenbaum & Rubin, 1983). The creation of matched samples explicitly takes into consideration that the variables influencing the selection of offenders for an SB 123 sentence may not be independent of the variables associated with recidivism.

Evaluating the Effectiveness of SB 123 Using Unmatched Samples

Differences in failure rates across study samples are also partially explained by differences in attributes of offenders (e.g., demographics) and by other variables measuring their social and institutional context (e.g., county of conviction). This section provides a baseline exploration of whether SB 123 offenders are more or less likely to recidivate or be re-arrested than offenders not sentenced to SB 123 and examines the independent effect of individual-level variables. This approach, based on the analysis of unmatched samples, assumes that there are insignificant differences (in terms of demographic factors, criminal histories, etc.) between SB 123 offenders and offenders sentenced to non-SB 123 sentences.¹⁸ However, this approach does not follow the parameters of a quasi-experimental research—i.e., individuals in treatment and comparison groups need to show non-significant differences in terms of their attributes and exposure to intervention. Such a quasi-experimental approach is fully implemented in the following section (see below under “*Estimating the Effects of SB 123 on Matched*

¹⁸ This approach also assumes that there is an insignificant effect of the selection process by which some offenders are sentenced to SB 123 and others are not.

Samples”).¹⁹ Nonetheless, this section provides estimates on the impact of SB 123 and individual-level characteristics on recidivism and re-arrest.

All analyses are conducted using only Sample 3; models using the Sample 1 and Sample 2 are included in Appendix C. Table 4-4 describes a series of demographic characteristics for the offenders in Sample 3. As Table 4-4 shows, there were significant differences between individuals sentenced to SB 123 and those in the comparison groups of individuals sentenced to prison, community corrections, or court services. Specifically, drug possessors sentenced to prison were more likely to be non-white, male, older, and from an urban county and to have more serious criminal histories and additional charges at sentencing than offenders receiving other sentences. Table 4-4 also shows that the share of non-minorities, women, and younger individuals was higher among the subset of SB 123 offenders than other groups. Compared to those sentenced to prison and community corrections, drug possessors sentenced to SB 123 had less serious criminal history scores and fewer additional charges at the time of their most recent conviction; yet, compared to court services, SB 123 offenders had more serious criminal history scores and slightly more additional charges. Finally, offenders sentenced to SB 123 were more likely convicted in rural counties (i.e., populations under 100,000 residents) than offenders sentenced to other sanctions. These differences suggest that there is significant heterogeneity in the study sample. While convicted of the same offense, individuals sentenced to SB 123 are different than those receiving other sentences, particularly prison.

¹⁹ Our initial analyses do not account for the fact that sentencing decisions regarding drug possessors may follow a given selection process. In other words, the factors we find to predict differences in recidivism rates may also determine sentencing decisions that place offenders into our different treatment and comparison groups. Research has shown that sentencing decisions are sensitive to offender attributes and other case-related variables.

Table 4-4. Descriptive Statistics for Sample of Drug Possessors by Type of Sentence

	SB 123	Prison	Standard Probation	
			Community Corrections	Court Services
<i>Race</i>				
% White	82.1%	71.8%	75.8%	83.1%
% Black	17.9%	28.2%	24.7%	16.9%
<i>Ethnicity</i>				
% Hispanic	9.2%	12.8%	14.6%	25.5%
% Non-Hispanic	90.8%	87.2%	85.4%	74.5%
<i>Gender</i>				
% Male	68.1%	78.6%	74.7%	75.5%
% Female	31.9%	21.4%	25.9%	24.5%
<i>Age*</i>				
% 25 or younger	38.4%	12.8%	20.6%	27.9%
% 26-35	27.5%	28.2%	28.4%	33.5%
% 36 or older	34.0%	59.0%	41.1%	38.6%
<i>Criminal History*</i>				
% E-F score	14.6%	65.8%	34.9%	10.8%
% G-I score	85.4%	34.2%	65.1%	89.2%
<i>Additional charges*</i>				
% Yes	26.2%	34.2%	28.0%	22.4%
% No	73.8%	65.8%	72.0%	77.6%
<i>County of conviction*</i>				
% Urban	36.7%	59.0%	54.6%	52.1%
% Rural	63.3%	41.0%	45.4%	47.9%

* Measured at first drug possession conviction.

We rely on this sample of offenders to generate a baseline estimation using a series of logistic models focusing on the individual-level covariates of recidivism and re-arrest. These models predict the likelihood of supervision failure (incarceration following re-conviction or revocation or re-arrest) within 12 and 24 months, controlling for these individual-level factors. Models 1 through 5 examine the impact of SB 123 at 12 months.

Models 6 through 10 examine the impact of SB 123 at 24 months follow-up. Coefficients presented in Models 1 through 10 represent the increases in the likelihood of failure generated by each predictor variable. These coefficients are presented as odds ratios – coefficients greater than 1 imply an increased probability of failure and coefficients below 1 indicate a reduction in such probability. In all models, SB 123 is taken as the reference category when comparing outcomes to other sanctions; the coefficients listed for court services, community corrections, and prison are the effects of these sanctions on recidivism compared to SB 123. Thus, a coefficient greater than 1 for one of these sanctions implies that the sanction increases the probability of recidivism compared to SB 123 and a coefficient below 1 indicates that the sanction decreases the probability of recidivism relative to SB 123. Table 4-5 shows the results obtained for Models 1 through 5 that examine failure at 12 month follow-up; Table 4-6 shows results obtained Models 6 through 10 that examine failure at 24 months follow-up.

Table 4-5. Logistic Regression with UnMatched Samples Predicting Recidivism at 12 Months of Exposure

	Coefficients (Odds Ratios)				
	Model 1 Re-arrest	Model 2 Incarceration	Model 3 Reconviction	Model 4 Revocation	Model 5 Revocation Filing
Race (Non-White)	0.941	1.247	1.183	1.259	1.019
Ethnicity (Hispanic)	1.145	0.630*	0.636	0.629*	0.679**
Gender (Female)	0.655***	1.254*	0.811	1.323*	1.151
Age (Years)	0.976***	0.995	0.983	0.986	0.982***
Criminal History	1.210***	1.196***	1.399***	1.169***	1.150***
Charges (More than one)	1.013	0.860	0.626	0.895	0.891
County (Urban)	0.899	1.960***	2.303**	1.918***	2.472***
Sentence Date (post Nov 05)	0.461***	0.602***	0.966	0.563***	0.639***
Court Services	0.705***	0.559***	0.673	0.545***	0.720**
Community Corrections	0.966	1.459**	1.343	1.476***	1.178
Prison	0.463**	1.042	0.349	1.163	--
Total cases	4192	4192	4192	4192	4026
-2 log likelihood	3643.90	2572.59	2925.35	2925.35	3698.01
Pseudo R2	.074	0.076	.076	.076	0.089
Chi2	212.54**	168.73***	182.40***	182.40***	254.77***

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

As Models 1 through 5 show, SB 123 offenders are consistently more likely to fail within 12 months than offenders sentenced to court services, regardless of the outcome considered. Specifically, compared to SB 123, court services reduces the likelihood of re-arrest by 29.5 percent (Model 1), reduces the likelihood of incarceration for either a revocation or reconviction by 44.1 percent (Model2), reduces the likelihood of revocation leading to incarceration by 45.5 percent (Model 4), and reduces the likelihood of any technical violation by 37.8 percent (Model 5). The only exception to this is failure due to reconviction (Model 3); SB 123 has no impact on reconviction relative to court services.

The models also indicate that SB 123 has little impact relative to community corrections. As Model 2 shows, community corrections increases the likelihood of incarceration compared to SB 123; however, this comes entirely from the impact of SB 123 on revocations. As Model 4 shows, community corrections increases the likelihood of revocation by 47.6 percent compared to SB 123; however, as Models 1 and 3 show, SB 123 has no impact on either re-arrest or reconviction compared to community corrections. Moreover, as Model 5 shows, SB 123 has no impact on violations compared to community corrections.

The models also indicate that SB 123 has little impact relative to prison. As Model 1 shows, prison reduces the likelihood of arrest within 12 months by 53.7 percent relative to SB 123. However, SB 123 has no significant affect on incarceration (Model 2), reconviction (Model 3), or revocation (Model 4) relative to prison.

Across all five models, the best predictors of failure are criminal history, county of conviction, sentence date, and ethnicity. For all outcomes, offenders with more serious criminal histories are more likely to be re-arrested, incarcerated, reconvicted, revoked, or receive a technical violation than other offenders. Similarly, offenders from urban counties are more likely to be incarcerated, reconvicted, revoked, or receive a technical violation than other offenders; however, while not significant, offenders from urban counties are less likely to be re-arrested. This indicates a potential difference in supervision practices between urban and rural jurisdictions – offenders are failing in urban jurisdiction, not necessarily because they have higher criminality than offenders in more rural areas, but because they receive more technical violations and are revoked more frequently than offender in rural areas. Contrary to expectations, Hispanic

offenders are less likely to be incarcerated, revoked, or receive a technical violation than non-Hispanic offenders; in fact, across all three outcomes, Hispanic offenders are roughly 37 less likely to fail than non-Hispanic offenders. In turn, Hispanic offenders are no more or less likely to be re-arrested or reconvicted than other offenders; again, this may indicate potential differences in supervision practices for Hispanic offenders rather than differences in underlying criminality. Finally, given that supervision practices in the state were changing during this period, we considered the impact of sentencing date on outcomes. As the models show, offenders sentenced after November 2005 were much less likely to fail than offenders sentenced before November 2005. As Models 4 and 5 show, being sentenced after November 2005 reduced the likelihood of revocation by 43.7 percent and reduced the likelihood of a technical violation by 37.1 percent; surprisingly, this also reduce the likelihood of re-arrest by 53.9 percent.

Gender and age are the only other predictors of failure. Female offenders are less likely to be re-arrested within 12 months (Model 1) but are more likely to be revoked within 12 months (Model 4). Older offenders are less likely to be re-arrested (Model 1) and less likely to receive a technical violation (Model 5).

The strong impact of SB 123 on revocations relative to community corrections is encouraging. The reduction in the likelihood of revocations is likely due in part to the statutory changes in revocation practices enacted as part of SB 123 – continued drug use is not a revocable violation under SB 123. The reduction in the likelihood of revocation may also be due to the increase in treatment services provided to SB 123 clients. Since the SB 123 population receives essentially the same conditions and levels of supervision as the population of individuals sentenced to community corrections (both prior to and

after implementation of SB 123), one may assume that the change in the intensity of drug treatment for the SB 123 population explains at least some of the difference in recidivism rates.

The lack of impact of SB 123 relative to court services may not be surprising. Most of the individuals now sentenced to SB 123 were sentenced to court services prior to implementation of SB 123. Following implementation, SB 123-eligible drug possessors were moved off of the court services caseload – a sanction with minimal conditions and minimal levels of supervision – and sentenced to SB 123 under the supervision of community corrections – a sanction with significant conditions and heightened levels of supervision. This apparent net-widening has led, in the first instance, to a dramatic increase in the amount of control and surveillance placed over the population of drug possessors in the state. At the 12 month follow-up period, this increase in control and surveillance has led to an apparent increase in the revocation rates for this same population.

Table 4-6 presents the results of Models 4 through 6 examining outcomes at 24 months.

Table 4-6. Logistic Regression with UnMatched Samples Predicting Recidivism at 24 Months of Exposure*

	Coefficients (Odds Ratios)				
	Model 6 Re-arrest	Model 7 Incarceration	Model 8 Reconviction	Model 9 Revocation	Model 10 Revocation Filing
Race (Non-White)	1.464***	1.250*	1.260	1.250	1.051
Ethnicity (Hispanic)	0.681**	0.531***	0.314	0.558***	0.542***
Gender (Female)	0.938	1.182	0.820	1.225	1.002
Age (Years)	0.972***	0.985**	0.971*	0.987**	0.975***
Criminal History	1.254***	1.275***	1.584***	1.243***	1.200***
Charges (More than one)	0.944	0.914	0.699	0.941	0.966
County (Urban)	0.902	2.163***	2.403**	2.138***	2.443***
Sentence Date (post Nov 05)	1.202*	0.873	1.306	0.833	0.904
Court Services	0.705**	0.571***	0.584	0.569***	0.675***
Community Corrections	1.055	1.288*	1.277	1.290*	1.112
Prison	0.650	0.837	0.760	0.849	--
Total cases	3053	3053	3053	3053	2909
-2 log likelihood	3486.51	2641.29	3049.66	3049.66	3103.08
Pseudo R2	.071	0.099	.099	.099	0.102
Chi2	169.25**	201.77***	217.29***	217.29***	227.58***
	*				

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

As Models 6 through 10 show, SB 123 offenders are still more likely to fail within 24 months than offenders sentenced to court services, regardless of the outcome considered. In fact, court services reduces the likelihood of failure by roughly the same amount at both 12 and 24 months across all outcomes. Similarly, the impact of SB 123 relative to community corrections remains the same at both 12 and 24 months – offenders on community corrections are more likely to be revoked at 24 months relative to SB 123 (Model 9), but are not significantly different in terms of re-arrest (Model 6), reconviction (Model 8), or technical violations (Model 10). Moreover, at 24 months, SB has no impact on failure rates relative to prison.

Again, the strong impact of SB 123 on revocation relative to community corrections is encouraging; this may be an indication that SB 123 is having an effect on non-criminal behavior, increasing compliance with probation conditions or increasing individuals' ability to maintain stability in the community. This is further supported by the fact that community corrections increases the likelihood of a technical violation relative to SB 123, although the relationship is not significant.

However, it appears that SB 123 has no impact on the criminogenic patterns of drug possessors in the state. SB 123 has no impact on re-arrest or reconviction relative to either community corrections or prison and increases re-arrests relative to court services. The coefficients for most demographic and legal variables remain largely unchanged between 12 and 24 months. Again, across all types of sanctions, individuals who are younger, non-Hispanic, from urban counties, and have higher criminal history scores are more likely to fail. Unlike 12 month failure rates, gender has no impact on failure at 24 months; similarly, while sentence date reduced the likelihood of re-arrest, revocation, and technical violations at 12 months, this had little impact at 24 months (actually increasing the likelihood of re-arrest at 24 months). Finally, while race had no affect on failure at 12 months, offenders who were non-white were more likely to arrested and incarcerated after 24 months.

Despite the significance of these results, baseline logistic regressions do not provide accurate assessments of the unique effect of treatment exposure on individual-level outcomes (i.e. effect on recidivism of participation in SB 123 program). Specifically, it is possible that treatment effects (SB 123 effects) may be confounded with individual-level variables influencing the selection process of offenders into treatment

and comparison groups. In other words, variables influencing the selection of offenders for SB 123 sentences may not be independent of the variables associated with offender recidivism. The next section explores a more comprehensive set of statistical procedures aimed to assess treatment effects. Such procedures rely on the matching of offenders in the treatment and comparison groups using individual-level attributes associated with the underlying selection process. Specifically, using propensity scores we created statistically equivalent samples of individuals sharing the same set of attributes (e.g. gender, age, ethnicity, criminal history) with different degrees of exposure to the intervention under study (SB 123 sentence). In other words, via propensity scores, we matched offenders who received an SB 123 sentence with “equivalent” offenders who received a prison sentence or standard probation.

Estimating the Effects of SB 123 on Matched Samples

To further examine the effect of SB 123 on the likelihood of recidivism, we rely on propensity score matching to generate a sample of comparable sets of offenders exposed to different community-based sentencing approaches (Rosenbaum & Rubin, 1983). This procedure allows the pairing of individuals convicted of drug possession who received an SB 123 sentence with “equivalent” offenders who received a sentence to court services or standard community corrections. We restrict the implementation of our matching algorithms to Sample 3 to minimize the impact of history effects that could bias outcomes (e.g. policy changes, changes in enforcement and revocation practices, changes in resources, or data consistency and quality that coincided with the implementation of SB 123 and affected all offenders) and to better model the statutory requirements of SB 123 (in-state residents, no prior convictions—arrests—for drug sales or drug manufacture).

The matching algorithms are based on the specification of a selection model aimed at minimizing the compositional differences across subsamples in exposure to the intervention (in this case, receiving an SB 123 sentence). Failing to account for the differences in the exposure to SB 123 would confound its effect on our various measures of recidivism with the effects of other individual-level variables influencing the selection of offenders into different sentencing approaches.

To calculate a propensity score for each offender we first fit a series of probit models using the set of individual-level covariates described above (see *Measures*). These models predicted exposure to the “treatment” intervention or participation in the study group (i.e., receiving an SB 123 sentence) compared to selection into an alternative disposition (court services or standard community corrections). A propensity score (of receiving an SB 123 sentence) was then calculated for each offender. Offenders in Samples 2 or 3 were matched on the basis of their propensity scores following different measures of “similarity.” There is little consensus in the research literature on the advantages of one matching procedure over others or the process by which variables should be included in the selection models. In all cases these algorithms reflect a challenging balance between reductions in sample size and degree of similarity between cases on the treatment and comparison groups. We use multiple matching procedures to decrease the chance that our results are influenced by the choice of any given approach. Following prior research (e.g., King, Massoglia, & Macmillan, 2007), we highlight two of these methods (other procedures are summarized in the Appendix C). The nearest neighbor algorithm identifies for each SB 123 offenders its closest pair in the comparison group. Then it computes an estimate of the treatment effect as the average difference

between recidivism figures between each pair of “matched drug possessors”. We specify the non-replacement option in order to generate a one-to-one matching of cases. We also implement a caliper of (.005) which indicates the magnitude of the difference between propensity scores of paired cases. The choice of this caliper minimizes the differences across attributes of individuals in the treatment and comparison groups. A second method, kernel-based matching, is more flexible than nearest neighbor because it defines the pairs based on the weighted average distance between all individuals in the comparison group (bandwidth=.06). Each approach generates an estimate of the impact of SB 123 on individual-level recidivism minimizing the selection process of these individuals into SB 123 and other sentencing alternatives (community services or standard community corrections).

We calculated propensity scores for study Sample 3 comparing SB 123-eligible offenders that received an SB 123 sentence with *similar* SB 123-eligible offenders that either received a court services sentence or a sentence to standard community corrections supervision. We replicated this approach across all 5 measures of recidivism and our two different follow-up periods.

The implementation of these approaches effectively reconfigured our study sample to minimize observed differences in offender level covariates. Tables 4-7 and 4-8 show how through matching we generated new study samples at 12 and 24 month follow-up with most variables indicating non-significant compositional differences between the study and the two different comparison groups (court services and community corrections)²⁰. Prior to the matching of the cases, these sub-samples were significantly different from

²⁰ Results presented here are based on sample 3 (most restrictive eligibility criteria to define SB 123 eligibility). Listwise deletion of missing data. Results for sample 2 are included in the Appendix C.

one another with regards to most covariates included in the estimation—i.e., the unmatched samples were “unbalanced”. For example, females sentenced to SB 123 with 24 months of risk exposure represented about 32% of the cases whereas for court services the estimate is approximately 26% (Table 4-4). Relative to other low-level drug possessors in Kansas, individuals sentenced to SB 123 are more likely to be younger, non-minority, rural dwellers. More importantly, SB 123 offenders tend to exhibit more serious criminal histories when compared to other drug possessors sentenced to court services—yet the scores for SB 123 are less serious when compared to the sub-sample of offenders sentenced to community corrections. The t-values estimated for the matched samples indicate that these differences are significantly reduced once the sample is reconfigured based on individual propensities to SB 123. The balance property is similarly met using other matching algorithms similar to the nearest-neighbor approach and alternative specifications of the length of risk exposure (12 months vs. 24 months) (see Becker & Ichino, 2002; Leuven & Sianesi, 2003).

The use of propensity scores was more effective at reducing compositional differences for the 12-month follow-up samples, and for comparisons between SB 123 and standard community corrections. In the case of court services at the 24-month benchmark, however, the matching was more difficult—some compositional differences (age, criminal history scores) remained significant after adjusting the matching procedures in different ways. Still, in the majority of cases, the propensity scores approach effectively reduced the selection bias generated by these variables and clearly identified in the table of descriptive statistics for Sample 3 (see Table 4-1).

It was not possible to create a suitable matched sample of SB 123-eligible individuals sentenced to prison. Matched samples of individuals sentenced to SB 123 and prison could not be reconfigured to satisfy the balancing property of the propensity score matching approach due to the range and magnitude of the differences between these groups (see Table 4-1); after implementing the matching algorithms, we found that the resulting samples were not representative of either subpopulation. As such, the individual-level analyses that follow do not include a comparison group of individuals sentenced to prison.

The final matched samples used in the main analyses (Sample 3 as baseline) varied according to matching algorithm and follow-up period. A full breakdown of these figures is included in the Appendix C.

Table 4-7. T-test Results Comparing Offenders Sentenced to SB 123, Court Services, and Community Corrections for Unmatched and Matched Samples at 12 Month Follow-up

	SB 123 vs. Court Services						SB 123 vs. Community Corrections					
	Unmatched sample			Matched sample			Unmatched sample			Matched sample		
	SB 123	Court services	t-value	SB 123	Court services	t-value	SB 123	Com. Corr.	t-value	SB 123	Com. Corr.	t-value
Race (Non-white)	.178	.168	.61	.220	.175	1.99	.178	.234	-3.53***	.239	.234	.20
Ethnicity (Hispanic)	.092	.254	-11.32***	.254	.217	1.50	.093	.145	-3.99***	.175	.142	1.62
Gender (female)	.318	.249	3.4***	.264	.255	.33	.318	.258	2.98**	.291	.266	1.01
Age (years)	31.479	33.003	-3.44**	33.491	32.923	.95	31.479	33.354	-4.25***	33.373	33.151	.38
Criminal History	2.084	1.822	4.77***	1.973	1.843	1.83	2.084	2.800	-12.59***	2.783	2.744	.48
Additional charges	.263	.228	1.81	.226	.225	.07	.263	.289	-1.35	.337	.291	1.76
Urban County	.364	.524	-7.45***	.524	.509	.52	.363	.543	-8.47***	.548	.530	.62
Sentence after Nov 05	.583	.401	8.36***	.432	.405	.94	.583	.449	.6.23***	.512	.462	1.81

Note: Nearest 1-to-1 matching algorithm is done without replacement and is derived from Leuven and Sianesi (2003) using the “psmatch2” command in STATA (probit function, caliper of .005, region of common support). Results are independent of recidivism outcome. Analyses based on sample 3.

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Table 4-8. T-test Results Comparing Offenders Sentenced to SB 123, Court Services, and Community Corrections for Unmatched and Matched Samples at 24 Month Follow-up

	SB 123 vs. Court Services						SB 123 vs. Community Corrections					
	Unmatched sample			Matched sample			Unmatched sample			Matched sample		
	SB 123	Court services	t-value	SB 123	Court services	t-value	SB 123	Com. Corr.	t-value	SB 123	Com. Corr.	t-value
Race (Non-white)	.168	.179	-.56	.251	.184	2.56*	.168	.222	-2.83**	.249	.201	1.51
Ethnicity (Hispanic)	.092	.200	-6.88***	.211	.174	1.46	.092	.150	3.83***	.138	.147	-.36
Gender (female)	.317	.263	2.37*	.270	.268	.07	.317	.248	3.05**	.279	.255	.86
Age (years)	31.194	32.982	-3.71***	34.082	32.734	2.08*	31.194	33.027	-3.80***	33.821	32.633	1.90
Criminal History	2.105	1.842	4.22***	2.069	1.859	2.64**	2.101	2.784	-10.45***	2.771	2.996	.81
Additional charges	.267	.237	1.28	.309	.237	2.52*	.267	.290	-1.07	.315	.289	.09
Urban County	.362	.528	-6.92***	.544	.521	.70	.362	.541	-7.52***	.554	.524	.09
Sentence after Nov 05	.409	.243	6.96***	.278	.253	.87	.409	.281	5.37***	.351	.293	1.97

Note: Nearest 1-to-1 matching algorithm is done without replacement and is derived from Leuven and Sianesi (2003) using the “psmatch2” command in STATA (probit function, caliper of .005, region of common support). Results are independent of recidivism outcome. Analyses based on sample 3.

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

We rely on the newly configured matched samples to measure the effect of SB 123 relative to court services and standard community corrections across our five measures of offender recidivism at 12 and 24-month follow-up. We used different matching algorithms and adjusted their criteria to define “similar” cases. A full account of these models is presented in the Appendix C. Results presented below summarize our findings focusing on three outcome measures—re-arrest, re-incarceration and revocation filing—using the nearest-neighbor matching procedure (caliper=.005, without replacement).

We first focus on the impact of SB 123 relative to court services. Drawing on estimates from the unmatched samples we find that across all three outcomes and two follow-up periods, failure rates for SB 123 offenders are significantly higher than those observed for similar offenders sentenced to court services. These estimates are not paired on a case by case basis but rather on the general set of eligibility criteria we developed to define our population of SB 123-eligible population. As shown in Table 4-9, failure rates are higher at 24 months, with the largest difference in recidivism rates between the study and the comparison group being the filing of a revocation (independent of sanction) at 24 months—about 37 percent of SB 123 offenders received a revocation filing at 24 months compared to 30 percent of similar offenders sentenced to court services ($p < .01$). Using propensity scores we matched cases on a one-on-one basis reducing differences in exposure to the treatment variable (receiving an SB 123 sentence).²¹ Because we relied on a nearest neighbor protocol without replacement for the matching of cases, our sample decreased from $N=3,199$ (unmatched sample) to $N=1,221$ (matched sample) for the 12-month follow-up ($N=2,535$ to $N=998$ for the 24-month follow-up). Estimates from the

²¹ Some balancing issues with the 24-month sample could not be solved by adjusting the estimation parameters (for example, by increasing caliper in matching procedure). After matching, the sample of SB 123 is significantly more white and have a slightly more serious criminal history. Also a higher fraction of them have additional charges. We argue that the impact of these issues in the estimates is minimal because they were not significantly related to selection into SB 123 in our probit models.

matched sample indicate that, minimizing the bias introduced by differential exposure to SB 123, offenders sentenced to SB 123 have generally higher failure rates than their court services counterparts. This is the case for two of the three recidivism measures (revocation filing, incarceration) at both 12 and 24 months—with the latter figures showing a widening gap between the performance of SB 123 offenders and the matched offenders sentenced to court service. However, there was no significant difference in re-arrest rates between these two groups once the pairing of cases was implemented at either follow-up period. Estimates from other matching models were consistent with the results presented here (see Appendix C).

Table 4-9. SB 123 vs. Court Services -Recidivism Rates at 12, 24 Months

	Sample SB/CS	Re-arrest rates			Incarceration rates			Revocation filing rates		
		SB	CS	Diff	SB	CS	Diff	SB	CS	Diff
<i>12 months</i>										
Unmatched	2753/626	.219	.168	.051**	.102	.065	.036**	.261	.222	.038*
Matched	595/626	.198	.176	.022*	.104	.069	.035	.276	.222	.053*
<i>24 months</i>										
Unmatched	2026/509	.429	.308	.120***	.203	.131	.071**	.370	.297	.072**
Matched	489/509	.380	.321	.059	.186	.134	.051*	.361	.294	.067**

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Bootstrapped standard errors (100 replications) Matching based on nearest neighbor without replacement (caliper=.005, restricted to regions of common support). Sample sizes may vary slightly according to outcome (listwise deletion, see Appendix C)

We replicate the analysis to assess the impact of SB 123 on recidivism relative to standard community corrections supervision. Table 4-10 presents estimates across our key measures of recidivism at 12 and 24 month follow-up. Estimates from the unmatched samples indicate that with the exception of re-arrest, offenders sentenced to SB 123 have lower failure rates than SB 123-eligible offenders sentenced to standard community corrections. Differences were generally larger at the 24 months threshold and when focusing on revocation events.

Estimates from the matched samples confirmed this pattern, although controlling selection into SB 123 narrowed the gap between SB 123 offenders and equivalent offenders sentenced to community corrections. At 24-month follow-up, we found no significant differences between the study and the comparison groups with matched samples, suggesting that the long-term performance of offenders in SB 123 is not different than the those offenders receiving a standard community corrections sentence. At 12 months, however, SB 123 offenders are less likely to have a revocation filing and less likely to be incarcerated than similar offenders sentenced to community corrections. These results are largely confirmed by other matching algorithms presented in Appendix C.

Table 4-10. SB 123 vs. Standard Community Corrections - Recidivism Rates at 12, 24 Months

	Sample SB/CC	Re-arrest rates			Incarceration rates			Revocation filing rates		
		SB	CC	Diff	SB	CC	Diff	SB	CC	Diff
<i>12 months</i>										
Unmatched	2753/646	.219	.241	-.022	.101	.177	-.075***	.261	.345	-.084***
Matched	628/646	.240	.239	.001	.123	.172	-.049**	.289	.341	-.052*
<i>24 months</i>										
Unmatched	2026/519	.429	.457	-.028	.203	.297	-.094***	.380	.458	-.078**
Matched	498/519	.452	.460	-.008	.251	.291	-.040	.381	.401	-.019

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Bootstrapped standard errors (100 replications) Matching based on nearest neighbor without replacement (caliper=.005, restricted to regions of common support). Sample sizes may vary slightly according to outcome (listwise deletion, see Appendix C).

We replicated our analyses using a Kernel-based procedure that maximizes the information extracted from the available set of cases via the weighting of matches based on differences in propensity scores (bandwidth=.06). Thus, the estimate of the effect of SB 123 is dependent on the “distance” in propensity scores between offenders in the study (SB 123) and comparison

groups (court services or standard community corrections). In other words offenders who are “closer” matches contribute more to the estimation of the overall intervention effects. Results are presented in the Appendix C. Patterns confirm the significance and direction of effects reported for the nearest-neighbor matching algorithm.

Conclusion

The impact of SB 123 on the recidivism rates of drug possessors is mixed; overall, the success of SB 123 varies by the type of recidivism considered and the sanction to which it is compared. When assessing the impact of SB 123 using unmatched samples of offenders, we found that participation in SB 123 decreased the likelihood of both revocation and reconviction compared to community corrections. However, SB 123 increased the likelihood of revocation compared to court services. Given the apparent shift in offenders from court services to SB 123 following implementation, this result may not be surprising – SB 123 significantly increased the surveillance and supervision of a large number of drug possessors and may have led to higher revocation rates. Finally, SB 123 had no significant impact on recidivism compared to prison. The analyses on the unmatched samples also revealed that several individual-level attributes of offenders were associated with patterns of success and failure. Offenders who were older, Hispanic, white, from rural counties, or who had lower criminal histories were also less likely to recidivate.

The results from our estimation using matched samples are more consistent, but indicated that SB 123 had a very limited impact on recidivism rates. Using propensity scores we generated a sample of offenders who were similar in terms of gender, age, race, ethnicity, and criminal history. In other words, using this procedure we examined the outcomes for drug possessors who were the same except for sentence imposed – SB 123, court services, or community

corrections. Using these matched groups, SB 123 had no significant long term (24 month) impact on recidivism compared to community corrections; SB 123 did not increase or decrease the likelihood of re-arrest, revocation or incarceration for offenders. In contrast, SB 123 increased the chances of failures linked to new incarcerations or revocations compared to court services. Specifically, we found that about 18.6 percent of SB 123 offenders in the matched sample were incarcerated during their first 24 months in the community . During the same period, approximately 13 percent of matched offenders monitored by court services were sent to prison. When restricting the threshold of failure to the first 12 months of community supervision, results are relatively similar. Patterns are even more pronounced when examining differences in revocation filings, particularly at the 24-month threshold (about 36% of SB 123 offenders are associated with such event compared to about 29% of matched court services offenders).

At the 12-month threshold, we did find that SB 123 offenders performed better than their counterparts in standard community corrections in terms of fewer incarcerations and revocation filings. However, there were no significant different in re-arrest rates at 12 or 24 months between SB 123 and either comparison group (court services or community corrections). These results highlight a difficult association between the structural design of SB 123 and its ultimate goals. SB 123 is guided by an interest is diverting prison-bound offenders to community-based supervision while preserving public safety. Thus, like other mandatory sentencing policies, the primary focus of SB 123 is on changing sentencing practices, not necessarily changing offender behavior. While such *systemic* concern is reflected in the mandatory nature of the program, its inherent inflexibility also has the potential to trigger a number of adverse effects. As our analyses indicate, SB 123 largely failed to divert individuals from prison; rather, it diverted individuals from court services, subjecting offenders to greater levels of surveillance and control.

This increased control likely led to the limited impact of SB 123 relative to other sanctions. Moreover, at the individual-level, mandatory treatment dismisses the significance of the individual's readiness and engagement with treatment—rather, treatment under SB 123 is seen as another condition of supervision. While mandatory treatment may provide a viable mechanism for directing offenders into treatment, like compulsory treatment more generally it is unclear whether mandatory treatment can be translated into an internalized desire to change (Huebner & Cobbina, 2007; Young, Fluellen, & Belenko, 2004). As it is currently structured, SB 123 does not provide a clear mechanism for translating compulsory compliance with treatment through supervision and sanctions into internalized motivation.

As noted above, the system- and individual-level goals of SB 123 are inter-related: failure to divert the right offenders into the program may increase revocation rates by subjecting offenders to more surveillance and control; in turn, such increases in surveillance and control may lead to higher recidivism rates and result in more admissions to prison. Chapter 2 showed that SB 123 actually resulted in very few individuals being diverted from prison; as this chapter shows, SB 123 also resulted in a general increase in recidivism rates for SB 123-eligible offenders. Thus, the ultimate system-level impact of SB 123 appears to be fairly limited. The next chapter addresses this question, by estimating the impact of SB 123 on prison admissions at sentencing and due to recidivism.

Chapter 5: The System-Level Impact of SB 123

Diversion programs traditionally have shared two interrelated goals: an *individual-level* goal of reducing failure rates of participating offenders (often defined in terms of criminal recidivism) and a *system-level* goal of reducing the overall size of prison populations by diverting individuals from prison at sentencing and by reducing the number of people entering prison through revocation or a new conviction (Tonry, 1996).²² While these two objectives are interrelated, they are not necessarily co-extensive. A program can effectively divert offenders from prison at sentencing, but that does not ensure that those offenders will have lower recidivism rates due to these alternatives to incarceration; in fact, gains in diversion can be outweighed by subsequent returns to prison triggered by revocations (Blomberg, 2003; Tonry, 1996; Tonry and Lynch, 1996). In turn, offenders in diversion programs may have lower recidivism rates than offenders in other forms of community-based supervision, but that does not necessarily translate into reductions in prison populations if few offenders are actually diverted from prison or if the reductions in failure rates are relatively small (Blomberg, 2003; Tonry, 1996; Tonry and Lynch, 1996).

As noted in previous chapters, SB 123 was designed and implemented to have a significant system-level impact on prison admissions and populations. Narrowly-defined eligibility rules, mandatory sentencing requirements, and restrictions on revocation practices were aimed at reducing circumvention and, in turn, ensuring diversion and lower revocation rates. As Chapter 2 showed, few SB 123-eligible offenders were sentenced to prison prior to implementation of SB 123; thus, it appears that SB 123 had limited opportunities to divert individuals from prison. As Chapter 4 indicated, SB 123 similarly proved to have a limited impact on individual-level

²² Initiatives may refer to additional objectives at the systemic or individual-level including for example, reducing the prevalence of substance abuse, improving the social functioning of offenders, or enhancing the allocation of supervision or treatment resources. Here we focus on what we consider to be the primary objectives of such initiatives (public safety and use of costly prison space).

outcomes; recidivism rates for SB 123 offenders were generally no different than those of offenders sentenced to community corrections and tended to be higher than those of offenders sentenced to court services.

This chapter assesses the system-level impact of SB 123 on prison admissions and prison populations. Specifically, we estimate the number of people diverted from prison at sentencing and the number of people diverted from prison due to revocations and reconvictions. Results indicate that SB 123 resulted in a slight reduction in the number of drug possessors entering prison, saving the state between 158 and 494 prison beds over the first three years of program operation (2003-2006). In other words, results show that Kansas' SB 123, like California's Proposition 36 (Ehlers and Ziedenberg, 2006), achieved a *system-level* impact, alleviating prison populations by reducing the number of drug possessors entering prison, but has had no *individual-level* impact, failing to reduce recidivism rates among drug possessors beyond the threshold observed for other forms of probation.

Methodology

Sample & Measures

To assess the system-level impact of SB 123 on state prison populations, the study examined all "SB 123-eligible" individuals convicted between November 1, 2001 (twenty-four months prior to SB 123 implementation) and October 31, 2006 (thirty-six months after SB 123 implementation) who were sentenced to SB 123, community corrections, court services, or prison. Because of the focus on system-level outcomes, recidivism was narrowly defined to only include incarceration due to reconvictions or revocations. Consistent with this rationale, the analyses also focused on long-term patterns of recidivism (24-month recidivism rates), which were tracked for all offenders through October 31, 2008.

As summarized in Chapter 1, we reconfigured our sample of SB 123-eligible offenders in different ways to more effectively address our research questions. For this chapter we implemented a general sample to define SB 123 eligibility and a more restricted sample to more closely reproduce the statutory requirements of SB 123: Sample A included all individuals convicted of a first or second offense of drug possession who had a criminal history score E through I; Sample B included all individuals convicted of a first or second offense of drug possession who had a criminal history score E through I and who also had no prior arrests for drug sale or manufacture (these two samples largely correspond to samples 1 and 3 described in Chapter 1). Based on these definitions, Sample A included 2,791 individuals sentenced prior to SB 123 and 4,508 individuals sentenced post implementation; Sample B included 2,081 individuals sentenced prior to implementation of SB 123 and 3,327 sentenced post implementation. Table 5-1 shows the composition of these two samples.

Table 5-1. Sample Descriptions and Sample Sizes

	Sample A	Sample B
Offense of Conviction	Drug possession (1 st , 2 nd)	Drug possession (1 st , 2 nd)
Criminal History	E-I	E-I
Sentence date	Nov.1, 2001-Oct 31, 2006	Nov.1, 2001-Oct 31, 2006
Prior arrest drug sale/ manuf.	No	Yes
Total N	7299	5408
Total pre-SB 123	2791	2081
Court Services (%)	1643 (58.9%)	1289 (61.9%)
Community Corrections (%)	884 (31.7%)	644 (30.9%)
SB 123 (%)	0 (0.0%)	0 (0.0%)
Prison (%)	264 (9.4%)	147 (7.1%)
Total post SB 123	4508	3327
Court Services (%)	679 (15.1%)	530 (15.9%)
Community Corrections (%)	890 (19.7%)	586 (17.6%)
SB 123 (%)	2730 (60.6%)	2097 (63.0%)
Prison (%)	209 (4.6%)	114 (3.4%)

Analyses

To assess the system-level impact of SB 123, the analyses fit a series of projection algorithms seeking to estimate the number of prison admissions avoided due to SB 123. For this project, the calculation of SB 123 impacts on prison populations involved determining the number of admissions avoided at sentencing and the number of admissions avoided through incarcerations linked to reconvictions and revocations. The calculation of prison beds saved also involved determining the length of prison stays corresponding to admissions at sentencing and due to revocation (see Chapter 1 for a detailed description).

The Impact of SB 123 on Prison Admissions and Prison Beds

As noted above, the analysis of prison admissions and bed savings relied on two samples of SB 123-eligible offenders. Using Sample A (which defines eligibility by conviction offense and criminal history score only), during the first three years of SB 123 implementation, 4,508 SB 123-eligible offenders were sentenced to either SB 123, community corrections, court services,

or prison. Using Sample B (which defines eligibility by conviction offense, criminal history score, and prior arrest for drug sale/manufacture), 3,327 SB 123-eligible offenders were sentenced. As Table 5-1 shows, in the two years prior to SB 123 implementation just 9.4 percent of offenders in Sample A and 7.1 percent of offenders in Sample B received a prison sentence; after implementation, 4.6 percent of offenders in Sample A and 3.4 percent in Sample B received a prison sentence. Thus, while SB 123 appears to have diverted some eligible offenders at sentencing, there were few offenders to divert prior to implementation *and* SB 123 failed to divert all of them after sentencing. Moreover, SB 123 primarily diverted eligible offenders, not from prison, but from court services to community corrections. During the two years pre-implementation, about 59 percent of all SB 123-eligible offenders from Sample A and 62 percent of offenders from Sample B received a court services sentence; after implementation these numbers declined to roughly 15 percent for both samples.

While sentencing patterns changed in an unanticipated manner, SB 123, nonetheless, resulted in a reduction in the number of SB 123-eligible offenders entering prison directly from court (Table 5-2). Based on sentencing patterns prior to implementation, we estimate that between 236 and 424 SB 123-eligible offenders would have been sentenced to prison in the absence of the legislation; after implementation, between 114 and 209 SB 123-eligible individuals were actually sentenced to prison, resulting in an estimated diversion ranging between 122 and 214 individuals during the first three years of program implementation. Based on sentences imposed prior to implementation and time served requirements, these individuals would have been sentenced to roughly 26-28 months in prison on average and would have served roughly between 19-21 months after accounting for good time (85%) and jail credit (average of 3 months). Overall, we estimated that between 2003 and 2006, the 122 to 214 SB 123-eligible offenders diverted from

prison resulted in aggregate savings of approximately 198-377 prison beds. Tables 5-2A and 5-2B summarize the parameters included in these estimations for Samples A and B.

Table 5-2A. Number of Actual and Expected Sentences for SB 123-Eligible Offenders (Sample A) Sentenced in First 36 Months Post-Implementation (November 1, 2003 – October 31, 2006), by Sentence Type

	Total	Sentence			
		SB 123	Prison	Community Corrections	Court Services
Percent of sentences pre-SB 123	1.000	0.000	0.094	0.317	0.589
Expected number of sentences post-SB 123	4,508	0	424	1,429	2,655
Actual sentences post-SB 123	4,508	2,730	209	890	679
Change in sentences	0	2,730	-215	-539	-1,976
Estimated prison admissions avoided <i>at sentencing</i>			-214		
Average prison time served pre-implementation			1.76 yrs		
Estimated number of beds saved at sentencing (admissions avoided*average years served)			-377		

Table 5-2B. Number of Actual and Expected Sentences for SB 123-Eligible Offenders Sentenced in First 36 Months Post-Implementation (November 1, 2003 – October 31, 2006), by Sentence Type

	Total	Sentence			
		SB 123	Prison	Community Corrections	Court Services
Percent of sentences pre-SB 123	1.000	0.000	0.071	0.309	0.619
Expected number of sentences post-SB 123	3,327	0	236	1,028	2,059
Actual sentences post-SB 123	3,327	2,097	114	586	530
Change in sentences	0	2,097	-122	-442	-1,529
Estimated prison admissions avoided <i>at sentencing</i>			-122		
Average prison time served pre-implementation			1.62 yrs		
Estimated number of beds saved at sentencing (admissions avoided*average years served)			-198		

While SB 123 did not significantly lower recidivism rates relative to community corrections or court services (see Chapter 4), SB 123, nonetheless, coincided with an aggregate reduction in revocation rates and a reduction in the number of people admitted to prison due to recidivism (Tables 5-3A and 5-3B). Based on sentencing patterns and revocation rates *prior to implementation*, we estimate that out of the 4,508 SB 123-eligible offenders sentenced after implementation in Sample A, 1,091 of these individuals (24.2 percent) would have been admitted to prison due to a revocation or new conviction in the absence of the legislation, if revocation and re-offending rates had remained constant; similarly, of the 3,327 SB 123-eligible offenders sentenced after implementation in Sample B, 764 of these individuals (22.9 percent) would have been admitted to prison. After implementation, 932 individuals (20.7 percent) in Sample A and 683 individuals (20.5 percent) in Sample B were actually admitted to prison for a reconviction or revocation, resulting in a reduction in prison admissions due to recidivism in the range of 81 to 159 individuals. Based on sentences imposed throughout the study period for probation violators, these individuals would have served roughly 7.8 months (0.65 years), resulting in a savings of 53 to 117 prison beds between November of 2003 and November of 2006.

Table 5-3A. Number of Actual and Expected Returns to Prison for SB 123-Eligible Offenders Using Pre-Implementation 24-month Recidivism Rates (Sample A), by Sentence Type

	Total Offenders	Sentence			
		SB 123	Prison	Community Corrections	Court Services
Expected sentences post-SB 123	4,508	0	424	1,429	2,655
Percent revoked pre-SB 123		0	0.435	0.28	0.14
Expected revocations post-SB 123		0	184	400	372
Percent new convictions pre-SB 123		0	0.032	0.046	0.021
Expected new convictions post-SB 123		0	14	66	56
Total expected admissions to prison		0	198	466	428
Actual sentences post-SB 123	4,508	2,730	209	890	679
Actual revocations post-SB 123		466	38	211	91
Actual new convictions post-SB 123		58	7	30	11
Total actual admissions to prison		524	45	241	102
Estimated prison admissions avoided due to recidivism		524	-153	-225	-326
Total prison admissions avoided due to recidivism		-180			
Average prison time served pre-implementation		0.65 yrs			
Estimated number of beds saved through revocation (admissions avoided*average years served)		-117			

Table 5-3B. Number of Actual and Expected Returns to Prison for SB 123-Eligible Offenders Using Pre-Implementation 24-month Recidivism Rates (Sample B), by Sentence Type

	Total Offenders	Sentence			
		SB 123	Prison	Community Corrections	Court Services
Expected sentences post-SB 123	3,327	0	236	1,028	2,059
Percent revoked pre-SB 123		0	0.286	0.292	0.145
Expected revocations post-SB 123		0	67	300	298
Percent new convictions pre-SB 123		0	0.057	0.046	0.019
Expected new convictions post-SB 123		0	13	47	39
Total expected admissions to prison		0	80	347	337
Actual sentences post-SB 123	3,327	2,097	114	586	530
Actual revocations post-SB 123		378	22	145	69
Actual new convictions post-SB 123		42	3	17	7
Total actual admissions to prison		420	25	162	76
Estimated prison admissions avoided due to recidivism		420	-55	-185	-261
Total prison admissions avoided due to recidivism		-81			
Average prison time served pre-implementation		0.65 yrs			
Estimated number of beds saved through revocation (admissions avoided*average years served)		-53			

These analyses relied only on pre-implementation recidivism rates to estimate post-implementation effects. Using post-implementation recidivism rates produces markedly different results due to the general decline in revocation rates between 2001 and 2006, particularly for SB 123-eligible individuals sentenced to prison (Tables 5-4A and 5-4B). Based on sentencing patterns and revocation rates *after implementation*, 907 individuals (20.1 percent) in Sample A and 621 individuals (18.7 percent) in Sample B would have been admitted to prison due to a revocation (most cases) or new conviction in the absence of the legislation. After implementation, 912 individuals in Sample A and 681 individuals in Sample B were *actually*

admitted to prison due to recidivism, resulting in a *net gain* in prison admissions due to recidivism of 5 to 45 individuals. In other words, SB 123 resulted in an increase in admissions to prison resulting from supervision failures. Based on sentences imposed post-implementation and time served requirements, these individuals would have served roughly 7.8 months (0.65 years) in prison, resulting in an estimated increase of 3 to 40 prison beds during the first three years of program operation.

Table 5-4A. Number of Actual and Expected Returns to Prison for SB 123-Eligible Offenders Using Post-Implementation 24-month Recidivism Rates (Sample A), by Sentence Type

	Total Offenders	Sentence			
		SB 123	Prison	Community Corrections	Court Services
Expected sentences post-SB 123	4,508	0	424	1,429	2,656
Percent revoked post-SB 123		0	.225	.23	.131
Expected revocations post-SB 123		0	95	329	348
Percent new convictions post-SB 123		0	.041	.021	0.033
Expected new convictions post-SB 123		0	17	30	88
Total expected admissions to prison		0	112	359	436
Actual sentences post-SB 123	4,508	2,730	209	890	676
Actual revocations post-SB 123		466	38	211	91
Actual new convictions post-SB 123		58	7	30	11
Total actual admissions to prison		524	45	241	102
Estimated prison admissions avoided due to recidivism		524	-67	-118	-334
Total prison admissions avoided due to recidivism			+5		
Average prison time served pre-implementation			0.65 yrs		
Estimated number of beds saved at sentencing (admissions avoided*average years served)			+3		

Table 5-4B. Number of Actual and Expected Returns to Prison for SB 123-Eligible Offenders Using Post-Implementation 24-month Recidivism Rates (Sample B), by Sentence Type

	Total Offenders	Sentence			
		SB 123	Prison	Community Corrections	Court Services
Expected sentences post-SB 123	3,327	0	236	1,028	2,059
Percent revoked post-SB 123		0	0.220	0.238	0.127
Expected revocations post-SB 123		0	52	245	261
Percent new convictions post-SB 123		0	0.030	0.028	0.013
Expected new convictions post-SB 123		0	7	29	27
Total expected admissions to prison		0	59	274	288
Actual sentences post-SB 123	3,327	2,097	114	586	530
Actual revocations post-SB 123		378	22	145	69
Actual new convictions post-SB 123		42	3	17	7
Total actual admissions to prison		420	25	162	76
Estimated prison admissions avoided due to recidivism		420	-34	-112	-212
Total prison admissions avoided due to recidivism		+62			
Average prison time served pre-implementation		0.65 yrs			
Estimated number of beds saved at sentencing (admissions avoided*average years served)		+40			

The estimates of the number of individuals diverted at sentencing and the estimates of prison admissions averted due to recidivism vary significantly according to sample and baseline used to calculate expected patterns of failure and time serviced. Table 5-5 summarizes the estimated change in prison admissions and prison beds saved due to SB 123. Using the most liberal estimates – the most general sample (Sample A) and the pre-SB 123 recidivism rates – we estimate that the implementation of SB 123 avoided a total of 394 prison admissions and saved 494 prison beds during the first three years of program implementation. Using the most conservative estimates – the most restrictive sample (Sample B) and the post-SB 123 recidivism

rates – we estimate that the implementation of SB 123 avoided just 60 prison admissions and saved 158 prison beds between during the first three years of implementation. We believe that the latter figure more likely reflects the true impact of SB 123 on the prison system in Kansas because it more accurately captures the narrow eligibility requirements for SB 123 sentencing as well as the long-term decline in revocation rates across all types of sanctions that coincided with the implementation of SB 123.

Table 5-5. Estimated Reduction in Prison Admissions and Prison Bed Savings Due to SB 123

	Sample A		Sample B	
	Admissions	Prison Beds	Admissions	Prison Beds
Estimates using pre-implementation recidivism rates				
At Sentencing	-214	-377	-122	-198
Due to Recidivism	-180	-117	-81	-53
Total Savings	-394	-494	-203	-251
Estimates using post-implementation recidivism rates				
At Sentencing	-214	-377	-122	-198
Due to Recidivism	+ 5	+3	+62	+40
Total Savings	-209	-374	-60	-158

To roughly estimate the cost efficiency of SB 123, we rely on a simple comparison of total treatment expenditures and total prison costs avoided due to SB 123. During the first three years of program operation, the state spent \$16,837,177 on treatment services under SB 123 (Kansas Sentencing Commission, 2008). During this time, the average cost per inmate for incarcerating a person in the state prison for one year was \$20,950 (Kansas Department of Corrections, 2004, 2005, 2006, 2008a).²³ Using the conservative estimates of bed savings (relying on post-

²³ We rely on average cost per inmate rather than marginal cost per inmate because, at the time SB 123 was enacted, the state was facing new prison construction as the result of prison population growth. SB 123 was enacted with the explicit goal of avoiding such construction; as such, any potential savings due to SB 123 would be in the average cost per inmate that new construction would entail.

implementation recidivism rates in Table 5-5), SB 123 saved the state between \$3,310,100 and \$7,835,300 (total bed savings x average cost per inmate) in incarceration costs during the first three years of program operation. Using the most liberal estimates of bed savings (relying on pre-implementation recidivism rates in Table 5-5), SB 123 saved the state between \$5,258,450 and \$10,349,300 in incarceration costs. Subtracting these savings in incarceration costs from the total treatment expenditures for the program, we find that, overall, SB 123 resulted in a *net loss* to the state of between \$13,527,077 and \$6,487,877.

Conclusion

Mandatory drug diversion programs like SB 123 are partially aimed at preserving the individual-level impacts on recidivism linked to earlier programs, while also enhancing the nature and scope of system-level impacts on prison populations. These system impacts have become a critical interest to states due to growing pressures to slow or reduce the rate of growth of prison populations. Few studies to date, however, examine whether these programs have been effective at meeting these twin expectations.

This study of Kansas' SB 123 offers a different perspective. We find that when using matched samples of similar SB 123-eligible offenders, SB 123 had no significant impact on most measures of recidivism compared to community corrections and actually increased the chances of recidivism compared to court services. At the same time, we find that SB 123 has alleviated some of the pressure generated by low level drug offenders admitted to prison, saving between 158 and 494 prison beds over the first three years of the program.

The conflicting impacts of SB 123 are a consequence of program design. Like other diversion programs, SB 123 resulted in significant net-widening which likely affected the overall outcomes of the program at both the system- and individual-levels. Unlike other diversion

programs, however, the net-widening generated by SB 123 is not exclusively the result of circumvention of the law or changes in decisions related to charging, plea bargaining, or sanctioning; rather, like other mandatory sentencing laws, net-widening results from the usage of minimal front-end criteria – specifically, offense of conviction and criminal history – to define SB 123-eligible offenders and mandatory sentencing requirements to ensure the imposition of the SB 123 sentence. This seems paradoxical, as narrow eligibility requirements and limitations on discretion are often implemented in an effort to overcome such net-widening found in other discretionary diversion programs.

The minimal eligibility criteria and mandatory nature of the program resulted, in the first instance, in front-end net-widening, diverting offenders primarily from court services supervision rather than from prison. Prior to the implementation of SB 123, roughly 62 percent of SB 123-eligible offenders were sentenced to court services and only 7 percent were sentenced to prison. The mandatory nature of the program ensured that many of these prison bound offenders were diverted from prison to community corrections – meeting the system-level goal of the program; however, it also ensured that many non-prison bound offenders were diverted from court services to community corrections. The narrow eligibility criteria and mandatory nature of SB 123 were implemented to avoid such front-end net-widening found in other diversion programs – narrow eligibility criteria *should* ensure targeting of specific populations and mandatory sentencing *should* ensure that only those target populations are diverted. This assumes that eligibility requirements properly target the population desired. As this shows, SB 123 did not target only prison bound offenders. Moreover, like mandatory sentencing policies generally (Tonry, 1996), SB 123 then restricts the ability of judges to avoid the imposition of the SB 123 sentence when it is seen as directed at non-targeted offenders. Thus, while the minimal eligibility criteria and

mandatory nature of SB 123 were designed to avoid front-end net-widening and ensure system-level impacts, they achieved only the latter goal, largely because the eligibility criteria were not tailored specifically to the prison bound population.

For policymakers, the outcomes in Kansas present a dilemma. In Kansas, like in many other jurisdictions implementing state-wide drug diversion programs, efforts are primarily focused on system-level impacts of reducing pressure on prisons and saving money. However, such efforts often fall short in two regards: first, they tend to only specify front-end operations of the program (program participation) while not clearly developing parameters for other decision-making points that may play an even more significant role (revocations). Second, they often gain public support based on their promise of reduced substance abuse, reduced recidivism, and greater public safety. Moreover, the content of the program – drug treatment – is focused on improving offender performance and is justified in terms of such performance, mostly in terms of reduced criminal recidivism but also lower incidence of drug addiction-related problems. The mixed success of Kansas' SB 123 raises questions about how policymakers can define the success of similar state-wide mandatory drug diversion efforts: is it enough for a mandatory drug diversion program to reduce prison populations but have no impact on offenders?

Chapter 6: Criminal Justice Perspectives on SB 123

The implementation and operation of SB 123 may be described in a number of ways, each emphasizing a different substantive dimension of the initiative. Chapters 2, 3, and 5 of this report, for example, focused on the system-level impacts of SB 123, examining changes over time in the sentencing of drug possessors, the supervision and treatment of drug offenders across the state, and the size and composition of prison admissions and populations. Chapter 4 assessed individual-level impacts of SB 123, examining the affect of SB 123 relative to other sanctions on several measures of recidivism. While evaluating SB 123 at these two levels of analysis provides an important account of the formal effects of SB 123, it offers a limited account of the informal adaptations and reactions to this policy by criminal justice stakeholders. Because these actors were ultimately responsible for implementing and carrying out the central provisions of SB 123, it is important to examine the range and nature of their expectations regarding the main goals of the initiative, their concerns about how SB 123 changed workloads and oversight, and their perceptions how SB 123 impacted their general work routines, decision-making processes, and practices.

The attitudes and behaviors of stakeholders matter when enacting new policies since these attitudes and behaviors can alter the substantive content of such policies through circumvention or simplification of the proposed changes, or by shaping the speed and scope the adoption process. The compulsory nature of the central provisions of SB 123 sought to minimize some of these patterns, at both sentencing and supervision: entry into SB 123 was mandatory according to offense of conviction and criminal history; local community corrections agencies were designated as the only community-based agency in charge of the supervision of SB 123 offenders; assessments of treatment needs were to be conducted by community-based providers specialized in developing such evaluations; treatment providers were to be certified and

evaluated by the KDOC to treat SB 123 offenders; and providers were to be monitored by the KSC and individual community corrections agencies for billing and accounting purposes. However, SB 123 allowed specific criminal justice actors to implement other core provisions of the program within their own institutional context: the nature of the “team approach” between supervising officers and drug counselors, the specification of local standards for revocations, and the recruitment and contracting of local providers was all determined by local community corrections agencies.

More generally, the design of SB 123 effectively granted stakeholders various opportunities and incentives to shape the implementation and functioning of the program according to their own agency-level concerns and individual perceptions about the rationale and ultimate objectives of the initiative. The actions and attitudes of a number of these actors, from judges to individual community corrections officers, may have amplified or mitigated the expected impacts of SB 123 at the system- and individual-levels. Understanding these informal processes is important not only to explain observed trends in SB 123 outcomes and interventions, but also to illuminate the broader challenges – such as, program fidelity and consistency, inter-agency coordination, and unanticipated outcomes – associated with large-scale initiatives aimed at realigning criminal justice operations.

This chapter documents key elements of the implementation and operation of SB 123 as indicated by stakeholders in various community corrections districts of Kansas. It summarizes the range of informal reactions to SB 123 and explores how these adaptations may have impacted the program’s processes and outcomes.

Methodology

Data

To develop this actor-centered portrait, we draw on two sets of qualitative data. The first set of data was gathered from site visits to four community corrections districts in the state (two urban, two rural) conducted in the Spring/Summer of 2009-2010. In each of these visits we conducted group interviews with supervising community corrections officers and one-on-one interviews with community corrections directors. In some sites we also interviewed other local actors such as managers of community-based treatment providers, drug counselors and officers and staff of court services.

We complemented this detailed review focused on supervision protocols with a second data collection effort aimed at exploring how SB 123 impacted other work environments. In the Summer 2009 and Summer 2010, we conducted 86 telephone interviews with judges, prosecutors, public defenders, and other community corrections directors.²⁴ For each of these criminal justice actors we developed a list of potential contacts based on public records available on the internet and referrals by key informants from the KDOC at the state and local levels.

Analytical Strategy

The feedback we received from courtroom actors and other criminal justice stakeholders was recorded as field notes. To analyze these data we classified field notes by type of agency, topic, and context (urban/rural). Notes were analyzed across topics and agencies, noting the clustering of responses around specific issues or actors, as well as outliers and other unique data.

²⁴ This number includes 37 prosecutors, 17 judges, 24 community corrections directors (in-person and telephone interviews), and 6 public defenders. The overall response rate was 46 percent. Service providers and representatives of court services and KDOC regional parole offices were engaged through group interviews in the course of our site visits.

Through iteration, we developed a number of substantive themes, some of which coincided with those highlighted by our qualitative instruments (e.g., SB 123 eligibility issues). Others emerged from the interviews themselves (e.g., rural/urban differences in supervision models). The following sections summarize each of these themes.

Defining and Ensuring “Success” in the Context of SB 123

Community corrections officers and managers described the overall purposes of SB 123 in a manner that was consistent with the statutory objectives of the program. Officers referred to SB 123 as primarily concerned with *reducing the recidivism of drug offenders*, and *saving money*. Sometimes they expressed these objectives more broadly, indicating that SB 123 was *about helping offenders*, or *trying harder at helping offenders succeed and breaking the cycle of new victims*. The new approach to supervision conveyed by SB 123 was often defined in comparison to a more traditional, law enforcement-oriented framework with fewer opportunities and resources to facilitate offender change. The focus of this traditional model, officers said, was not offender success but *surveillance* and *control*. In contrast, SB 123 was perceived as expanding the traditional perspective’s exclusive focus on accountability with other domains more clearly linked to offender performance, including *thinking that offenders need more time to get help and reflect on their own process of change*, and *ensuring that supervising officers help them work on their issues and not just check on conditions*.

Our telephone interviews with courtroom actors—judges, prosecutors, defense attorneys—revealed relative uniformity across agencies regarding what they see as the main objectives of SB 123. However, their idea of success of the initiative was more clearly aligned with the systematic goals outlined by the new legislation (i.e., *reduce the prison population and avoid new prisons*). In contrast to community corrections employees, we found a lot more

variation within subsets of courtroom actors in terms of viewpoints concerning the effectiveness of SB 123. As one prosecutor commented, even within his own office *there is no consensus regarding 123*. One third of all defense attorneys, prosecutors, and judges believed that the program was *moderately to very successful* in reaching the stated goals of SB 123. These actors commented *that community corrections is doing good things and that the program is being effective, it is easing prison crowding so the state does not have to build new prisons, and they like the fact that SB 123 requires mandatory treatment, but at the same time, they aren't incurring huge amounts of debt paying for the treatment*. On the other hand, a number of courtroom actors expressed serious skepticism about the effectiveness of the program in terms of reaching the stated goals. These actors reported that the program is *financially draining on the system, almost everyone who has participated has been back in court for narcotics, and they should scrap the program because the program is not significant and the restrictions are making things worse*.

Officers and managers also expressed more general views about the correlates of offender success. Most of them strongly believed that a *realistic* view of this process should begin by realizing that *success is a choice of the offender and that it begins and ends with the offender*. One person said that *success is about a personal desire to not commit crime and there is nothing magic about treatment or services that will address this*. A few officers further questioned the overall rationale of SB 123 suggesting that *forcing people into treatment is not helpful and can backfire because you're setting the wrong expectations*. Offender motivation was perhaps the most cited reason for why judges, prosecutors, and defense attorneys were skeptical about the success of the program. They believed the mandatory treatment could not force offenders to take treatment seriously. One defense attorney commented that *there is no guarantee that offenders*

will utilize treatment because they might just want to stay out of prison; a prosecutor similarly reported that *just because they are required to do treatment doesn't mean they are devoted*.

These courtroom actors expressed serious skepticism at the state's ability to reform drug offenders, particularly when these actors had witnessed people who appeared *unwilling to change and give up drugs*. A number of judges also questioned the ability of SB 123 to reduce substance abuse since it does not address the underlying issues that are responsible for the onset of substance abuse. One prosecutor believed that the number one obstacle that hampered the effectiveness of the program was that offenders *are returning to communities in which they came before being sentenced under SB 123 -- when offenders go home, they fall right back in with friends and with their old habits*. Another prosecutor referred to the program as a *band aid that needs to be overhauled* because it is not addressing the social factors that drive offenders to abuse substances.

More prevalent was the position that community corrections may be able to change the handling of specific processes such as more referrals and closer attention to revocations; but, in order to be effective, these efforts need to be matched by the offenders' readiness for change. The use of cognitive tools was seen as facilitating this process; although for some, additional steps needed to be considered to *push some more offenders to fully consider transforming their lives away from the justice system*. Drawing on the addiction language and the "stages of change" model, some referred to this process as thinking about how correctional interventions could better support the offenders' *pre-contemplation stage* and not just foster their *contemplation phase*.

Officers linked the success of SB 123 offenders in their caseloads to their own success as supervising agents. Most believed that the new protocols for supervision and interaction with SB

123 offenders were not fully included in their own performance evaluations and that managers still looked for patterns in decision-making and caseload management that more closely resembled a more traditional model (e.g., number of visits, contacts, number of UAs, enforcement of conditions). As such, some officers questioned the consistency of the new approach, indicating that it has *increased workloads* because *in reality* they have to comply with all parameters of the traditional model (e.g., number of contacts, UAs) in addition to the new parameters inspired in the SB 123 model (e.g., motivational interviewing, more input from offenders regarding their supervision and treatment plans). For some, these inconsistencies led them to simplify the SB 123 approach by saying that *it's just about not revoking people*, and that all community corrections agencies adopted it because *that's where the funding is*. Overall, officers believe that the current reporting requirements on their case management and supervision strategies are not consistent with the SB 123 vision and that managers *keep adding new things without dropping any*. Many were frustrated because *the system does not allow us to share how we are trying harder to help people succeed*.

One area where officers perceived a clear difference between the SB 123 model and the more traditional framework to handle offenders is the use of the LSI-R. Generally, officers perceived the instrument as being *informative*, and that its use had made communication more *fluid* with everyone being better at defining risk and supervision strategies. Yet for some, these benefits came at a cost, including redundant information about the offender, overreliance on actuarial outcomes that may not be recorded properly, and lack of time to devote to supervision tasks. More generally, officers believed that data entry and case reports were not only unfairly portraying their work but that the reports also were too time consuming to the point that for some *you spend a lot more time completing forms and less time getting to know your caseload*.

Another area where officers identified a clear break with previous models was the handling of revocations. To be a successful officer, they said, *you need to show that you have exhausted all tools at your disposal before staffing a case* (i.e. seeking a revocation). Under the traditional model, effectively filing the revocation is what mattered the most. Although this change in vision was generally welcomed by officers, they also expressed concerns about having to *watch their backs* a lot more closely because *keeping people in the community is a lot harder than sending them to prison*. For a minority of officers, SB 123 increased their liability as supervising officers because *non-complaint offenders are getting too many chances*. For them, the focus on offender success is excessive and has come at the expense of paying attention to their own success and concerns.

Consistent with the formal structure of SB 123, officers believed that offender success was not only a matter of the offenders' choices and the different supervision strategies, but also a reflection of the ability of the drug treatment providers to instigate and support change. Generally officers perceive that local providers understand *that treatment and criminal risk go hand in hand*, and that most of providers were *doing a good job*, specifically indicating that *offenders are receiving treatment they need*; however, officers perceive that the work and performance of the providers was not closely watched by community corrections administrators. Paradoxically, officers did not seem systematically engaged with their own evaluation of the work conducted by providers. When asked about how they evaluated providers' effectiveness, responses were often vague or weakly articulated (*I rely on what offenders tell me, I look at the data, I talk to my colleagues*). Officers in rural areas indicated that because they had few providers, it was hard to *change providers* or ask *people to do things differently*. In both rural and urban areas, officers felt they did not have the tools to gauge whether the treatment delivered

was *effective* or *appropriate*—according to some, *providers are the experts in treatment, not us*. Still, officers perceived that SB 123 offenders would perform better than non SB 123 offenders due to the volume and quality of treatment, rather than suggesting that these differences, if any, would be linked to their own supervision interventions. In fact, officers systematically conveyed that the new model of community corrections supervision was never exclusive to SB 123 offenders but that everyone on their caseloads benefited from the realignment of the agency toward evidence-based practices.

Officers provided mixed feedback regarding the degree to which SB 123 offenders need all the treatment they currently receive. For some officers, a number of SB 123 offenders *don't need all the attention* because they do not have serious drug abuse issues or because *their main issue is not drug dependency but criminal risk*. A more prevalent view among officers was that a number of *offenders who should be on SB 123 are not* due to prior convictions that make them ineligible (e.g., prior manufacture convictions, a critical issue for methamphetamine offenders). While we fully develop issues of eligibility below, this issue overlaps with success because both officers and managers feel that the pool of SB 123 offenders has increasingly expanded to include individuals whose chief concern is not to work on addiction issues, but to receive a more lenient sanction at sentencing.

Officers and managers were better able to describe the success of SB 123 in terms of its individual-level goals of improving and expanding rates of offender performance rather than the more systemic goals of the new legislation (e.g., reduce use of prison for low-level drug offenders, generate savings). As such, both groups of individuals articulated a number of barriers to the effective operation of SB 123 in regard to individual-level processes. Some of these issues were broadly related to the model of service delivery implemented with SB 123—perceived by

certain officers as being too *offender-centered*, or lacking a more robust component of supervision (*we cannot lose sight that these people are criminals*). A few officers challenged what they considered to be an excessive focus on treatment (*this is not diabetes*). For others the issue was not how to calibrate the different services provided to offenders, but the mandatory nature of the program itself stating that *these people* [SB 123 offenders] *are not trying to change their behavior, only a small percentage of SB 123 offenders actually want to change or get help*. Along the same lines, some officers expressed concern about the inflexibility of the model to clearly offer treatment to those in need—rather than those eligible per guidelines—and the associated costs of such unwarranted interventions.

A second set of barriers to the success of SB 123 reflected concerns about the lack of specification of key decision points for supervision and treatment interventions. Some officers felt uncomfortable with what they perceived to be increasing numbers of offenders being granted repeated SB 123 sentences. A greater fraction of officers indicated that one of the pitfalls of the program is that it *allowed the opportunity to provide services without a clear sense of what constitutes failure or the practical meaning of non-compliance*. For some, several of the key protocols developed by SB 123 were seen as too rigid (e.g., eligibility) while others not clearly specified (e.g. revocation standards).

Consistent with community correction officers' perceptions of the goals of SB 123, managers also reported viewing the purpose of SB 123 as *providing offenders with treatment in the community, reducing the prison population, saving money, and helping offenders to break their addiction*. Also consistent with ground level staffs' views concerning offender success, managers believed that major determinant of offender success in the program was the offenders' motivation for being in the program because *some will use regardless of treatment*. Managers,

however, were able to specify a greater number of system-level challenges to the operation of SB 123. In particular they expressed concern about the continued financial support of the legislature for the program in the context of the current economic recession. Yet, they also suggested that the program needed additional funding in order to provide treatment for offenders with substance abuse issues who currently are not eligible for inclusion under SB 123. These managers expressed a desire for the legislature to invest more money into providing substance abuse treatment for ineligible offenders because there is a *limited amount of treatment paid for by the state and we don't have funds to provide treatment to those excluded under SB 123*. Although a number of directors admit that the program is financially draining, all of these directors believed that *it costs a lot more to send offenders to prison than it does to treat them in the community* and that the program *is saving money in the long run*.

Like some of the community corrections directors, a number of courtroom actors also questioned the financial stability of the state and the continued dedication of the legislature to funding the program. The few prosecutors and defense attorneys that questioned whether the state should continue funding the program cited that it is both *expensive* and *time consuming*. These actors believed that the program was not having its intended effect (i.e., *reducing recidivism, saving money, or reducing the prison population*) and questioned whether it is in the state's best interest to continue to fund a program that *is bogging down the system exponentially because the state is wasting resources and time on offenders that may not be amenable to treatment*. The courtroom actors that questioned the continued financing of the program stressed the goal of saving money above all other goals; one judge believed that *if SB 123 cost more than building new prisons, the legislature would do away with it because the program is being driven by financial concerns and getting offenders treatment is a good unintended consequence of the*

program. In addition to questioning whether the state should continue funding the program, a number of courtroom actors believed that the program currently was not being funded properly in order to reach SB 123's stated objectives. These courtroom actors reported that there were insufficient funds available because the program: *excludes too many offenders, needs more providers, and needs more long term treatment and residential centers*. As outlined below, these actors argued that increasing the discretion of courtroom actors would save money because they could divert resources away from those who do not want treatment and direct it towards those that would benefit most.

Another major obstacle expressed by community corrections directors concerned the lack of available providers and the inability to oversee and react to issues of quality and fidelity of treatment protocols implemented by these providers. One manager reported that *finding qualified providers and maintaining fidelity to the program* was a difficult task, especially in rural jurisdictions where there is a limited number of available providers. Another director was *disappointed* because after a few years of program operation SB 123 did not lead to an increase in the volume and scope of local treatment alternatives—his expectation was that over time SB 123 was going to trigger an *expansion of services where there weren't services before*. This was a particularly critical issue for a few directors in more rural districts because they lacked inpatient treatment providers in their jurisdiction or the providers they referred clients to lacked the resources to accommodate all of the offenders that needed services. This subset of managers largely indicated that they continued to lack local providers to effectively address the needs of their SB 123 offenders (particularly in regards to inpatient treatment, and services for special subpopulations). Directors reported that the lack of available providers in their jurisdictions significantly limited their ability to choose competent providers or to instigate a better and more

consistent set of treatment practices. Lastly, a few managers in rural districts suggested that some providers were abusing the funds designated by SB 123 for treatment. One manager believed that *providers are all about the money* and another manager believed that one of their providers was *engaging in unethical practices by over-estimating treatment needs in order to make money*. One director stated that *the state needs to select their providers more carefully by evaluating outcomes associated with these programs* in order to decrease abuses and inconsistency in treatment delivery.

Defining Eligibility

Supervising officers, more so than community corrections managers, tended to see the *narrow, inflexible* eligibility criteria for SB 123 participation as a major shortcoming of this initiative. As summarized in the previous section, officers were particularly concerned about the relatively low success of offenders that *shouldn't get into the program* because they have little motivation or readiness for the process of behavioral change supported by SB 123—i.e., *they don't need it, they don't deserve it*. Most officers suggested that these individuals tended to be those pleading down from other drug related crimes to drug possession. More generally, officers and managers underscored that the inflexibility and nature of the parameters used to define eligibility compromised the rationale of SB 123 because the bill gave incentives to courtroom actors to force into the program individuals who did not exhibit chronic substance abuse issues and, therefore, were more likely to fail in a model of heightened supervision and higher expectations for treatment compliance. More specifically, they indicated that, *because the money for treatment is there*, county attorneys and defense lawyers were more likely to plead down these offenders, especially when the underlying offense was related to drug distribution, drug manufacture or drug trafficking. To some officers, the mandatory nature of SB 123 on the basis

of legal attributes of each case facilitated the *entry into the program of individuals that look on paper ok, but they don't even want to hear about treatment*. In addition, as pointed out by officers, most offenders fit the profile of a drug-involved criminal whereas the rationale for SB 123 treatment is *to help those whose addiction plays a significant role in their criminal behavior*. The mandatory nature of SB 123 negates this possibility by equating treatment need with a *very specific combination of offense of conviction and criminal history*. Both officers and managers perceived that there was a growing share of these offenders on the SB 123 caseloads, *effectively diluting the positive impacts of the program between those who really need it and those who got it because they thought is a better deal than any of the alternatives*. The failures of this growing subgroup of SB 123 offenders were, in turn, seen as impacting the officers' own performance measures in terms of being mandated to mobilize—*waste*—interventions and resources for a population with disproportionately high recidivism rates. They also considered that the plea bargaining process was unfairly dumping into their caseloads offenders who needed to be looked at more carefully by courtroom actors—particularly prosecutors and judges as the main *gatekeepers* for program participation.

Being mandated to supervise offenders that were not seen as *legitimate* SB 123 cases (because their *real* offense was not drug possession or they did not have chronic drug issues) was a major source of frustration for officers. Another element of tension was the officers' perception that some offenders who were not formally included as SB 123 cases *deserved to be* in SB 123 and could not because of the program's strict formal eligibility rules. More specific comments were also inspired by the same critique of the design of SB 123. For example, several officers described how there was *almost full overlap* between methamphetamine users and manufacturers

and that, for this reason, it was hard to get them into SB 123—the program was perceived to miss the point that *each drug and each type of drug addict is different*.

In addition to concerns about working with some SB 123 offenders that in the officers' view should have received a different sanction, officers also were concerned that some offenders that *truly* needed treatment but were not convicted of possession were not receiving the support they needed. Further, some officers suggested that these offenders were worse off than prior to SB 123 implementation because the standard services for community corrections clients were *running at all-time capacity*. According to officers, getting treatment for their non-SB 123 offenders with substance abuse issues was *a lot harder*, and that *waiting lists are getting longer and longer while stays in treatment are getting shorter and shorter*.

Prosecutors and defense attorneys responsible for the implementation of SB 123 voiced similar concerns with the program regarding the inflexibility and narrowness of the statute. Defense attorneys reported that SB 123 *needs to be expanded* because under the current version of the statute *it eliminates people we have an obligation to treat*. One defense attorney argued that *the program should be open to more offenders and that minor person felonies should not disqualify someone who has a drug problem*. In order to account for the narrowness of the initiative, defense attorneys argued that courtroom actors need more discretion so that individuals with drug problems who do not qualify under SB 123 can get treatment. A few prosecutors similarly commented that *the program excludes people who need substance abuse treatment and it unfairly cuts people off and these people can still be helped in the community*. Prosecutors also believed that they needed more discretion to funnel people into SB 123 because this program *lacks the subjective analysis of who will benefit from treatment and there is no guarantee that offenders will utilize treatment because they might just want to stay out of prison*.

Both prosecutors and defense attorneys believed that discretion would allow them *to figure out a way to get more resources for those who want it and will benefit from them*, while at the same time giving them the ability *to take resources away from those who don't want them and give them to those that do*. As it has been noted above, key actors involved with the implementation of SB 123 believed that offender motivation was a major factor that determined whether the person is successful, therefore, by increasing the level of discretion exercised by courtroom actors, both prosecutors and defense attorneys believed that they will be able to help offenders by tailoring sentences on a case by case basis.

A few judges expressed similar frustrations concerning the narrowness and inflexibility of the eligibility criteria set forth by SB 123. In particular, they indicated that in certain occasions, depending on the nature of the case, prosecutors and defense attorneys circumvent the mandatory nature of SB 123 to include otherwise ineligible offenders. A number of judges stated that prosecutors and defense attorneys have engaged in *plea bargaining from felony crimes down to a misdemeanor so the offender is SB 123-eligible*. The problem that judges have with this practice is *that sellers are not fit for SB 123 but their cases are eligible because they are pled down to possession without intent to deliver*. A majority of judges who reported frustration with this practice believed that, if they were granted more discretion, they would be able to make sure that those who are entering SB 123 are offenders that are amenable to treatment. More specifically, judges reported that they should be *allowed more discretion to apply or reject SB 123 eligibility on a case by case basis*.

Almost half of the judges interviewed were also concerned about offenders who, in their views, should receive SB 123 because of the nature of their substance abuse problems but cannot due to the fact that their criminal history makes them ineligible for inclusion under SB 123. One

judge stated that *there are many cases where individuals commit more serious crimes where the offender is an addict and they are not eligible for SB 123 treatment because of the seriousness of the current charge, but those people are the ones who probably need the most help because they are committing serious crimes to feed their addiction.* A few judges reported that there are a group of offenders that commit non-drug related crimes and who are in serious need of substance abuse treatment as well as those included under SB 123. One judge commented that *it would be nice if there was an expansion of those who could be eligible because it is the small felony offenders who commit these crimes while they are under the influence and they need substance treatment.* Judges believed that if their discretion was broadened under the SB 123 statute, they would be able to *give 123 recommendations* for offenders that do not qualify for SB 123 but would benefit by the services provided by under the statute.

In response to the narrowness and inflexibility of the SB 123 eligibility requirements, a few judges reported circumventing the law when they believed that an offender would either benefit or not benefit from treatment provided under the statute. Due to the limitations imposed on judges' discretion, one judge reported that *there have been a few cases where I have given SB 123 to ineligible offenders because I know that any other treatments will not be successful.* Another judge said that in some instances he has *modified the crime that was charged to make it applicable to the program.* In addition to circumventing the law to make certain offenders eligible for SB 123, one judge reported circumventing the law to restrict offenders who were SB 123-eligible from receiving services. This judge commented that *if they are eligible but we know they will not succeed in 123 then we give them the option of probation or prison and some people we just send to prison because they are on their second chance and we know they are not going to change.*

In addition to the circumvention practiced by judges, both prosecutors and defense attorneys stated that they too have tried to plead ineligible offenders down to an offense covered under SB 123 because they believe certain offenders will benefit from treatment. One defense attorney commented that defense attorneys *routinely plot ways around the 3rd conviction of possession to get these offenders into treatment even though they are not eligible under the statute*. Defense attorneys reported attempting to circumvent the law because *the program needs to be expanded and that people need to go through treatment more than just once*. Prosecutors also attempted to plea down cases for offenders who were ineligible because *restricting some offenders with drug problems is not in line with the spirit of SB 123 because it is not helping all drug offenders*. In these cases, prosecutors will sometimes try to *modify the crime the offender was charged with to get the offender into SB 123*. Another prosecutor also commented that if a *defense attorney can prove that a seller hadn't received treatment before, they will sometimes plea bargain the case down to possession*. The second reason reported by prosecutors for pleading cases down to possession concerned the strength of the case against the offender. In some instances, prosecutors reported that when a possession with intent to distribute case was weak against a certain offender, they would plead the case down in order to ensure that the offender did not completely walk on the case. As was the case with judges, both prosecutors and defense attorneys reported attempting to navigate the narrow requirements covered by SB 123 in order to provide offenders with the provisions offered under the statute.

Equity also appears to be an issue to when considering jurisdiction-level differences in key courtroom processes. Both community corrections managers and officers perceived that SB 123 had not been successful at making sure every jurisdiction in the state followed the same process of adjudication of SB 123 cases. Thus, while participants in our focus groups tended to

challenge the eligibility criteria of SB 123 due to their inflexibility and narrowness, they also indicated that these same elements of the legislation had not been effective at closing the gaps between jurisdictions where sentences for SB 123 were more likely than others. For most officers and some managers, this issue was not too central, as they explained it in terms of differences in available resources, the attitudes of particular courtroom actors, and the tradition of each jurisdiction (e.g., some jurisdictions have the option to funnel drug possessors to local drug courts instead of SB 123, or are in the process of developing different types of drug diversion programs).

Officers described different strategies of adaptation to cope with their frustrations regarding the current eligibility criteria for SB 123. Some had considered telling offenders to *get arrested for drug possession instead of theft* so their underlying drug issues could be dealt with properly as SB 123 offenders. Others hoped to see some of their absconders *turn out busted for drug possession rather than through an executed warrant* because such event would allow them to receive *the attention they need*. Other strategies appeared less extreme, like adjusting treatment plans in collaboration with the SB 123 providers for SB 123 offenders that *did not need treatment*—in these cases, a couple of officers said, treatment could be suspended and then resumed at any point during the probation period *if there was need for it*.

Managers indicated how Senate Bill 14 (SB 14), passed in 2007, allowed officers to overcome some of the eligibility restrictions of SB 123. SB 14 was a “risk reduction” initiative developed by the Kansas Department of Corrections that provided grant incentives to community correction agencies to reduce their revocation rates by 20 percent by Fiscal Year 2008. Officers described how the SB 14 funds effectively allowed them to get the non SB 123 offenders into treatment (as well as other non-drug offenders into a wider variety of programs) and pay for their

assessments of treatment needs. According to some officers, *at the end it is about money more than how to supervise or what services to refer an offender to.*

Supervision and Revocations

The statutory provisions of SB 123 called for a new model of community-based supervision of low-level drug offenders. This new model was to include a more active role of treatment providers and SB 123 offenders in the crafting of supervision and treatment plans, as well as a more systematic use of cognitive-behavioral tools to promote pro-social attitudes and behaviors of program participants. Most officers and managers interviewed for this project indicated that this new framework was *well received* at the local level because it provided an overarching vision and resources that strengthened ongoing local initiatives of organizational change inspired by evidence-based practices—*SB 123 helped us raise the profile of cognitive strategies, the importance of skills development for us but also in terms of being more supportive of the process of change of our offenders, to think in a different way about collaborations with other agencies as partnerships not just the old show-and-tell.* According to most managers, throughout the process of implementation of SB 123 the KDOC was *very supportive, bringing technical assistance to us, sharing the big picture.* Other managers had a less positive opinion of the process, indicating that SB 123 lacked a more inclusive strategy for dissemination of new protocols, and that SB 123 was *once again, Topeka telling us how to do our jobs.* Officers tended to side somewhere in the middle of these two perceptions, suggesting that there was not enough information about the long-term plan symbolized by SB 123 beyond the use of new tools (LSI-R) and the general sense that SB 123 was just another *(well-funded) drug diversion program.*

SB 123 also promoted a new approach for handling technical violations of supervision conditions. Under the new model, supervising officers and managers were to *try harder to keep*

offenders in the community, exhausting treatment options and other service and supervision interventions before considering revocation filings. According to the rationale of the program, supervising agencies needed to focus on systematic patterns of non-compliance by SB 123 offenders—rather than discrete violations—before seeking more restrictive measures of offender accountability. The attention to the revocation process was justified by reference to the therapeutic orientation of the model—*relapse is part of the recovery process*—but also to the fact that one of the key goals of SB 123 was to reduce the use of incarceration for low-level drug offenders both at sentencing *and* while on community based supervision. However, while the first of these two components was narrowly defined through a mandatory sentencing provision, the second could not be fully specified given the nature of the supervision process.

Officers and managers who participated in our focus groups were quick to point out that the revocation of SB 123 offenders was a key domain of operation of the program. The language and substantive framework they used to describe revocations under SB 123 was closely aligned with the formal language of the bill—e.g., the meaning of relapse, the need for a continuum of care and sanctions, the team approach to treatment and supervision. They generally accepted the idea of a more careful review of revocations as a mechanism to *help offenders in the recovery process*. However, to some extent, officers expressed frustration about repeated relapses and what a few perceived to be a clearly formulated policy of *no-revocations of SB 123 cases*. More prevalent was the view that there was not a clearly delineated set of parameters to define failure of SB 123 offenders and subsequent interventions, including subsequent sentences to SB 123. Some suggested that local community corrections agencies needed to *decide when enough is enough* and that such conversation *had been avoided for too long*. This challenge to the operation of SB 123 was often formulated in conjunction with other concerns about disparities in the pool

of SB 123 offenders regarding treatment needs and readiness for cognitive and behavioral interventions. A number of officers also indicated that while some types of violations may clearly reflect ongoing adjustments to treatment regimes (e.g., positive UAs), others were *hardly related* to relapse and drug recovery (absconding, curfew violations).

This view was shared by many courtroom actors who perceived the ambiguity in the definition of what constitutes noncompliance under SB 123. A number of courtroom actors argued that judges are interpreting noncompliance differently across jurisdictions and that *there is too much subjectivity* involved in interpreting a key aspect of the statute. One prosecutor believed that since *there is no bright line rule about what is and what is not compliance, it can be interpreted and imposed differently across the state*. Another defense attorney reported that judges typically interpret noncompliance to mean leaving the prescribed treatment program *but it is more difficult if the person is simply not participating enough or has missed a few treatment sessions*. These courtroom actors believed that the ambiguity surrounding the term noncompliance in the statute is a serious deficiency of SB 123 and a number argued that the term needs to be clarified through revision of the statute.

Perhaps because of this ambiguity, judges, prosecutors, and defense attorneys reported mixed feelings concerning the changes in revocation practices that resulted from the implementation of SB 123. On the one hand, many courtroom actors reported positive views of the changes in revocation and violation responses because *it is better to deal with offenders through treatment instead of sending them to prison since they are unlikely to get treatment while they are incarcerated*. Also, for many courtroom actors changes in revocation practices were aligned with the objective of providing treatment to offenders. These actors viewed *the realization that they need to exhaust community resources for SB 123 offenders* as a positive

factor because *relapse is part of the recovery process*. They also felt that the new method of handling offender violations and revocations was a positive aspect which supported the legislature's intentions to have community corrections work with offenders in the community and to exhaust all possible avenues before sending unsuccessful offenders to prison.

On the other hand, a small fraction of courtroom actors reported that the increase in supervision placed on SB 123 offenders – from court services to community corrections supervision – has, in fact, increased the number of revocations handed down to offenders. These actors believed that the increase in expectations for low level drug offenders that resulted from the redirection of probationers from court services to community corrections made it more difficult for offenders to abide by the restrictions governing their supervision, thus, increasing violations and revocations. One prosecutor commented that *there would be significantly more leeway to tailor the program for offender treatment goals if they didn't have mandatory prison impositions for SB 123 offenders upon failure* and that the state is *harsher on SB 123 offenders* because of these mandatory prison impositions for non-compliance. Another prosecutor reported that *SB 123 offenders are being held to a higher standard* and that *he has never opposed SB 123 treatment because he wants to help offenders prove they can beat their addiction, but once they have been given a chance, he doesn't have a problem with sending them to prison*. Several courtroom actors argued that SB 123 restrictions have made it easier to revoke SB 123 offenders because *judges are intolerant of violators who have been through SB 123*.

Yet, some prosecutors, judges, and defense attorneys expressed frustration concerning what they perceived to be lax revocation practices mandated under the SB 123 statute. These judicial actors believed that SB 123 has made it almost impossible to revoke offenders for violations because *judges have been told not to revoke SB 123 offenders*. One judge commented

that the legislature was granting SB 123 offenders so much leeway *that an offender would need to literally shoot their supervising officer in their office in order to get revoked*. Several courtroom actors believed that the restrictions on revocations are *sending the message that the criminal justice system isn't serious* because the system is *allowing offenders to violate with no consequences*. These courtroom actors believed that this was a negative factor because offenders who are not serious about rehabilitating themselves are continuing to take resources away from those who are trying to help themselves.

Most officers noted that they were indeed more flexible in their current supervision strategies—compared to those employed in the past—and had *adapted* to the new framework. In some cases this adaptation was conveyed in a way that suggested a greater, more comprehensive level of engagement between officers and offenders—*we care more, we try harder, we think outside the box*. According to officers, they now *look at cases from all angles*, looking for new ways to engage offenders, *building on their strengths and natural supports*. Managers also describe how they probed the supervision strategies of their officers more systematically, particularly when considering a revocation—*have you read the police report on this case? Have you talked to his employer? What's the latest on his treatment plan? If you do not know the answer to these questions, we cannot even begin to staff a case, to consider a revocation. We cannot revoke someone just because an officer is frustrated with an offender*. They also indicated how the decision to file a revocation, while formally residing within their own purview, was more of a *team effort*, with officers contributing to the scanning of alternatives to the revocation. In other cases the officers' adaptation to SB 123 was described as more distant, suggesting that for a minority of officers the core of the new practices *boiled down to learning how to build*

better cases for revocations, or how to document everything in case something goes wrong with an offender.

The nature and scope of the expectations and concerns of staff and managers have changed over time. One critical juncture was the passing of SB 14, which encouraged community corrections agencies to lower their revocation rates to match the Kansas Department of Corrections' long-term shift toward a model of risk reduction (Kansas Department of Corrections, 2004, 2006). This initiative was quickly disseminated throughout the state because, according to agency managers, SB 14 provided significant grant funding to local agencies that reduced revocation rates, and in many districts the vision supporting it was aligned with local efforts to reorganize supervision interventions. As such, it becomes increasingly difficult to disentangle the officers' perceptions about the revocation process under SB 123 independently of their expectations and concerns regarding the more recent, broader policy change associated with SB 14. While some of protocols of these two initiatives are, in fact, similar—e.g., staffing of cases prior to revocation filings, enhancement of targeted supportive interventions, heightened use of data and actuarial instruments—the context in which these provisions operate is different in a number of domains. As pointed out by some community corrections managers, SB 123 explicitly put in place a treatment-oriented strategy to realign the management of drug offenders; however, SB 14 incorporated no *treatment talk* because the target population was not the same—*we are to focus on high risk cases, but that doesn't mean we can "treat" a robber or a burglar the same way we can treat an addict*. For a few officers, the relative absence of a model that would justify the lowering of revocations for their high-risk, non-SB 123 caseloads was seen as *discomforting* because they perceived that there was not a clear set of alternative interventions to deal with these offenders in the community. In some cases, it was suggested that the same issue

applied to SB 123, despite the availability of treatment and a more clearly-specified model of supervision practices. In these cases, the more careful review of revocation-bound SB 123 cases was described as a threat to public safety because *some people really need a time out and we are choosing to ignore the warning signs*.

According to officers, the decision to file revocations on SB 123 and non-SB 123 cases had been recentralized in the hands of supervisors or agency directors in some community corrections agencies. It was unclear to what extent this process was connected directly with the local implementation of SB 123 or SB 14 and to what extent most agencies were effectively following this approach. Officers were not necessarily frustrated about their increasing inability to revoke cases independently, although on a few occasions it was mentioned how this pattern was in opposition to the greater emphasis on officers' discretion and flexibility to manage caseloads. More generally, both officers who adapted to SB 123 and SB 14 with a greater level of engagement and effort, and those who did not, suggested that lower revocations do not reflect a decrease in the number of supervision violations, rather, a *shift in the way we handle them*.

Officers perceived that with SB 123 and more clearly with SB 14 the pressure to lower revocations has increased over time, partially reflecting the shrinking of corrections budgets and the emergence of new models of supervision. The team approach employed in some community corrections agencies to staff cases and discuss revocation filings has reportedly facilitated communication about expectations and anxieties of staff regarding this process. In some cases, however, officers indicated having *a hard time abiding with the office consensus* regarding a particular non-revocation decision due to personal convictions about potential threats to public safety, degree of effort already put into specific cases, or perceived inconsistencies in decision-making processes regarding caseloads (i.e., having lots of discretion but no power to revoke). In

one community corrections agency, officers reported how courtroom actors opposing the policy of lower revocations had recently seized on the dissent of individual officers, asking them to indicate whether the recommended handling of specific revocations was *our own judgment or the judgment of the office*. The manager of this particular agency was aware of the strain put on officers asked to *own* a collective decision even if they do not fully agree with it and suggested that sometimes this pattern may reflect a strategy of resistance to change by staff.

A number of courtroom actors perceived the new revocation practices as *lax* and blamed them on the potential financial sanctions that could be imposed by the KDOC under SB 14. One prosecutor stated that *he believes that the only reason why community corrections doesn't revoke is due to the money situation and the funding that comes from reduced revocations under SB 14 and that this is impacting him because prosecutors can't do what they are supposed to do*. Since the revocation policies are keeping more offenders in the community, one prosecutor commented that *this has increased the burden placed upon community corrections*. Overall, these judicial actors expressed that the inability to revoke offenders for violating the conditions of their release is having deleterious consequences on the way offenders are managed in the community.

The Context of SB 123

Rural and Urban Settings

Supervising officers and community corrections managers consistently described how specific features of their immediate local environment shaped their supervision practices and adaptation strategies to SB 123 and to more recent initiatives such as SB 14. In particular, they described different pathways linking the relative level of urbanization of their communities to the nature of their offender populations (e.g., more methamphetamine users in rural areas), triggers for success and failure while on supervision (e.g., gangs, employment opportunities), and the

scope of interventions and resources available to support the process of change and recovery of offenders (fewer services for special subpopulations in rural settings). Officers in urban areas were more comfortable than their rural counterparts with the level and array of provider services available locally, indicating that *providers know we have a choice* and illustrating ways these providers have adapted to a more competitive environment (e.g., extended office hours, transportation, one-stop centers). In these environments, officers said, *the treatment needs of SB 123 offenders are being met*. They also conferred that SB 123 offenders are aware of the fact that urban agencies have a greater ability to mobilize resources, therefore realizing that they have a *real chance to change, that we are all fully on-board to help them*.

Yet, officers in both rural and urban settings raised a number of emerging issues related to the delivery of services for SB 123 offenders. On the one hand, most officers expressed their concern regarding the perceived increase in the number of offenders with dual diagnoses and the lack of resources and substantive orientation to deal with them—*no one knows what to do with them, how to support them effectively, we looked everywhere for evidenced-based practices that would match our population, no luck*. For some officers, this concern reflected a broader issue on the limits of drug treatment capacity and ability—sometimes described in terms of the lack of providers in more rural areas of the state, sometimes defined in terms of the limited ability of providers to work with cognitive-based tools, or sometimes defined in terms of their own ability as supervising officers to develop strategies with specific subpopulations (e.g., motivational interviewing and mentally ill offenders or offenders with dual diagnoses).

In addition to having greater access to more—and sometimes *better*—treatment, officers in urban areas shared their perceptions about the array of structural differences in supervision practices in urban versus rural settings. According to them, cities may provide *more*

opportunities for treatment but also more opportunities for failure and as such, supervision interventions needed to be adjusted more frequently to react to triggers of relapse and triggers of new criminal activity (e.g., contacts with other offenders). Because of the relative availability of providers and other community-based groups, officers also referred to the heightened expectation of collaboration and partnership with these groups across a variety of domains (e.g., data and information sharing, alignment of interventions) leading to new problems such as confusion over authority roles and fidelity to treatment plans.

Whereas urban environments were conceptualized as anonymous spaces with more *institutional resources*, officers in both urban and rural settings described rural settings as more tightly-knit communities with easier access to *natural supports*. Officers in rural areas talked about how their interventions sought to promote these supports as a way to counteract the relative scarcity of treatment providers and other community-based organizations. For a few officers however, the stigma of a criminal conviction was more clearly present in these communities, hindering the ability of offenders to rebuild their identities and ultimately change their lives. Other officers debated the idea that there were fewer resources in rural areas and suggested that smaller jurisdictions can *get more stuff done because we can just walk down the street and get people on board*. More generally, however, officers and managers of the two rural community corrections agencies we visited expressed confidence that the majority of their SB 123 offenders were effectively receiving the treatment they needed, although placement for those with special needs was seen as *a lot more difficult* (e.g., those in need of inpatient treatment, or those with dual diagnoses, etc). Like their urban counterparts, officers in rural areas described supervision as being *a different world*, with no specialized caseloads or support personnel for specific tasks (intake, court, etc.). Further, they described how even if their caseload numbers

were sometimes lower, they spent a significant amount of time transporting offenders—*windshield time*—doing home visits, and being a *jack of all trades*.

Managers in rural areas felt that their reach to partners and community-based organizations and businesses was limited because *decisions are taken elsewhere*. They suggested that they are more dependent on the brokerage of other organizations, such as the KDOC and SRS, to facilitate cooperation at the local level. In bigger communities, they said, these agreements may still be necessary but these jurisdictions *can do a lot on their own*. Managers from urban areas agreed. They described how local stakeholders and even their own supervising officers thought of SB 123 in the context of other drug diversion programs (courts, prosecution).

Interactions with courtroom actors and other criminal justice agencies

Officers and managers indicated that the operation and rationale of SB 123 was generally supported by key institutional actors involved in the program—judges, providers, and to some extent, county attorneys. According to one manager, *time has helped iron out some of the issues we encountered at the beginning*, referring to confusion over functions and roles linked to supervision and treatment interventions, expectations regarding program eligibility, and concerns about the public safety impacts of changes to revocation policies. A similar process unfolded within community corrections agencies, as managers and staff developed new skills (e.g., the use of the LSI-R), reorganized workloads (e.g., exclusive SB 123 caseloads vs. mixed), and received additional information about the overall structure and orientation of SB 123.

Other institutional interactions were described as being more fluid and dynamic, with *good and bad times*. This was particularly true regarding contacts with KDOC. For many officers and some managers, the KDOC could have better interacted with the KSC and the local community corrections agencies to facilitate the early implementation of SB 123, educating

officers and local stakeholders on the scope and nature of the new policy. For others, the KDOC provided some technical support but *the timing wasn't right because back in 2003 the KDOC was trying to develop a new model for parole, not probation*. In one jurisdiction, a manager described the involvement of the KDOC during the implementation of SB 123 as a *catalyst for change, as a concrete framework to introduce people to evidence-based-practices*. This opinion contrasted with the feedback we gathered in a different jurisdiction where SB 123 was seen as an *attempt to recentralize community corrections as a state issue*. In most cases, however, the issues of program implementation are not critical anymore, largely because key actors have adapted to the legislation or because they perceived that some of the problems have been addressed; for example, some made reference to SB 14 as a *better* strategy to strengthen the work of local agencies because it allowed more flexibility in the models of supervision and services.

Officers and managers reported a good level of interactions and communications with judges handling SB 123 cases. According to one officer, *judges didn't need a lot of convincing early on regarding SB 123 because they get that if the offenders are successful then everyone else is safer*. In two jurisdictions, managers reported working with judges in a systematic way through the local community corrections board: *You need to tell them why things are important, what's the big picture, let them own part of the process, that way they will be on your side*, said one manager. Another manager described how the use of data and research prompted a *more nuanced, sophisticated* conversation with local judges and other stakeholders about investments in criminal justice and public safety, *shifting the debate from politics to reality*. Some officers reported that judges had *worked with them* to facilitate the entry of offenders with *real addiction problems* into SB 123 or other similar programs. Others indicated that, in general, when judges handled SB 123 they tended to be *more lenient* because *they know that the program has a*

different strategy to work with people. However, both officers and managers also shared how a *minority* of judges did not *appreciate* the SB 123/SB 14-inspired changes to the revocation procedures (e.g., systematic staffing of cases, review before filing). In some cases it was reported that judges would avoid calling officers to testify during revocation proceedings because *they figure they know what we are going to say (give him another chance).*

Although most courtroom actors deny that SB 123 has had an impact on their relationship with other stakeholders, a vast majority of respondents did believe that the statute has had a significant impact on streamlining the way that cases are processed, primarily because it is *much easier now to obtain plea bargains from defendants when the punishment is probation.* These courtroom actors report that offenders are much more likely to plea to possession charges when the threat of prison is not hanging over their heads. They reported that the ease in obtaining plea bargains after the implementation of SB 123 has resulted *in less trials, which is saving time and money.* Even though courtroom actors have reported a number of negative features that have surfaced as a result of the increase in plea bargaining (i.e. sellers and manufacturers being plead down possession), almost every judicial actor reported positive aspects in terms of substantially reducing the burden placed upon the court when offenders decide to go to trial.

While relationships between community corrections and courtroom actors and among courtroom actors were described favorably, the interactions with local court services agencies were described in a remarkably different fashion, from *distant* or *non-existent*, to *tense* and *difficult.* A few officers suggested that this was a *normal* feature of local criminal justice due to differences in functions, oversight, resources, and orientation. More generally, however, officers were critical of court services because *they are still stuck in the same old model of supervision, of surveillance, of papers,* or because they were seen as *resisting* the implementation of

evidence-based practices (e.g. LSI-R, a new case management system). In one of the more rural jurisdictions we visited, managers reported that informal interactions with court services were getting better and that now there was actually some regular communication between the two agencies including the presence of some court services officers at EBP trainings. The relationship between community corrections and regional parole officers also was seen as *distant*, with parole officers poorly integrated in local debates and conversations about coordination of local criminal justice agencies. In one community corrections districts, community corrections agents reported a different pattern, marked by the sharing of case-specific information with local parole officers, joint planning and participation in training seminars, and greater coordination with regards to deployment of interventions and resources.

Officers and managers did not identify any particular change in the interactions between their agencies and local law enforcement or the local KDOC parole office. Generally, they described law enforcement has been generally *helpful* but somewhat *resistant* to the new policies regarding the revocation of probation grants. However, this tension was often discounted as being natural given differences in functions and expectations—*the police are taught about things being black or white, they do poorly when asked to think in shades of gray*. A few officers remarked that on several occasions they felt law enforcement was taking unfair advantage of their role as supervising officers, asking for intelligence on specific offenders or showing an excessive emphasis on force and control of offenders.

Officers and managers reported that the most *difficult* interaction with regards to the operation SB 123 was consistently centered on county attorneys or prosecutors. On the one hand, officers and managers perceived that these courtroom actors were not systematically enforcing their role as gatekeepers of SB 123, *unfairly* directing offenders to SB 123 through the plea

bargaining process. On the other hand, some prosecutors were perceived as having a hard time supporting the new revocation practices of community corrections and the KDOC at large. It was reported that while SB 123 triggered a more careful review of the revocation process, the resistance from county attorneys increased with the passing of SB 14. According to one manager, *with SB 123 we could always say that we were actually doing something with the offenders instead of just filling revocations, that we were doing treatment. With all other offenders in the context of SB 14, it has become increasingly hard to show in a concrete way that we are still working with offenders, that we are not just ignoring violations. We don't have the treatment model as an excuse; all we can say is that we are trying harder to work with them before giving up.* Officers and managers indicate that the challenges they receive from a few prosecutors are about public safety and the concern that there is a community corrections policy of no revocations for SB 123. Officers further report that these challenges sometimes have actually translated into a more contentious treatment of officers, with *the prosecutor asking individual officers if a particular recommendation was suggested by the agency or by themselves.* Others reported how some prosecutors would circumvent community corrections altogether, filing revocations without their knowledge and/or minimizing the input of supervising officers.

In contrast, officers and managers expressed that their interactions with treatment providers were largely *productive* and aligned with the statutory mandate of SB 123. They emphasized that early-on, providers saw SB 123 as a *pot of gold*, because of the volume and stability of the funding that came with the new program. They also indicated how this pattern has become more prevalent given recent reductions in treatment and programming funds for the general population of criminal justice-involved individuals. According to managers, with the increasing relevance of SB 123 funding, providers are *more compliant* with program standards

for billing, reporting, and *quicker at producing information or more attentive at following-up on our requests*. Officers indicated that sometimes they took advantage of this situation to encourage providers to address the needs of their non-SB 123 caseloads. Because officers see the contrast between *the red carpet treatment* of SB 123 offenders and the relative lack of options or services for the non-SB 123 offenders, they reported being generally *frustrated* with the formal inability to *funnel all offenders into the right services*. More substantively, officers and managers consistently reported that the vision and content of treatment fostered by SB 123 did not encounter a lot of resistance among providers—*they were already doing cognitive work, using the stages of change model, thinking about relapse, using actuarial tools*. However, as mentioned in a previous section, both managers and officers did not elaborate on the specific ways they reassess the work of the local providers despite the fact that they clearly understand that the ultimate authority over the management of a SB 123 case resides with them—a vision that according to officers is shared by providers and other local criminal justice actors)

Conclusions

SB 123 was ambitious because it created a new state-wide program to be implemented locally in jurisdictions with very different resources, environments, and readiness to adapt to change. Prior to implementation, some community corrections agencies were already thinking about EBP and had explored some of the tools that SB 123 pushed forward. Other agencies effectively used the fact that this was a funded mandate to begin a process of change. Still others resisted change on normative grounds or because they saw it as the state usurping local authority. In some jurisdictions, community corrections managers and staff report that SB 123 was implemented properly with proper planning, consultation, and feedback; in other jurisdictions,

managers and staff felt somewhat disoriented, indicating that the only real change they saw initially was training for the LSI-R.

The fact that, in some places, SB 123 coincided with local processes of reorganization was largely beneficial. But, at the same time, these agencies continue to reassert their independence and have worked toward tweaking models of supervision and treatment in different ways. In some places, community corrections is more involved in the delivery of services and often run part of the cognitive component of SB 123 themselves. In other places, community corrections has not used cognitive tools as intensively as SB 123 intended. In other places, community corrections has looked at alternatives to SB 123 to develop or enhance existing programs for dealing with nonviolent drug offenders (e.g. other diversion programs, drug courts). Managers in some jurisdictions describe how change promoted by SB 123 was somewhat easier to handle because it could be linked to a specific officer or a specific type of offender. In contrast, with the more recent SB 14, expectations are of a more general change.

SB 123 was about two inter-related goals – a system-level goal of reducing prison populations and an individual-level goal of reducing recidivism. Initially, community corrections officers and managers who were involved in the daily supervision of offenders only saw the individual-level goal; saving prison beds was seen as a state issue. In contrast, courtroom actors reported goals that were in line with the systematic purpose behind the senate bill to reduce prison crowding and save the state money. Yet, over time, as officers perceived increasing numbers of individuals enter SB 123 who had pleaded down from sale or who did not have substance abuse problems, they started to perceive the emphasis increasingly placed on non-revocation; thus, they perceived the primary goal as a systemic goal but not a legitimate one. The eligibility issues frustrated the individual-level goals of SB 123 at least in the eyes of

officers. Officers had issues with eligibility because “not all the right people were getting services” but also with revocation process which they saw as confusing, too restrictive, and unfair. Officers and managers also evaluated jurisdiction-level differences in implementation and functioning of SB 123 as normal and explained by the fact that “each place is different”. This reinforces the fact that officers saw individual performance as the only legitimate goal, since jurisdiction-level differences allowed for the program to be tailored to local needs and expectations without reference to larger system-level goals of diversion or fidelity.

Since community corrections officers believed the goals of SB 123 to be more in line with the reformation of offenders, they appear to object to the inclusion of ineligible offenders under the statute because they experienced more difficulty providing assistance to offenders who may not have a substance abuse problem in the first place. Even though a number of courtroom actors objected to this practice as well, a sizable proportion of respondents who reported pleading cases down to help offenders believed these offenders would benefit from the services provided under the statute. Due to the fact that courtroom actors believed the goals of SB 123 were to reduce prison crowding and save money, it would appear they circumvented the law in a manner that was consistent with spirit of the goals of the senate bill (i.e., reduce prison crowding by keep substance abusers out of prison) even though it was not stipulated in the statute.

Although a number of negative perspectives were reported concerning abuses of the plea bargaining process, both prosecutors and defense attorneys provided positive feedback regarding the impact that plea bargaining has had on reducing their workloads – SB 123 allowed both prosecutors and defense attorneys to save time, resources, and money by reducing the number of cases that went to trial. Since negotiating pleas for cases that were eligible for inclusion under SB 123 effectively reduced the amount of time prosecutors and defense attorneys had to spend

on each case, both groups of actors reported positive views concerning the impact that SB 123 had on improving courtroom processes and outputs.

The implementation of SB 123 also facilitated the realignment of specific processes within community corrections but was not seen as a comprehensive policy that required the reorganization of general practices, particularly in smaller jurisdictions. In these jurisdictions, the new SB 123 clients were absorbed by existing caseloads and over time, these caseloads changed somewhat given the new model for the supervision of SB 123 offenders. SB 14 (which provided grant funding to community corrections districts that lowered revocation rates for all offenders) sought to trigger change at a broader scale by targeting a critical type of intervention (revocation) without tying it to a particular population or predefined set of services. As such, managers and officers had difficulties disentangling the impact of the two separate bills, particularly in recent years. However, they agreed that SB 123 paved the ground for SB 14, by socializing people into EBP; although, in some places, the predefined structure of SB 123 went against the independence of community corrections agencies to define their own supervision models. SB 14, in contrast, allowed them to implement EBP within their own existing structures. Other key domains of evaluation of SB 123 may suffer from the same overlap between the programs. For example, officers describe a tension between what they are asked to do and how they are evaluated under both programs.

There are several lessons from the implementation and functioning of SB 123. First, there is a trade-off between the effective implementation of any mandatory sentencing or mandatory treatment scheme and the ability of the model to be flexible. Some components of SB 123 were compulsory to favor systemic goals and uniformity in implementation. For example, eligibility requirements were narrowly set to facilitate system goals; however, stakeholders saw

these eligibility rules as both too narrow and too broad – people entered SB 123 who should not have and people were excluded from SB 123 who should have been admitted. As a result, all actors argued that they should have more discretion to determine SB 123 eligibility; this argument was accompanied by a parallel argument – other actors should have less discretion.

Indeed, the more rigid structure has not been entirely effective at minimizing actors' input in the process – the plea bargaining process and the active circumvention of the statute to let people into or out of the program has affected the fidelity of the implementation process. But beyond eligibility, the program may, in fact, be different in each jurisdiction as each agency implements interventions and mobilizes resources in different ways to match local expectations and processes. This process, as we learned, is shaped by personal attitudes, the nature of the local criminal justice system and community, the characteristics of the offender population, and the availability of providers. While the program may function differently in each jurisdiction, there are benefits to this approach. Jurisdictions with few resources have the flexibility to adapt the program to existing constraints and agencies can rely on existing relationships to build a program that fits the local environment.

For larger efforts at EBP there are also several lessons to be learned. First, some core principles of EBP are hard to teach; for example, the circumvention of the law and individuals' complaints about eligibility indicates that local stakeholders have difficulty accepting the fact that not everyone can be on treatment. Indeed, issue of equity were crucial for officers and judges and conditioned their actions. The structure of the bill did not help because it was clearly aimed at promoting system-level goals, although the language was about performance, which led to confusion and discontent among many local stakeholders.

Finally, the views expressed by stakeholders across all agencies explain much of what we found in the statistical analyses in previous chapters. For example, sentencing patterns are different than expected because there is some confusion and discontent with eligibility requirements that has led to circumvention. But, more importantly, the failure of SB 123 to affect recidivism rates is not surprising. As community corrections officers point out, supervision is the same for offenders on both community corrections and SB 123. As prosecutors and judges point out, issues of eligibility may “water down” the pool of SB 123 offenders.

Chapter 7: Offender Perspectives on SB 123

Criminal justice stakeholders responsible for the implementation and functioning of SB 123 hold a wide range of expectations regarding the main goals of the program and express varying perceptions about its ultimate degree of success. Yet, all stakeholders recognized, in different ways, that underlying the program was a desire to change offenders' behavior – that drug treatment could not only reduce the likelihood of criminal recidivism but also reduce drug dependency and improve other pro-social outcomes (e.g., employment, social relationships). Chapter 4, which examined different individual-level outcomes for SB 123-eligible offenders, showed that SB 123 did not reduce most recidivism rates relative to other sanctions. However, the outcomes employed in these models only reflected a specific dimension of the program's impacts on individual processes and behaviors. In particular, evaluating SB 123 in terms of its effects on recidivism rates provides an important account of the formal, criminal justice-related effects of SB 123, but offers a limited account of the actual, transformative role of SB 123 in terms of offenders' behaviors and attitudes. In addition, while examining stakeholders' accounts of program implementation and functioning is informative (Chapter 6), it too offers a limited view of the functioning of the program, particularly the changes to supervision and treatment practices that SB 123 was intended to produce. Understanding how offenders view these issues is important not only to explain observed trends in SB 123 outcomes and interventions, but also to highlight the broader challenges associated with implementing state-wide efforts aimed at changing supervision practices, treatment provision, and, ultimately, offenders' behaviors.

This chapter documents the functioning of SB 123 as experienced by offenders in various community corrections districts in Kansas. It contrasts their views on supervision and treatment interventions, drawing inferences on the relative similarities and differences between SB 123 and standard community corrections supervision. It also summarizes the range of reactions to SB

123 as perceived by offenders and explores how these views on program implementation and operation may inform the program's future processes and outcomes.

Methodology

Data

To develop this actor-centered portrait, we draw on a set of data gathered through structured interviews with 76 SB 123-eligible offenders sentenced to either SB 123 (43) or standard community corrections throughout the state (33). Subjects were interviewed in Summer 2010 using a structured interview protocol (Appendix D). The interview protocols aimed at eliciting the offenders' views about access and delivery of services and supervision interventions while on probation, their perception of relative access and effectiveness of treatment, their motivation and readiness to change, and their interactions with both supervising officers and drug treatment counselors.

Sample

Because we sought to contrast the probation experience of SB 123 offenders and other low-level drug offenders, we restricted the sample frame to individuals convicted of simple drug possession who were assessed to be in need of substance abuse treatment. We distributed recruitment letters in three community corrections districts across the state (2 urban and 1 rural) to 150 individuals who were convicted of drug possession and were being supervised by community corrections during Spring 2010. From these 150 potential respondents, 93 individuals agreed to participate in the study and 76 ultimately participated, for a response rate of roughly 82 percent. Overall, 57 percent of those participating were SB 123 offenders, 55 percent were male, and 66 percent were from urban community corrections districts.

Analytical strategy

To analyze these data we classified responses according to a number of themes, corresponding to our structured interview schedules. Overall, we focused on five areas derived from the data: treatment planning and access to treatment; interactions with counselors and community corrections officers, treatment received, obstacles to treatment, expectations and goals of treatment and evaluations of success. We looked for general patterns of agreement across these areas and evaluated differences based on SB 123 versus non-SB 123 sentence, gender, and urban/rural community corrections district.

Treatment Planning and Access to Treatment

SB 123 called for enhanced treatment access and treatment services for program participants. The structure and delivery of these interventions was to be based on actuarial assessments of treatment needs, criminogenic risks, and severity of addiction. This is consistent with the feedback on the operation of the program we received from the SB 123 offenders interviewed for this project. In fact, nearly all SB 123 and non-SB 123 offenders reported that they had been assessed for treatment needs and informed about treatment availability. Moreover, despite some perceptions among community corrections officers that non-SB 123 offenders encountered difficulties in actually getting treatment, both SB 123 and non-SB 123 offenders largely noted that they were easily accessing community-based services. More specifically, both groups of offenders similarly agreed that the description of the treatment they needed was *clear*, that it was *easy to understand*, and that the ultimate treatment plan was *satisfactory* at effectively addressing their programming needs.

Differences between SB 123 and non-SB 123 offenders arose, however, around a primary component of the new approach fostered by SB 123 – the extent to which offenders were

allowed to take an active role in developing their treatment plans. Nearly all SB 123 offenders indicated that they had met with their supervising community corrections officer to discuss the course of treatment and to create a treatment plan; in contrast, most of the non-SB 123 offenders noted that they were not kept apprised of the process of crafting their treatment plan and reported very few interactions with their supervising officers in this regard. We observed a similar breakdown in the patterning of responses regarding treatment plans and interactions with drug counselors: nearly all SB 123 offenders met with their providers to discuss the types of treatment needed and to create a treatment plan while very few of the non-SB 123 offenders felt that they were involved in planning treatment with their counselors. SB 123 and non-SB 123 offenders are supervised by the same officers and access services from the same providers/counselors; thus, differences between SB 123 and non-SB 123 offenders in perceptions about participation in treatment planning may, in fact, reflect differences in program design and operation.

In addition to increasing the involvement of offenders in the creation of their treatment plans, SB 123 intended for community corrections officers, counselors, and offenders to meet in a team setting to facilitate the referral process and to coordinate treatment and supervision, including modifications to plans and a more timely mobilization of resources. However, just more than half of the SB 123 offenders noted that they had such a team meeting prior to starting treatment. This varied significantly across community corrections district. In one district, nearly all SB 123 offenders stated that they took part in a team meeting; in the other community corrections districts, only half of the SB 123 offenders noted that they participated in a team meeting.

This was still significantly more than the non-SB 123 offenders; roughly one in four non-SB 123 offenders took part in a team meeting prior to initiating treatment. Again, there was some variation across community corrections districts, with offenders from one district agreeing more than those in other districts; yet, across all districts, far fewer non-SB 123 offenders agreed that they engaged in any kind of team meeting approach to treatment. In fact, very few non-SB 123 offenders believed that their supervising officer and counselor worked together in any way during their time on probation. Further, most non-SB 123 offenders indicated that it was not clear to them who was ultimately in charge of their treatment planning. In contrast, SB 123 offenders generally agreed that their supervising officer *and* primary counselor worked together in planning the treatment and involved them (the offender) in treatment planning.

Again, these differences between SB 123 and non-SB 123 offenders may reflect differences in program design and operation. But the differences specifically among SB 123 offenders also indicate potential differences in the level of implementation of SB 123 concepts and supervision protocols across community corrections districts. As seen in previous chapters, the level of buy-in among community corrections officers varied substantially across community corrections districts; this is reflected in how SB 123 offenders experience supervision across the state and in the level to which officers involve offenders in treatment planning.

Interactions with Counselors and Community Corrections Officers

While non-SB 123 offenders were not as actively engaged in the creation of treatment plans, they, nonetheless, shared SB 123 offenders' positive views of counselors and supervising officers. Both subsets of drug possessors generally agreed that their day-to-day interactions with counselors were *positive* and that counselors were effectively *giving them the tools to succeed*. However, as mentioned above, a greater fraction of SB 123 offenders also noted that their

counselors coordinated their work with community corrections officers—for non-SB123 offenders, counselors and officers were helpful independently but were not perceived as working together. As noted above, this appears to be in keeping with the increased use of team meetings encouraged under SB 123 and the generally inclusive involvement of counselors, community corrections officers, and offenders in treatment planning. Moreover, it seems to contradict community corrections officers' opinion that SB 123 practices have spilled over to non-SB 123 cases (see Chapter 6); in terms of treatment planning, organizing a team approach, and generally coordinating supervision and treatment, offender perceptions suggest that SB 123 practices appear to show little transference across caseloads.

The offender interviews also provided insight into the unintended consequences of the team approach and heightened collaboration between providers and supervising officers advocated by SB 123. In particular, SB 123 offenders noted that counselors were more likely to focus on both treatment conditions *and* supervision conditions; non-SB 123 offenders did not perceive the same shift in focus among counselors. As we heard in several focus groups with community corrections officers, some providers now see the community corrections sentence as a mechanism for enforcing treatment conditions; as the interviews with offenders show, some SB 123 offenders have noticed this as well. While greater attention by a greater number of parties to the interaction between criminal risk and treatment needs may generate more timely and more comprehensive interventions, it can also ultimately result in increased net-widening—greater supervision and heightened enforcement of (more) probation conditions. This setting was avoided in the non-SB 123 caseload because, as pointed out by non-SB 123 offenders, counselors and officers worked more independently of one another and, thus, were more clearly specialized in one substantive area.

In contrast, both SB 123 and non-SB 123 offenders were not remarkably different in their ratings of interactions with supervising officers. Both groups described these interactions as *positive* and overwhelmingly agreed that their supervising officers were providing them *with the tools they needed to succeed* on probation as well as communicating effectively expectations of behavior and progress while on supervision. Moreover, supervising officers were generally seen as *understanding* of other factors affecting offenders' lives. As one SB 123 offender noted, "I honestly, honestly, have an amazing corrections officer. He is stern and strict but he is also understanding. I really believe my ISO wants his clients to succeed. He seems to genuinely care about our well being and our futures." Another person noted how "understanding and compassionate" their supervising officer was at "listening to my troubles" and "encouraging me" during every meeting. Many SB 123 and non-SB 123 offenders noted that their supervising officer was responsible for "helping me to get where I'm at today."

But these positive views were not held by all. While most offenders felt their supervising officer was understanding of each persons' problems and needs, several offenders noted that officers treated each person the same. As one person noted, officers needed to "understand each person individually." Several noted the difficulties in developing a relationship with their supervising officer because of changes in staffing, with one person stating that she "should have stayed with the same P.O. the whole time" rather than being "assigned to my third P.O."

While supervising officers were generally seen as supportive, many offenders found probation to be very difficult. Both SB 123 and non-SB 123 offenders were evenly split on the difficulty in adapting to the conditions of supervision; moreover, many offenders thought that their supervising officer focused too much on enforcing conditions of supervision. As one person stated, "The officers appear overwhelmed -- too many clients. I felt they just enforced

rules and fines and were not interested in my overall welfare.” Others felt that the focus on conditions meant that officers could not focus on referrals to other services. One person noted that their supervising officer “could have provided more resources of help after I got out of treatment;” another person similarly noted that the supervising officer could have helped with “directing me to sources that could work with me to improve education and employment options/plans.” Others addressed, not the lack of referrals to other services, but a lack of understanding among supervising officers of the difficulties of balancing drug treatment, community corrections conditions, and other responsibilities. One person noted that their supervising officer could have “worked around my work schedule because you never know when you have to work over or come in on your days off when scheduled for a probation visit.” As another person noted, the supervising officer “could have been more understanding because it is hard with three kids and no drivers’ license.”

There were no clear differences between SB 123 and non-SB 123 offenders in terms of negative comments about supervising officers. Moreover, there were no real differences in responses across community corrections districts. In the end, general complaints about probation supervision may be expected within any program or jurisdiction.

Treatment Received

Despite the perceptions of some community corrections officers that non-SB 123 offenders were not able to access the same treatment as SB 123 offenders, both subsets of respondents reported that they received nearly identical modalities of treatment. Consistent with the analyses of recorded treatment interventions compiled by the KDOC (Chapter 3), SB 123 offenders indicated that the most common form of treatment received was out-patient group with non-SB 123 offenders reporting nearly the same rate of exposure to this modality of treatment.

Moreover, nearly half the individuals in both groups received some combination of in-patient, intensive outpatient, drug abuse education, and relapse prevention and very few individuals in either group received out-patient family, day treatment, or detoxification. These patterns are consistent with the concentration of modalities of treatment captured in the KDOC case management system. Offenders in both groups perceived out-patient group to be one of the most effective approach to treatment, in addition to in-patient, and relapse prevention.

SB 123 and non-SB 123 offenders were also both generally satisfied with the treatment they received. Moreover, both groups noted that the treatment they received was generally the treatment that they needed. Very few noted that they received less treatment than they felt they needed; similarly, few felt that they received more treatment than they needed. This was confirmed by the fact that very few individuals noted receiving treatment that was not in their original plan. However, while neither group thought that they received less treatment than they needed or that the cost of treatment affected the kind of treatment they received, some non-SB 123 offenders still felt that if they had more money they would have received better treatment. Perhaps this conclusion among non-SB 123 offenders points more to the quality of treatment or the length of treatment they received, rather than the type of treatment they received. This is consistent with some of the feedback we received from criminal justice stakeholders regarding the ongoing downsizing of treatment options and dosage across a number of criminal justice programs.

Obstacles to Treatment

While both SB 123 and non-SB 123 offenders noted that they had some difficulty adapting to the conditions of supervision, these conditions were not seen as an obstacle in their probation tenure, despite the fact that many believed that officers focused too much on enforcing conditions. Very few SB 123 or non-SB 123 offenders believed that the conditions of the community corrections sentence interfered with treatment; similarly, very few offenders found it difficult to meet the expectations set in treatment plans. Rather, for some rural offenders, actually commuting to treatment presented a significant obstacle. Indeed, some SB 123 offenders noted that they had to travel up to 200 miles to attend treatment. As one person noted, “it was difficult with making [treatment] appointments when transportation is limited.” This corresponds to the perceptions of many community corrections officers from rural communities; transportation problems and the distance some offenders had to travel to access treatment were seen by officers as causing significant impediments to offender success.

The biggest obstacles to treatment, however, revolved around addressing addiction and personal attitudes. As one SB 123 offender noted, “Going to the class and talking about the drug. Right now I don’t want to talk about drugs, it just makes me want it.” Consistent with the opinions of some stakeholders, offenders noted that success in drug treatment was dependant on personal commitment; moreover, developing that commitment presented a substantial obstacle. As one person noted, “deciding that I wanted to stop using” was the most difficult part of treatment. As another person put it, this involved balancing both the conditions of supervision and the temptations of drug addiction: “Trying to stay in perfect guidelines of what is expected of you when faced with temptations every day is very hard.” Others noted that “my attitude towards authority needed to be changed. I had to realize that my P.O. wants to help me succeed in corrections.” For some, the stigma of a conviction presents problems beyond simple drug

addiction, creating difficulties in other areas of life that, in turn, affect treatment. As one person noted, “Being classified as a felon and the label you have is the most difficult thing to overcome. No one wants to hire you because of your past. Even though you are reformed.” The decision to change was seen as personal, not directly linked to the nature and scope of supervision and treatment services—both SB 123 and non SB 123 offenders believe that officers and counselor were helpful and were providing them the tools to succeed in the community.

While most non-SB 123 offenders felt that the lack of funding did not affect their ability to access treatment, some did note the burden that paying for treatment placed on them. “The cost should be looked at more to make sure the person can afford it. I am not able to pay \$240 a month for six months which creates another bill on top of restitution, court costs, etc. I was told I wouldn't be released from treatment until I'm caught up on all payments. I don't always have \$60 a week for treatment.” SB 123 offenders did not express similar views. While SB 123 offenders are required to pay court costs, restitution, and supervision fees at the same rate as non-SB 123 offenders, the funding provided for under SB 123 unburdens them from the additional financial cost of treatment. This difference was similarly highlighted by many criminal justice stakeholders.

Expectations and Goals of Treatment and Evaluations of Success

While from an institutional perspective drug treatment is essentially meant to address drug addiction and recidivism, offenders enter treatment with a variety of goals around drug use, crime, life skills, and relationships. Nearly all offenders focused primarily on total abstinence from all drug use – rather than trying to address addiction to a specific drug or to simply reduce the use of drugs. This demanding vision of success—all or nothing—may prove counterproductive for some offenders, hampering efforts to reduce harm over time, rather than

providing a quick, superficial fix. Moreover, while many mentioned that they hoped drug treatment would help them stop getting into legal trouble, very few saw treatment as a way to simply avoid a harsher sentence or to look better in court. The primary differences in what people wanted to achieve in treatment arose, not between SB 123 and non-SB 123 offenders, but between men and women. Men and women were identical in terms of wanting treatment to help them stop using drugs and stay out of legal trouble; but women were much more likely to see treatment as a way to address other problems in their lives (e.g. health, employment, etc.) and to improve their relationships with children and family.

Nearly everyone mentioned “sorting out my life” as a goal they wanted to achieve through treatment. People described wanting “to win my life back,” “to save my life,” “to live life on life’s terms,” and to “just get my life back to what it was before.” Most also hoped treatment could help them improve their health, employment chances, education, and finances. However, women were much more likely to list these than men; moreover, women were much more likely to see treatment as a way to improve their relationships. Nearly half of the women noted that they were hoping treatment could help them get their children back (compared to roughly one in four of the men), and many women saw treatment as a way to help them keep others in their lives happy or to generally sort out family issues. Men, in contrast, had narrower, more limited views on the immediate and long terms impacts of treatment that were primarily focused on addiction.

People overwhelmingly believed that treatment was helping them achieve these goals. When asked to explain why treatment was effective, some noted the direct link to assistance with addiction: “Because it gave me an outlet to be honest with someone who then was able to give me some clear direction in staying sober” or “It helped me to understand why I was so dependent

on drugs and why I put drugs before everyone and everything.” Some saw treatment as giving them a clear set of tools, “It provided solutions and a counselor after I left treatment,” or an environment that allowed them to understand the potential causes of their addiction, “I was able to hear other people in certain situations that resembled mine, and we all ended up in the same place.” Others noted the link between addiction and the rest of their lives: “I was able to plan short term and take care of responsibilities I have previously ignored. They helped me make doctor’s appointments, budget, get food stamps, get my license, plus provide a safe, clean, stable environment for me.” Another person noted that treatment “made it clear that my life was unmanageable, and drugs were the cause of it.” Others saw treatment as a way to address one specific problem before addressing others; as one person noted, “Because if you take care of the main problem: drugs, you have time for your goals you want to achieve.”

The direct benefits of treatment, in turn, went beyond simply addressing drug addiction. As one person noted, “I was able to get in touch with my emotions and begin dealing with my core issues clear minded and sober.” Another said that treatment “Gave me hope to a future.” Finally, some people were able to directly articulate the new approach that SB 123 was intended to achieve – a shift in community corrections officers thinking about addiction and responses to violations. One SB 123 offenders noted that “When I was first put on community corrections I continued to use and was homeless with two small kids. I gave a dirty UA and my ISO decided in-patient treatment was best for me. If it wasn't for in-patient, I would have continued to use causing myself to get into more trouble. I completed treatment, have a home, have my kids, and have 17 months clean and sober.”

Despite the generally positive views of treatment and the benefits treatment is seen as having, in the end, most individuals had a realistic evaluation of their own success on treatment,

with a few individuals saying that they were both successful and unsuccessful on community corrections. Individuals expressing mixed reviews of their own success generally talked about continued drug use. As one person noted, “I stopped using marijuana, but I still struggle with cocaine.” Others noted that only through repeated attempts did the effects of treatment start to take hold: “It took a couple of times in treatment for me to get the treatments going in my life .”

Conclusion

The feedback gathered from our interviews suggests that SB 123 has effectively shaped a number of interactions and processes between community corrections officers, counselors, and offenders. While the team approach may not be evident in all SB 123 cases, it, nonetheless, is more prevalent among SB 123 cases compared to non-SB 123 cases of similar offenders. Despite these differences in levels of involvement of offenders in treatment planning and team meetings, the similarities in opinions between SB 123 and non-SB 123 offenders about community corrections and community corrections supervision is not surprising. Both groups are supervised by the same officers and are, ultimately, subject to the same supervision conditions. As we heard from community corrections officers, officers make no distinction between the two groups – except perhaps in how they respond to violations. Community corrections officers noted that they enforce conditions in the same way (i.e. flag violations) for both groups; in this sense, for the offender, supervision under SB 123 and standard community corrections is experienced in the same way. Again, the primary difference between the two groups arises from involvement in the treatment planning process and the coordination of work across supervision and treatment.

The availability of funding for treatment for the SB 123 population does not appear to increase their access to treatment *or* their satisfaction with treatment – both groups received the

same types of treatment in nearly identical proportions and they both felt that this was the treatment that they needed. However, there does appear to be a difference in perceptions of treatment quality between the two groups – some non-SB 123 offenders felt that if they had more money they could have received better treatment; while a small percentage of SB 123 offenders felt the same way. As we have heard from community corrections officers and treatment providers, SB 123 provides for longer stays in treatment; and we heard several times from officers that non-SB 123 treatment is significantly shorter than the same modality under SB 123. In the end, offenders may be perceiving this as well and it may be affecting their evaluations of treatment quality. In addition to treatment dosage, we did not explore other domains of treatment delivery including waiting times for access to treatment or fidelity to cognitive approach. These elements may be as critical to understand quality as the few, more general patterns described above.

Conclusions and Recommendations

The enactment of SB 123 transformed a number of key domains and processes of Kansas' criminal justice system. SB 123 altered the sentencing patterns for low-level drug offenders as well as the nature and scope of their supervision in the community. It also reshaped interactions between some courtroom actors and other stakeholders and between correctional agencies at the state and local levels. A number of these outcomes were anticipated by program planners and, over time, they were moderated by local conditions and resources, as well as influenced by more general modifications to the program's operation and structure. Other outcomes of SB 123 were not clearly specified before implementation, limiting some of the program's operation and affecting system- and individual-level outcomes.

In this section we briefly summarize what we learned about the implementation and operation of SB 123. Rather than compiling findings from each of the substantive chapters included in this report, we sought to highlight program success and ongoing challenges of the program.

Successes

SB 123 achieved its system-level goal of reducing admissions to prison for drug possession and saving prison beds. We conservatively estimate that SB 123 diverted between 41 and 71 people from prison at sentencing each year during the first three years of program operation. While some of these gains were moderated by new admissions linked to recidivism, overall, SB 123 effectively saved the state between 158 and 374 prison beds over the first three years of the program.

While SB 123 did not reduce recidivism rates relative to other sanctions, it, nonetheless, improved offender performance in a number of domains. SB 123 was part of an initiative in the state aimed at reducing revocation rates, particularly with regards to compliance with supervision

conditions. Across all comparison groups and follow-up periods, supervision failure triggered by technical violations declined considerably since 2002 and, according to the KSC, other outcomes appear to be improving as well including time to failure for SB 123. More generally, SB 123 was also associated with more positive attitudes of program participants, particularly with regards to offender involvement in treatment planning and interactions with supervising officers.

SB 123 also delivered more and better treatment to offenders. Analyses of administrative data showed that SB 123 offenders received more treatment interventions per person than non-SB 123 offenders and that there was a high degree of consistency between the modality of treatment that an offender was assessed to need and the modality of treatment to which they were initially referred. This was confirmed by offenders who noted that they got the treatment services they needed, received the proper amount of treatment, and were ultimately helped by the treatment they received. Supervising officers agreed partially with this assessment, suggesting that more attention needed to be paid to rural sites and special subpopulations.

Despite this critique, SB 123 increased availability of drug treatment in the state by providing adequate funding for treatment services. Funding for SB 123 remains robust and after five years of program operation, providers have largely adapted to the flow of offenders and the program's reporting requirements. In some of the largest jurisdictions, providers have increased treatment capacity, although in more rural areas such patterns have not been replicated. SB 123 has also encouraged more providers to meet evidence based practices and tailor drug treatment specifically to the needs of people in the criminal justice system by requiring providers to incorporate cognitive therapies into existing treatment modalities. Providers are more attentive to evidence based practices and are increasingly aligning treatment with supervision and acting as referral sources for other community based services.

As intended, SB 123 has also changed supervision practices. The primacy of treatment – a goal of SB 123 – appears to have taken hold as community corrections officers rely less on restrictive supervision interventions and more on supportive supervision interventions. This has also changed stakeholders' views of addiction and drug possessors. In addition, officers have become more familiar with new tools and protocols such as the LSI-R, Motivational Interviewing, and cognitive approaches, and perceive these as being useful and relevant to their work. There is some evidence suggesting that supervision and referral practices for SB 123 have migrated to non-SB 123 caseloads as well, broadening the impacts of the bill, and creating new synergies and partnerships. Moreover, the innovation in vision and practice fostered by SB 123 is exerting pressure in other systems and agencies to adopt similar practices (e.g., court services is considering implementation of LSI-R).

SB 123 has also changed revocation practices for drug possessors. Supervising officers and community corrections managers reported new strategies to better handle condition violators on SB 123, for example, by staffing cases and not revoking after a single condition violation or a positive UA. This process contributed to the declining rate of revocations for this population, and was expanded to other groups with newer initiatives such as SB 14. There is significant internal and external support for the revocation review process fostered by SB 123; yet, buy-in remains more limited than it does for SB 123's sentencing provisions.

By fostering new lines of communication, SB 123 has facilitated a more open, purposive conversation among criminal justice stakeholders at the state and local levels. Overall, courtroom actors understand and support the vision of SB 123 and report increased collaborations with regards to the program; and their actions tend to contribute to the effective operation of the program. SB 123 has also fostered a team approach between officers, providers, and offenders.

As such, SB 123 has been able to effectively balance treatment with accountability by allowing offenders to help develop their own services plans. Offenders perceive this is a positive element of the program and feel more invested in the process of change.

Finally, SB 123 has fostered innovation in local community corrections offices. Officers in some jurisdictions are now trying new cognitive strategies to deal with SB and non-SB 123 offenders (e.g., thinking reports as sanctions, group sessions) as well as new strategies to improve case management and interventions (e.g., mobilization of community resources, use of vouchers). This process was seen as initiated by SB 123 and strengthened by subsequent legislative efforts such as SB 14. In some places, the SB 123 model has changed from an exclusive focus on substance abuse to broader focus on a mental health framework for case management. At the same time, with SB 123 and associated tools (e.g. a statewide case management system for community corrections) the Kansas Department of Corrections has decreased fragmentation of community corrections and instituted a more uniform set of practices and vision regarding the state's response to drug offenders.

Continuing Challenges

Despite these successes, SB 123 continues to face several challenges that affect both the system- and individual-level success of the initiative.

Net-widening

Sentencing practices changed dramatically after implementation of SB 123; however, not in the manner initially intended. SB 123 appears to have drawn offenders primarily away from court services rather than prison. Prior to implementation of SB 123, roughly 60 percent of drug possessors were sentenced to court services; following implementation, just 8 percent were sentenced to court services. Nearly 89 percent of convicted drug possessors are now supervised

by community corrections, under either SB 123 or standard community corrections supervision. This front-end net-widening – pulling offenders from court services rather than prison – is the result of poor targeting of offenders with narrow eligibility requirements, mandatory sentencing provisions, and a disconnect between pre-implementation sentencing patterns and post-implementation sentence requirements. As such, more drug possessors are now subject to stricter conditions and greater surveillance than prior to implementation of SB 123; a situation that may be leading to higher rates of revocation.

Circumvention

While the structure of SB 123 has led to significant front- and back-end net-widening, courtroom actors are also actively circumventing the statute. A high percentage of eligible offenders continue to be sentenced to non-SB 123 sentences and many ineligible offenders continue to receive SB 123 sentences. By 2008 – after five years of program operation – roughly 30 percent of SB 123-eligible cases are still being sentenced to court services, standard supervision by community corrections, or prison. In turn, roughly 6 percent of individuals sentenced to SB 123 during the first five year of program operation were actually ineligible for SB 123 based on prior criminal history.

This appears to be the result of active circumvention by courtroom actors. This circumvention is tied to disagreements with eligibility requirements and the mandatory nature of program. Paradoxically, stakeholders find the eligibility requirements to be both too broad and too narrow and argue for more discretion as a way to solve the problem. This circumvention has led to additional front-end net-widening, poor opinions of program success among some stakeholders, resentment by community corrections officers, a watering down of the offender pool, and ultimately negative impacts on both system- and individual-level outcomes.

Eligibility, Treatment Needs, and Treatment Amenability

At the individual-level, mandatory treatment ultimately dismisses the significance of the individual's readiness and engagement with treatment. As criminal justice stakeholders noted and offenders confirmed, the ultimate success of treatment depends on the individual. While mandatory treatment may provide a viable mechanism for directing offenders into treatment, like compulsory treatment more generally, it is unclear whether mandatory treatment can be translated into an internalized desire to change. As it is currently structured, SB 123 does not provide a clear mechanism for translating compulsory compliance with treatment through supervision and sanctions into internalized motivation. Moreover, it does not base the imposition of the SB 123 sentencing and, ultimately, treatment on offender needs. Rather, the imposition of the SB 123 sentence is determined solely by offense of conviction and prior criminal history, without reference to treatment needs or amenability to treatment. This disconnect, in turn, likely affects the overall impact of SB 123 on individual-level outcomes.

Limited Impact on Recidivism Relative to Other Sanctions

These challenges have led to the primary challenge facing SB 123 – a limited impact on recidivism rates. SB 123 increased the likelihood of recidivism compared to court services and had no significant impact on recidivism compared to community corrections or prison. The impact relative to court services may not be surprising; most failures on probation are the result of revocations and SB 123 increased the level of surveillance and control drug possessors were subjected to in the community increasing the likelihood of revocation. The impact relative to community corrections may not be surprising either; while SB 123 offenders received more treatment than offenders on community corrections, they received nearly identical supervision as indicated by administrative data and interviews with community corrections officers. The

impact relative to prison is more problematic; with so few individuals sentenced to prison and with those individuals looking very different than the individuals sentenced to SB 123, it was impossible to accurately assess the impact of SB 123 relative to prison.

Small System-Level Impact

While SB 123 had a small system-level impact – reducing admissions to prison and saving prison beds – net-widening, eligibility issues, and circumvention decreased the ability of SB 123 to have a larger impact. By design, SB 123 targeted an already small population of prison-bound drug possessors, severely limiting SB 123’s ability to divert offenders at sentencing. In turn, SB 123 effectively served as a drug treatment program by delivering treatment to drug possessors; but, given the diversion of drug possessors from court services into community corrections, the enhanced accountability and treatment expectations also resulted in back-end net-widening and severely limited SB 123’s ability to reduce admissions to prison due to revocations.

Recommendations

Whether prompted by continued fiscal crises, prison capacity constraints, or public pressure, statewide efforts at mandating community-based sanctions for drug possessors will likely continue (see e.g., Richburg, 2009). In turn, policymakers will surely confront questions about the effectiveness of such programs at reducing prison populations and deterring future criminal activity. Programs like SB 123 have the potential to overcome noted deficiencies in other compulsory programs and to achieve both systemic- and individual-level goals. However, how policymakers balance the importance of these twin goals will ultimately determine the expansion of such programs to other jurisdictions. Below are several recommendations for

altering SB 123 to meet both these goals. These recommendations may be seen as a roadmap for other states seeking to develop a similar mandatory community-based program.

Eligibility and Sentencing Requirements

The challenges above highlight a difficult association between the structural design of SB 123 and its ultimate goals. SB 123 is guided by an interest in diverting prison-bound offenders to community-based supervision while preserving public safety. Like other mandatory sentencing policies, the primary focus of SB 123 is on changing sentencing practices, not necessarily changing offender behavior. However, like other diversion programs, SB 123 gathers support both politically and publically because it provides treatment and seeks to change such behavior; moreover, it is evaluated on these terms as well. Thus, to remain a politically viable program, it must succeed at both the system and individual levels. As such, the program must develop mechanisms to reduce net-widening by transforming SB 123 into a back-end program that focuses on treatment delivery for drug possessors already on probation who have been assessed as “amenable” to or in need of treatment.

As such, the mandatory diversion portion of the program could remain, ensuring that eligible prison-bound offenders are diverted to the community. The narrow eligibility criteria would function as a low bar for entry into the program – judges would be required to impose a probation sentence for all offenders meeting the eligibility requirements. However, risk assessments and treatment needs assessments would ultimately determine the imposition of SB 123 treatment and a community corrections sentence, allowing SB 123 treatment to be tied to either court services or community corrections. In this way, judges would be required to impose an SB 123 sentence for all offenders who meet the treatment needs threshold, but the risk assessment would determine if offenders were sentenced to court services (low risk) or

community corrections (high risk); moreover, offenders who did not meet the treatment needs threshold would receive standard court services or community corrections without SB 123 treatment. In this way, the program would preserve the system level goal (diverting all eligible offenders from prison based on conviction offense and criminal history) while potentially improving individual-level outcomes (reserving SB 123 treatment for those needing it and community corrections supervision only for those who pose the highest risk). Such reforms may be possible in Kansas as patterns of prison expansion have slowed somewhat and the ultimate goals of SB 123 can be re-centered on offender performance rather than prison-bed savings.

Supervision Practices

Our findings also highlight the significant role of administrative procedures of community based supervision when defining patterns of success and failure. Our analyses revealed that the majority of SB 123 failures were triggered by revocations (technical violations) rather than reconvictions (new offenses). Policy makers and practitioners should consider a careful examination of the revocation procedures for the SB 123 and the non-SB 123 population of offenders. This revision should build upon the fact that one of the strengths of SB 123 is its team approach and the fact that SB 123 offenders are supervised and treated more often than any other offenders of similar characteristics. Under these conditions, system actors should anticipate avenues of action provided an increase in the number of violations detected and reported. Perhaps the standards for the revocation of probation terms should be re-examined to more closely reflect the different nature of the SB 123 scheme of service delivery.

Balancing Flexibility and Fidelity

As a state-wide initiative, SB 123 faced the task of ensuring fidelity across a diverse and fragmented system of semi-autonomous community correction districts. On the one hand, this

presented a problem given the obstacles faced by many rural jurisdictions; few providers, long distances necessary to attend treatment, and limited engagement with offenders all affected the ability of offenders to access treatment and for officers to adhere to the team approach mandated by SB 123. Thus, the structure of SB 123 called for particular processes that were not conducive to rural practices or experiences with supervision. On the other hand, the semi-autonomy of the community corrections offices allowed for adaptation and innovation in the approach to SB 123. Rural agencies were able to rely on informal networks, familial ties, and other community-based services to meet the expectations of SB 123; in many instances, they created their own treatment services and transportation services so offenders could receive treatment.

Balancing fidelity and flexibility is not an easy task. As our analyses show, there is a great deal of variation in the imposition of non-SB 123 sentences for otherwise eligible offenders across the state. There is a great deal of variation in the use of treatment interventions and the balance of supportive and restrictive supervision interventions. There is a great deal of variation in the number of treatment providers available and in the level of buy-in among judges, prosecutors, and community corrections officers. In the end, the state could seek to control some of this variation with greater oversight by state-level agencies, either the Sentencing Commission overseeing sentencing practices or the Department of Corrections requiring more accountability in the use of restrictive sanctions and referrals for service. But, this can only occur if local differences in resources can be overcome. As such, a limited amount of flexibility is necessary to ensure that the program can work across diverse jurisdictions.

Limitations

While these analyses point to several conclusions about SB 123 and recommendations for future mandatory diversion/treatment initiatives, there remain several limitations to the research. First, the analyses rely heavily on examining offenders sentenced and supervised immediately after implementation of SB 123 – a time in which system actors are still adjusting to changes in responsibilities, roles, and expectations that any new program demands. Perhaps more importantly, the impact of SB 123 on offender outcomes is intended to be long-term. The magnitude and covariates of these effects may not be fully reflected in the time frame employed for this study. Moreover, the impact of SB 123 on reconviction rates relative to other sentences indicates that the long term impact of the program may already be evident.

Second, the analyses of recidivism rely on a very limited set of covariates of individual level outcomes. The analyses lack any measures of risk, treatment need, or other factors potentially associated with recidivism (e.g. employment, marital status, etc.). As such, the study is limited in its ability to determine whether SB 123 or some other unexamined factor affected individual level outcomes. Future evaluations of mandatory diversion/treatment programs should seek to include additional covariates, particularly assessment scores measuring risks/needs, that may be associated with variation in recidivism rates..

Third, the study relies on recidivism rates as the sole measure of program success. The analyses lack any measure of other potential outcomes, including substance use or other risks/needs. As such, the study is unable to determine whether SB 123 had any effect on other pro-social behaviors of program participants. Future evaluations of mandatory diversion/treatment programs should seek to include these other measures of success as well. While such programs may not reduce revocation rates, a positive impact on other pro-social behaviors may have long-term effects on program outcomes.

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"Reconciling the Multiple Objectives of Policies for Drug Offenders: Kansas Experience with Mandatory Treatment," Andres F. Rengifo and Don Stemen, BJS/JRSA 2009 National Conference, Saint Louis, MO, October 2009.

"Alternative Sentencing Policies for Drug Offenders: Mandating Treatment in Kansas," Don Stemen and Andres F. Rengifo, National Institute of Justice Research Conference, Washington, DC, June 2009.

"The Impact of Kansas Senate Bill 123 on Recidivism Rates," Don Stemen, Vera Institute of Justice, New York, NY, May 2009.

Appendices

Appendix A: Statutory Provisions Pertaining to SB 123

21-4603. Authorized dispositions; crimes committed prior to July 1, 1993.

(a) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its findings and recommendations known to the court in the presentence report.

(b) Except as provided in subsection (c), whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence;

(4) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence;

(5) assign the defendant to a community correctional services program subject to the provisions of K.S.A. 75-5291, and amendments thereto, and such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(6) assign the defendant to a conservation camp for a period not to exceed six months;

(7) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(8) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529 and amendments thereto, unless waived by the court; or

(10) impose any appropriate combination of subsections (b)(1) through (b)(9).

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto. In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less. In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(c) Whenever any juvenile felon, as defined in K.S.A. 38-16,112, prior to its repeal, has been found guilty of a class A or B felony, the court shall commit the defendant to the custody of the secretary of corrections and may impose the fine applicable to the offense.

(d) (1) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (d)(2), at any time within 120 days after a sentence is imposed, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits and shall modify such sentence if recommended by the Topeka correctional facility unless 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 inmate will not be served by such modification.

(2) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(e) The court shall modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections unless 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 inmate will not be served by such modification. The court shall have the power to impose a less severe penalty upon the inmate, including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

(f) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp shall file a performance report and recommendations with the court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (b), except to reassign such person to a conservation camp as provided in subsection (b)(6).

(g) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(h) An application for or acceptance of probation, suspended sentence or assignment to a community correctional services program shall not constitute an acquiescence in the judgment

for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(i) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 21-4628, and amendments thereto, the provisions of this section shall not apply.

(j) The provisions of this section shall apply to crimes committed before July 1, 1993.

21-4705. Same; grid for drug crimes applied in felony cases under uniform controlled substances act; authority and responsibility of sentencing court; presumptive disposition. [See Revisor's Note]

(a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, for crimes committed on or after July 1, 1993:

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I shall not be considered a departure and shall not be subject to appeal.

(e) The sentence for a second or subsequent conviction of K.S.A. 65-4159, prior to its repeal, or K.S.A. 2010 Supp.21-36a03, and amendments thereto, manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 21-4716 and amendments thereto justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, or K.S.A. 2010 Supp. 21-36a06, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison as provided by this section. Subject to appropriations therefor, such term of imprisonment shall be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. If the secretary determines that substance abuse treatment resources are otherwise available, such term of imprisonment may be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The secretary's determination regarding the availability of treatment resources shall not be subject to review. The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

(2) If the defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. 2010 Supp. 75-52,144, and amendments thereto, has been discharged or refused to participate in a certified drug abuse treatment program, as provided in K.S.A. 2010 Supp. 75-52,144, and amendments thereto, has completed an intensive substance abuse treatment program under paragraph (1) or has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1), such defendant's term of imprisonment shall not be subject to modification under paragraph (1). The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(g) (1) Except as provided further, if the trier of fact makes a finding that an offender carried a firearm to commit a drug felony, or in furtherance of a drug felony, possessed a firearm, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to:

(A) Except as provided in subparagraph (1)(B), an additional 6 months' imprisonment; and

(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

(2) The sentence imposed pursuant to paragraph (1) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to violations of K.S.A. 2010 Supp. 21-36a06 or 21-36a13, and amendments thereto.

21-4714. Presentence investigation report; information included; part of court record; confidential information, disclosure to certain parties; report format .

(a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after

July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, or K.S.A. 2010 Supp. 21-36a06, and amendments thereto, and meet the requirements of K.S.A. 21-4729, and

amendments thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, or K.S.A. 2010 Supp. 21-36a06, and amendments thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.

(c) The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary.

22-3716. Arrest for violating condition of probation, assignment to community corrections, suspension of sentence or nonprison sanction, procedure; time limitation on issuing warrant; limitations on serving sentence in department of corrections' facility or serving period of postrelease supervision, exceptions .

(a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (d), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written or verbal statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. A written statement delivered to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. Except as otherwise provided, if the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. Except as otherwise provided, no offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section shall be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections for such violation, unless such person has already at least one prior assignment to a community correctional services program related to the crime for

which the original sentence was imposed, except these provisions shall not apply to offenders who violate a condition of release or assignment or a nonprison sanction by committing a new misdemeanor or felony offense. The provisions of this subsection shall not apply to adult felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto. The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(c) A defendant who is on probation, assigned to a community correctional services program, under suspension of sentence or serving a nonprison sanction and for whose return a warrant has been issued by the court shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it appears that the defendant has violated the provisions of the defendant's release or assignment or a nonprison sanction, the court shall determine whether the time from the issuing of the warrant to the date of the defendant's arrest, or any part of it, shall be counted as time served on probation, assignment to a community correctional services program, suspended sentence or pursuant to a nonprison sanction.

(d) The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant for the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

(e) Notwithstanding the provisions of any other law to the contrary, an offender whose nonprison sanction is revoked and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a "sexually violent crime" or a "sexually motivated crime" as defined by K.S.A. 22-3717, and amendments thereto, offenders sentenced pursuant to K.S.A. 21-4704, and amendments thereto, wherein the sentence is presumptive imprisonment but a nonprison sanction may be imposed without a departure or offenders whose nonprison sanction was revoked as a result of a conviction for a new misdemeanor or felony offense. The provisions of this subsection shall not apply to offenders who are serving or are to begin serving a sentence for any other felony offense that is not excluded from postrelease

supervision by this subsection on the effective date of this subsection. The provisions of this subsection shall be applied retroactively. The department of corrections shall conduct a review of all persons who are in the custody of the department as a result of only a revocation of a nonprison sanction. On or before September 1, 2000, the department shall have discharged from postrelease supervision those offenders as required by this subsection.

(f) Offenders who have been sentenced pursuant to K.S.A. 21-4729, and amendments thereto, and who subsequently violate a condition of the drug and alcohol abuse treatment program shall be subject to an additional nonprison sanction for any such subsequent violation. Such nonprison sanctions shall include, but not be limited to, up to 60 days in a county jail, fines, community service, intensified treatment, house arrest and electronic monitoring. of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220 and amendments thereto to the warden of the state correctional institution to which the defendant is conveyed.

(g) The criminal history worksheet will not substitute as a presentence report.

(h) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(i) Except as provided in K.S.A. 21-4715, and amendments thereto, the court can take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(j) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.

21-4729. Nonprison sanction; certified drug abuse treatment programs; assessment; supervision by community corrections; discharge from program; exceptions to placement in program.

(a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or K.S.A. 2010 Supp. 21-36a06, and amendments thereto:

(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to such sections repeal or K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, and amendments thereto, or any substantially similar offense from another jurisdiction; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to such sections repeal or K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, and amendments thereto, or any substantially similar offense from another jurisdiction, if such person felonies committed by the offender were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to:

(1) A drug abuse assessment which shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the offender; and

(2) a criminal risk-need assessment, unless otherwise specifically ordered by the court. The criminal risk-need assessment shall assign a high or low risk status to the offender.

(c) The sentencing court shall commit the offender to treatment in a drug abuse treatment program until determined suitable for discharge by the court but the term of treatment shall not exceed 18 months.

(d) Offenders shall be supervised by community correctional services.

(e) Placement of offenders under subsection (a)(2) shall be subject to the departure sentencing statutes of the Kansas sentencing guidelines act.

(f) (1) 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.

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, licensed psychiatrists, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2010 Supp. 75-52,144, and amendments thereto.

(h) (1) The following offenders who meet the requirements of subsection (a) shall not be subject to the provisions of this section and shall be sentenced as otherwise provided by law:

(A) Offenders who are residents of another state and are returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision; or

(B) offenders who are not lawfully present in the United States and being detained for deportation.

(2) Such sentence shall not be considered a departure and shall not be subject to appeal.

Appendix B: Kansas Sentencing Guidelines Drug Sentencing Grid

SENTENCING RANGE – DRUG OFFENSES

Category→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+Misd	1 Misd. 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	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
III	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
IV	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 11

Legend
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-2
 18 months (up to) for felonies classified in Severity Level 3
 And, on and after July 1, 2009, felony cases sentenced pursuant to K.S.A. 2011 Supp. 21-6824 (formerly 21-4729 SB 123)
 12 months (up to) for felonies classified in Severity Level 4

Postrelease Supervision Terms are:

36 months for felonies in Severity Levels 1-2
 24 months for felonies classified in Severity Level 3
 12 months for felonies classified in Severity Level 4 except for some
 Unlawful possession offenses committed on and after 11/1/03 pursuant to K.S.A. 2011 Supp. 21-5706 (formerly K.S.A. 21-36a06)

Postrelease for felonies committed after 4/20/95 are:

24 months for felonies classified in Severity Levels 1-3
 12 months for felonies classified in Severity Level 4

Reproduced from Kansas Sentencing Commission, (2011), Kansas Sentencing Guidelines Desk Reference Manual, Appendix D.

Appendix C: Propensity Score Matching

Research Design and Data

The creation of matched samples and the assessment of SB 123 effects were based on the use of a technique known as propensity score matching (PSM). PSM was employed to adjust for observable differences between study and comparison groups in terms of attributes of offenders that influenced their likelihood of “treatment” (receiving an SB 123 sentence), thus reducing the impact of these differences on observed outcomes (recidivism). More specifically, via PSM we selected individuals from the study and comparison groups who shared substantive observable characteristics (demographics, criminal history) but had different exposures to SB 123 (some were sentenced to SB 123, some were not). Because we consider only offenders sentenced post-SB 123 implementation, all offenders in the study and the comparison groups effectively had the possibility of receiving an SB 123 sentence. When differences in the observable characteristics of these offenders are controlled for, study and comparison groups are said to be “structurally equivalent,” facilitating any further assessment of outcomes. In other words, via PSM we redefined the composition of the treatment and comparison groups in order to facilitate the calculation of unbiased estimates of the average impact of SB 123 in its target population.

PSM enhances the quality of controls for the endogeneity of receiving the intervention under examination (in this case, having been sentenced to SB 123). In order to extract cases that are structurally similar we implemented a series of probit models assessing the probability of placement into the study group—that is, we modeled the expected likelihood of offenders being sentenced to SB 123 versus court services or standard community corrections. We did not include a comparison group of SB 123-eligible offenders that actually received a prison sentence post-SB 123 implementation because of the low number of individuals in this category (drawing

on Sample 3 estimates, N=117 with 12 months of risk exposure and N=92 with 24 months of risk exposure) and the impossibility of matching appropriately these offenders with those receiving an SB 123 sentence.

The matching of cases was implemented following a number of different algorithms and specifications in order to reduce the impact of model selection on estimates. Also each model considered the full range of recidivism outcomes described above. Further, all models were reconfigured according to the two follow-up periods (12 months and 24 months).

We define recidivism using five different measures of failure in the community, including re-arrest (regardless of disposition), incarceration (due to a new conviction or a revocation) and revocation filing (for a new crime or a technical violation, regardless of new disposition). In all cases, the comparison groups consisted of various sample configurations of SB 123-eligible offenders sentenced to standard probation (community corrections or court services). As outlined in Chapter 1 of this report, our baseline sample included individuals sentenced of first- or second- drug possession crime without non-violent prior convictions (categories E-I). To better capture the statutory provisions of SB 123 we reconfigured this baseline offender pool into different samples, from a broadly define sample (pre-and post sentences of SB-eligible offenders) to more restricted samples based on date of sentence and additional criteria for eligibility (samples 2-3). Recidivism outcomes for all samples were tracked through October 31, 2008.

This appendix supplements the individual-level recidivism analyses presented in Chapter 4. It replicates the propensity score matching approach using a more broadly-defined sample of SB 123-eligible offenders (Sample 2, which includes all offenders sentenced after SB 123 implementation regardless of prior arrest records, or state residency status). It also provides

additional details regarding the selection models employed to generate the matched samples, and summarizes estimates derived from the utilization of matching algorithms not explored in the main body of the report.

Implementing a Selection Model

The propensity scores models presented in Chapter 4 estimate differences in three recidivism outcomes at 12 and 24 months between SB 123-eligible offenders sentenced to SB 123 and SB 123-eligible offenders monitored by court services or community corrections. All models are based on the more conservative criteria to define eligibility under SB 123 (Sample 3). Model estimates are based on two widely used matching algorithms: nearest-neighbor and kernel-based.

All PSM estimates are drawn from samples of statistically equivalent offenders with similar likelihoods of exposure to the treatment variable (receiving an SB 123 sentence). We use probit models to specify this process, with the dependent variable reflecting whether any given SB 123-eligible offender actually receive an SB 123 sentence or no (1=received sentence, 0=otherwise). Such models are presented below in Table A-1 (Sample 2) and Table A-2 (Sample 3). Estimates in each table capture the likelihood of individuals with two different follow-up periods (12 and 24 months) receiving an SB 123 sentence

Table A-1. Probit Regressions Predicting SB 123 Sentence at 12 and 24 Months Follow-up by Comparison Group, Sample 2

	Model 1 SB 123 - Court Services		Model 2 SB 123 - Comm. Corr.	
	12 months	24 months	12 months	24 months
Race (Non-White)	-.060 (.061)	-.0.089 (.067)	-.129* (.053)	-.190 (.060)
Ethnicity (Hispanic)	-.721*** (.066)	-.521 *** (.077)	-.422*** (.067)	-.461 *** (.076)
Gender (female)	.096 (.052)	.105 (.057)	.044 (.048)	.076 (.054)
Age (years)	-.013*** (.002)	-.014*** (.003)	-.009*** (.002)	-.008*** (.002)
Criminal History	.052* (.018)	.066** (.020)	-.267*** (.015)	-.247*** (.017)
Charges (> 1)	.124 (.051)	.072 (.056)	-.013 (.045)	-.041 (.052)
County (urban)	-.318*** (.046)	-.345*** (.052)	-.285*** (.043)	-.303*** (.049)
Sentence (< Nov 05)	.483*** (.045)	.468*** (.055)	.280*** (.041)	.345*** (.050)
Constant	1.168*** (.091)	1.190*** (.101)	1.721*** (.085)	1.691*** (.095)
Total cases	4435	3410	4753	3624
PseudoR2	.076	.062	.099	.098
Chi2	322.97***	212.09***	515.74***	398.07***

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Note: Offenders in all samples and follow-up periods were convicted of first or second drug possession after November 1, 2003 (SB 123 implementation) and had criminal history scores E-I.

Table A-2. Probit Regressions Predicting SB 123 Sentence at 12 and 24 Months Follow-up by Comparison Group, Sample 3

	Model 1 SB 123 - Court Services		Model 2 SB 123 - Comm. Corr.	
	12 months	24 months	12 months	24 Months
Race (Non-White)	-.008 (.072)	-.051 (.080)	-.133* (.067)	-.096 (.077)
Ethnicity (Hispanic)	-.739*** (.74)	-.534 *** (.087)	-.431*** (.082)	-.437*** (.092)
Gender (female)	.120* (.059)	.118 (.067)	.043 (.059)	.087 (.067)
Age (years)	-.014*** (.003)	-.016*** (.003)	-.008** (.003)	-.008** (.003)
Criminal History	.088*** (.022)	.097*** (.025)	-.211*** (.019)	-.196*** (.021)
Charges (> 1)	.116 (.060)	.073 (.068)	-.073 (.058)	-.074 (.065)
County (urban)	-.346*** (.054)	-.369*** (.601)	-.413*** (.054)	-.425*** (.061)
Sentence (< Nov 05)	.461*** (.052)	.439*** (.064)	.361*** (.052)	.383*** (.629)
Constant	1.157*** (.104)	1.187*** (.117)	1.721*** (.102)	1.686*** (.117)
Total cases	3379	2535	3399	2545
PseudoR2	.086	.069	.088	.085
Chi2	278.53***	175.94***	290.7***	218.08***

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Offenders in all samples and follow-up periods were convicted of first or second drug possession after November 1, 2003 (SB 123 implementation) and had criminal history scores E-I.

As Tables A-1 and A-2 indicate, most of the individual-level covariates included in the selection models are significantly associated with patterns of SB 123 sentencing. Further, results are largely stable for the two follow-up periods (12 and 24 months) and the two sample configurations (Sample 2, no criteria for prior drug arrest for drug sale/possession, and Sample 3, which specifies this additional criteria for eligibility). For example, Model 1 in Table A-1 shows that younger drug offenders are more likely to be sentenced to SB 123 when compared to older offenders also convicted of a drug possession charge. The same pattern was detected for

individuals sentenced in rural counties, and individuals with a lower, less serious criminal history score. The overall fit of both models was moderate.

Estimates presented in Tables A-1 and A-2 were used as a basis for the generation of the matched samples. Specifically, the selection model in Table A-2 was used to reconfigure the sample used to calculate the PSM estimates presented in Chapter 4. Specifically, for each sample we generated a predicted probability (a “propensity score”) of entry into SB 123. These probabilities represented the expected likelihood that given observed individual-level predictors offenders would have been sentenced to SB 123, even if in actuality they did not receive SB 123. The goal was to provide the empirical basis for the matching of individuals in the treatment group (i.e. those who were actually sentenced to SB 123) with individuals in the comparison groups (i.e., those who were not sentenced to SB 123). Such matching is implemented associating individuals in each group with similar probabilities of entry into SB 123—that is, similar propensity scores.

Matching and Evaluation of Outcomes

The propensity scores were used to match individuals in the treatment group with individuals in the comparison groups. There are several estimation techniques associated with the specific parameters required to define the matching of cases. These techniques vary regarding thresholds of “similarity” across cases from different groups, the use of comparison cases for multiple matches, and other criteria regarding the overall distribution of cases within groups. The analyses presented in Chapter 4 relied on a nearest-neighbor matching protocol (narrow caliper without replacement) and kernel-based matching using the propensity scores derived from the baseline models presented above (Table A-2). We also implemented a number of alternative matching algorithm based on different measures of “similarity” of cases (e.g., nearest-neighbor with

different caliper, radius). The estimation of SB 123 effects was based on the comparison of recidivism rates of offenders included in the matched samples. This strategy focused on the measurement of the average effect of treatment on the treated (ATT), or the assessment of the observed differences in failure rates by type of intervention (SB 123 vs. court services, and SB 123 vs. community corrections). In each case we employed observations in common support and computed the standard errors of the ATT estimate using a bootstrapping approach (100 replications). This strategy was replicated for the two follow-up periods considered by this evaluation (12 and 24 months).

The Tables A-3 to A-5, below, summarize the average SB 123 effects using different matching algorithms and follow-up periods. Estimates are all based on Sample 3 (findings derived from using Sample 2 were identical).

Table A-3. Estimated Average Treatment Effects on the Treated (ATT): Impact of SB 123 on Overall Incarceration Rates at 12 and 24 Month Follow-up by Comparison Group. Sample 3

Matching method/ comparison group	Sample size		ATT	Standard Error	t-stat
	SB 123	Compar.			
A. 12 month follow up					
<i>Vs. Community Corrections</i>					
Nearest 1-to-1, caliper .005	628	646	-.049	.021	-2.333**
Nearest neighbor, random draw	2753	534	-.065	.023	-2.881**
Kernel,bandwidth of .06	2753	639	-.050	.017	-2.941**
Radius, caliper of .01	2753	646	-.043	.018	-2.389**
<i>Vs. Court Services</i>					
Nearest 1-to-1, caliper .005	626	595	.035	.021	1.667
Nearest neighbor, random draw	2753	539	.034	.015	2.806**
Kernel,bandwidth of .06	2753	624	.033	.021	1.480
Radius, caliper of .10	2720	626	.036	.020	1.802
B. 24 month follow up					
<i>Vs. Community Corrections</i>					
Nearest 1-to-1, caliper .005	498	519	-.040	.030	-1.298
Nearest neighbor, random draw	2026	423	-.064	.031	-2.027*
Kernel,bandwidth of .06	2026	510	-.063	.024	-2.599**
Radius, caliper of .01	2008	519	-.047	.026	-1.890
<i>Vs. Court Services</i>					
Nearest 1-to-1, caliper .005	489	509	.051	.023	2.180*
Nearest neighbor, random draw	2026	439	.061	.026	2.305*
Kernel,bandwidth of .06	2026	506	.065	.020	3.253***
Radius, caliper of .10	1978	509	.064	.020	3.201***

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Nearest 1-to-1 matching algorithm is done without replacement and is derived from Leuven and Sianesi (2003) using the “psmatch2” command in STATA while nearest neighbor, kernel, and radius algorithms are derived from Becker and Ichino (2002). The bootstrapped standard errors are estimated using 100 replication samples.

Table A-4. Estimated Average Treatment Effects on the Treated (ATT): Impact of SB 123 on Re-arrest Rates at 12 and 24 Month Follow-up by Comparison Group, Sample 3

Matching method/ comparison group	Sample size		ATT	Standard Error	t-stat
	SB 123	Compar.			
C. 12 month follow up					
<i>Vs. Community Corrections</i>					
Nearest 1-to-1, caliper .005	628	646	.001	.027	.055
Nearest neighbor, random draw	2753	534	-.017	.029	-.576
Kernel, bandwidth of .06	2753	639	-.001	.020	-.050
Radius, caliper of .01	2753	534	-.017	.029	-.567
<i>Vs. Court Services</i>					
Nearest 1-to-1, caliper .005	595	626	.022	.026	.835
Nearest neighbor, random draw	2753	539	.075	.024	3.172***
Kernel, bandwidth of .06	2753	624	.033	.021	1.571
Radius, caliper of .10	2720	626	.036	.020	1.813
D. 24 month follow up					
<i>Vs. Community Corrections</i>					
Nearest 1-to-1, caliper .005	498	519	-.008	.032	.246
Nearest neighbor, random draw	2026	423	.020	.041	.495
Kernel, bandwidth of .06	2026	510	-.010	.028	-.371
Radius, caliper of .01	2008	519	.014	.033	.440
<i>Vs. Court Services</i>					
Nearest 1-to-1, caliper .005	489	509	.059	.035	1.686
Nearest neighbor, random draw	2026	439	.073	.031	2.352**
Kernel, bandwidth of .06	2026	506	.093	.023	3.984***
Radius, caliper of .10	1978	509	.084	.027	3.129***

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Nearest 1-to-1 matching algorithm is done without replacement and is derived from Leuven and Sianesi (2003) using the “psmatch2” command in STATA while nearest neighbor, kernel, and radius algorithms are derived from Becker and Ichino (2002). The bootstrapped standard errors are estimated using 100 replication samples

Table A-5. Estimated Average Treatment Effects on the Treated (ATT): Impact of SB 123 on Revocation Filing at 12 and 24 Month Follow-up by Comparison Group, Sample 3

Matching method/ comparison group	Sample size		ATT	Standard Error	t-stat
	SB 123	Compar.			
E. 12 month follow up					
<i>Vs. Community Corrections</i>					
Nearest 1-to-1, caliper .005	629	646	-.052	.024	-2.192*
Nearest neighbor, random draw	2753	534	-.037	.028	-1.321
Kernel,bandwidth of .06	2753	639	-.050	.017	-2.941**
Radius, caliper of .01	2723	646	-.020	.027	-.725
<i>Vs. Court Services</i>					
Nearest 1-to-1, caliper .005	595	626	.053	.024	2.201*
Nearest neighbor, random draw	2753	539	.085	.027	3.183***
Kernel,bandwidth of .06	2753	624	.063	.019	3.302***
Radius, caliper of .10	2720	626	.070	.022	3.129***
F. 24 month follow up					
<i>Vs. Community Corrections</i>					
Nearest 1-to-1, caliper .005	2008	519	-.019	.034	-.559
Nearest neighbor, random draw	2026	423	-.020	.032	-.626
Kernel,bandwidth of .06	2026	510	-.049	.025	-1.926
Radius, caliper of .01	2008	519	-.020	.033	-.060
<i>Vs. Court Services</i>					
Nearest 1-to-1, caliper .005	489	509	.067	.028	2.364**
Nearest neighbor, random draw	2026	439	.064	.038	1.696
Kernel,bandwidth of .06	2026	506	.092	.023	4.060***
Radius, caliper of .10	1978	509	.096	.027	3.597***

* p<.05 ** p<.01 *** p<.001 (two-tailed tests)

Note: Nearest 1-to-1 matching algorithm is done without replacement and is derived from Leuven and Sianesi (2003) using the “psmatch2” command in STATA while nearest neighbor, kernel, and radius algorithms are derived from Becker and Ichino (2002). The bootstrapped standard errors are estimated using 100 replication samples

Appendix D: Interview Protocols

D1. Semi-structured Instrument for Justice System Actor Interviews: Judges, Chief Prosecutors, Chief Public Defenders

Goals of SB 123 and effects on offenders and system

- 1) In your opinion, what is the most important goal of Senate Bill 123?
 - a. How effective is it at achieving that (those) goal(s)?
 - b. What are the primary obstacles to achieving that (those) goal(s)?
- 2) What kinds of effects do you think SB 123 is having on offenders? (PROBE – for example, reducing substance abuse, reducing recidivism, improving pro-social behavior)
 - a. How would you define *offender* success under the program?
- 3) What kinds of effects do you think SB 123 is having on the system as a whole? (PROBE – for example, reducing prison populations or admissions to prison, saving money)
 - a. How would you evaluate the overall success of SB 123 as a program?

Effects of SB 123 on processes

- 4) In your opinion, on what part of the process has SB 123 had the largest impact? (PROBE – for example, charging, plea bargaining, sentencing, revocations). Why?
 - a. PROBE - Has this been a positive or negative impact?
- 5) What do you think has been the impact of SB 123 on violations and revocations?
 - a. PROBE - Are violations treated differently for SB 123 offenders than for others? Does this cause any problems?
 - b. PROBE - Is the revocation process different for SB 123 offenders than for others? Does this cause any problems?
- 6) How has the Department of Corrections' risk reduction initiative affected opinions about violations and revocations generally?
 - a. Has this also affected opinions about violations and revocations for SB 123 offenders?
- 7) Describe how SB 123 has been affected by or affects the plea bargaining process?
 - a. PROBE - How does plea bargaining affect the type of offenders entering SB 123?

- 8) Do you think that the majority of SB 123 offenders have a serious substance abuse problem?
- 9) How could SB 123 improve the targeting of offenders with substance abuse problems?

Interactions with other agencies

- 10) How have your interactions with other justice actors (judges, prosecutors, defense attorneys, supervising officers) changed as a result of SB 123?
 - a. Are there any aspects of SB 123 that have led to conflicts with other actors in the system (PROBE – for example, changes in violation and revocation practices, changes in charging practices, changes in supervision)
- 11) How effective do you think the state is in communicating information about changes to SB 123 to your office?
 - a. What kind of interactions or communications do you have with the sentencing commission? The DOC?

Obstacles and the future of SB 123

- 12) Have you encountered significant obstacles in working with SB 123?
 - a. If so, have you developed any strategies to overcome these obstacles? Please be as specific as you can.
 - b. Have these obstacles remained constant throughout the implementation period or are you currently facing new challenges?
- 13) How do you think SB 123 needs to be changed?

D1. Structured Instrument for Offender Interviews

Section 1: Substance Abuse Assessment

1. When you received your most recent community corrections sentence, did you receive a substance abuse assessment?
 - 0 Yes
 - 1 No

2. During your most recent community corrections sentence, were you informed that you needed to attend substance abuse treatment?
 - 0 Yes
 - 1 No (**If No, skip to Question 20 on page 6**)

3. During your most recent community corrections sentence, did you meet with a probation officer to talk about what type of substance abuse treatment you needed?
 - 0 Yes
 - 1 No

4. During your most recent community corrections sentence, did you meet with a probation officer to create a plan or schedule of substance abuse treatment you would receive?
 - 0 Yes
 - 1 No

5. During your most recent community corrections sentence, did you meet with a drug treatment counselor to talk about what type of substance abuse treatment you needed?
 - 0 Yes
 - 1 No

6. During your most recent community corrections sentence, did you meet with a treatment counselor to create a plan or schedule of substance abuse treatment you would receive?
 - 0 Yes
 - 1 No

7. During your most recent community corrections sentence, did you have a team meeting, with you, your probation officer, and a treatment counselor, to talk about treatment options?
 - 0 Yes
 - 1 No

8. During your most recent community corrections sentence, did you receive any substance abuse treatment?
 - 0 Yes
 - 1 No
 - i. If No, why?

(If No, Skip to Question 20 on page 6)

Section 2: Substance Abuse Treatment

This section includes questions about substance abuse treatment that you received during your most recent community corrections sentence. If you did not receive any substance abuse treatment during your most recent community corrections sentence, please skip to Question 20 on page 6.

9. The following questions are about substance abuse treatment planning you may have received. *(Circle one number for each item)*

	<u>Strongly Disagree</u>	<u>Disagree</u>	<u>Neutral</u>	<u>Agree</u>	<u>Strongly Agree</u>	
a	Prior to starting substance abuse treatment, I was given a clear description of what kind of treatment I needed.	1	2	3	4	5
b	It was clear who was in charge of planning my substance abuse treatment.	1	2	3	4	5
c	It was easy to understand what treatment I would receive.	1	2	3	4	5
d	My substance abuse treatment plan accurately addressed my treatment needs.	1	2	3	4	5
e	I was satisfied with my substance abuse treatment plan.	1	2	3	4	5
f	The community corrections officer assigned to my case included me in planning my substance abuse treatment.	1	2	3	4	5
g	The treatment counselor assigned to my case included me in planning my substance abuse treatment.	1	2	3	4	5
h	The community corrections officer and treatment counselor assigned to my case worked together in planning my substance abuse treatment.	1	2	3	4	5
i	The community corrections officer assigned to my case informed me about what treatment I needed.	1	2	3	4	5
j	The treatment counselor assigned to my case informed me about what treatment I needed.	1	2	3	4	5

10. During your most recent community corrections sentence, which of the following types of substance abuse treatment did you receive (*circle all that apply*):

- 0 In-patient/residential
- 1 Intensive out-patient
- 2 Out-patient group
- 3 Out-patient family
- 4 Out-patient individual
- 5 Drug abuse education
- 6 Detox
- 7 Day treatment
- 8 Relapse prevention
- 9 Reintegration
- 10 Other (please specify _____)

11. Of the types of substance abuse treatment that you received, which one was the most effective for you? _____

12. What goals did you hope to achieve in substance abuse treatment (*circle all that apply*)?

- 0 No clear goals
- 1 Stop taking all drugs
- 2 Stop taking specific drug(s)
- 3 Reduce all drug use
- 4 Reduce use of specific drug(s)
- 5 Improve health
- 6 Improve employment chances
- 7 Improve education
- 8 Improve relationships
- 9 Sort out life/get it together
- 10 Get kids back/contact with kids
- 11 Keep someone happy (family, partner, etc.)
- 12 Sort out other family issues
- 13 Sort out finances
- 14 Sort out accommodations
- 15 Receive a prescription
- 16 Receive a referral to another drug service
- 17 Avoid harsher sentence
- 18 Look better in court
- 19 Get out of crime/stop getting into legal trouble
- 20 Just see what happens/what is available
- 21 Get counselor/someone to talk to
- 22 Other goal (please specify _____)

13. Was the substance abuse treatment you received effective in helping you achieve these goals? Why or why not? _____

14. The following questions are about the substance abuse treatment you received. *(Circle one number for each item)*

		Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
a	I received substance abuse treatment that was not in my original treatment plan.	1	2	3	4	5
b	The substance abuse treatment I received was helpful.	1	2	3	4	5
c	I was satisfied with the substance abuse treatment I received.	1	2	3	4	5
d	I received the kind of substance abuse treatment that I needed.	1	2	3	4	5
e	The cost of substance abuse treatment affected what kind of treatment I received.	1	2	3	4	5
f	The conditions of the community corrections sentence interfered with my substance abuse treatment.	1	2	3	4	5
g	If I had more money, I would have received better substance abuse treatment.	1	2	3	4	5
h	It was difficult to adapt to the conditions of substance abuse treatment.	1	2	3	4	5
i	I received more substance abuse treatment than I needed.	1	2	3	4	5
j	I received less substance abuse treatment than I needed.	1	2	3	4	5

15. During your most recent community corrections sentence, how many different treatment agencies did you receive treatment from? _____

16. On average, how many miles did you have to travel to attend substance abuse treatment? _____ miles.

17. Did the distance you had to travel make it difficult to attend substance abuse treatment?
 0 Yes
 1 No

18. Was this the first time you participated in substance abuse treatment?
 0 Yes
 1 No

Section 3: Interactions with Treatment Providers

19. The following questions are about the treatment provider(s) you received services from.
(Circle one number for each item)

	<u>Strongly Disagree</u>	<u>Disagree</u>	<u>Neutral</u>	<u>Agree</u>	<u>Strongly Agree</u>
a The substance abuse treatment counselor assigned to my case provided me with the tools I needed to succeed in treatment.	1	2	3	4	5
b The substance abuse treatment counselor assigned to my case made his/her expectations clear.	1	2	3	4	5
c My interactions with the substance abuse treatment counselor assigned to my case were positive.	1	2	3	4	5
d The substance abuse treatment counselor assigned to my case coordinated their work with my community corrections officer.	1	2	3	4	5
e The substance abuse treatment counselor assigned to my case focused on the conditions of the community corrections sentence as well as treatment conditions.	1	2	3	4	5
f Substance abuse treatment providers treat individuals on SB 123 differently than they treat other individuals on community corrections.	1	2	3	4	5

Section 4: Community Corrections

20. The following questions are about your interactions with the community corrections officer assigned to your case. *(Circle one number for each item)*

	<u>Strongly Disagree</u>	<u>Disagree</u>	<u>Neutral</u>	<u>Agree</u>	<u>Strongly Agree</u>
a The community corrections officer assigned to my case provided me with the tools I needed to succeed on community corrections.	1	2	3	4	5
b The community corrections officer assigned to my case made his/her expectations clear.	1	2	3	4	5
c My interactions with the community corrections officer assigned to my case were positive.	1	2	3	4	5
d It was difficult to adapt to the conditions of supervision.	1	2	3	4	5
e Individuals sentenced to SB 123 are treated differently than other individuals on community corrections.	1	2	3	4	5
f I received emotional support from my family while on community corrections.	1	2	3	4	5
g The community corrections officer assigned to my case coordinated their work with other service providers.	1	2	3	4	5
h The community corrections officer assigned to my case was too focused on enforcing the conditions of the community corrections sentence.	1	2	3	4	5
i The community corrections officer assigned to my case was understanding of other factors affecting me (e.g. treatment conditions, employment, etc.).	1	2	3	4	5

21. Did you receive any services in any of the following areas while on community corrections (circle all that apply)?

- 0 Education
- 1 Employment
- 2 Housing
- 3 Mental health
- 4 Physical health
- 5 Family
- 6 Other (please specify _____)

22. How successful do you think you have been on community corrections?

- 0 Not at all successful
- 1 Not very successful
- 2 Both successful and unsuccessful
- 3 Successful
- 4 Very successful

23. What are the greatest obstacles to success on community corrections?

24. What do you think the community corrections officer assigned to your case could have done differently to help you?

Section 5: Background Information

25. What is your gender?
- 0 Male
 - 1 Female
26. What is your racial background?
- 0 Black or African-American
 - 1 White
 - 2 Asian
 - 3 Other or more than one race (please specify _____)
27. What is your ethnic background?
- 0 Hispanic
 - 1 Non-Hispanic
28. What is your current marital status?
- 0 Married
 - 1 Unmarried, but living with a partner
 - 2 Married, but living alone
 - 3 Unmarried, and living alone
29. What is your age as of your last birthday? _____
30. What age were you when you first started using drugs? _____
31. Which of the following best describes what you are doing now?
- 0 Employed full-time
 - 1 Employed part-time
 - 2 Unemployed but looking for work or training
 - 3 Unemployed but not looking for work or training
 - 4 Permanently unable to work because of long term illness or disability
 - 5 Retired
 - 6 Looking after home or family
 - 7 Full-time student
 - 8 Doing something else (please specify _____)
32. During your most recent community corrections sentence, what type of sentence did you receive?
- 0 SB 123
 - 1 Community Corrections (non-SB 123)

That concludes our survey. On the back of this page, you are welcome to write any comments you have about specific questions in this questionnaire, potential uses for the information obtained, and any additional issues you feel may be beneficial to this research.

Thank you very much for your participation.