

Report of the Kansas Criminal Justice Reform Commission to the 2020 Kansas Legislature

CHAIRPERSON: Marc Bennett, district attorney from an urban area, appointed by the Kansas County and District Attorneys Association (KCDAA)

VICE-CHAIRPERSON: Representative Stephen Owens

OTHER MEMBERS: Senators David Haley and Rick Wilborn; and Representative Gail Finney

FACILITATOR: Reggie Robinson, appointed by the Governor

NON-LEGISLATIVE MEMBERS: Chief Todd Ackerman, Marysville Police Department, appointed by the Attorney General; Jennifer Baysinger, criminal justice reform advocate, appointed by the Legislative Coordinating Council; Hon. Glenn Braun, Chief Judge, Ellis County, appointed by the Kansas District Judges Association; Sheriff Bill Carr, Ford County, appointed by the Attorney General; Hon. Marty Clark, Magistrate Judge, Russell County, appointed by the Kansas District Magistrate Judges Association; Professor John Francis, Washburn University School of Law, appointed by the Dean of Washburn University School of Law; Chris Mechler, Judicial Branch Court Services Officer, appointed by the Chief Justice of the Supreme Court; Tabitha Owen, county attorney from a rural area, appointed by the KCDAA; Sylvia Penner, criminal defense attorney, appointed by the Governor; Bill Persinger, mental health professional, appointed by the Kansas Community Mental Health Association; Professor Jean Phillips, University of Kansas School of Law, appointed by the Dean of the University of Kansas School of Law; Pastor Adrion Roberson, faith-based community representative, appointed by the Governor; Brenda Salvati, drug and alcohol addiction treatment provider (2003 SB 123 program), appointed by the Kansas Sentencing Commission; Shelly Williams, community corrections representative, appointed by the Secretary of Corrections; Derek Schmidt, Attorney General (non-voting); Scott Schultz, Executive Director, Kansas Sentencing Commission (non-voting); and Jeff Zmuda, Acting Secretary of Corrections (non-voting).

CHARGE

The Commission is directed by KSA 2019 Supp. 21-6902 to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;

- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;
- Analyze diversion programs and recommend options to expand diversion programs and implement statewide standards;
- Review community supervision levels and programming available for those serving sentences for felony convictions;
- Study and make recommendations for specialty courts statewide;
- Survey and make recommendations regarding available evidence-based programming for offenders in correctional facilities and in the community;
- Study Department of Corrections policies for placement of offenders and make recommendations for specialty facilities, to include geriatric, healthcare, and substance abuse facilities;
- Evaluate existing information management data systems and recommend improvements that will allow criminal justice agencies to more efficiently evaluate and monitor the efficacy of the criminal justice system; and
- Study other matters, that, as the Commission determines, are appropriate and necessary to complete a thorough review of the criminal justice system.

Kansas Criminal Justice Reform Commission

PRELIMINARY REPORT

Conclusions and Recommendations

The Kansas Criminal Justice Reform Commission adopts the following preliminary recommendations:

- The following specialty prison related initiatives should be authorized or adopted, with priority given to substance abuse treatment:
 - Funding and authority for Kansas Department of Corrections (KDOC) to repurpose/renovate an existing building within the correctional facility system, or another State-owned facility, to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system should be authorized;
 - Funding and authority for KDOC to repurpose/renovate an existing building within the correctional facility system, or another State-owned facility, to provide approximately 200-250 male beds for substance abuse treatment should be authorized;
 - Funding and authority for KDOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment should be authorized; and
 - The recommendations of the Mental Health Task Force Reports, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings should be adopted;
- The Kansas Association of Court Services Officers' legislative initiative to amend KSA 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a Certification of ID to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver's license should be considered;
- A request for proposal should be issued as soon as possible for a comprehensive assessment relating to the current state of data sharing across Kansas agencies;
- An inventory of all major initiatives developed and funded at local and state levels to improve outcomes with offenders with mental illness and/or substance use disorders within and prior to entering the criminal justice system should be conducted;
- HB 2292 was introduced to the House Judiciary Committee during the 2019 Legislative Session. This bill would have expanded SB 123 money to diverted defendants, instead of only convicted offenders, to allow them to enter state-paid substance abuse treatment. This legislation was tabled by the Judiciary Committee. It is the recommendation of this Commission that this bill should be revisited and the stakeholders should work together to find a workable solution to allow certified substance abuse treatment prior to conviction;

- The penalties for crimes classified as drug grid level five should be revised to be similar to nondrug grid level eight;
- Unlawful tampering with an electronic monitoring device should be reclassified from a level six crime to a level eight crime;
- The felony loss threshold should be increased from \$1,000 to \$1,500 on certain property crimes;
- Domestic battery qualifying prior convictions should be revised to include prior convictions with a domestic violence designation;
- Kansas Department of Revenue Form DC-1020 and fees associated with restricted licenses should be revised such that the fee is not paid before the person knows if they qualify for a restricted license;
- The mandatory 90-day suspension period that accompanies reinstatement should be amended;
- One reinstatement fee should be permitted per suspended license case number;
- Courts should be permitted to waive mandatory fines and fees for indigent persons charged with traffic infractions; and
- The Legislature should authorize the addition of a public defender as a Commission member.

BACKGROUND

The 2019 Legislature passed HB 2290, codified at KSA 2019 Supp. 21-6902, which established the Kansas Criminal Justice Reform Commission (Commission) and directed the Commission to address various specified issues involving the Kansas criminal justice system. The bill required the Commission to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and make recommendations for legislation that would ensure sentences are appropriate;
- Review the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses;
- Analyze diversion programs utilized throughout the state and make recommendations with respect to

expanding diversion options and implementation of statewide diversion standards;

- Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision;
- Study specialty courts and make recommendations for the use of specialty courts throughout the state;
- Survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming;
- Study the policies of the Kansas Department of Corrections (KDOC) for placement of offenders within the

correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities;

- Evaluate existing information management data systems and make recommendations for improvements to data systems that will enhance the ability of criminal justice agencies to evaluate and monitor the efficacy of the criminal justice system at all points in the criminal justice process; and
- Study other matters as the Commission determines are appropriate and necessary to complete a thorough review of the criminal justice system.

The bill required the Commission to submit a preliminary report to the 2020 Legislature and a final report to the 2021 Legislature.

ORGANIZATION

HB 2290 established the following voting members and appointing authorities for the Commission:

- One member of the Senate, appointed by the President of the Senate;
- One member of the Senate, appointed by the Minority Leader of the Senate;
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- One member of the House of Representatives, appointed by the Minority Leader of the House of Representatives;
- One member of the Judicial Branch Court Services, appointed by the Chief Justice of the Supreme Court;

- One criminal defense attorney or public defender, appointed by the Governor;
- One county or district attorney from an urban area and one county attorney from a rural area, appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, appointed by the Attorney General;
- One professor of law from the University of Kansas School of Law and one professor of law from Washburn University School of Law, appointed by the deans of such schools;
- One drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program, appointed by the Kansas Sentencing Commission;
- One district judge, appointed by the Kansas District Judges Association;
- One district magistrate judge, appointed by the Kansas District Magistrate Judges Association;
- One member representative of the faith-based community, appointed by the Governor;
- One member of a criminal justice reform advocacy organization, appointed by the Legislative Coordinating Council (LCC);
- One mental health professional, appointed by the Kansas Community Mental Health Association; and
- One member representative of community corrections, appointed by the Secretary of Corrections.

The bill established the following non-voting members to the Commission:

- The Attorney General, or the Attorney General’s designee;
- The Secretary of Corrections, or the Secretary’s designee; and
- The Executive Director of the Kansas Sentencing Commission, or the Executive Director’s designee.

The bill also required the Governor to appoint a facilitator to assist the Commission in developing a project plan and carrying out the duties of the Commission in an orderly fashion.

The appointments to the Commission were completed by August 1, 2019. Pursuant to HB 2290, staff and meeting support for the Commission was provided by the Office of Revisor of Statutes, the Kansas Legislative Research Department (KLRD), and the Division of Legislative Administrative Services.

SUBCOMMITTEES

At its August 28, 2019, meeting, the Commission voted to establish five subcommittees and directed each subcommittee to study specific topics assigned by HB 2290. The following subcommittees were established:

- Data Management;
- Diversion/Specialty Courts/Specialty Prisons/Supervision ;
- Mental Health and Drug Treatment;
- Proportionality/Guidelines; and
- Reentry.

After the subcommittees were established, Commission members volunteered to serve on specific subcommittees and a chairperson for each subcommittee was selected at that time. A list of the subcommittee chairpersons and members is attached to this report as Appendix B.

From September through November 2019, each subcommittee met multiple times, usually *via* teleconference or videoconferencing with access provided to the public. In November 2019, the LCC approved two meeting days (use of Statehouse facilities and technology) for each subcommittee for the remainder of fiscal year (FY) 2020.

Each subcommittee produced a preliminary report, including recommendations it proposed the Commission consider for adoption as part of this report. The Commission considered these proposed recommendations at its November 25, 2019, meeting, as discussed below. The preliminary reports produced by each subcommittee are attached to this report as Appendix C.

COMMISSION MEETINGS

The LCC approved seven meeting days for the Commission during FY 2020. The Commission met four times before submission of this report: August 28, September 30, October 28, and November 25, 2019. [*Note: Due to the timing of the meeting and the report deadline of December 1, a summary of the November 25, 2019, meeting is not included below.*]

August 28, 2019, Meeting

Reggie Robinson, the facilitator for the Commission, provided an introduction to the work of the Commission, noting work would occur across 18 months.

Overview of 2019 HB 2290

Representative Jennings provided an overview of 2019 HB 2290, the legislation that created the Commission. Representative Jennings discussed the impetus behind the bill, including capacity issues within KDOC. He noted the State could choose to build more capacity in the state prisons and hire additional correctional officers, or allocate those resources elsewhere. He also stated the Commission should draft specific recommendations and draft legislation.

Representative Jennings requested the Commission consider the goal of the criminal justice system to aid in drafting recommendations.

He stated it was his opinion that, for offenders who will return to the community, the main goal should be to change the behavior of the offender.

Update on Current Criminal Justice Reform Efforts in Kansas

The Attorney General began the discussion with a summary of his op-ed that was published shortly before the meeting. He noted there are two ways to alter the behavior of offenders: mental health services and substance abuse treatment.

The Attorney General recommended consideration of substance abuse, drug courts, and specialized sentencing guidelines. He also recommended the Commission review a report by a recent mental health task force which, among other recommendations, suggested the State double the number of mental health beds in the state.

Facilitator Robinson stated he reached out to a number of state agencies to determine their current reform efforts and to seek input. He noted KDOC is implementing the Justice Reinvestment Initiative by involving groups such as the Council of State Governments (CSG), the Justice Center, The Pew Charitable Trusts, and the National Governors Association.

The Acting Secretary of Corrections stated his excitement about collaborating with the various groups. He stated it was his expectation the groups could help make recommendations specifically for Kansas.

A Commission member noted the report submitted by the Kansas Criminal Justice Recodification, Rehabilitation and Restoration Project (3Rs Committee) made recommendations that required a large amount of funds. He stated it would be beneficial to seek out an amount the Legislature would be willing to spend in the Commission's initial report.

Commission Organization

Staff from the Office of Revisor of Statutes provided an overview of the Kansas Open Meetings Act and Kansas Open Records Act and how both apply to the Commission.

Facilitator Robinson opened the floor for discussion and nominations for the officer positions of the Commission. After discussion, members decided to select a chairperson and vice-chairperson. After nominations and commission voting, Marc Bennett was selected as Chairperson and Representative Owens was selected as Vice-chairperson.

The Chairperson began a discussion regarding subcommittees. Members decided to establish five subcommittees and directed each working group to study specific topics assigned by HB 2290. The subcommittees were established with the following chairpersons:

- Data Management—Jennifer Baysinger;
- Diversion/Specialty Courts/Specialty Prisons/Supervision—Chris Mechler;
- Mental Health and Drug Treatment—Representative Owens;
- Proportionality/Guidelines—Chief Todd Ackerman; and
- Reentry—Representative Finney.

The Chairperson discussed the duties of the subcommittees. He noted they are to identify the issues, examine the efforts of other states or entities, and determine goals and required resources.

September 30, 2019, Meeting

The Commission heard reports by each subcommittee.

Subcommittee Reports

Data Management

Subcommittee chairperson Jennifer Baysinger reported on the Data Management Subcommittee. She stated the Subcommittee had met once *via* teleconference and during the meeting the Subcommittee identified two areas of interest: receiving an overview of the current communication among governmental data systems, and the technical implementation of a

plan that would allow greater communication among all agencies.

Ms. Baysinger also stated agency representatives would be invited to the next Subcommittee meeting to discuss current system gaps, what those agencies would like to see happen, and desired system features. She also discussed possible funding that had been set aside for juvenile justice reform that KDOC may be able to redirect for system upgrades.

Diversion/Specialty Courts/Specialty Prisons/Supervision

Subcommittee chairperson Chris Mechler reported on the Diversion/Specialty Courts/Specialty Prisons/Supervision Subcommittee, noting the Subcommittee met two times. She indicated, during the first meeting, the Subcommittee reviewed goals imparted by the Chairperson and discussed the four main topics assigned to the Subcommittee. Ms. Mechler stated the Subcommittee members decided to divide into four working groups: diversion, supervision, specialty courts, and specialty prisons. Each working group would focus on its specific topic and then report back to the Subcommittee.

Ms. Mechler stated, at the second meeting, the Attorney General provided an overview of the Kansas Open Meetings Act and answered questions on the topic. She stated staff from CSG provided details on the entity's collaboration with KDOC and offered to provide assistance to the Subcommittee.

Mental Health/Substance Abuse

Subcommittee chairperson Representative Owens reported on the Mental Health/Substance Abuse Subcommittee. He stated the Subcommittee had met once and discussed member interests, goals, and possible alternatives. He stated the Subcommittee discussed topics, such as possible integration of substance abuse treatment with healthcare, diversion, and the Shawnee County co-responder system. He discussed potential presentations by stakeholders, including presentations on co-responder systems, mental health treatment in the state, and KDOC mental health programs. He also stated a number of comments were made by members of the public

regarding potential options to address mental health problems.

Proportionality/Sentencing

Subcommittee chairperson Chief Todd Ackerman reported on the Proportionality/Sentencing Subcommittee, noting the Subcommittee had met twice. At the first meeting, the Subcommittee reviewed the goals they wanted to achieve. He stated the Subcommittee discussed gaps in current law, certain property crimes, and the codification work of the 3Rs Committee. He also noted the Subcommittee requested prison projection data from the Kansas Sentencing Commission for drug and property crimes.

Chief Ackerman stated, at the second meeting, a representative of the Sentencing Commission made a presentation on prison projections and other statistics and information from its annual report. He noted the Subcommittee discussed developing a pilot project for sentencing reform in four counties: Johnson, Sedgwick, Shawnee, and Wyandotte. He stated the Subcommittee planned to discuss legislative proposals that may be brought by the Sentencing Commission during the 2020 Legislative Session.

Reentry

Subcommittee chairperson Representative Finney reported on the Reentry Subcommittee, stating the Subcommittee had met twice. She stated during the first meeting, the Subcommittee discussed HB 2290 and brainstormed a list of topics that affect offenders as they reenter society. She noted the Subcommittee decided to focus on the following topics: mental health, housing, employment, and driver's licenses.

Representative Finney stated the Subcommittee received information from the Acting Secretary of Corrections, who indicated nearly 50 percent of the 6,000 prisoners released each year have difficulty obtaining a driver's license or other form of identification. She stated the Subcommittee discussed daily activities that require a driver's license, such as driving to the probation office, work, and doctor appointments, and taking children to school. She stated fines and fees make it more difficult for persons to comply and for many, it is easier to drive without a license.

She noted the Subcommittee requested additional statistics on the topic and plans to develop legislation to address the issue.

Discussion of Commission Goals

The Chairperson reminded members of the nine topics for the Commission, set forth in 2019 HB 2290, to consider:

- Sentencing guidelines;
- Proportionality of sentences;
- Diversion programs;
- Supervision levels and programming;
- Specialty courts;
- Evidence-based programming;
- Policies of KDOC for placement of offenders within the correctional facility system, including geriatric, healthcare, and substance abuse facilities;
- Data management; and
- Other matters.

The Chairperson asked for discussion on the direction the Commission wants to take and considerations for the preliminary report. Facilitator Robinson stated the Commission must consider what to include in its report to the Legislature.

Commission members noted the difficulties of identifying specific proposals for certain subcommittees and that subcommittees should ascertain the state of the criminal justice system so proposals may be made. Members also discussed the need for funding, noting it should be addressed in the preliminary report. Members also discussed setting specific goals so legislation could be introduced during the 2020 Session.

Following discussion, the Chairperson stated the Commission would incorporate specific goals

in the interim report and the goal would be to incorporate as many objectives from 2019 HB 2290 as possible.

Commission members discussed some specific issues identified by the subcommittees. Commission members discussed the creation of a substance abuse treatment facility that had been proposed by the 3Rs Committee, but was not constructed due to lack of funds. Members noted provisions are in place in current law that can help alleviate some of the impact on prison bed space. Commission members also discussed the potential for street-based programs to address mental health and addiction along with veterans courts, modeled after the Johnson County program.

Facilitator Robinson stated the framework of the report should have three parts: 1) the organization of the Commission, how often meetings have been held, and a summary of the work that has been done; 2) identification of the items that are ready for legislative action in 2020; and 3) the roadmap for what the Commission intends to study going forward, the work that is planned, and a foreshadowing of the cost involved.

Commission members discussed costs and some suggested potential savings be presented as an investment opportunity with initial costs offset by later savings. Members also discussed developing a three-year plan to demonstrate the division of funding over future fiscal years rather than presenting costs as one sum.

The Chairperson stated a regional approach to some issues may be helpful. He gave an example of Wichita utilizing additional drug, alcohol, and mental health treatment, which could reduce the numbers of those entering prison by as much as 25 percent. The Acting Secretary of Corrections stated CSG has collaborated with KDOC to examine the criminal justice system and would be able to assist the Commission with determining potential savings, outcome projections, or both.

Commission members also briefly discussed prison overcrowding, county jails, prison alternatives, funding for public defenders, pre-conviction programs, and methamphetamine abuse.

Discussion of the 3Rs Report

The Chairperson opened the discussion on the 3Rs Report. Ms. Mechler stated many topics discussed today were discussed in the report. The Chairperson asked staff to identify relevant portions from the 3Rs Report for each subcommittee.

Other Matters

The Chairperson asked for discussion on other matters that should be brought to the attention of the Commission. A Committee member requested information on whether any Kansas communities or counties are planning to build new jails or make renovations to existing jails.

The Chairperson stated subcommittee reports would be discussed at the next meeting and asked the Executive Director of the Kansas Sentencing Commission and the Acting Secretary of Corrections to present on sentencing issues and recidivism rates at the next meeting.

Commission members discussed desired information, such as the uniformity and availability of community programming. Members noted certain subcommittees were examining the topic and other members stated legislation had also been considered. Members discussed the need for input from entities such as Valeo Behavioral Health Care, the League of Kansas Municipalities, and the Kansas Association of Counties.

October 28, 2019, Meeting

The Commission heard reports from each subcommittee.

Subcommittee Reports

Data Management

The Chairperson gave a report on the Data Management Subcommittee. He stated the Subcommittee worked to identify barriers between various criminal justice stakeholder information technology (IT) systems. He noted one challenge is making specific recommendations when there are differences between systems. He stated the group may request an audit by the Legislative Division of Post Audit to determine the makeup of various IT systems.

Diversion/Specialty Courts/Specialty Prisons/Supervision

Ms. Mechler stated the group held several meetings and she would plan to provide a summary of each of the work of each of the working groups. She stated the Subcommittee was working to develop a survey to further their understanding of the criminal justice system, but the group has not identified any “low-hanging fruit” at this point.

Ms. Williams provided the report on the Diversion Working Group. She stated the group has identified a number of diversion issues, concerns, and gaps in the system. She stated the group is working towards formulating specific recommendations for the preliminary report.

Ms. Mechler discussed the Specialty Courts Working Group. She stated the group has held one meeting to date, they obtained a list of each specialty court in the state, and the group is planning to attend a drug court session to observe the court’s work.

Ms. Mechler discussed the Specialty Prisons Working Group, noting the Attorney General is the chairperson of the group. Chief Ackerman stated the group would make specific recommendations to address bed space in existing facilities. Ms. Mechler also stated the group is planning to provide financial information to the Legislature.

Ms. Mechler also addressed the work of the Supervision Working Group. She stated the group met twice and has gathered information regarding the current supervision programs in the state. Ms. Williams noted the group has specifically examined cognitive behavioral intervention programs and have identified some gaps in community supervision, specifically in substance abuse treatment.

Mental Health/Substance Abuse

Representative Owens reported on the Mental Health/Substance Abuse Subcommittee. He stated the Subcommittee met most recently by telephone conference. He stated a presentation was made about community mental health centers (CMHCs). He stated the group also discussed the 2006 3Rs Report and decided to make a recommendation for an audit to develop an inventory of mental health

and substance abuse initiatives across Kansas. He stated the information would help the group determine gaps in the system.

Proportionality/Sentencing

Chief Ackerman stated the Proportionality/Sentencing Subcommittee met and Sentencing Commission staff presented proposed legislation related to proportionality in sentencing. Some of the Sentencing Commission's specific recommendations included modifications to an increase in Good Time credit, and reclassification of certain drug crimes. He stated the Subcommittee discussed a proposal of early discharge for non-violent drug offenders and the use of inpatient facilities for certain inmates.

Reentry

Representative Finney reported on the Reentry Subcommittee. She stated the Subcommittee met four times since the Commission began its work. She stated the Subcommittee spent time learning about reentry and held discussions with the Acting Secretary of Corrections and another representative of KDOC.

Representative Finney stated the group decided to address driver's license issues for those released from incarceration. She further noted her group heard testimony that possessing a driver's license enables offenders to obtain a job, which is a requirement of parole. She stated the Subcommittee is proposing a reduction of fees and penalties for those found to be driving on a suspended license. The group reached out to various stakeholders for comment on the proposal.

Professor Phillips also commented on the suspended license topic. She noted persons who are found to be driving without a valid license are currently suspended from driving for 90 days after paying a fine. She stated the group may propose to do away with the 90-day suspension, which would allow those who have paid their fine to be able to drive immediately.

Overview—Kansas Sentencing Commission

The Executive Director of the Kansas Sentencing Commission gave a presentation. He stated the group is made up of a cross-section of the criminal justice community. He discussed the

work of the Sentencing Commission and noted the agency:

- Tracks and provides prison bed impact statements for all legislation with criminal justice implications;
- Makes various presentations to legislative committees;
- Is actively involved with the House Committee on Corrections and Juvenile Justice, the House Committee on Judiciary, and the Senate Committee on Judiciary;
- Maintains many criminal justice databases with records from the KDOC and Kansas Bureau of Investigation (KBI);
- Prepares an annual report and Desk Reference Manual;
- Administers the 2003 SB 123 substance abuse treatment program; and
- Answers research requests and staffs a hotline.

The Executive Director discussed the creation of the Sentencing Commission and stated it is charged with the development and maintenance of uniform sentencing guidelines. He noted the Sentencing Commission is required by law to make recommendations annually if the prison population is within two years of being at capacity.

The Executive Director discussed the annual report and certain statistics. He noted an increase of 432 felony sentences in 2018 with drug-related offenses being the most prevalent overall. He discussed the demographics of the prison population and noted African Americans are overrepresented in the incarcerated population. He also stated the median age of Kansans is 36.3 years old, which is reflected in the prison population with the highest age cohort being between age 31 and 40 years old. He stated the counties of Johnson, Sedgwick, Shawnee, and Wyandotte account for 46 percent of crimes committed in the state.

The Executive Director discussed legislative proposals that would be made by the Sentencing Commission, including:

- Increasing Good Time credit up to 50 percent;
- Allowing early discharge from probation;
- Removing drug offenders from the state registry;
- Decreasing penalties for certain drug possession crimes;
- Amending criminal penalties for tampering with electronic monitoring equipment;
- Funding a pre-trial substance abuse diversion program;
- Increasing felony loss thresholds for certain property crimes;
- Allowing compassionate release;
- Addressing mandatory minimums for certain misdemeanor crimes; and
- Allowing early discharge for drug offenders after completion of at least 50 percent of their sentence.

He stated there should be a two-step approach to treating drug offenders and recommendations should include provisions to save prison beds and treat offenders after release.

Commission members discussed early discharge. The Executive Director indicated persons participating in drug court programs would not likely receive the 50 percent reduction to allow them to complete the program.

Overview—KDOC

The Acting Secretary of Corrections gave a presentation on KDOC and particular stresses on the system. He stated both male and female prison

populations are increasing and the agency needs to add more beds. He stated KDOC has considered repurposing a unit at the Kansas Juvenile Correctional Complex, opening a unit at the former Larned Juvenile Correctional Facility, or new construction at the Topeka Correctional Facility to address the growing population of female inmates. He noted an additional issue to consider when adding beds is whether the facility can be adequately staffed.

Addressing the male population, the Acting Secretary stated KDOC has examined buildings adjacent to the Winfield Correctional Facility, former honor camps at Toronto and Eldorado, the former Larned Juvenile Correctional Facility, and units at Lansing Correctional Facility (LCF). He also stated KDOC has contracted with certain Kansas counties to house inmates and with Saguaro Correctional Center in Arizona. He provided an update on the LCF construction project, stating 2,400 replacement beds are scheduled to be open in 2020.

The Acting Secretary next discussed particular services offered by KDOC. He noted approximately 98 percent of offenders would return to the community, so KDOC emphasizes services in order to combat recidivism. He stated recidivism has been reduced from 55.0 percent to 34.0 percent since 2001. He noted 75.0 percent of those released need job services, such as GED programs and vocational training; substance abuse and recovery services; and programming to address criminal thinking.

The Acting Secretary also discussed staffing issues, including retention. He stated the pay increase approved by the Legislature is helping to retain existing staff and hire new staff. He noted KDOC was recently able to end mandatory 12-hour shifts at El Dorado Correctional Facility, although overtime is still an issue.

The Acting Secretary indicated release centers can be helpful to individuals who may not have the support or resources needed to succeed after reentering the community. He stated work release programs may be a topic the Commission could study.

Review and Discussion of 2006 3Rs Committee Work

KLRD staff presented an overview of the history and reports of the 3Rs Committee, which was established by the 2004 Legislature and charged with similar tasks as the present Commission. The 3Rs Committee formed three subcommittees to accomplish its work: recodification, behavioral health, and reentry. Staff noted in addition to filing reports with the Legislature in 2005 and 2006, the 3Rs Committee also established the Kansas Reentry Policy Council and conducted a statewide Policy Conference on Offender Reentry.

Staff stated the 2006 3Rs Committee Report noted the 2005 Legislature had appropriated significant funding for reentry initiatives in Sedgwick and Wyandotte counties. The 2006 Report also noted a number of issues the 3Rs Committee had encountered that had prevented it from fully accomplishing its work. Staff noted while the 2006 Legislature did extend the time for submission of a final 3Rs Report until January 2007, and records indicate 3Rs activity continued throughout 2006, there is no record of a final 2007 report ever being completed and submitted. Staff noted the work of the 3Rs recodification subcommittee was continued and completed through the establishment in 2007 of the Kansas Criminal Code Recodification Commission and the adoption by the 2010 Legislature of the recodified Criminal Code produced by this Recodification Commission.

Staff noted the recommendations included by each of the 3Rs subcommittees in the 2006 Report. Commission members requested staff attempt to identify legislation that may have resulted from the 3Rs Committee work, and also requested more information regarding the Sedgwick and Wyandotte counties reentry initiatives funded by the 2005 Legislature.

Discussion of Goals and Recommendations for the Interim Report

Commission members discussed the process for their report. A Commission member discussed concerns with debt collection courts and a request for the Commission to include a public defender. A Commission member stated he had conducted a survey on county jails and found there are 97

county jails in the state. He noted of the 47 responses received, 25 sheriffs indicated their jails are at or near capacity. He also discussed jail construction and cost-sharing with municipalities.

PRELIMINARY RECOMMENDATIONS

Each subcommittee was asked to develop its own recommendations for approval by the full Commission and to include these recommendations in a subcommittee report (attached to this report as Appendix C).

At its November 25, 2019, meeting, the Commission discussed and approved, except as noted, the following preliminary recommendations based upon the subcommittees' proposals. In some cases, the Commission modified the wording of the recommendation.

The Commission notes these are preliminary recommendations it believes the Legislature should act upon during the 2020 Session. As it continues its work, the Commission will continue to consider many of the topics covered by these recommendations and may have further recommendations with regard to these topics.

[*Note:* Due to the timing of the meeting and the report deadline of December 1, as well as the drafting and approval process, additional details regarding the November meeting could not be included in this report. This information may be found in the minutes for the November 25 meeting and will be included in the Commission's report to the 2021 Legislature.]

Data Management

- A request for proposal (RFP) should be issued as soon as possible for a comprehensive assessment relating to the current state of data sharing across Kansas agencies;
- The RFP should specify either independent academic, and/or independent non-profit technical assistance be sought to work alongside existing state agencies and systems.

Diversion/Specialty Courts/Specialty Prisons/Supervision

The Subcommittee chose to organize four working groups: diversion, supervision, specialty courts, and specialty prisons.

Diversion

- The Legislature should consider 2019 HB 2292 with certain proposed amendments. [Note: See the HB 2292 bill draft in Appendix C. Instead of adopting this subcommittee's specific recommendation, the Commission adopted the Mental Health/Substance Abuse Subcommittee's general recommendation with regard to HB 2292.]

Specialty Courts

No recommendations were made.

Specialty Prisons

In adopting the following recommendations regarding specialty prisons, the Commission noted the highest priority among these specialty prison recommendations should be addressing substance abuse:

- Funding and authority for KDOC to repurpose/renovate an existing building within the correctional facility system, or another State-owned facility, to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system should be authorized;
- Funding and authority for KDOC to repurpose/renovate an existing building within the correctional facility system, or another State-owned facility, to provide approximately 200-250 male beds for substance abuse treatment should be authorized;
- Funding and authority for KDOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment should be authorized;

- The recommendations of the Mental Health Task Force Reports, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings should be adopted;
 - Maintain at least the current number of beds in Osawatimie State Hospital (OSH) and Larned State Hospital (LSH) and add 36-60 additional regional or state hospital beds within 24 months;
 - Within five years, add up to a total of 22 new regional or state hospital beds, including those added in the first 24 months;
 - Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and number of licensed beds; and
 - End the moratorium on admissions to OSH that has been in place since June 2015.

Supervision

- The Kansas Association of Court Services Officers' legislative initiative to amend KSA 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a Certification of ID to offenders under their supervision, be presented as one form of identification for obtaining a replacement driver's license should be considered.

Mental Health/Substance Abuse

- An inventory of all major initiatives developed and funded at local and state levels to improve outcomes with offenders with mental illness and/or substance use disorders within and prior to entering the criminal justice system should be conducted;

- The purpose of the study would be to identify effective strategies for coordinating community mental health and substance abuse treatment with the criminal justice system; and
- This study should evaluate existing local programs, such as crisis intervention teams, jail diversion, and integrated case management approaches to treatment of offenders;
- HB 2292 was introduced to the House Judiciary Committee during the 2019 Legislative Session. This bill would have expanded SB 123 money to diverted defendants, instead of only convicted offenders, to allow them to enter state-paid substance abuse treatment. This legislation was tabled by the Judiciary Committee. It is the recommendation of this Commission that this bill be revisited and the stakeholders should work together to find a workable solution to allow certified substance abuse treatment prior to conviction; and
- Funds during the 2020 Legislative Session that can be spent on regional treatment beds during FY 2021 should be identified and earmarked. [*Note:* Instead of adopting this subcommittee recommendation, the Commission adopted the Diversion / Specialty Courts / Specialty Prisons / Supervision Subcommittee's recommendations with regard to treatment facilities.]

Proportionality/Sentencing

- The penalties for crimes classified as drug grid level five should be revised to be similar to nondrug grid level eight;
- Unlawful tampering with an electronic monitoring device should be reclassified

from a level six crime to a level eight crime;

- The felony loss threshold should be increased from \$1,000 to \$1,500 on certain property crimes [*Note:* See 20 RS 1899 in Appendix C];
- Domestic battery qualifying prior convictions should be revised to include prior convictions with a domestic violence designation; and
- Pre-trial substance abuse programs should be implemented statewide. [*Note:* Instead of adopting this subcommittee recommendation, the Commission adopted the the Mental Health/Substance Abuse Subcommittee's recommendation with regard to HB 2292.]

Reentry

- Kansas Department of Revenue Form DC-1020 and fees associated with restricted licenses should be revised such that the fee is not paid before the person knows if they qualify for a restricted license;
- The mandatory 90-day suspension period that accompanies reinstatement should be amended;
- One reinstatement fee should be permitted per suspended license case number; and
- Courts should be permitted to waive mandatory fines and fees for indigent persons charged with traffic infractions.

Other Recommendation

The Commission recommends the Legislature authorize the addition of a public defender as a member of the Commission.

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Appendix A

Kansas Criminal Justice Reform Commission Interim Report

December 1, 2019

To: Kansas Legislature
Re: Interim Report
Pursuant to HB 2290

Interim Report

Members of the Kansas Legislature,

During the 2019 legislative session, HB 2290 established the Kansas Criminal Justice Reform Commission. The bill further directed the Commission to “prepare and submit its interim report to the legislature on or before December 1, 2019.”

At the second Commission meeting, held in September, the Commission identified the goals of the interim report as follows:

First, setting forth the steps undertaken thus far by the Commission;

Second, recognizing that the final report from the Commission is not due until December 1, 2020, the Commission identified the need early in this process to identify--where possible—legislation to be introduced in the upcoming 2020 Kansas Legislative session; and

Third, identifying a “road map” forward to provide legislators some notice as to where the Commission’s recommendations may lead. Where possible attention is to be paid to identifying any fiscal impact associated with the implementation of specific systems improvements.

It has become clear that, given the relatively short period of time the Commission has to address a subject matter as complex and far-reaching in scope as criminal justice reform, the substantive work of the Commission will be accomplished in various subcommittees.

Accompanying this document, you will find the interim report of each respective subcommittee. To accomplish the goals set forth above, each sub-committee has been asked to include the following in their respective reports:

1. The subcommittee's sense of the topics/issues the committee members expect to address during the course of the Commission's work;
2. Any observations the committee members want to memorialize regarding the process that lies ahead for their respective sub-committee;
3. Specific recommendations for action to be taken in the upcoming 2020 legislative session;
4. Any appendices detailing any other matters they believe appropriate to include in their respective interim report.

Early Success

The various subcommittees have identified several opportunities for legislation in the upcoming 2020 session. These suggestions are worth noting here as they represent early opportunities to take positive steps toward achieving the ultimate goals of the Commission.

Examples include:

1. Legislation to amend certain, specific statutes to enhance proportionality in drug cases and property crimes cases.
2. Legislation to approve the implementation of a pre-trial substance abuse program, consistent with HB 2292 from the 2019 Kansas legislative session.
3. Legislation to authorize the funding and authority for DOC to repurpose/renovate an existing building within the correctional facility system to provide

approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system

4. Authorize the funding and authority for DOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
5. Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment
6. Adopt the recommendations of the Mental Health Task Force Report (MHTFR), as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings (details set forth in the report);
7. Support the Kansas Court Services Officer's Association's legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a Certification of ID to offenders under their supervision.
8. Legislation to request an RFP to be issued early in the 2020 session to conduct a comprehensive assessment relating to the current state of data sharing across criminal justice stakeholder agencies in Kansas.

Conclusions

In 2006, the 3R Committee, a prior criminal justice committee assembled by the Kansas Legislature, delivered a portion of its recommendations to the legislature. The committee, so

named for its focus on Recodification, Rehabilitation and Restoration, identified many of the same issues 13 years ago that plague our criminal justice system today. For reasons that are not entirely clear in hindsight and arguably irrelevant today, the only portion of that commission’s final report that resulted in substantive change to the Kansas criminal justice system was “recodification” of the criminal code. Had other issues identified by that Commission—namely, access to mental health and addiction treatment as well as expanded services for re-entry into society post-incarceration—been adequately addressed in 2006, it is entirely likely that the issues that served as the impetus for the current Justice Reform Commission could have been significantly ameliorated.

We will have no difficulty identifying the issues that need to be addressed. That work is in progress. While the Commission is confident it can deliver substantive ideas for improvement by the end of the Commission’s charge. The most difficult task will be the identification by the legislature of the requisite funding streams necessary to systematically implement the recommendations. To be clear, there will simply and unavoidably be a price tag associated with this effort if meaningful change is the expected outcome of this Commission’s work.

Respectfully Submitted this 1st Day of December, 2019.

Marc Bennett
Chair

Stephen Owens
Vice Chair

Appendix B

2019 Kansas Criminal Justice Reform Commission

Subcommittee Membership

* denotes chairperson

Data Management

Jennifer Baysinger*
Marc Bennett
Sheriff Bill Carr
Senator Rick Wilborn
Scott Schultz (*ex officio*)

Diversion / Supervision / Specialty Courts / Specialty Prisons

Chris Mechler*
Chief Todd Ackerman
Hon. Glenn Braun
Hon. Marty Clark
Representative Gail Finney
Tabitha Owen
Shelly Williams
Attorney General Derek Schmidt (*ex officio*)
Acting Secretary Jeff Zmuda (*ex officio*)

Mental Health and Drug Treatment

Representative Stephen Owens*
Professor John Francis
Bill Persinger
Pastor Adrion Roberson
Brenda Salvati
Scott Schultz (*ex officio*)

Proportionality / Guidelines

Chief Todd Ackerman*
Sheriff Bill Carr
Chris Mechler

Proportionality / Guidelines cont.

Tabitha Owen
Senator Rick Wilborn
Scott Schultz (*ex officio*)

Reentry

Representative Gail Finney*
Jennifer Baysinger

Reentry cont.

Sylvia Penner

Professor Jean Phillips

Shelly Williams

Acting Secretary Jeff Zmuda (*ex officio*)

Appendix C

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Data Management Task Force Subcommittee Report

1. Overview

Criminal justice reform is focused on innovative and evidence-based efforts to reduce costs and achieve improved outcomes in the justice system while holding individuals involved in criminal activity accountable, ensuring increased public safety. Often, reform efforts are aimed at programs, but to gain the insights needed to improve the understanding of individuals and their situational risks and needs, to identify information needed for sentencing, treatment and custody decisions, and to measure long-term impact and outcomes, Kansas agencies need access to comprehensive, reliable and consistent data.

2. Observations

The urgent need for comprehensive data integration has been discussed among departments throughout the state for many years with multiple efforts, yet little success. These needs apply at the county level, too.

Major barriers identified include:

- IT departments, where they exist, are already stretched thin
- Different platforms and operational systems already in place
- Rural and small agencies lack modern technology
- Various rules and perceptions about what data can and can't be shared (HIPPA)

Situational successes are limited, but include examples such as:

- Data dumping information available for cross referencing
- Embedding bridge positions; using employees of other agencies to office in KDOC and access data for case management of offenders
 - Example: For several years, a DCF employee was housed in the Wichita Parole Office and accessed all data systems relating to TANF, child support, benefits...etc. providing it to case managers, as needed and allowed.
 - Example: A similar position existed at El Dorado Correctional Facility's admissions unit. Incoming offenders were assessed on issues relating to child support (paternity issues...etc.). Per KDOC, payment of child support in these instances was increased by 10%.

These hodge-podge efforts do not constitute a long term, effective solution. To support accurate, evidence-based decisions, Kansas needs an end-to-end platform that enables a broader adoption of advanced data management, analytics and data visualization. This framework should incorporate data elements from different sources to develop a comprehensive picture of an individual in the criminal justice system – not only involving their history with the criminal justice system, but also social services, economic and education data, health information (as allowed), and more.

3. Recommendation for Action Now

The Data Management Subcommittee quickly agreed a full overview of the current data systems in Kansas is imperative. In line with the current administration's commitment to transparency, an RFP should be issued as soon as possible for a comprehensive assessment relating to the current state of data sharing across Kansas agencies.

The RFP should specify either independent academic, and/or independent non-profit technical assistance be sought to work alongside existing state agencies and systems. The only way to accurately assess, map, and evaluate the current state of data in Kansas is to seek independent review and concurrent comparison to those states which have already begun grappling with this problem.

It's time for action. Cross-jurisdictional information is not always shared. As a result, information from an individual's prior contact(s) with one component of the criminal justice system that may be relevant to the individual's culpability, drug or mental health treatment needs, family history, risk to the community or ties to the community may be unavailable to other stakeholder. This can affect bond conditions, charging decisions, restitution or child support payments, conditions of probation and parole, officer safety and the decisions made by DCF, police and the court-system related to the welfare of children.

**Diversion, Specialty Courts, Specialty Prisons, and Supervision Subcommittee
Report to the Kansas Criminal Justice Commission
Marc Bennett, Chairperson
Representative Stephen Owens, Vice-chairperson**

I. Introduction

The Diversion, Specialty Courts, Specialty Prisons, Supervision subcommittee was appointed by Criminal Justice Reform Commission (CJRC) Chairman Marc Bennett to address specific issues identified in section 2(b) of 2019 HB 2290. The subcommittee has held meetings on September 13 and 20, 2019; October 23, 2019; and November 14, 2019.

II. Subcommittee Members

Chris Mechler, Chair (Judicial Branch Court Services)
Chief Todd Ackerman (Police Chief Representative)
Honorable Glenn Braun (District Judge)
Honorable Marty Clark (District Magistrate Judge)
Tabitha Owen (County Attorney from a Rural Area)
Shelly Williams (Community Corrections Representative)
Representative Gail Finney (Legislative Member)
Attorney General Derek Schmidt (Agency Ex-Officio)
Acting Secretary Jeff Zmuda (Department of Corrections) (Agency Ex-Officio)

III. Organization and membership of Working Groups

The subcommittee decided to divide the tasks into working groups as detailed below. Each working group held regular meetings to discuss the individual topic area. The working group reports are attached to this report.

A. Diversion: 2019 HB 2290 Section 2(b)(3)

Members: Shelly Williams, Chair; Honorable Marty Clark; Attorney General Derek Schmidt

Topic: Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of a statewide diversion standards.

B. Specialty Courts: Section 2(b)(5) of 2019 HB 2290

Members: Hon. Glenn Braun, Chair; Tabitha Owen, Chris Mechler

Topic: Study specialty courts and make recommendations for the use of specialty courts throughout the state.

C. Specialty Prisons: 2019 HB 2290 Section 2(b)(7)

Members: Attorney General Derek Schmidt, Chair; Chief Todd Ackerman; Acting Secretary Jeff Zmuda

Topic: Study the policies of the department of corrections for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare and substance abuse facilities.

D. Supervision: 2019 HB 2290 Section 2(b)(4) and (5)

Members: Shelly Williams, Chair; Hon. Glenn Braun; Hon. Marty Clark

Topic: Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision; and survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming.

IV. Recommendations for legislative action in the 2020 session

Although we have much work ahead and have identified a number of issues and topics for additional study and consideration, it is already clear to us at this point that we have a set of recommendations we believe are ripe for legislative action now, in the 2020 Legislative Session. Here are those recommendations:

A. The Diversion Workgroup recommends that the Commission endorse the following legislative initiative during the 2020 Legislative Session:

1. 2019 HB 2292 as introduced with amendments. The proposal is included with the diversion workgroup report.

B. The Specialty Prisons Workgroup endorses the following legislative initiatives:

1. Authorize the funding and authority for DOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
 - Estimated cost of renovations: \$9-10 Million.
 - Estimated cost of operation: \$8.3 Million.
2. Authorize the funding and authority for DOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
 - Estimated cost of renovations: \$3.5-4.5 Million.
 - Estimated cost of operation: \$4.1 Million/200 beds.
3. Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment.
 - Estimated cost of building: \$20.7 Million.
4. Adopt the recommendations of the Mental Health Task Force Report (MHTFR), as provided to the 2018 and 2019 Legislatures, to implement and fund a

comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.

- i. Maintain at least the current number of beds in Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) and add 36 to 60 additional regional or state hospital beds within 24 months. Budget: Assuming full occupancy, with all-funds costs of \$407 to \$936 per bed per day: \$5.3 million to \$12.3 million a year for 36 beds, up to \$8.9 million to \$20.5 million for 60 beds.
 - ii. Within five years, add up to a total of 221 new regional or state hospital beds, including those added in the first 24 months. Budget: Up to an additional \$23.9 million to \$55 million a year, all funds, assuming full occupancy and 60 beds added in first two years.
 - iii. Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and the number of licensed beds. Budget: Addressing staffing, shrinkage and contract labor will cost between \$10.8 million and \$11.3 million a year, all funds.
 - iv. End the moratorium on admissions to OSH that has been in place since June 2015. Budget: \$764 to \$936 per bed per day, based on FY 2018 OSH and Adair Acute Care per diem rates.
- C. The Supervision Workgroup recommends that the Commission endorse the following legislative initiatives during the 2020 Legislative Session:
1. Support the Kansas Court Services Officer's Association's legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a Certification of ID to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver's license. (b)(17) an identification certificate issued by a court services or community corrections agency to an offender under the probation supervision of the community corrections agency.

Attachments:

- A. Diversion Working Group Report
- B. Specialty Courts Working Group Report
- C. Specialty Prisons Working Group Report
- D. Supervision Working Group Report

Attachment A

Diversion Working Group Report

November 18, 2019

Diversion Working Group:

- Shelly Williams, Chairperson
- Honorable Marty Clark
- Attorney General Derek Schmidt

Diversion Workgroup Interim Report

The Diversion Workgroup, a workgroup of the Diversion/Specialty Courts/Specialty Prisons Subcommittee, has met four times since the convening of the Kansas Criminal Justice Reform Commission on August 28, 2019. The Workgroup was charged with addressing Section 2 of 2019 HB2290 (b) (3) “Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of a state-wide diversion standards.” The Diversion Workgroup members were Honorable Marty Clark, 20th Judicial District Magistrate Judge, Jessica Dome, Assistant Attorney General, and Shelly Williams, Director, Riley County Community Corrections.

The Diversion Workgroup, in order to analyze diversion programs utilized throughout the state, determined that a comprehensive survey was needed to fully assess the current state of diversions in Kansas. It was further determined that more time was needed to create a survey for diversion programs, and that this is something that should be undertaken in 2020.

The Diversion Workgroup, in order to make recommendations with respect to expanding diversion options and implementation of state-wide diversion standards, again determined that we needed a more complete picture, including data from existing diversion programs. There are lots of gaps in available data, as some diversions are monitored by prosecuting attorneys and some by Court Services agencies.

The Diversion Workgroup, understanding that 2019 HB2292 is an active bill in the House Judiciary Committee, and that the Kansas Sentencing Commission voted to support their previous version, 2017 HB2087, similar to 2019 HB2292.

The Diversion Workgroup along with the Pretrial Justice Task Force, preliminarily agree that State funds should be earmarked and made available for evaluation and drug treatment for use by persons in diversion programs for certain drug-related offenses.

Initial Findings

FY 2019	1,469	offenders sentenced to SB123 Mandatory Drug Treatment
FY 2018	981	offenders were granted diversion according to the Office of Judicial Administration Annual Report
	263 or 26.8%	of those offenders were charged w/ a SL5 Drug Offense

Fiscal Impact

FY 2021	IF SB123 Drug Treatment Offenders Increased by:	
	25 offenders	\$92,840.00
	50 offenders	\$185,681.00
	75 offenders	\$275,520.00

The Diversion Workgroup recommends that the Commission endorse the following legislative initiatives during the 2020 Legislative Session:

- 2019 HB 2292 as introduced with amendments (See attached.)

The Diversion Workgroup identified several issues where it may be appropriate to make policy and/or legislative recommendations, however additional information needs to be collected and analyzed in 2020. Action may not be forthcoming on all, and as the Workgroup studies the topic of Diversion, other recommendations may surface.

- Should there be diversion state standards?
- Current law limits offenses eligible for diversion
- Should pre-file diversions be allowed?
- Should there be a policy that requires all misdemeanor offenders be offered a diversion?
- Should diversions be allowed to be processed through Drug Courts?
- Should there be a policy that mandates specific crimes be offered a diversion?
- What offenses are off limits?
- What offenses should be limited?
- Should DV diversions have to complete BIP?
- How many diversions should domestic battery offenders receive?
- Should waiving of fees be a required option based on some defined indigence criteria?
- Should there be mandatory fines for certain diversion offenses?
- How has the diversion mandate in the juvenile justice system impacted local jurisdictions? The offender?

Other items that were identified as concerns by the Workgroup include:

Concern: What strings become attached if state resources are made available to local programs?

Concern: Standardizing diversions eliminates the ability of elected officials, seen as the ones best suited to determine the best interests of justice for the local community, to make decisions.

Concern: Given that diversions are locally administered and controlled, attempts to change such control could create friction.

Concern: Diversion money currently collected and used locally could be swept.

Concern: Diversion indigence is not assessed across the State

Concern: Are we equal in justice based on who can afford a diversion?

Concern: How do we serve all offenders eligible for a diversion who cannot afford the costs?

As we look to the next steps, we need to gather information such as what procedures are in-place with existing cooperative agreements to assist other communities state-wide. We need to receive input from OJA and Court Services who may currently be administering diversion programs. In addition, the membership of the Workgroup needs to be expanded to include Court Services programs who operate a diversion program, a County/District Attorney from both rural and urban areas, a Drug Court program, to name a few.

The Diversion Workgroup reviewed Sedgwick County District Attorney Marc Bennett's 2019 HB 2292 proposed diversion bill and corresponding testimony, the 2017 Kansas County/District Attorney's Association (KCDAA) Diversion Survey, Kansas' existing diversion statutes, the Center for Health & Justice At TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, (December 2013), and Georgia's Code 15-1-15 Drug Court Divisions.

Respectfully submitted,

The Diversion Workgroup

2019 HB 2292 As Introduced with Below Amendments

(Recommended amendments are either underlined or struck through.)

Insert County before District Attorney

K.S.A. 21-6824

(b)(2) a criminal risk-need assessment. The criminal risk-need assessment shall assign a low, moderate or high risk status to the offender.

(c)(2) If the defendant being considered for a diversion agreement is assigned a high risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1), a low risk status overall and a moderate to high risk status in an alcohol/drug problem subscale, as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2), the diversion agreement shall require the divertee to comply with and participate in a drug abuse treatment program. The term of treatment shall not exceed 18 months and shall be paid by SB123 funds.

(d)(1) Offenders ~~or divertees~~ who are committed to a drug abuse treatment program pursuant to subsection (c)(1) shall be supervised by community correctional services according to evidence-based practices.

(d)(1)(a) Offenders or Divertees who are committed to a drug abuse treatment program pursuant to subsection (c)(2) shall be supervised by court services according to evidence-based practices.

K.S.A. 22-2907

(d) A district attorney may enter into a memorandum of understanding with Court Services ~~or Community Correctional Services~~...

(3) payment of costs for supervision in the amount of \$100; and

(4) any costs incurred as a result of urinalysis testing; and

(5) Determination of divertees ability to pay shall be made taking into account the financial resources utilizing a standardized Application and Affidavit of Indigency to be adopted by the Board of Indigent Defense Services, and the Federal Poverty Level Guidelines.

Sec. 3. K.S.A. 2018 Supp. 22-2909

(1) Payment of restitution, including court costs and diversion costs not to exceed \$100, or the average, if convicted, of the misdemeanor and felony supervision fees established in K.S.A. 21-6607.

(5) supervision by the county or district attorney, or by Court Services or Community Correctional Services pursuant to a memorandum of understanding entered into by the County or District Attorney pursuant to K.S.A. 22-2907(d), and amendments thereto, and payment of costs associated with such supervision not to exceed \$100, plus any actual costs incurred as a result of urinalysis testing.

Sec. 4. K.S.A. 2018 Supp. 75-5291

(5) Nothing in this act shall prohibit a community correctional services program from providing services to offenders pursuant to a memorandum of understanding entered into by a community correctional

~~services program and a county or district attorney pursuant to K.S.A. 22-29017(d), and amendments thereto.~~

Sec. 5 K.S.A. 2018 Supp. 75-52,144

(b)(1) Presentence drug abuse assessments of any person who is convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2018 Supp. 21-5706, and amendments thereto, and meetings the requirements of K.S.A. 21-4729, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2012 Supp. 21-6821, and amendments thereto;

(b)(1)(a) Drug abuse assessments of any person being considered for a diversion agreement in lieu of further criminal proceedings for a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2018 Supp. 21-5706, and amendments thereto, and meetings the requirements of K.S.A. 21-4729, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2012 Supp. 21-6821, and amendments thereto;

(b)(5)(b) The presentence criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer. The criminal risk-need assessment of any person being considered for a diversion shall be completed by a Court Services Officer. The presentence and diveree drug abuse treatment program...

~~(d)(1) The Kansas Sentencing Commission shall contract for payment for such services with the supervising agency.~~

(e)(1) The Court Services staff shall work with the substance abuse treatment staff to ensure effective supervision and monitoring of the diveree.

Attachment B

Specialty Courts Working Group Report

November 18, 2019

Specialty Courts Working Group:

- Honorable Glenn Braun, Chairperson
- Tabitha Owen
- Chris Mechler

Specialty Court Working Group Report

The Specialty Courts working group was tasked to address section 2 of 2019 HB2290 (b)(5) study specialty courts and make recommendations for the use of specialty courts throughout the state. The working group was able to identify twenty-four specialty courts in Kansas which include truancy courts, behavioral health courts, youth courts, mental health courts, tribal healing to wellness courts, veterans' courts and drug courts. (see attached list) These courts were initiated at the local level and operate with no special funding by the legislature. Supreme Court Rules 109A and 109B govern the conduct of the courts and require compliance with the Best Practices Standards published by the National Association of Drug Court Professionals and other organizations. It is important to protect the independence of the specialty courts to preserve their unique qualities which are adapted to their local communities.

As a reference, there are over 3000 drug courts in the United States serving 150,000 people. Drug courts are the most successful justice program for reducing addiction, crime and recidivism while saving taxpayer dollars. (75% of treatment court graduates do not reoffend; \$13,000 saved for every treatment court participant) The committee recommends the legislature pass laws promoting the establishment of specialty courts throughout the state and to provide funding for existing courts.

The committee will study and obtain information from existing Kansas specialty courts with the goal of recommending legislation. The committee will explore the feasibility of implementing a pilot program to offer a specialty court in a rural judicial district. In addition, several other state programs for specialty courts are to be considered and will provide a guide for the enactment of future laws. The group has reviewed the executive summary of *The Council of Accountability Court Judges: Processes and Outcomes Report* for the State of Georgia in conjunction with the Georgia enabling statutes for development of specialty courts.

The committee may explore other procedures for processing criminal cases in specialty courts separate from the standard conviction-sentence-probation method. To properly conduct a treatment court, it is important to adhere to the standards set out by the national associations. This may require defendants serve a longer probation period than currently allowed by statute or as contemplated by proposed legislation.

The working group has no recommendations for legislation for the 2020 session.

Specialty Courts

COURT	Judicial District	COUNTIES SERVED	TYPE
3rd Judicial District Court	3	Shawnee	Adult Drug Court
4th Judicial District Court	4	Franklin	Juvenile Drug Court
4th Judicial District	4	Franklin	Truancy Court
5th Judicial District Court	5	Chase & Lyon	Adult Drug Court
5th Judicial District	5	Chase & Lyon	Home Court
7th Judicial District	7	Douglas	Behavioral Health Court
8th Judicial District Court	8	Geary	Adult Drug Court
10th Judicial District Court	10	Johnson	Juvenile Drug Court
10th Judicial District	10	Johnson	Veteran's Treatment Court
18th Judicial District Court	18	Sedgwick	Adult Drug Court
19th Judicial District Court	19	Cowley	Adult Drug Court
23rd Judicial District	23	Ellis	Drug Court
26th Judicial District Court	26	Seward	Truancy Court
27th Judicial District Court	27	Reno	Adult Drug Court
28th Judicial District Court	28	Saline	Adult Drug Court
29th Judicial District Court	29	Wyandotte	Adult Drug Court
29th Judicial District Court	29	Wyandotte	Behavior (Mental) Health Court
31st Judicial District Court	31	Allen, Neosho, Wilson, & Woodson	Adult Drug Court
Kickapoo Nation Tribal Court			Tribal Healing to Wellness Court
Prairie Band Potawatomi Nation Tribal Court		Jackson & Surrounding area	Tribal Healing to Wellness Court
Wichita Municipal Drug Court		Sedgwick	Adult Drug Court
Wichita Municipal Mental Health Court		Sedgwick	Mental Health Court
Topeka Alternative Sentencing Court		Shawnee	Mental Health Court

As of November 2019

Attachment C

Specialty Prisons Working Group Report

November 18, 2019

Specialty Prisons Working Group:

- Attorney General Derek Schmidt
- Chief Todd Ackerman
- Acting Secretary Jeff Zmuda

Specialty Prisons Workgroup Report

Held regular meetings:

September 24, 2019

October 18, 2019

November 12, 2019

The Specialty Prisons Workgroup (Workgroup), a workgroup of the Diversion/Supervision/Specialty Courts/Specialty Prisons Subcommittee (Subcommittee), has met three times since the convening of the Kansas Criminal Justice Reform Commission (Commission) on August 28, 2019. The Workgroup was guided by the statutory duties of the Commission to study the policies of the Department of Corrections (DOC) for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities. The Subcommittee provided the Workgroup with direction to identify the current status of specialty prisons in Kansas, any issues, concerns or gaps impeding progress, any resources needed to move forward, and goals to address any identified issues. The Specialty Prisons Workgroup members were Attorney General Derek Schmidt, Chief Todd Ackerman, Marysville Police Department, and Acting Secretary Jeff Zmuda, DOC.

The Workgroup discussed the current status of specialty prisons in Kansas. Sec. Zmuda identified potential specialty areas for Kansas to consider: (1) substance abuse treatment; (2) geriatric care; and (3) mental health care.

The Workgroup recognized statutory authority currently exists for placement of offenders in a substance abuse treatment center within K.S.A. 21-6804, K.S.A. 21-6805, and K.S.A. 8-1567(b)(2), but DOC does not have any substance abuse treatment centers available within the current correctional facility system. The Workgroup identified other gaps in system include: (1) the need for re-entry and transitional space within the system; (2) mental health population has special needs that need to be addressed; and (3) there is a need to provide specialized care for the geriatric prison population.

The Workgroup determined a need for financial resources to modify existing facilities or build a new facility to provide “specialty” treatment or care for specialized prisons populations. The Workgroup also determined an available labor force as a needed resource to staff specialized facilities.

The Workgroup requests the Subcommittee recommend the Commission endorse the following legislative initiatives during the 2020 Legislative Session:

- Authorize funding necessary for a “substance abuse treatment center” within the correctional facility system in order to give effect to statutory provisions adopted as part of the 3Rs Report;
- Authorize funding for modification of a facility to address the needs of the geriatric prison population; and
- Support the recommendations of the Mental Health Task Force as provided to the 2018 and 2019 Legislatures as the Mental Health Task Force Report (MHTFR).

Specifically, the Workgroup recommends the legislature:

- Authorize the funding and authority for DOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
 - Estimated cost of renovations: \$9-10 Million.
 - Estimated cost of operation: \$8.3 Million.

- Authorize the funding and authority for DOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
 - Estimated cost of renovations: \$3.5-4.5 Million.
 - Estimated cost of operation: \$4.1 Million/200 beds.
- Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment.
 - Estimated cost of building: \$20.7 Million.
- Adopt the recommendations of the MHTFR, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.
 - Maintain at least the current number of beds in Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) and add 36 to 60 additional regional or state hospital beds within 24 months.
 - Budget: Assuming full occupancy, with all-funds costs of \$407 to \$936 per bed per day: \$5.3 million to \$12.3 million a year for 36 beds, up to \$8.9 million to \$20.5 million for 60 beds.
 - Within five years, add up to a total of 221 new regional or state hospital beds, including those added in the first 24 months.
 - Budget: Up to an additional \$23.9 million to \$55 million a year, all funds, assuming full occupancy and 60 beds added in first two years.
 - Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and the number of licensed beds.
 - Budget: Addressing staffing, shrinkage and contract labor will cost between \$10.8 million and \$11.3 million a year, all funds.
 - End the moratorium on admissions to OSH that has been in place since June 2015.
 - Budget: \$764 to \$936 per bed per day, based on FY 2018 OSH and Adair Acute Care per diem rates.

Attachment D

Supervision Working Group Report

November 18, 2019

Supervision Working Group:

- Shelly Williams, Chairperson
- Honorable Glenn Braun
- Honorable Marty Clark

Kansas Criminal Justice Reform Commission Supervision Workgroup Interim Report

The Supervision Workgroup, a workgroup of the Diversion/Specialty Courts/Specialty Prisons Subcommittee, has met three times since the convening of the Kansas Criminal Justice Reform Commission on August 28, 2019. The Workgroup was charged with addressing Section 2 of 2019 HB2290 (b)(4) Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision, and (b)(6) “Survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming.” The Supervision Workgroup members were Honorable Glenn Braun, 23rd Judicial District Court Judge, Honorable Marty Clark, 20th Judicial District Magistrate Judge, and Shelly Williams, Director, Riley County Community Corrections.

The Supervision Workgroup, in order to review the supervision levels and programming available for offenders who serve felony offenses on community supervision, determined that a comprehensive survey was needed to understand available programming in Kansas. It was further determined that more time was needed to create a survey, and that assistance would be needed from CSG Justice Center and other state and national partners.

The Supervision Workgroup, in order to survey the availability of evidence-based programming for offenders in the community and to be able to make recommendations for changes in available programming, again determined that the Workgroup needed a more complete picture, including data from existing community supervision entities.

The Supervision Workgroup decided to capture a high level view of Court Services and Community Corrections supervision from readily available data sources to include, how many people on supervision, their risk levels, the distribution of their risk levels, caseload sizes, how many FTEs, both fully and partially state-funded positions, and how many PSI Reports are completed each year. (See attached.) The Workgroup also captured a high level view of evidenced-based programming currently provided by Community Corrections agencies. (See attached.)

The Supervision Workgroup recommends that the Commission endorse the following legislative initiatives during the 2020 Legislative Session:

- Support the Kansas Court Service Officer’s Association’s legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a Certification of ID to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver’s license.

(b)(17) an identification certificate issued by a court services or community corrections agency to an offender under the probation supervision of the community corrections agency.

The Supervision Workgroup identified several gaps where it may be appropriate to make policy and/or legislative recommendations, however additional information needs to be collected and analyzed in 2020. Action may not be forthcoming on all, and as the Workgroup studies the topic of community supervision, other recommendations may surface.

- Limited community-based intermediate sanctions including but not limited to, electronic monitoring, GPS, day reporting, and work and treatment release for condition violators
- Availability of resources in rural communities

- Availability of inpatient substance abuse treatment facilities state-wide
- Availability of wrap around services, including care coordination and peer support for offenders with mental health and substance abuse needs
- Availability of Batterer’s Intervention Programs state-wide to include state- level funding support
- Inability of BIP assessors to appropriately determine the risk level of domestic violence offenders based on lack of access to criminal history information

The Supervision Workgroup reviewed the US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Probation and Parole in the United States, 2016*, (April 2018), and the American Civil Liberties Union of Kansas, "Survey of Chief Court Services Officers & Directors of Community Corrections, Kansas" (*Fall 2019*).

As the Workgroup explores the next steps, we need to gather information such as what exists in communities across the state impacting community supervision. In addition, the membership of the Workgroup needs to be expanded to include Court Services and Community Corrections line-staff, a County/District Attorney from both rural and urban areas, and a Drug Court program, to name a few.

Respectfully submitted,

The Supervision Workgroup

Supervision Workgroup Interim Report Attachments

Community Supervision Landscape

During FY18, 8,142 probation sentences were reported to the Kansas Sentencing Commission, an increase of 208 sentences or 2.6% compared with FY 2017 (7,934 sentences).

Of this number, 4,522 were nondrug sentences and 3,620 were drug sentences.

Court Services

FY19 Adult Offender Data

Year-end caseload numbers (June 30, 2019)

Adult Supervision offenders total = 13,656

- 3,265 felony offenders
- 10,391 misdemeanor offenders

Adult Pre-Trial Supervision offenders total = 1,955

- 1,531 felony offenders
- 424 misdemeanor offenders

TOTAL Adults supervised by Court Services = 15,611

Reports for Court

Presentence = 16,351

- 14,616 felony PSI
- 1,735 misdemeanor PSI

Pre-Trial reports = 7,073

- 5,168 felony reports
- 1,905 misdemeanor reports

Community Corrections

FY19 Adult Offender Data

Year-end caseload numbers (June 30, 2019)

Adult Supervision Offenders Total = 8,284

- 4,195 or 49.8% moderate to high risk offenders
- 3,045 or 36.1% low to very low risk offenders
- 1,044 or 14.1% no risk level assigned

Adult Supervision Absconders Total = 2,024

Residential Total = 250

- Johnson County = 185
- Sedgwick County = 65

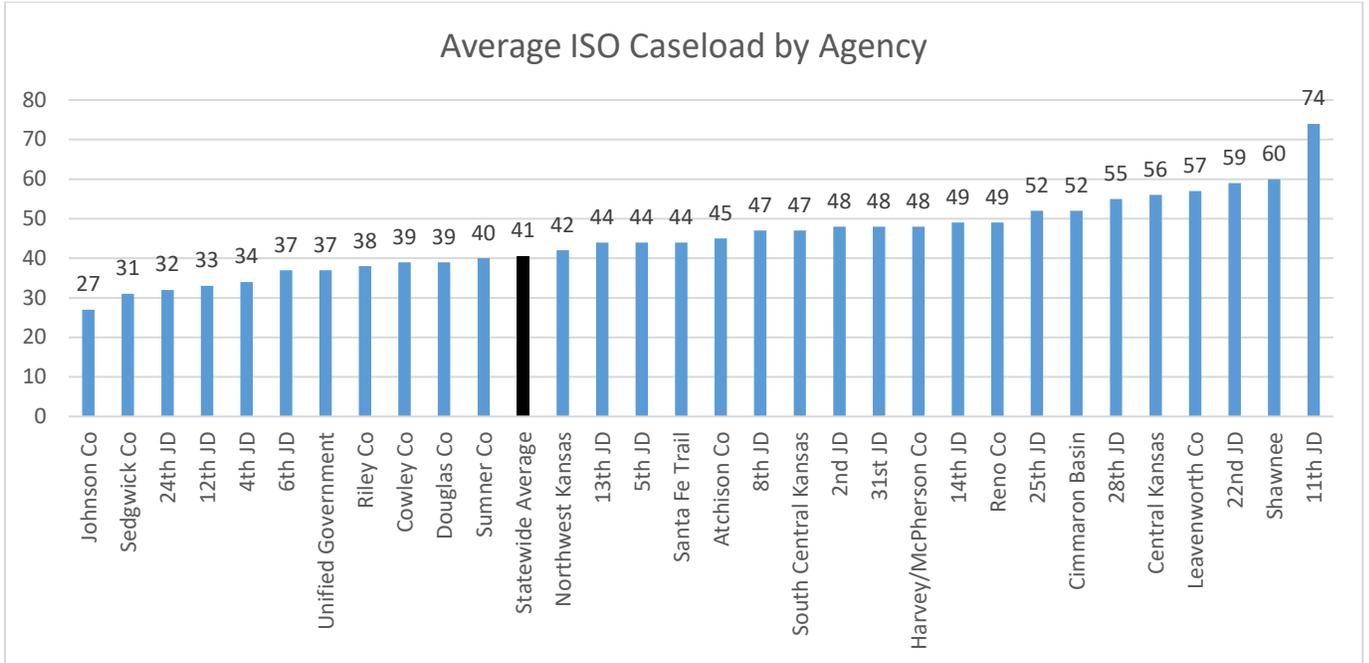
FY18 Outcomes

During FY18, 2,511 offenders were admitted into a cognitive-based intervention (15 different CBIs were offered during FY18)

- Of those, 1,448 or 58% completed the intervention successfully
- Of the 2,511 offenders admitted into a cognitive-based intervention, they were served by one of fifteen different CBIs. The following CBIs were offered in FY18: A New Direction, Batterer's Intervention Program, Crossroads, Courage to Change, Decision Points, Getting It Right, Getting

Motivated to Change, Intro to CBI, Change Companies Life Skills, MRT, MRT Job Readiness, SAP, Seeking Safety, Thinking for a Change and TruThought.

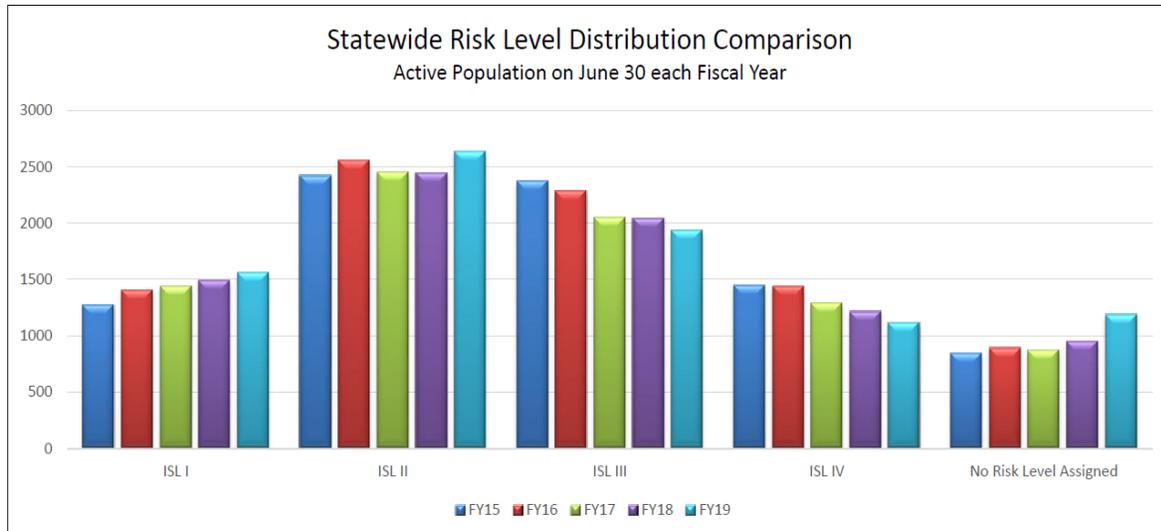
The average statewide Community Corrections caseload was 41 offenders per officer, with the highest caseload being 74 and the lowest 27. There are a total of 209 positions funding through Community Corrections state allocation.



TOADS caseload reports ran on 101019 (active cases only)

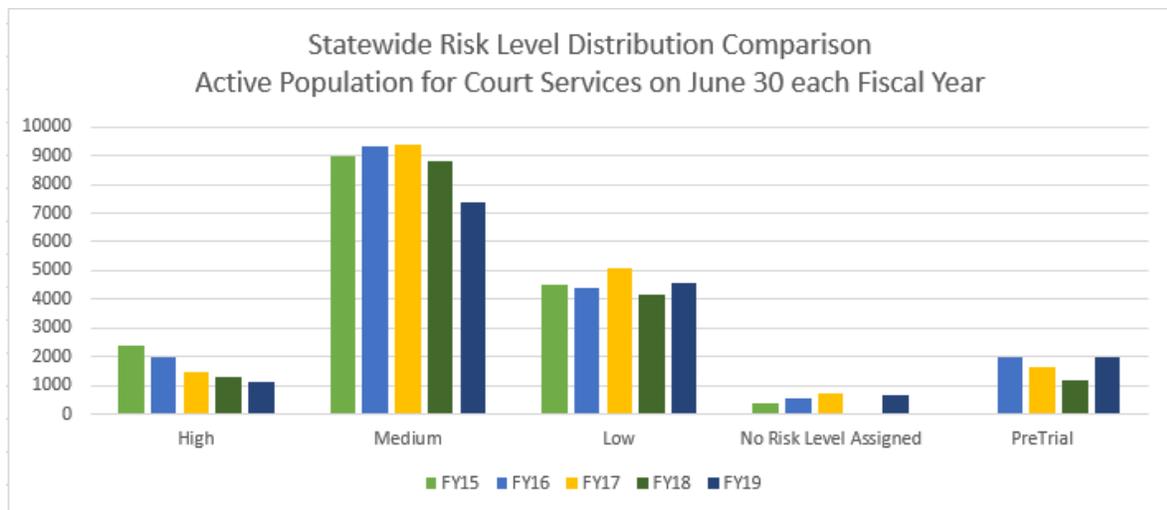
Jo Co numbers combined for ISP & ARC

Sg Co numbers combined for ISP, ARC & Drug Court

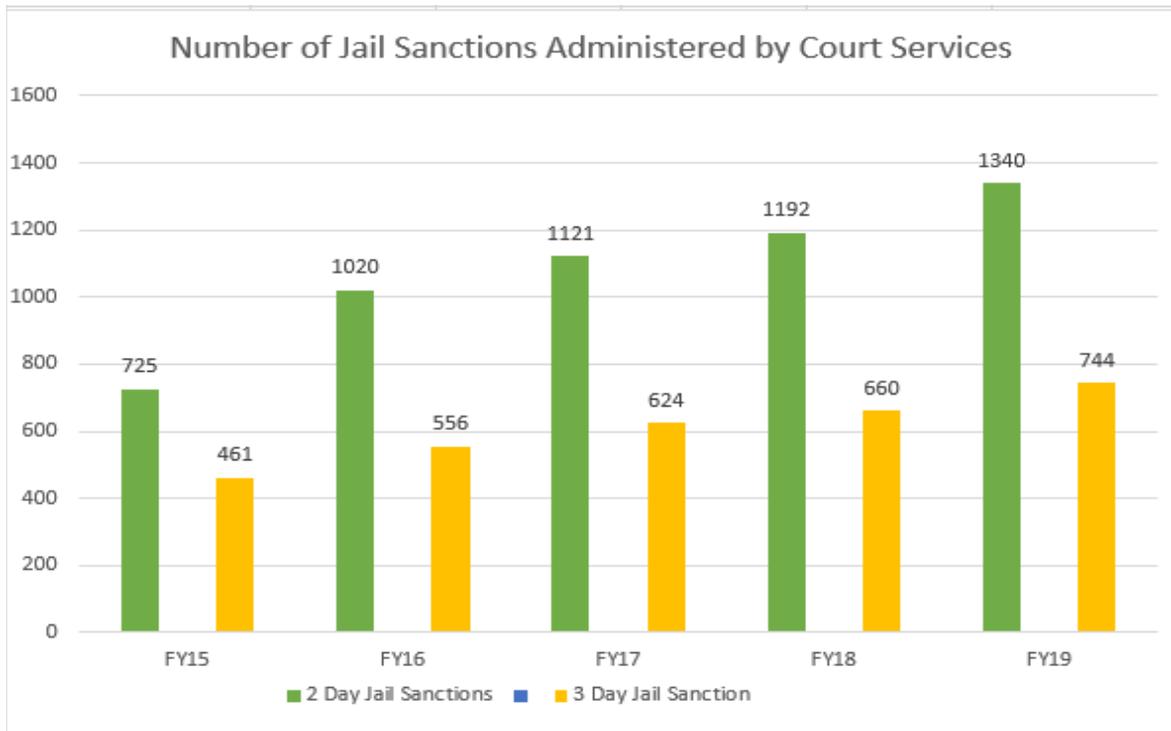


	ISL I		ISL II		ISL III		ISL IV		No Risk Level Assigned	
	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%
FY15	1272	15.2%	2420	29.0%	2372	28.4%	1448	17.3%	842	10.1%
FY16	1406	16.4%	2554	29.8%	2285	26.6%	1440	16.8%	892	10.4%
FY17	1438	17.8%	2451	30.3%	2048	25.3%	1288	15.9%	872	10.8%
FY18	1492	18.3%	2445	30.0%	2038	25.0%	1216	14.9%	946	11.6%
FY19	1560	18.5%	2635	31.3%	1933	22.9%	1112	13.2%	1187	14.1%

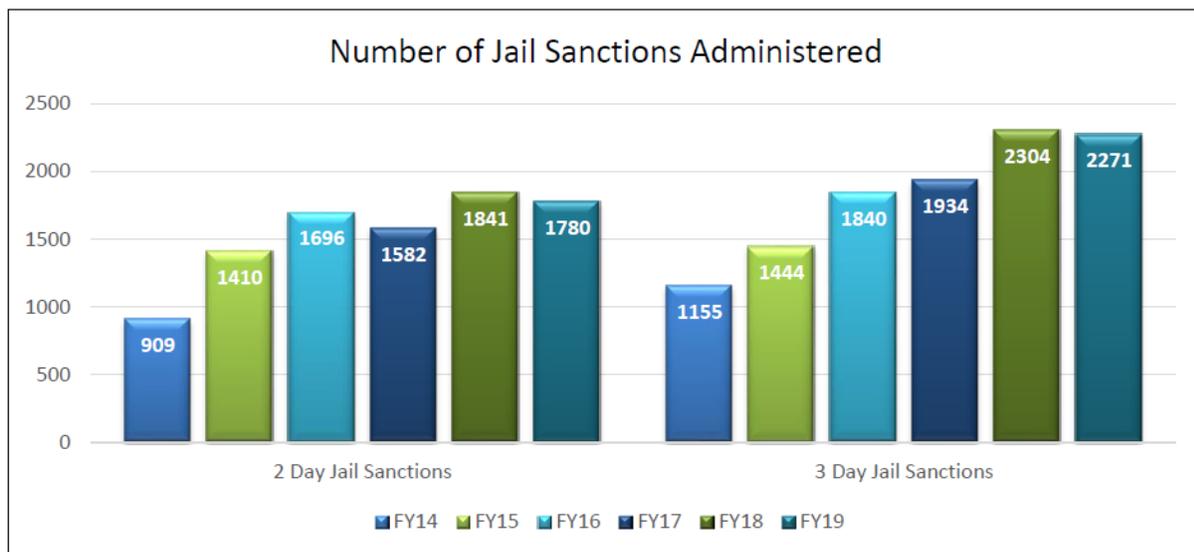
Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population



	FY15		FY16		FY17		FY18		FY19	
	(N)	%								
High	2379	14.6%	1996	11.0%	1460	8.0%	1271	8.3%	1111	7.1%
Medium	8987	55.2%	9303	51.0%	9369	51.2%	8799	57.2%	7356	47.1%
Low	4515	27.7%	4404	24.2%	5079	27.7%	4145	26.9%	4553	29.2%
No Risk Level Assigned	395	2.4%	561	3.1%	737	4.0%	12	0.1%	636	4.1%
PreTrial			1964	10.8%	1667	9.1%	1159	7.5%	1955	12.5%



JAIL SANCTIONS					
	FY15	FY16	FY17	FY18	FY19
2 Day Jail Sanctions	725	1020	1121	1192	1340
3 Day Jail Sanction	461	556	624	660	744

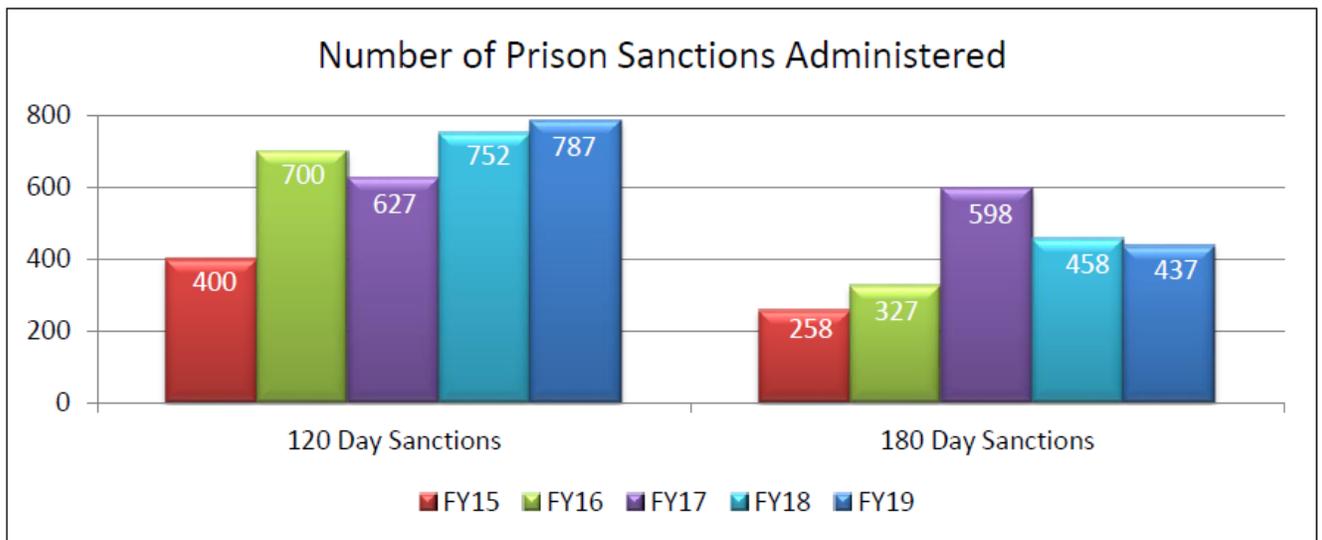


* Number of Sanctions Administered = Total Number of 2 and 3 day sanction interventions entered in TOADS during each fiscal year.

Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population

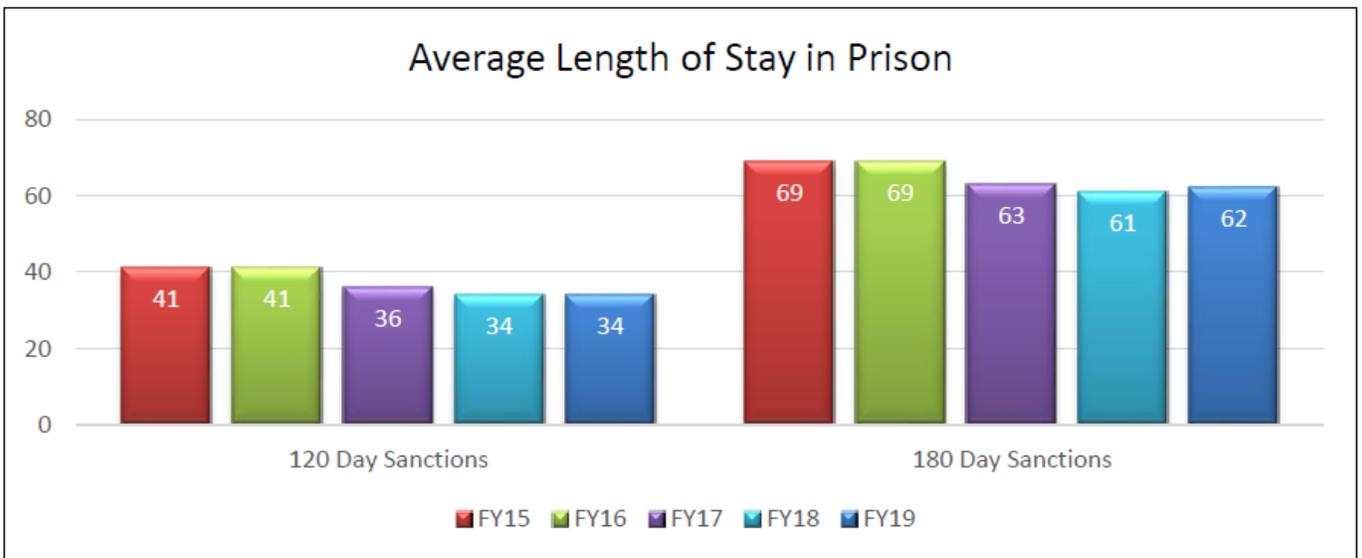
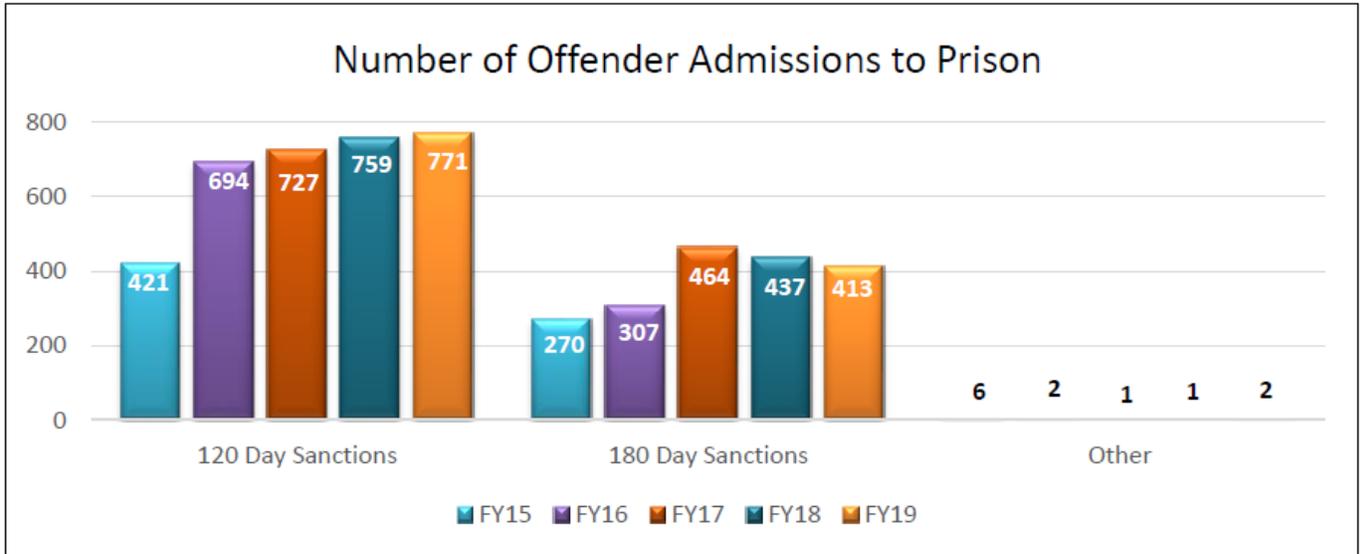


Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population



*Number of Sanctions Administered = Total Number of 120 and 180 day sanction interventions entered in TOADS during each fiscal year.

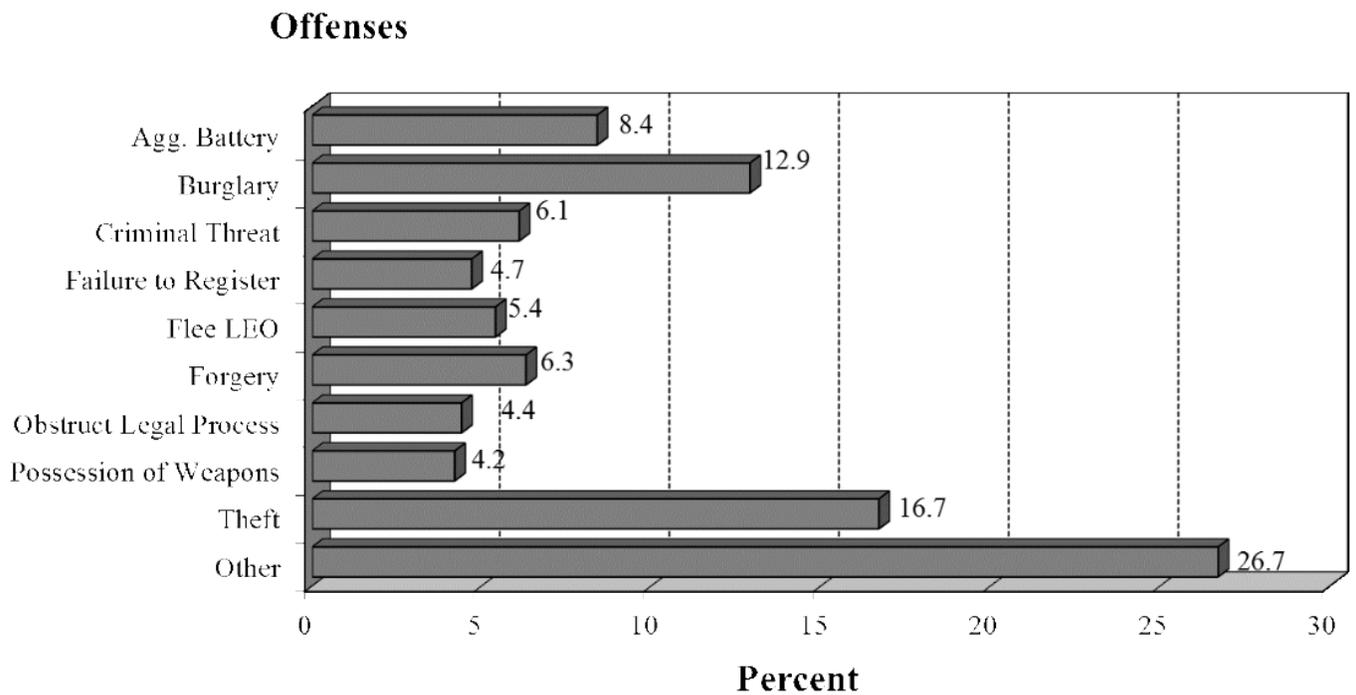
Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population



Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population

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 Of this number, 4,522 were nondrug sentences and 3,620 were drug sentences.

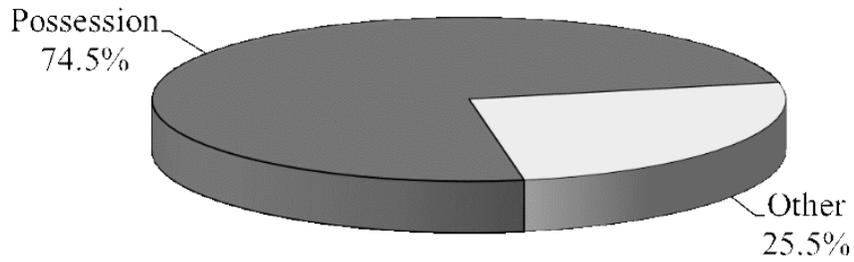
Figure 32: FY 2018 Top Ten Offenses for Probation Nondrug Sentences



Based on 4,522 probation nondrug sentences

Kansas Sentencing Commission's Annual Report & Prison Populations Projections, Brown, George Ebo, (September 2019).

Figure 33: FY 2018 Probation Drug Sentences by Offense



Based on 3,620 probation drug sentences

Kansas Sentencing Commission’s Annual Report & Prison Populations Projections, Brown, George Ebo, (September 2019).

Kansas Criminal Justice Reform Commission
Sub-Committee: Mental Health / Substance Abuse
Interim Report

December 1, 2019

To: Criminal Justice Reform Commission

Re: Interim Report

Members of the Criminal Justice Reform Commission,

Background

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Mental Health / Substance Abuse Sub-Committee was established. Rep. Stephen Owens was selected to chair the sub-committee. Since its creation, the sub-committee has met three times: September 23, 2019, October 22, 2019 and November 6, 2019 at the Kansas Sentencing Commission and via an online meeting platform. During these meetings, our sub-committee heard presentations from the Community Mental Health Care system, the Substance Use Disorder system, studied the 3R's report commissioned by the 2005 Kansas Legislature's Criminal Justice Reform Committee, and heard from various other stakeholders regarding the important work of this sub-committee.

Goals

As a sub-committee, we have identified the following statement and feel it most clearly identifies our goals as a working group:

To create an integrated system between mental health, substance abuse and criminal justice at the county, regional and state levels that can provide prompt, appropriate treatment and interventions to break the cycles of decompensation and incarceration to successfully reduce the

number of individuals with mental illness, substance use disorders or dually diagnosed individuals entering into, residing in and reentering the criminal justice system.

The majority of this language comes from the aforementioned 3R's report; specifically, the Mental Health / Substance Abuse sub-committee work.

Sub-Committee Recommendations

The sub-committee has focused in on three specific areas where we feel the legislature should take action on in the 2020 session.

1. We recommend conducting an inventory of all major initiatives developed and funded at local and state levels to improve outcomes with offenders with mental illness and/or substance use disorders within and prior to entering the criminal justice system. The purpose of the study will be to identify effective strategies for coordinating community mental health and substance abuse treatment with the criminal justice system. This study should evaluate existing local programs such as crisis intervention teams (CIT), jail diversion, and integrated case management approaches to treatment of offenders.
2. HB 2292 was introduced to the House Judiciary Committee during the 2019 Legislative Session. This bill would have expanded SB 123 money to diverted defendants, instead of only convicted offenders, to allow them to enter state paid substance abuse treatment. This legislation was tabled by the Judiciary Committee. It is the recommendation of this committee that this bill be re-visited and that the stakeholders work together to find a workable solution to allow certified substance abuse treatment prior to conviction.

3. Methamphetamine remains among the biggest crime-drivers in the state. The lack of access to drug treatment, both the result of regional inaccessibility and a lack of insurance or a payment source, is an issue that must be addressed. With this in mind, we highly encourage the legislature to identify and earmark funds during the 2020 legislative session that can be spent on regional treatment beds during the 2021 fiscal year.

Conclusions

The mental health / substance abuse sub-committee has recommended three items we believe the legislature can take meaningful action on during the 2020 session. These items represent recommendations researched and evaluated during our first three months of sub-committee work. This is just the beginning. Over the next 14 months, this sub-committee will continue to meet, research and hear testimony to help us conclude our work as required by December 1, 2020. I will reiterate the importance funding will play in the recommendations of this sub-committee. While we constantly strive to look for options that are funding neutral, the reality is to effect change in the criminal justice system, it will take a significant initial investment. This investment will pay significant dividends in the following years through decreased jail and prison bed space.

Respectfully Submitted this 1st Day of December, 2019.

Rep. Stephen Owens
Chairman

Professor John Francis
Washburn Law

Bill Persinger
CEO Valeo Behavioral Health Care

Pastor Adrion Roberson

Brenda Salvati
Director of Treatment & Prevention Services
Preferred Family Health Care

Scott Schultz
Director: Kansas Sentencing Commission
Ex-Officio Member

KCJRC Proportionality Committee

With the creation of the Kansas Criminal Justice Reform Commission, we have been charged with review of the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses. Listed are our immediate and long-term recommendations for the preliminary report. We have also kept in mind the financial and bed space constrictions of the Department of Corrections for the State of Kansas.

Immediate (short term)

1. Decrease the penalties from drug grid level five to level eight for proportionality to nondrug grid level eight for proportionality reasons.

Explanation: This is in support of 2019 HB 2047. The subcommittee reviewed and concurred with the Sentencing Commission that sentences for severity level 5 drug crimes should be comparable to those of severity level 8 nondrug crimes. The proposal would lower drug grid severity level 5 sentences to be consistent or proportional with crimes on the nondrug grid at severity level 8.

2. Change unlawful tampering with electronic monitoring device from a level six crime to a level eight crime.

Explanation: Support for 20-RS1902 a proportionality bill coming from the Sentencing Commission. It is a minimal cost to damage an ankle strap. Currently, the offense is a severity level 6 nonperson felony. If a defendant is charged with a class A Misdemeanor and placed on monitoring during the course of their case, he or she could receive more time for this violation than the original sentence. The proposal also provides that if the offender is being monitored for an underlying misdemeanor offense, the tampering penalty would be a class A misdemeanor. Finally, lowering the penalty to a severity level 8 crime is also proportional and consistent with the penalty for escape from custody.

3. Increase felony loss threshold from \$1,000 to \$1,500 on 11 property crimes.

Explanation: This is in support of 20-RS1899. It is for proportionality reasons only. In 2016, the felony theft threshold was raised from \$1,000 to \$1,500. The same was accomplished for mistreatment of a dependent adult or elder person in 2018. We believe not including the rest of the property crimes was just an oversight when the original threshold was moved and support raising the threshold on these crimes.

4. Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation.

Explanation: Currently, the domestic violence statute only counts domestic battery convictions as prior convictions to determine class severity for sentencing. We suggest a language change

that would include prior convictions of a crime with a “domestic violence designation” under KSA 22-4616. As it stands currently, a defendant that has two prior convictions of aggravated battery under KSA 21-5413 with a DV designation, would not qualify as “prior convictions” if convicted of domestic battery under KSA 21-5414. This change would ensure that the legislative intent of counting prior crimes against family members and intimate partners are used to determine the appropriate crime severity level at sentencing.

5. Implementation of pre-trial substance abuse programs.

Explanation: This is in support of 2019 HB 2292. Similar to the 2003 SB 123 substance abuse treatment program administered post-conviction by the Sentencing Commission, the bill would provide for substance abuse treatment funding for divertees. The subcommittee agrees that diverting nonviolent drug offenders from the criminal justice system is a key to better utilizing current resources and incentivizing offenders to be successful by avoiding a felony conviction, which could result in decreased opportunities in obtaining employment and housing.

Long term (1 Year)

1. Proposing the combining of both sentencing grids instead of utilizing drug and non-drug grids.

Explanation: Examination of the drug grid sentence ranges disclose that there is a need to explore proportionality with the nondrug grid. Those crimes currently on the drug grid are all nonperson and the subcommittee will seek to determine whether they can be incorporated into the nondrug grid.

2. Implement a more open and expanded compassionate release program.

Explanation: The subcommittee recognizes that the cost of corrections is expensive and continues to increase over time. Nationally, compassionate release programs for terminally ill or functionally incapacitated inmates is underutilized. Kansas is possibly the most stringent in the country in its criteria for release. The current statute requires a physician to certify that the inmate has a terminal medical condition likely to cause death within 30 days of release. In consultation with the KDOC, it was disclosed that only a handful of inmates have been released in the last 10 years under this provision. Moreover, it takes on an average of 30 days just to do the paperwork and get all the approvals finished. Changes to K.S.A. 22-3728 and 22-3729 would assist in allowing more inmates to be eligible for release to save taxpayer dollars and allow for inmates to be with their families in their last days.

3. Early discharge from prison of 50% for non-violent drug offenders.

Explanation: A referral has been made from the Sentencing Commission to determine the effectiveness of all drug offenders being placed on community corrections after 50% of their time is served in prison. The proposal in its current form is estimated to save 61 beds in FY 2021 and 370 in FY 2030. If it would be applied retroactively, the savings increase to 291 beds in FY 2021 and 402 in FY 2030.

4. Implement the use of in-patient treatment centers instead of prisons for nonviolent drug offenders.

Explanation: The Kansas Sentencing Commission estimates that the drug offender prison population will increase 24.4% or 384 beds in the next 10 years. This initiative would free up prison space for violent offenders. Nonviolent drug offenders would be able to seek treatment they wouldn't normally receive in prison, thereby lowering the recidivism rate. The subcommittee is currently exploring inpatient facility options that would allow for focused substance abuse and mental health treatment as an option prior to revocation to prison. While a potentially costly initiative, cost avoidance should be considered if these facilities are successful.

5. Judicial review of probation time at 50% served.

Explanation: This is in support of 2019 HB 2052, including the Office of Judicial Administration balloon amendments proposed last legislative session. This is a review of the probation to see if all terms have been met. This would include all terms and conditions that were set by the court such as fines, restitution, treatment, or other programs. If satisfactory, the offender would be terminated from probation. The bill would serve to incentivize offenders to successfully complete probation early and allow probation officers to allocate scarce resources to higher risk/needs offenders.

AN ACT concerning crimes, punishment and criminal procedure; related to loss values; amending K.S.A. 2019 Supp. 21-5802, 21-5813, 21-5821, 21-5825, 21-5828, 21-5830, 21-5927, 21-6002, 21-6004, 21-6005 and 21-6205 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2019 Supp. 21-5802 is hereby amended to read as follows: 21-5802.

(a) Theft of property lost, mislaid or delivered by mistake is obtaining control of property of another by a person who:

(1) Knows or learns the identity of the owner thereof;

(2) fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by a mistake; and

(3) intends to permanently deprive the owner of the possession, use or benefit of the property.

(b) Theft of property lost, mislaid or delivered by mistake of the value of:

(1) \$100,000 or more is a severity level 5, nonperson felony;

(2) at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(3) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(4) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(c) As used in this section, "property delivered by mistake" includes, but is not limited to, a mistake as to the:

(1) Nature or amount of the property; or

(2) identity of the recipient of the property.

Sec. 2. K.S.A. 2019 Supp. 21-5813 is hereby amended to read as follows: 21-5813. (a)

Criminal damage to property is by means other than by fire or explosive:

(1) Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

(b) Aggravated criminal damage to property is criminal damage to property, as defined in subsection (a)(1), if the value or amount of damage exceeds \$5,000, committed with the intent to obtain any regulated scrap metal as defined in K.S.A. 2019 Supp. 50-6,109, and amendments thereto, or any items listed in K.S.A. 2019 Supp. 50-6,111(d), and amendments thereto, upon:

(1) Any building, structure, personal property or place used primarily for worship or any religious purpose;

(2) any building, structure or place used as a school or as an educational facility;

(3) any building, structure or place used by a non-profit or charitable business, corporation, firm, service or association;

(4) any grave, cemetery, mortuary or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead;

(5) any agricultural property or agricultural infrastructure;

(6) any construction, mining or recycling facility, structure or site;

(7) any utility, utility service, telecommunication, telecommunication service, cable or video service facility, property, building, structure, site or component thereof;

(8) any municipal, county or state building, structure, site or property;

(9) any residential, commercial, industrial or agricultural irrigation, sprinkler or watering system or component thereof;

(10) the infrastructure of any residence, building or structure;

(11) any historical marker, plaque or work of art;

(12) any vehicle or transportation building, facility, structure, site or property; or

(13) any other building, structure, residence, facility, site, place, property, vehicle or any infrastructure thereof.

(c) Criminal damage to property if the property:

(1) Is damaged to the extent of \$25,000 or more is a severity level 7, nonperson felony;

(2) is damaged to the extent of at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and

(3) damaged is of the value of less than ~~\$1,000~~ \$1,500 or is of the value of ~~\$1,000~~ \$1,500 or more and is damaged to the extent of less than ~~\$1,000~~ \$1,500 is a class B nonperson misdemeanor.

(d) Aggravated criminal damage to property is a severity level 6, nonperson felony.

(e) (1) As used in subsection (b):

(A) "Infrastructure" includes any fixture to, attachment upon or part of a residence, building or structure's framework, electrical wiring and appurtenances, plumbing or heating and air systems; and

(B) "site" includes any area, place or location set aside for specific use or uses, including, but not limited to, storage, staging, repair, sorting, transportation, planning or organization.

(2) Any of the items or locations listed in subsection (b) shall include the curtilage, adjoining land and any improvements thereupon.

(3) Nothing in subsection (b) shall be construed to require the:

(A) Construction or existence of any door, gate, fence, barrier or wall; or

(B) existence of notice, postings or signs to potential trespassers.

(f) In determining the amount of damage to property, damages may include the cost of repair or replacement of the property that was damaged, the reasonable cost of the loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property.

Sec. 3. K.S.A. 2019 Supp. 21-5821 is hereby amended to read as follows: 21-5821. (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check on any financial institution for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check that the maker or drawer has no deposit in or credits with the financial institution or has not sufficient funds in, or credits with, the financial institution for the payment of such check in full upon its presentation.

(b) Giving a worthless check is a:

(1) Severity level 7, nonperson felony if:

(A) The check is drawn for \$25,000 or more; or

(B) more than one worthless check is given within a seven-day period and the combined total of the checks is \$25,000 or more;

- (2) severity level 9, nonperson felony if:
- (A) The check is drawn for at least ~~\$1,000~~ \$1,500 but less than \$25,000;
 - (B) more than one worthless check is given within a seven-day period and the combined total of the checks is at least ~~\$1,000~~ \$1,500 but less than \$25,000; or
 - (C) the person giving the worthless check has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times; and
- (3) class A nonperson misdemeanor if the check is drawn for less than ~~\$1,000~~ \$1,500.
- (c) As used in this section and K.S.A. 2019 Supp. 21-5822, and amendments thereto:
- (1) "Check" is any check, order or draft on a financial institution;
 - (2) "financial institution" means any bank, credit union, savings and loan association or depository; and
 - (3) "notice" includes oral or written notice to the person entitled thereto.
- (d) In any prosecution against the maker or drawer of a check, payment of which has been refused by the financial institution on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the financial institution:
- (1) Unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding \$30 for each check, within seven days after notice has been given to the maker or drawer that such check has not been paid by the financial institution. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check; or

(2) if a postdated date is placed on the check without the knowledge or consent of the payee.

(e) It shall not be a defense to a prosecution under this section that the check upon which such prosecution is based was:

(1) Postdated, unless such check was presented for payment prior to the postdated date; or

(2) given to a payee who had knowledge or had been informed, when the payee accepted such check that the maker did not have sufficient funds in the hands of the financial institution to pay such check upon presentation, unless such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(f) In addition to all other costs and fees allowed by law, each prosecutor who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed \$10 for each check. If the issuer of the check is convicted in a district court, the administrative handling costs may be assessed as part of the court costs in the matter. The moneys collected pursuant to this subsection shall be deposited into a trust fund which shall be administered by the board of county commissioners. The funds shall be expended only with the approval of the board of county commissioners, but may be used to help fund the normal operating expenses of the county or district attorney's office.

Sec. 4. K.S.A. 2019 Supp. 21-5825 is hereby amended to read as follows: 21-5825. (a) Counterfeiting is manufacturing, using, displaying, advertising, distributing or possessing with intent to distribute any item or services knowing such item or services bear or are identified by a

counterfeit mark.

(b) Counterfeiting is a:

(1) Severity level 7, nonperson felony if:

(A) The retail value of such item or service is \$25,000 or more;

(B) such counterfeiting involves 1,000 or more items bearing a counterfeit mark; or

(C) a third or subsequent violation of this section;

(2) severity level 9, nonperson felony if:

(A) The retail value of such item or service is at least ~~\$1,000~~ \$1,500 but less than \$25,000;

(B) such counterfeiting involves more than 100 but less than 1,000 items bearing a counterfeit mark; or

(C) a second violation of this section; and

(3) class A nonperson misdemeanor, if the retail value of such item or service is less than ~~\$1,000~~ \$1,500.

(c) A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to distribute.

(d) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(e) As used in this section:

(1) "Counterfeit mark" means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) intellectual property affixed to any item knowingly sold, offered for sale,

manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property;

(2) "intellectual property" means any trademark, service mark or trade name as such terms are defined in K.S.A. 81-202, and amendments thereto; and

(3) "retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(f) The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes or possesses.

Sec. 5. K.S.A. 2019 Supp. 21-5828 is hereby amended to read as follows: 21-5828. (a) Criminal use of a financial card is any of the following acts done with intent to defraud and to obtain money, goods, property or services:

(1) Using a financial card without the consent of the cardholder;

(2) using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) Criminal use of a financial card is a:

(1) Severity level 7, nonperson felony if the money, goods, property or services obtained within any seven-day period are of the value of \$25,000 or more;

(2) Severity level 9, nonperson felony if the money, goods, property or services obtained within any seven-day period are of the value of at least ~~\$1,000~~ \$1,500 but less than \$25,000; and

(3) class A nonperson misdemeanor if the money, goods, property or services obtained within a seven-day period are of the value of less than ~~\$1,000~~ \$1,500.

(c) As used in this section:

(1) "Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property or services or to conduct other financial transactions; and

(2) "cardholder" means the person or entity to whom or for whose benefit a financial card is issued.

(d) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

Sec. 6. K.S.A. 2019 Supp. 21-5830 is hereby amended to read as follows: 21-5830. (a) Impairing a security interest is, with intent to defraud the secured party:

(1) Damaging, destroying or concealing any personal property subject to a security interest;

(2) selling, exchanging or otherwise disposing of any personal property subject to a security interest without the written consent of the secured party, where such sale, exchange or other disposition is not authorized by the secured party under the terms of the security agreement; or

(3) failing to account to the secured party for the proceeds of the sale, exchange or other disposition of any personal property subject to a security interest, where such sale, exchange or other disposition is authorized and such accounting for proceeds is required by the secured party under the terms of the security agreement or otherwise.

(b) Impairing a security interest, when the personal property subject to the security interest is of the value of:

(1) \$25,000 or more and is subject to a security interest of \$25,000 or more is a severity level 7, nonperson felony;

(2) at least ~~\$1,000~~ \$1,500 and is subject to a security interest of at least ~~\$1,000~~ \$1,500 and either the value of the property or the security interest is less than \$25,000 is a severity level 9, nonperson felony; and

(3) less than ~~\$1,000~~ \$1,500, or of the value of ~~\$1,000~~ \$1,500 or more but subject to a security interest of less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

Sec. 7. K.S.A. 2019 Supp. 21-5927 is hereby amended to read as follows: 21-5927. (a) Medicaid fraud is:

(1) With intent to defraud, making, presenting, submitting, offering or causing to be made, presented, submitted or offered:

(A) Any false or fraudulent claim for payment for any goods, service, item, facility [or] accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(B) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is

allowed or allowable;

(C) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(D) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(E) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

(F) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(G) any wholly or partially false or fraudulent book, record, document, data or instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or

allowable;

(H) any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the Kansas department for aging and disability services, Kansas department of health and environment, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program; or

(I) any false or fraudulent statement or representation made, with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the medicaid program; or

(2) intentionally executing or attempting to execute a scheme or artifice to defraud the medicaid program or any contractor or subcontractor thereof.

(b) (1) Except as provided in subsection (b)(2), for each individual count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2), where the aggregate amount of payments illegally claimed is:

(A) \$250,000 or more, medicaid fraud is a severity level 3, nonperson felony;

(B) at least \$100,000 but less than \$250,000, medicaid fraud is a severity level 5, nonperson felony;

(C) at least \$25,000 but less than \$100,000, medicaid fraud is a severity level 7, nonperson felony;

(D) at least ~~\$1,000~~ \$1,500 but less than \$25,000, medicaid fraud is a severity level 9,

nonperson felony; and

(E) less than ~~\$1,000~~ \$1,500, medicaid fraud is a class A nonperson misdemeanor.

(2) For each individual count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2):

(A) When great bodily harm results from such act, regardless of the aggregate amount of payments illegally claimed, medicaid fraud is a severity level 4, person felony, except as provided in subsection (b)(2)(B); and

(B) when death results from such act, regardless of the aggregate amount of payments illegally claimed, medicaid fraud is a severity level 1, person felony.

(3) Medicaid fraud as defined in subsection (a)(1)(H) or (a)(1)(I) is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(1)(F), the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

(d) In sentencing for medicaid fraud, subsection (c)(3) of K.S.A. 2019 Supp. 21-6815, and amendments thereto, shall not apply and an act or omission by the defendant that resulted in any medicaid recipient receiving any service that was of lesser quality or amount than the service to which such recipient was entitled may be considered an aggravating factor in determining whether substantial and compelling reasons for departure exist pursuant to K.S.A. 2019 Supp. 21-6801 through 21-6824, and amendments thereto.

(e) A person who violates the provisions of this section may also be prosecuted for,

convicted of, and punished for any form of battery or homicide.

Sec. 8. K.S.A. 2019 Supp. 21-6002 is hereby amended to read as follows: 21-6002. (a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another;

(2) knowingly failing to serve civil process when required by law;

(3) using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to intentionally cause harm to another;

(4) except as authorized by law, with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract;

(5) except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime; or

(6) knowingly submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in:

(A) Subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor;

(B) subsection (a)(5) is a:

(i) Severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and

(ii) class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor; and

(C) subsection (a)(6) if the claim is:

(i) \$25,000 or more is a severity level 7, nonperson felony;

(ii) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(iii) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(2) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the

governmental entity; or

(2) constitutes misuse of public funds, as defined in K.S.A. 2019 Supp. 21-6005, and amendments thereto.

(d) As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

Sec. 9. K.S.A. 2019 Supp. 21-6004 is hereby amended to read as follows: 21-6004. (a) Presenting a false claim is, with the intent to defraud, presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

(b) Permitting a false claim is the auditing, allowing or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or public employee who knows such claim or demand is false or fraudulent in whole or in part.

(c) (1) Presenting a false claim or permitting a false claim for:

(A) \$25,000 or more is a severity level 7, nonperson felony;

(B) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(C) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(2) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee's office or employment.

Sec. 10. K.S.A. 2019 Supp. 21-6005 is hereby amended to read as follows: 21-6005.

(a) Misuse of public funds is knowingly using, lending or permitting another to use public money in a manner not authorized by law, by a custodian or other person having control of public

money by virtue of such person's official position.

(b) (1) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is:

(A) \$100,000 or more is a severity level 5, nonperson felony;

(B) at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(C) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(D) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(2) Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.

(c) As used in this section, "public money" means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

Sec. 11. K.S.A. 2019 Supp. 21-6205 is hereby amended to read as follows: 21-6205. (a) Criminal desecration is:

(1) Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being; or

(2) recklessly, by means other than by fire or explosive:

(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;

(B) damaging, defacing or destroying any public monument or structure;

(C) damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) damaging, defacing or destroying any place of worship.

(b) Criminal desecration as defined in:

(1) Subsections (a)(2)(B), (a)(2)(C) or (a)(2)(D) if the property is damaged to the extent of:

(A) \$25,000 or more is a severity level 7, nonperson felony;

(B) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(C) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor; and

(2) subsections (a)(1) or (a)(2)(A) is a class A nonperson misdemeanor.

Sec. 12. K.S.A. 2019 Supp. 21-5802, 21-5813, 21-5821, 21-5825, 21-5828, 21-5830, 21-5927, 21-6002, 21-6004, 21-6005 and 21-6205 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. _____

AN ACT concerning crimes, punishment and criminal procedure; relating to unlawfully tampering with electronic monitoring equipment; amending K.S.A. 2019 Supp. 21-6322 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2019 Supp. 21-6322 is hereby amended to read as follows: 21-6322.

(a) Unlawfully tampering with electronic monitoring equipment is, knowingly and without authorization, removing, disabling, altering, tampering with, damaging or destroying any electronic monitoring equipment used pursuant to court ordered supervision or as a condition of post-release supervision or parole.

(b) Unlawfully tampering with electronic monitoring equipment is a:

(1) Severity level-6 8, nonperson felony in the case of electronic monitoring equipment used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any felony; and

(2) class A nonperson misdemeanor in the case of electronic monitoring equipment used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any misdemeanor or used pursuant to court-ordered supervision in any civil case.

Sec. 2. K.S.A. 2019 Supp. 21-6322 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 2292

By Committee on Judiciary

2-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to diversion agreements; supervision of people on diversion; certified
3 drug abuse treatment programs; amending K.S.A. 22-2907 and K.S.A.
4 2018 Supp. 21-6824, 22-2909, 75-5291 and 75-52,144 and repealing
5 the existing sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2018 Supp. 21-6824 is hereby amended to read as
9 follows: 21-6824. (a) (1) There is hereby established a nonprison sanction
10 of certified drug abuse treatment programs for certain offenders who are
11 sentenced on or after November 1, 2003. Placement of offenders in
12 certified drug abuse treatment programs by the court shall be limited to
13 placement of adult offenders, convicted of a felony violation of K.S.A.
14 2018 Supp. 21-5706, and amendments thereto, whose offense is classified
15 in grid blocks:

16 ~~(1)~~(A) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing
17 guidelines grid for drug crimes and such offender has no felony conviction
18 of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their
19 repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their
20 transfer, or K.S.A. 2018 Supp. 21-5703, 21-5705 or 21-5716, and
21 amendments thereto, or any substantially similar offense from another
22 jurisdiction; or

23 ~~(2)~~(B) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing
24 guidelines grid for drug crimes, such offender has no felony conviction of
25 K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their
26 repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their
27 transfer, or K.S.A. 2018 Supp. 21-5703, 21-5705 or 21-5716, and
28 amendments thereto, or any substantially similar offense from another
29 jurisdiction, if the person felonies in the offender's criminal history were
30 severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines
31 grid for nondrug crimes, and the court finds and sets forth with
32 particularity the reasons for finding that the safety of the members of the
33 public will not be jeopardized by such placement in a drug abuse treatment
34 program.

35 (2) *There is hereby established a certified drug abuse treatment*
36 *program for certain persons who enter into a diversion agreement in lieu*

1 *of further criminal proceedings on and after July 1, 2019. Placement of*
2 *divertees in certified drug abuse treatment programs pursuant to a*
3 *diversion agreement shall be limited to placement of adults, on a*
4 *complaint alleging a felony violation of K.S.A. 2018 Supp. 21-5706, and*
5 *amendments thereto, whose offense is classified in grid blocks 5-C, 5-D, 5-*
6 *E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes*
7 *and such divertee has no felony conviction of K.S.A. 65-4142, 65-4159,*
8 *65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-*
9 *36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2018*
10 *Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any*
11 *substantially similar offense from another jurisdiction.*

12 (b) As a part of the presentence investigation pursuant to K.S.A. 2018
13 Supp. 21-6813, and amendments thereto, *or as a part of the consideration*
14 *of whether or not to allow diversion to a defendant, offenders or divertees*
15 *who meet the requirements of subsection (a), unless otherwise specifically*
16 *ordered by the court, shall be subject to:*

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

20 (2) a criminal risk-need assessment. The criminal risk-need
21 assessment shall assign a high or low risk status to the offender.

22 (c) (1) If the offender is assigned a high risk status as determined by
23 the drug abuse assessment performed pursuant to subsection (b)(1) and a
24 moderate or high risk status as determined by the criminal risk-need
25 assessment performed pursuant to subsection (b)(2), the sentencing court
26 shall commit the offender to treatment in a drug abuse treatment program
27 until the court determines the offender is suitable for discharge by the
28 court. The term of treatment shall not exceed 18 months. The court may
29 extend the term of probation, pursuant to K.S.A. 2018 Supp. 21-6608(c)
30 (3), and amendments thereto. The term of treatment may not exceed the
31 term of probation.

32 (2) *If the defendant being considered for a diversion agreement is*
33 *assigned a high risk status as determined by the drug abuse assessment*
34 *performed pursuant to subsection (b)(1) and a moderate or high risk*
35 *status as determined by the criminal risk-need assessment performed*
36 *pursuant to subsection (b)(2), the diversion agreement shall require the*
37 *divertee to comply with and participate in a drug abuse treatment*
38 *program. The term of treatment shall not exceed 18 months.*

39 (d) (1) Offenders *or divertees* who are committed to a drug abuse
40 treatment program pursuant to subsection (c) shall be supervised by
41 community correctional services.

42 (2) Offenders *or divertees* who are not committed to a drug abuse
43 treatment program pursuant to subsection (c) shall be supervised by

1 community correctional services or court services based on the result of
2 the criminal risk assessment.

3 (e) Placement of offenders under subsection ~~(a)(2)~~ (a)(1)(B) shall be
4 subject to the departure sentencing statutes of the revised Kansas
5 sentencing guidelines act.

6 (f) (1) Offenders *or divertees* in drug abuse treatment programs shall
7 be discharged from such program if the offender *or divertee*:

8 (A) Is convicted of a new felony; or

9 (B) has a pattern of intentional conduct that demonstrates the
10 offender's *or divertee's* refusal to comply with or participate in the
11 treatment program, as established by judicial finding, *in the case of an*
12 *offender, or in the opinion of the county or district attorney, in the case of*
13 *a divertee.*

14 (2) (A) Offenders who are discharged from such program *pursuant to*
15 *subsection (f)(1)* shall be subject to the revocation provisions of K.S.A.
16 2018 Supp. 21-6604(n), and amendments thereto.

17 (B) *Divertees who are discharged from such program pursuant to*
18 *subsection (f)(2) shall be subject to the revocation provisions of such*
19 *diversion agreement.*

20 (g) As used in this section, "mental health professional" includes
21 licensed social workers, persons licensed to practice medicine and surgery,
22 licensed psychologists, licensed professional counselors or registered
23 alcohol and other drug abuse counselors licensed or certified as addiction
24 counselors who have been certified by the secretary of corrections to treat
25 ~~offenders~~ *persons* pursuant to K.S.A. 2018 Supp. 75-52,144, and
26 amendments thereto.

27 (h) (1) Offenders *or divertees* who meet the requirements of
28 subsection (a) shall not be subject to the provisions of this section and
29 shall be sentenced as otherwise provided by law, if such offenders *or*
30 *divertees*:

31 (A) Are residents of another state and are returning to such state
32 pursuant to the interstate corrections compact or the interstate compact for
33 adult offender supervision; or

34 (B) are not lawfully present in the United States and being detained
35 for deportation; or

36 (C) do not meet the risk assessment levels provided in subsection (c).

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

39 (i) The court may order an offender who otherwise does not meet the
40 requirements of subsection (c)(1) to undergo one additional drug abuse
41 assessment while such offender is on probation. Such offender may be
42 ordered to undergo drug abuse treatment pursuant to subsection (a)(1) if
43 such offender is determined to meet the requirements of subsection (c)(1).

1 The cost of such assessment shall be paid by such offender.

2 (j) *For the purposes of this section, the term "divertee" means a*
3 *person who has entered into a diversion agreement pursuant to K.S.A. 22-*
4 *2909, and amendments thereto.*

5 Sec. 2. K.S.A. 22-2907 is hereby amended to read as follows: 22-
6 2907. ~~(+)~~(a) After a complaint has been filed charging a defendant with
7 commission of a crime and prior to conviction thereof, and after the
8 district attorney has considered the factors listed in K.S.A. 22-2908, *and*
9 *amendments thereto*, if it appears to the district attorney that diversion of
10 the defendant would be in the interests of justice and of benefit to the
11 defendant and the community, the district attorney may propose a
12 diversion agreement to the defendant. The terms of each diversion
13 agreement shall be established by the district attorney in accordance with
14 K.S.A. 22-2909, *and amendments thereto.*

15 ~~(2)~~(b) Each district attorney shall adopt written policies and
16 guidelines for the implementation of a diversion program in accordance
17 with this act. Such policies and guidelines shall provide for a diversion
18 conference and other procedures in those cases where the district attorney
19 elects to offer diversion in lieu of further criminal proceedings on the
20 complaint.

21 ~~(3)~~(c) Each defendant shall be informed in writing of the diversion
22 program and the policies and guidelines adopted by the district attorney.
23 The district attorney may require any defendant requesting diversion to
24 provide information regarding prior criminal charges, education, work
25 experience and training, family, residence in the community, medical
26 history, including any psychiatric or psychological treatment or
27 counseling, and other information relating to the diversion program. In all
28 cases, the defendant shall be present and shall have the right to be
29 represented by counsel at the diversion conference with the district
30 attorney.

31 (d) *A district attorney may enter into a memorandum of*
32 *understanding with court services or community correctional services to*
33 *assist with supervision and monitoring of persons who have entered into a*
34 *diversion agreement. The district attorney shall retain authority over*
35 *whether a defendant is given the option to enter into a diversion*
36 *agreement, and whether a defendant has violated the terms of such*
37 *agreement. A memorandum of understanding shall include provisions*
38 *related to:*

- 39 (1) *Determining the level of supervision needed for a defendant;*
40 (2) *use of a criminal risk-need assessment; and*
41 (3) *payment of costs for supervision.*

42 Sec. 3. K.S.A. 2018 Supp. 22-2909 is hereby amended to read as
43 follows: 22-2909. (a) A diversion agreement shall provide that if the

1 defendant fulfills the obligations of the program described therein, as
2 determined by the attorney general or county or district attorney, such
3 attorney shall act to have the criminal charges against the defendant
4 dismissed with prejudice. The diversion agreement shall include
5 specifically the waiver of all rights under the law or the constitution of
6 Kansas or of the United States to a speedy arraignment, preliminary
7 examinations and hearings, and a speedy trial, and in the case of diversion
8 under subsection (c) waiver of the rights to counsel and trial by jury. The
9 diversion agreement may include, but is not limited to, provisions
10 concerning:

11 (1) Payment of restitution, including court costs and diversion costs;,
12 (2) residence in a specified facility;,
13 (3) maintenance of gainful employment; ~~and~~;
14 (4) participation in programs offering medical, educational,
15 vocational, social and psychological services, corrective and preventive
16 guidance and other rehabilitative services; *and*
17 (5) *supervision by the county or district attorney, or by court services*
18 *or community correctional services pursuant to a memorandum of*
19 *understanding entered into by the county or district attorney pursuant to*
20 *K.S.A. 22-2907(d), and amendments thereto, and payment of costs*
21 *associated with such supervision.*

22 (b) If a county creates a local fund under the property crime
23 restitution and compensation act, a county or district attorney may require
24 in all diversion agreements as a condition of diversion the payment of a
25 diversion fee in an amount not to exceed \$100. Such fees shall be
26 deposited into the local fund and disbursed pursuant to recommendations
27 of the local board under the property crime restitution and victims
28 compensation act.

29 ~~(b)~~(c) The diversion agreement shall state: (1) The defendant's full
30 name; (2) the defendant's full name at the time the complaint was filed, if
31 different from the defendant's current name; (3) the defendant's sex, race
32 and date of birth; (4) the crime with which the defendant is charged; (5)
33 the date the complaint was filed; and (6) the district court with which the
34 agreement is filed.

35 ~~(e)~~(d) If a diversion agreement is entered into in lieu of further
36 criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567,
37 and amendments thereto, the diversion agreement shall include a
38 stipulation, agreed to by the defendant, the defendant's attorney if the
39 defendant is represented by an attorney and the attorney general or county
40 or district attorney, of the facts upon which the charge is based and a
41 provision that if the defendant fails to fulfill the terms of the specific
42 diversion agreement and the criminal proceedings on the complaint are
43 resumed, the proceedings, including any proceedings on appeal, shall be

1 conducted on the record of the stipulation of facts relating to the
2 complaint. In addition, the agreement shall include a requirement that the
3 defendant:

4 (1) Pay a fine specified by the agreement in an amount equal to an
5 amount authorized by K.S.A. 8-1567, and amendments thereto, for a first
6 offense or, in lieu of payment of the fine, perform community service
7 specified by the agreement, in accordance with K.S.A. 8-1567, and
8 amendments thereto; and

9 (2) participate in an alcohol and drug evaluation conducted by a
10 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and
11 follow any recommendation made by the provider after such evaluation.

12 ~~(d)~~(e) If a diversion agreement is entered into in lieu of further
13 criminal proceedings on a complaint alleging a domestic violence offense,
14 as defined in K.S.A. 2018 Supp. 21-5111, and amendments thereto, the
15 diversion agreement shall include a requirement that the defendant
16 undergo a domestic violence offender assessment and follow all
17 recommendations unless otherwise agreed to with the prosecutor in the
18 diversion agreement. The defendant shall be required to pay for such
19 assessment and, unless otherwise agreed to with the prosecutor in the
20 diversion agreement, for completion of all recommendations.

21 ~~(e)~~(f) If a diversion agreement is entered into in lieu of further
22 criminal proceedings on a complaint alleging a violation other than K.S.A.
23 8-1567, and amendments thereto, the diversion agreement may include a
24 stipulation, agreed to by the defendant, the defendant's attorney if the
25 defendant is represented by an attorney and the attorney general or county
26 or district attorney, of the facts upon which the charge is based and a
27 provision that if the defendant fails to fulfill the terms of the specific
28 diversion agreement and the criminal proceedings on the complaint are
29 resumed, the proceedings, including any proceedings on appeal, shall be
30 conducted on the record of the stipulation of facts relating to the
31 complaint.

32 ~~(f)~~(g) If the person entering into a diversion agreement is a
33 nonresident, the attorney general or county or district attorney shall
34 transmit a copy of the diversion agreement to the division. The division
35 shall forward a copy of the diversion agreement to the motor vehicle
36 administrator of the person's state of residence.

37 ~~(g)~~(h) If the attorney general or county or district attorney elects to
38 offer diversion in lieu of further criminal proceedings on the complaint and
39 the defendant agrees to all of the terms of the proposed agreement, the
40 diversion agreement shall be filed with the district court and the district
41 court shall stay further proceedings on the complaint. If the defendant
42 declines to accept diversion, the district court shall resume the criminal
43 proceedings on the complaint.

1 ~~(h)~~(i) Except as provided in subsection~~(h)~~(j), if a diversion agreement
2 is entered into in lieu of further criminal proceedings alleging commission
3 of a misdemeanor by the defendant, while under 21 years of age, under
4 K.S.A. 2018 Supp. 21-5701 through 21-5717, and amendments thereto, or
5 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments
6 thereto, the agreement shall require the defendant to participate in an
7 alcohol and drug evaluation conducted by a licensed provider pursuant to
8 K.S.A. 8-1008, and amendments thereto, and follow any recommendation
9 made by the provider after such evaluation.

10 ~~(h)~~(j) If the defendant is 18 or more years of age but less than 21 years
11 of age and allegedly committed a violation of K.S.A. 41-727, and
12 amendments thereto, involving cereal malt beverage, the provisions of
13 subsection~~(h)~~(i) are permissive and not mandatory.

14 ~~(h)~~(k) If a diversion agreement is entered into in lieu of further
15 criminal proceedings on a complaint alleging a violation of K.S.A. 2018
16 Supp. 21-6421, and amendments thereto, the agreement:

17 (1) Shall include a requirement that the defendant pay a fine specified
18 by the agreement in an amount equal to an amount authorized by K.S.A.
19 2018 Supp. 21-6421, and amendments thereto; and

20 (2) may include a requirement that the defendant enter into and
21 complete a suitable educational or treatment program regarding
22 commercial sexual exploitation.

23 ~~(h)~~(l) Except diversion agreements reported under subsection~~(h)~~(m),
24 the attorney general or county or district attorney shall forward to the
25 Kansas bureau of investigation a copy of the diversion agreement at the
26 time such agreement is filed with the district court. The copy of the
27 agreement shall be made available upon request to the attorney general or
28 any county, district or city attorney or court.

29 ~~(h)~~(m) At the time of filing the diversion agreement with the district
30 court, the attorney general or county or district attorney shall forward to
31 the division of vehicles of the state department of revenue a copy of any
32 diversion agreement entered into in lieu of further criminal proceedings on
33 a complaint alleging a violation of K.S.A. 8-1567, and amendments
34 thereto. The copy of the agreement shall be made available upon request to
35 the attorney general or any county, district or city attorney or court.

36 Sec. 4. K.S.A. 2018 Supp. 75-5291 is hereby amended to read as
37 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
38 counties for the development, implementation, operation and improvement
39 of community correctional services that address the criminogenic needs of
40 felony offenders including, but not limited to, adult intensive supervision,
41 substance abuse and mental health services, employment and residential
42 services, and facilities for the detention or confinement, care or treatment
43 of offenders as provided in this section except that no community

1 corrections funds shall be expended by the secretary for the purpose of
2 establishing or operating a conservation camp as provided by K.S.A. 75-
3 52,127, and amendments thereto.

4 (2) Except as otherwise provided, placement of offenders in a
5 community correctional services program by the court shall be limited to
6 placement of adult offenders, convicted of a felony offense:

7 (A) Who, on or after July 1, 2014, are determined to be moderate
8 risk, high risk or very high risk by use of a statewide, mandatory,
9 standardized risk assessment tool or instrument which shall be specified by
10 the Kansas sentencing commission;

11 (B) whose severity level and criminal history score designate a
12 presumptive prison sentence on either sentencing guidelines grid but
13 receive a nonprison sentence as a result of departure;

14 (C) all offenders convicted of an offense which satisfies the definition
15 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
16 which is classified as a severity level 7 or higher offense and who receive a
17 nonprison sentence, regardless of the manner in which the sentence is
18 imposed;

19 (D) any offender for whom a violation of conditions of release or
20 assignment or a nonprison sanction has been established as provided in
21 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
22 the offender being required to serve any time for the sentence imposed or
23 which might originally have been imposed in a state facility in the custody
24 of the secretary of corrections;

25 (E) placed in a community correctional services program as a
26 condition of supervision following the successful completion of a
27 conservation camp program;

28 (F) who have been sentenced to community corrections supervision
29 pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2018 Supp. 21-
30 6824, and amendments thereto; or

31 (G) who have been placed in a community correctional services
32 program for supervision by the court pursuant to K.S.A. 8-1567, and
33 amendments thereto.

34 (3) Notwithstanding any law to the contrary and subject to the
35 availability of funding therefor, adult offenders sentenced to community
36 supervision in Johnson county for felony crimes that occurred on or after
37 July 1, 2002, but before July 1, 2013, shall be placed under court services
38 or community corrections supervision based upon court rules issued by the
39 chief judge of the 10th judicial district. The provisions contained in this
40 subsection shall not apply to offenders transferred by the assigned agency
41 to an agency located outside of Johnson county. The provisions of this
42 paragraph shall expire on July 1, 2013.

43 (4) Nothing in this act shall prohibit a community correctional

1 services program from providing services to juvenile offenders upon
2 approval by the local community corrections advisory board. Grants from
3 community corrections funds administered by the secretary of corrections
4 shall not be expended for such services.

5 (5) *Nothing in this act shall prohibit a community correctional*
6 *services program from providing services to offenders pursuant to a*
7 *memorandum of understanding entered into by a community correctional*
8 *services program and a county or district attorney pursuant to K.S.A. 22-*
9 *2907(d), and amendments thereto.*

10 (6) The court may require an offender for whom a violation of
11 conditions of release or assignment or a nonprison sanction has been
12 established, as provided in K.S.A. 22-3716, and amendments thereto, to
13 serve any time for the sentence imposed or which might originally have
14 been imposed in a state facility in the custody of the secretary of
15 corrections without a prior assignment to a community correctional
16 services program if the court finds and sets forth with particularity the
17 reasons for finding that the safety of the members of the public will be
18 jeopardized or that the welfare of the inmate will not be served by such
19 assignment to a community correctional services program.

20 (b) (1) In order to establish a mechanism for community correctional
21 services to participate in the department of corrections annual budget
22 planning process, the secretary of corrections shall establish a community
23 corrections advisory committee to identify new or enhanced correctional
24 or treatment interventions designed to divert offenders from prison.

25 (2) The secretary shall appoint one member from the southeast
26 community corrections region, one member from the northeast community
27 corrections region, one member from the central community corrections
28 region and one member from the western community corrections region.
29 The deputy secretary of community and field services shall designate two
30 members from the state at large. The secretary shall have final
31 appointment approval of the members designated by the deputy secretary.
32 The committee shall reflect the diversity of community correctional
33 services with respect to geographical location and average daily population
34 of offenders under supervision.

35 (3) Each member shall be appointed for a term of three years and
36 such terms shall be staggered as determined by the secretary. Members
37 shall be eligible for reappointment.

38 (4) The committee, in collaboration with the deputy secretary of
39 community and field services or the deputy secretary's designee, shall
40 routinely examine and report to the secretary on the following issues:

- 41 (A) Efficiencies in the delivery of field supervision services;
- 42 (B) effectiveness and enhancement of existing interventions;
- 43 (C) identification of new interventions; and

- 1 (D) statewide performance indicators.
- 2 (5) The committee's report concerning enhanced or new interventions
3 shall address:
- 4 (A) Goals and measurable objectives;
- 5 (B) projected costs;
- 6 (C) the impact on public safety; and
- 7 (D) the evaluation process.
- 8 (6) The committee shall submit its report to the secretary annually on
9 or before July 15 in order for the enhanced or new interventions to be
10 considered for inclusion within the department of corrections budget
11 request for community correctional services or in the department's
12 enhanced services budget request for the subsequent fiscal year.
- 13 Sec. 5. K.S.A. 2018 Supp. 75-52,144 is hereby amended to read as
14 follows: 75-52,144. (a) Drug abuse treatment programs certified in
15 accordance with subsection (b) shall provide:
- 16 (1) ~~Presentence~~—Drug abuse assessments of any person who is
17 convicted of *or being considered for a diversion agreement in lieu of*
18 *further criminal proceedings* for a felony violation of K.S.A. 65-4160 or
19 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior
20 to its transfer, or K.S.A. 2018 Supp. 21-5706, and amendments thereto,
21 and meets the requirements of K.S.A. 21-4729, prior to its repeal, or
22 ~~subsection (a) of~~ K.S.A. 2018 Supp. 21-6824(a), and amendments thereto;
- 23 (2) treatment of all persons who are convicted of *or entered into a*
24 *diversion agreement in lieu of further criminal proceedings* for a felony
25 violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal,
26 K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2018 Supp.
27 21-5706, and amendments thereto, meet the requirements of K.S.A. 21-
28 4729, prior to its repeal, or K.S.A. 2018 Supp. 21-6824, and amendments
29 thereto, and whose sentence requires completion of a certified drug abuse
30 treatment program, as provided in this section;
- 31 (3) one or more treatment options in the continuum of services
32 needed to reach recovery: Detoxification, rehabilitation, continuing care
33 and aftercare, and relapse prevention;
- 34 (4) treatment options to incorporate family and auxiliary support
35 services; and
- 36 (5) treatment options for alcohol abuse when indicated by the
37 assessment of the offender or required by the court.
- 38 (b) ~~The presentence~~ criminal risk-need assessment shall be conducted
39 by a court services officer or a community corrections officer. The
40 ~~presentence~~ drug abuse treatment program placement assessment shall be
41 conducted by a drug abuse treatment program certified in accordance with
42 the provisions of this subsection to provide assessment and treatment
43 services. A drug abuse treatment program shall be certified by the

1 secretary of corrections. The secretary may establish qualifications for the
2 certification of programs, which may include requirements for supervision
3 and monitoring of clients; fee reimbursement procedures; handling of
4 conflicts of interest; delivery of services to clients unable to pay; and other
5 matters relating to quality and delivery of services by the program. Drug
6 abuse treatment may include community based and faith based programs.
7 The certification shall be for a four-year period. Recertification of a
8 program shall be by the secretary. To be eligible for certification under this
9 subsection, the secretary shall determine that a drug abuse treatment
10 program: (1) Meets the qualifications established by the secretary; (2) is
11 capable of providing the assessments, supervision and monitoring required
12 under subsection (a); (3) has employed or contracted with certified
13 treatment providers; and (4) meets any other functions and duties specified
14 by law.

15 (c) Any treatment provider who is employed or has contracted with a
16 certified drug abuse treatment program who provides services to offenders
17 shall be certified by the secretary of corrections. The secretary shall
18 require education and training which shall include, but not be limited to,
19 case management and cognitive behavior training. The duties of providers
20 who prepare the presentence drug abuse assessment may also include
21 appearing at sentencing and probation hearings in accordance with the
22 orders of the court, monitoring offenders in the treatment programs,
23 notifying the probation department and the court of any offender failing to
24 meet the conditions of probation or referrals to treatment, appearing at
25 revocation hearings as may be required and providing assistance and data
26 reporting and program evaluation.

27 (d) (1) The cost for all drug abuse assessments performed pursuant to
28 subsection (a)(1), and the cost for all certified drug abuse treatment
29 programs for any person who meets the requirements of K.S.A. 2018
30 Supp. 21-6824, and amendments thereto, shall be paid by the Kansas
31 sentencing commission from funds appropriated for such purpose. The
32 Kansas sentencing commission shall contract for payment for such
33 services with the supervising agency.

34 (2) The sentencing court shall determine the extent, if any, that such
35 person is able to pay for such assessment and treatment. Such payments
36 shall be used by the supervising agency to offset costs to the state. If such
37 financial obligations are not met or cannot be met, the sentencing court
38 shall be notified for the purpose of collection or review and further action
39 on the offender's sentence.

40 (3) *If the person has entered into a diversion agreement in lieu of*
41 *further criminal proceedings, the county or district attorney shall*
42 *determine the extent that such person is able to pay for such assessment*
43 *and treatment, if any. Such payments shall be used by the supervising*

1 *agency to offset costs to the state or county. If such financial obligations*
2 *are not met or cannot be met, the county or district attorney shall be*
3 *notified for the purpose of collection or review and further action on the*
4 *person's diversion agreement.*

5 (e) The community corrections staff shall work with the substance
6 abuse treatment staff to ensure effective supervision and monitoring of the
7 offender.

8 (f) The secretary of corrections is hereby authorized to adopt rules
9 and regulations to carry out the provisions of this section.

10 Sec. 6. K.S.A. 22-2907 and K.S.A. 2018 Supp. 21-6824, 22-2909, 75-
11 5291 and 75-52,144 are hereby repealed.

12 Sec. 7. This act shall take effect and be in force from and after its
13 publication in the statute book.

HOUSE BILL No. 2052

By Committee on Corrections and Juvenile Justice

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to probation; hearing; credit toward early discharge; amending K.S.A.
3 2018 Supp. 21-6608 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 21-6608 is hereby amended to read as
7 follows: 21-6608. (a) The period of suspension of sentence, probation or
8 assignment to community corrections fixed by the court shall not exceed
9 two years in misdemeanor cases, subject to renewal and extension for
10 additional fixed periods of two years. Probation, suspension of sentence or
11 assignment to community corrections may be terminated by the court at
12 any time and upon such termination or upon termination by expiration of
13 the term of probation, suspension of sentence or assignment to community
14 corrections, an order to this effect shall be entered by the court.

15 (b) The district court having jurisdiction of the offender may parole
16 any misdemeanant sentenced to confinement in the county jail. The period
17 of such parole shall be fixed by the court and shall not exceed two years
18 and shall be terminated in the manner provided for termination of
19 suspended sentence and probation.

20 (c) For all crimes committed on or after July 1, 1993, the duration of
21 probation in felony cases sentenced for the following severity levels on the
22 sentencing guidelines grid for nondrug crimes and the sentencing
23 guidelines grid for drug crimes is as follows:

24 (1) For nondrug crimes the recommended duration of probation is:

25 (A) 36 months for crimes in crime severity levels 1 through 5; and

26 (B) 24 months for crimes in crime severity levels 6 and 7;

27 (2) for drug crimes the recommended duration of probation is 36
28 months for crimes in crime severity levels 1 and 2 committed prior to July
29 1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or
30 after July 1, 2012;

31 (3) except as provided further, in felony cases sentenced at severity
32 levels 9 and 10 on the sentencing guidelines grid for nondrug crimes,
33 severity level 4 on the sentencing guidelines grid for drug crimes
34 committed prior to July 1, 2012, and severity level 5 of the sentencing
35 guidelines grid for drug crimes committed on or after July 1, 2012, if a
36 nonprison sanction is imposed, the court shall order the defendant to serve

1 a period of probation of up to 12 months in length;

2 (4) in felony cases sentenced at severity level 8 on the sentencing
3 guidelines grid for nondrug crimes, severity level 3 on the sentencing
4 guidelines grid for drug crimes committed prior to July 1, 2012, and
5 severity level 4 of the sentencing guidelines grid for drug crimes
6 committed on or after July 1, 2012, and felony cases sentenced pursuant to
7 K.S.A. 2018 Supp. 21-6824, and amendments thereto, if a nonprison
8 sanction is imposed, the court shall order the defendant to serve a period of
9 probation, or assignment to a community correctional services program, as
10 provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to
11 18 months in length;

12 (5) if the court finds and sets forth with particularity the reasons for
13 finding that the safety of the members of the public will be jeopardized or
14 that the welfare of the inmate will not be served by the length of the
15 probation terms provided in subsections (c)(3) and (c)(4), the court may
16 impose a longer period of probation. Such an increase shall not be
17 considered a departure and shall not be subject to appeal;

18 (6) except as provided in subsections (c)(7) and (c)(8), the total
19 period in all cases shall not exceed 60 months, or the maximum period of
20 the prison sentence that could be imposed whichever is longer. Nonprison
21 sentences may be terminated by the court at any time;

22 (7) if the defendant is convicted of nonsupport of a child, the period
23 may be continued as long as the responsibility for support continues. If the
24 defendant is ordered to pay full or partial restitution, the period may be
25 continued as long as the amount of restitution ordered has not been paid;
26 and

27 (8) the court may modify or extend the offender's period of
28 supervision, pursuant to a modification hearing and a judicial finding of
29 necessity. Such extensions may be made for a maximum period of five
30 years or the maximum period of the prison sentence that could be imposed,
31 whichever is longer, inclusive of the original supervision term.

32 (d) In addition to the provisions of subsection (a), a defendant ~~who~~
33 ~~has a risk assessment of low risk, has paid all restitution and has been~~
34 ~~compliant with the terms of~~ *may be discharged early from probation,*
35 *assignment to a community correctional services program, suspension of*
36 *sentence or nonprison sanction for a period of 12 months shall be eligible*
37 *for discharge from such period of supervision by the court if such*
38 *defendant is found to be in substantial compliance with the conditions of*
39 *such supervision. The court shall set a hearing at sentencing for the date*
40 *when the defendant will have served 50% of such defendant's term of*
41 *supervision to determine if a defendant has been in substantial compliance*
42 *with the defendant's term of supervision. The court shall grant such*
43 *discharge unless the court finds by clear and convincing evidence that*

- 1 denial of such discharge will serve community safety interests.
- 2 *(e) A defendant shall earn credit to reduce such defendant's term of*
3 *probation, assignment to a community correctional services program,*
4 *suspension of sentence or nonprison sanction when the defendant has*
5 *substantially complied with the conditions of such defendant's supervision.*
6 *A defendant shall be awarded seven days earned discharge credit for each*
7 *full calendar month of substantial compliance with the conditions of such*
8 *defendant's supervision.*
- 9 *(f) The Kansas sentencing commission shall adopt procedures and*
10 *forms to standardize the process for calculating earned discharge credit*
11 *pursuant to this section.*
- 12 *(g) For the purposes of this section, "substantial compliance" means:*
13 *(1) The defendant has made significant progress in meeting the*
14 *conditions of probation, assignment to a community correctional services*
15 *program, suspension of sentence or nonprison sanction; and*
16 *(2) the defendant has no violations of conditions of probation,*
17 *assignment to a community correctional services program, suspension of*
18 *sentence or nonprison sanction filed with the court pursuant to K.S.A. 22-*
19 *3716, and amendments thereto.*
- 20 *(h) The state of Kansas or any agents or employees of the state shall*
21 *not be liable for damages caused by any negligent or wrongful act or*
22 *omission in making the earned discharge calculations authorized by this*
23 *section.*
- 24 Sec. 2. K.S.A. 2018 Supp. 21-6608 is hereby repealed.
- 25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.

2018 Kansas Statutes

21-5413. Battery; aggravated battery; battery against certain persons; aggravated battery against certain persons. [See Revisor's Note] (a) Battery is:

- (1) Knowingly or recklessly causing bodily harm to another person; or
 - (2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner.
- (b) Aggravated battery is:
- (1) (A) Knowingly causing great bodily harm to another person or disfigurement of another person;
 - (B) knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or
 - (C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;
 - (2) (A) recklessly causing great bodily harm to another person or disfigurement of another person;
 - (B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or
 - (3) (A) committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act; or
 - (B) committing an act described in K.S.A. 8-1567, and amendments thereto, when bodily harm to another person results from such act under circumstances whereby great bodily harm, disfigurement or death can result from such act; or
 - (4) committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act while:
 - (A) In violation of any restriction imposed on such person's driving privileges pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto;
 - (B) such person's driving privileges are suspended or revoked pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto; or
 - (C) such person has been deemed a habitual violator as defined in K.S.A. 8-285, and amendments thereto, including at least one violation of K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any city in this state, any resolution of any county in this state or any law of another state, which ordinance, resolution or law declares to be unlawful the acts prohibited by that statute.
- (c) Battery against a law enforcement officer is:
- (1) Battery, as defined in subsection (a)(2), committed against a:
 - (A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
 - (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;
 - (C) judge, while such judge is engaged in the performance of such judge's duty;
 - (D) attorney, while such attorney is engaged in the performance of such attorney's duty; or
 - (E) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;
 - (2) battery, as defined in subsection (a)(1), committed against a:
 - (A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or
 - (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;
 - (C) judge, while such judge is engaged in the performance of such judge's duty;
 - (D) attorney, while such attorney is engaged in the performance of such attorney's duty; or
 - (E) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty; or
 - (3) battery, as defined in subsection (a) committed against a:
 - (A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;
 - (B) state correctional officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;
 - (C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or
 - (D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.
- (d) Aggravated battery against a law enforcement officer is:
- (1) An aggravated battery, as defined in subsection (b)(1)(A) committed against a:
 - (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;
 - (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
 - (C) judge, while such judge is engaged in the performance of such judge's duty;
 - (D) attorney, while such attorney is engaged in the performance of such attorney's duty; or
 - (E) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;
 - (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)(C), committed against a:
 - (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;
 - (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
 - (C) judge, while such judge is engaged in the performance of such judge's duty;
 - (D) attorney, while such attorney is engaged in the performance of such attorney's duty; or
 - (E) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty; or
 - (3) knowingly causing, with a motor vehicle, bodily harm to a:
 - (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary for aging and disability services, while such employee is engaged in the performance of such employee's duty.

(g) (1) Battery is a class B person misdemeanor.

(2) Aggravated battery as defined in:

(A) Subsection (b)(1)(A) or (b)(4) is a severity level 4, person felony;

(B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;

(C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer as defined in:

(A) Subsection (c)(1) is a class A person misdemeanor;

(B) subsection (c)(2) is a severity level 7, person felony; and

(C) subsection (c)(3) is a severity level 5, person felony.

(4) Aggravated battery against a law enforcement officer as defined in:

(A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and

(B) subsection (d)(2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(h) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;

(2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, whose duties include working at a correctional institution;

(3) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2018 Supp. 38-2302, and amendments thereto;

(4) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, whose duties include working at a city holding facility or county jail facility;

(5) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12;

(6) "mental health employee" means: (A) An employee of the Kansas department for aging and disability services working at Larned state hospital, Osawatomie state hospital, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto; and (B) contractors and employees of contractors under contract to provide services to the Kansas department for aging and disability services working at any such institution or facility;

(7) "judge" means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;

(8) "attorney" means a: (A) County attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and (B) public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto;

(9) "community corrections officer" means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs; and

(10) "court services officer" means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court.

History: L. 2010, ch. 136, § 48; L. 2011, ch. 30, § 19; L. 2013, ch. 122, § 8; L. 2014, ch. 115, § 20; L. 2015, ch. 90, § 1; L. 2018, ch. 7, § 2; July 1.

Revisor's Note:

Section was amended twice in the 2018 session, see also 21-5413a.

2018 Kansas Statutes

21-5414. Domestic battery; aggravated domestic battery. (a) Domestic battery is:

- (1) Knowingly or recklessly causing bodily harm to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member; or
- (2) knowingly causing physical contact with a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

(b) Aggravated domestic battery is:

- (1) Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner; or
- (2) knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

(c) (1) Domestic battery is:

(A) Except as provided in subsection (c)(1)(B) or (c)(1)(C), a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

(B) except as provided in subsection (c)(1)(C), a class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours' imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days' imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court; and

(C) a person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court. If the offender does not undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(2) Aggravated domestic battery is a severity level 7, person felony.

(d) In determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense under this section, a court shall consider information presented to the court relating to any current or prior protective order issued against such person.

(e) As used in this section:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since the termination of the relationship, if applicable;

(2) "family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(3) "protective order" means:

(A) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;

(B) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;

(C) a restraining order issued pursuant to K.S.A. 2018 Supp. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;

(D) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case or upon appeal that orders the person to refrain from having any direct or indirect contact with a family or household member;

(E) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

(F) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(f) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under subsection (c)(1):

(1) "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law,

- (3) only convictions occurring in the immediately preceding five years including prior to July 1, 2001, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and
- (4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.
- (g) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of subsection (a) or (b) or an ordinance of any city or resolution of any county which prohibits the acts that subsection (a) or (b) prohibits only twice during any five-year period.

History: L. 2010, ch.136, § 49; L. 2011, ch. 30, § 20; L. 2012, ch. 162, § 15; L. 2017, ch. 62, § 2; July 1.

2018 Kansas Statutes

22-4616. Domestic violence offenses; designation; special sentencing provision. (a) On and after July 1, 2011, in all criminal cases filed in the district court, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense. On and after July 1, 2013, in all criminal cases filed in the municipal court, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense.

(1) Except as provided further, if the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of K.S.A. 2018 Supp. 21-6604, and amendments thereto.

(2) The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of K.S.A. 2018 Supp. 21-6604, and amendments thereto, only if the court finds on the record that:

(A) The defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; and

(B) the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member.

(b) The term "domestic violence offense" shall have the meaning provided in K.S.A. 2018 Supp. 21-5111, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

History: L. 2010, ch. 101, § 1; L. 2011, ch. 30, § 141; L. 2012, ch. 162, § 17; May 31.

**Kansas Sentencing Commission Workshop
September 18, 2019**

Proposal to provide early release for drug grid crimes

1. Allow a defendant to petition the trial court for modification of incarceration sentence upon completion of at least 50% of total sentence. This procedure only applies to defendants who are in custody on a sentence where the primary crime is a drug grid sentence.¹
2. Modification can include either, or both, a modification of the length of sentence or being placed on probation to community corrections for the probation period imposed for the level of the crime of conviction, or for the period of the balance of their incarceration sentence plus one year, whichever is greater.²
3. If a defendant is placed on probation pursuant to this proposal, the court may revoke said probation upon a finding that any term or condition has been violated. There shall be no requirement that any quick dip sanction be used prior to a revocation, although the court is authorized to use jail sanctions, if deemed appropriate by the court.³
4. To be eligible to file a motion the defendant must have completed all programs required by the Secretary of Corrections.⁴
5. The defendant can only file one such motion during the period of their incarceration, unless the court authorizes the filing of a second motion, if the first motion is denied. The court can require certain conditions to be met prior to the filing of the second motion.⁵
6. The decision to grant the motion shall be within the discretion of the trial court.⁶
7. Upon request, the defendant is entitled to counsel to assist the defendant in making a determination on when the motion should be filed and presentation of the motion to the court.⁷

8. Upon the filing of said motion, the Secretary of Corrections shall file with the court a report identifying all programs completed by the defendant, any programs recommended, but not yet completed, all disciplinary actions imposed on the defendant while in custody, and any other information deemed relevant by the Secretary of Corrections. The Secretary may make a recommendation to the court as to whether the motion should be granted, but said recommendations will not be binding on the court.⁸

Footnotes to Proposal

1. This proposal is limited to the drug grid only. Typically, there is no individual victim of drug grid crimes. Therefore, there would be no victim notification requirements. Expanding the proposal to include nondrug grid crimes would require victim notification and could negatively impact victims as a result of these additional proceedings.
2. This proposal is not designed to reduce sentences imposed for drug crimes, but to give defendants a second chance at probation should they perform well in prison and satisfy the conditions necessary to file the motion. The sentence can remain intact and can be re-imposed if the defendant fails on probation.
3. This proposal does not require the use of quick dips prior to revocation of the release to probation under this proposal. It is my belief that quick dips are not as effective with defendants who have already served time in prison.
4. All programs available and appropriate for the defendant should be completed prior to being eligible to file a motion. This may require the Department of Corrections to modify when it provides programs to defendants to make them eligible, but if early release is an option, they should be motivated to make any changes necessary to accomplish that goal.
5. Motion filings are limited to prevent successive filings by defendants, similar to limitations imposed on motions under K.S.A. 6-1507 actions.
6. Decisions on the motions should be left to the discretion of the sentencing judge with input from local prosecutors and defense counsel. This may result in variance of the application of the option across the state, but that exists in prosecution and sentencing decisions already.
7. This provision makes it clear that counsel can be appointed prior to the filing of any motion.
8. This report requirement allows for the obtaining of information relevant to the decision making process without the necessity of KDOC staff appearing and testifying at motion hearings.

Interim Report of the Re-Entry Subcommittee, KCJRC

Nov. 18, 2019

1. Focus of the Subcommittee:

According to statistics from the Kansas Department of Corrections, over 6,000 offenders are released each year. Of these 6,000:

- 50% have issues relating to driver's licenses
- 75% enter KDOC needing job training. KDOC reaches about 75% of these persons.
- 75% need substance abuse and recovery programming. KDOC reaches about 50% of these persons.
- 20% will leave with no stable housing.
- 25% will need some level of mental health services
- Within three years, a third of those released will return to prison; half for supervised release violations, and the rest for new crimes.

The statistics bear out what was concluded in federally funded *Report of the Re-entry Policy Council* and the 2006 report of the *Kansas Criminal Justice Recodification, Rehabilitation, and Restoration Project (3Rs Report)*: successful re-entry requires that individuals have access to transportation, employment, housing, and health services, including physical, mental, and substance abuse treatment. These areas are linked. A person must be able to drive to consistently get to work or counseling or treatment. A job provides financial stability, which is important to housing.

Successful re-entry serves the needs not just of the person returning to society, but the rest of the citizenry. Because 50% of those being released from the KDOC face problems with driver's licenses, the subcommittee concluded it was important to immediately address the issues surrounding driver's licenses. At the same time, the subcommittee obtained preliminary information regarding housing, employment, and health services, and those topics remain on the agenda for the coming year.

At the October 28, 2019, Commission meeting the subcommittee was tasked with two additional areas of concern:

- The use of debt collection to incarcerate citizens.
- Early release for drug offenders who meet particularized criteria.

2. The Process going forward

Based on the information the subcommittee gathered, several topics merit further review:

- ❖ Driver's license issues:
 - Continue to gather data, including impact to revenue, and programs and changes that other states have implemented.

- Gain a fuller understanding of the intersection between the traffic infraction and resolutions in municipal or district court and the administrative process with the Kansas Department of Revenue. The goal is to identify ways to streamline the process and make it less onerous and costly, and then draft legislation to correct the problems identified.
- Look for ways to create efficiencies in the system, including the use of emails, text messages, or apps to provide notice and information.
- Assist KDOC with implementing a program to issue a state identification for persons being released so that upon re-entry people can obtain a driver's license.
- Look for avenues to assist incarcerated persons with resolving unpaid fines and traffic offenses prior to being released to enable those persons to obtain a license upon re-entry.
- Evaluate alternate pay sources for the salaries of public employees currently being compensated by suspended driver's licenses fees.
- Explore the effectiveness and impact of driver's license suspension as a mechanism to force payment, and the efficacy of eliminating the ability for the state to automatically suspend for non-payment and/or for failures to appear.
- ❖ Examine the challenges of employment, housing, and health services (mental, physical, substance abuse treatment), including evaluating programs currently in existence, gathering data on what programs are effective to increase and maintain employment, housing and health services. Explore how to increase access to the necessary resources, including access to social safety nets.
- ❖ Debt collection: gather research on the use of bond and failure to appear notices to the detriment of those who owe civil debt. Work on legislative changes to confine the use of bond and incarceration to be consistent with criminal justice matters, and not civil debt.
- ❖ Evaluate the proposal from the Kansas Sentencing Commission on the early release for drug offenders. The KSC provided data and a proposal to the Subcommittee. That information needs to be reviewed, and if necessary, additional data gathered.

3. Specific Recommendations for Action Now:

Although the subcommittee has identified a number of issues and topics for additional study and consideration, it is already clear that at this point that there are recommendations ripe for legislative action in the 2020 Legislative Session.

- ❖ DC1020 and fees associated with restricted licenses, specifically that the fee must be paid before the person knows if they qualify for a restricted license. Currently the fee is non-refundable.
- ❖ Amend the mandatory 90-day suspension period that accompanies reinstatement.
- ❖ Permit one reinstatement fee per citation.
- ❖ Permit courts to waive mandatory fines and fees for indigent persons.

Appendix: Information Gathered

To date, the subcommittee has met on six occasions. Initially, the subcommittee reviewed the charge as set out in section 2 of HB2290, and then turned to several documents to learn about the issues facing re-entry, including:

- Re-entry research provided by Natalie Nelson with the Kansas Research Department. Ms. Nelson's report provided information from clearinghouses on re-entry issues, including: <https://whatworks.csgjusticecenter.org> and <https://crimesolutions.gov>. One of the documents specifically addressed the Wichita Work Release Program.
- The conclusions reached regarding re-entry from the 2006 3Rs Report.
- The conclusions reached in the 2003 *Report of the Re-entry Policy Council*
- A report from Secretary Zmuda, who is a subcommittee member that provided detailed information about recidivism, which has decreased from 55% to 36%, and the issues facing persons released from the KDOC, including on-going issues that will need to be addressed upon re-entry. Secretary Zmuda described the strategies KDOC has in place to continue to decrease recidivism, and the barriers that still exist and impact successful re-entry.

Subcommittee members agreed to do initial investigation into the areas of driver's license reform, mental health, housing, employment, and to focus on gaps in re-entry. The subcommittee decided to focus on driver's license issues first and completed a review of the current statutes, regulations, and practices with regard to driver's licenses, including issues with obtaining a license and the problems that occur when released offenders drive without a license or on a suspended license. The subcommittee soon discovered that for many a continuous cycle of license suspensions occurs that can be difficult to break and which significantly impact a person's ability to maintain employment. The subcommittee agreed that it should research the issue with an eye towards drafting legislation to correct the problems.

Over the course of the next five meetings, the subcommittee gathered the following information:

- Margie Phelps, Executive Director of Programs and Risk Reduction at KDOC, provided the subcommittee with specific barriers that inmates face with driver's licenses. She also provided information about unpaid fines that inmates have which can create significant problems upon release.
- Janelle Robinson, Driver Services Supervisor with Kansas Department of Revenue Division of Vehicles, gave a presentation on *Suspended & Restricted Driver's License Process in Kansas*. Subcommittee learned about priorities with DC1020 and 1015 forms, the cost for requesting restricted licenses, and the 90-day suspension period.
- Pursuant to an Open Records Request of the Kansas Department of Revenue Division of Vehicles, the subcommittee learned that, as of October 10, 2019, there were a total

of 213,055 suspended licenses in 2019. From that same request, the following are the revenues attached to driver's license fees:

- Municipal court fees:
 - FY2018 \$901,981.12
 - FY2019 \$541,014.09
- Driving Suspended Reinstatement fees:
 - FY2018 \$3,292,273.34
 - FY2019 \$3,606,116.99
- Driver's License Reinstatement fees:
 - FY2018: \$2,663,082.50
 - FY2019: \$2,530,711.50
- Patrick Armstrong with Council of State Governments (CSG) gave a presentation on the ways the CSG can assist the subcommittee. Mr. Armstrong provided three different reports that had been created on the issue of driver's license schemes.
- Professor Meredith Schnug with the Douglas County Legal Aid Clinic at the University of Kansas School of Law provided insight into how the driver's licenses issues are addressed in Douglas County.
- Austin Spillar from the ACLU participated in a subcommittee meeting and directed the subcommittee to Fine and Fee Justice Center for more information.
- Data and information was provided by Kansas Appleseed regarding the costs of the current system and changes that could be beneficial while still collecting fees, specifically pointing to the changes made in California that have resulted in few suspensions and more compliance, including payment of fines, and the Free to Drive Coalition.
- Sarah Hoskinson, Deputy Special Counsel of the Kansas Supreme Court, discussed the *Ad Hoc Committee Report on Bonding Practices, Fines, and Fees in Municipal Court*. The report was the result of an Ad Hoc Committee created by Kansas Supreme Court Order. The report was submitted on September 6, 2018.
- Impact Assessment and Proposal for the early release of drug offenders provided by the Kansas Sentencing Commission. Based on that assessment, the Commission drafted a proposal that would permit drug offenders who have completed all KDOC programming to petition the court for early release.
- Report by Prof. John Francis of Washburn Law School on the problem of debt collection, bond, and/or incarceration. The subcommittee learned that people who have outstanding debt can be repeatedly summoned to court for nonpayment. If the debtor fails to appear, a show-cause order for contempt and eventually a warrant for non-appearance may be issued. If arrested, bond can be required to release the debtor from jail, and significantly, rather than returning the bond money when the person appears in court, bond can be forwarded to the creditor.