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Judiciary, Corrections, and Juvenile Justice

H-7 Mental Health and the Criminal Justice System

Considerations for incarcerated and detained persons with mental health issues have become increasingly common in the criminal justice system in Kansas. An overview of recent legislation and available services, including crisis intervention, mental health courts, and Kansas Department of Corrections (KDOC) mental health services follows.

Recent Legislation

Kansas Youth Suicide Prevention Coordinator and Kansas Criminal Justice Reform Commission—2019 HB 2290

The 2019 Legislature passed HB 2290, which creates and amends several laws related to public agencies. Among these provisions, the bill creates a position of Kansas Youth Suicide Prevention Coordinator within the Office of the Attorney General and creates the Kansas Criminal Justice Reform Commission (Commission) to study and make recommendations on various aspects of the criminal justice system, including several topics related to mental health.

Kansas Youth Suicide Prevention Coordinator

The bill requires the Attorney General to appoint a Kansas Youth Suicide Prevention Coordinator and additional support staff (as appropriations allow) to identify, create, and coordinate and support youth suicide awareness and prevention efforts throughout the state. The coordinator may:

- Lead the development, implementation, and marketing of a website, online application, and mobile phone application to facilitate communication with youth for the purpose of promoting youth safety and well-being;
- Develop and promote multidisciplinary and interagency strategies to help communities, schools, mental health professionals, medical professionals, law enforcement, and others work together and coordinate efforts to prevent and address youth suicide;

- Organize events that bring together youth, educators, and community members from across the state to share information and receive training to prevent and address youth suicide in their communities;
- Gather, disseminate, and promote information focused on suicide reduction; and
- Perform any other duty assigned by the Attorney General to carry out the provisions of the bill.

Kansas Criminal Justice Reform Commission

The Commission is comprised of 18 voting members and 3 non-voting members, and is required to, in relevant part:

- Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards;
- 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; and
- Study the policies of the 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.

The bill requires one member of the Commission to be a mental health professional appointed by the Kansas Community Mental Health Association. The bill requires the Commission to prepare and submit its preliminary report to the Legislature on or before December 1, 2019,

and a final report and recommendations to the Legislature on or before December 1, 2020. The preliminary report can be found at <http://www.kslegresearch.org/KLRD-web/Committees/Committees-KS-CriminalJustRefmComm.html>.

Juvenile Crisis Intervention Centers—2018 House Sub. for SB 179

The 2018 Legislature created and amended law to establish juvenile crisis intervention centers and procedures for admission of juveniles to such centers. For more information on 2018 House Sub. for SB 179, see article H-5 Juvenile Services in this *Briefing Book*.

Competency to Stand Trial—2018 HB 2549

The 2018 Legislature amended law related to the competency of a defendant to stand trial, expanding the list of places where a defendant may be committed for evaluation and treatment. The bill provides a court, in both misdemeanor and felony cases, may commit a defendant to the state security hospital or any appropriate state, county, or private institution or facility for a psychiatric or psychological examination and report to the court for determination of competency to stand trial. The bill also provides if a defendant is found incompetent to stand trial, the court must commit the defendant for evaluation and treatment to any appropriate state, county, or private institution or facility.

Under prior law, a defendant charged with a felony could be committed only to a state security hospital or any county or private institution for examination and report to the court and, if found incompetent to stand trial, could be committed only to a state security hospital or any appropriate county or private institution for evaluation and treatment. Under prior law, a defendant charged with a misdemeanor could be committed only to any appropriate state, county, or private institution for examination and report and, if found incompetent to stand trial, could be admitted only to these same institutions for evaluation and treatment.

**Crisis Intervention Act—2017 Senate Sub.
for HB 2053**

The 2017 Legislature passed legislation related to the care and treatment of persons with mental illness and problems with substance abuse through Senate Sub. for HB 2053, also known as the Crisis Intervention Act (Act). The Act outlines requirements for the use of emergency observation and treatment (EOT) in a “crisis intervention center” (center), defined as an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year; equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition; and uses certified peer specialists. EOT does not mean the person loses any civil right, property right, or legal capacity, except as ordered by a court. Admission alone does not create a presumption that a person is in need of a guardian or conservator, or both.

An individual may be admitted voluntarily or involuntarily based on the belief and factual circumstances supporting the belief that the person needs EOT due to mental illness or substance abuse and he or she is likely to cause harm to self or others if not immediately detained. Law enforcement can transport a person needing EOT to a center, and the center cannot refuse to accept a person for evaluation if the center is within the officer’s jurisdiction.

The person’s need for EOT must be evaluated within 4 hours after admission by the head of the center and no later than 23 hours after admission by a different behavioral health professional. If the head of the center determines the need for EOT exists after 48 hours, the head of the center must file an affidavit to that effect for review in the district court in the county where the center is located. If the head of the center determines the need for EOT exists after 72 hours, the head of the center must immediately file a petition to find appropriate placement for the person.

The Act outlines the rights of every patient being treated in a center and requires the head of the center to advise any person in custody of his or her rights under the Act.

**KDOC Mental Health and Behavioral
Health Services**

KDOC facilities provide comprehensive health care through private companies under contract with KDOC. Each facility provides 24-hour mental health care for inmates, including on-site crisis intervention, use of designated hospital rooms or appropriate health facilities, and emergency on-call mental health professional services when the emergency health facility is not located nearby. Mental health services are provided to inmates based upon psychiatric assessments. Specific programs and services are outlined below.

Larned Correctional Mental Health Facility

Historically, Larned Correctional Mental Health Facility has housed the most severely mentally ill adult male inmates within KDOC, along with a significant number of inmates with behavioral disorders that make them an unacceptable risk for housing in another facility. The Central Unit serves as a transitional unit for inmates who are not able to function in the general population of a traditional correctional institution for mental health reasons, but are not in need of psychiatric hospitalization. Inmates are assigned to this facility by mental health staff at other correctional institutions. In May 2017, KDOC announced plans to convert the 150-bed maximum-security Central Unit to a medium-security unit to house certain offenders aged 18-25 with high recidivism potential. The 150 mental health inmates previously housed in Central Unit were subsequently transferred to the behavioral health unit at El Dorado Correctional Facility in Summer 2017.

Larned State Hospital

At Larned State Hospital, 115 beds are reserved for KDOC offenders who need a higher level of psychiatric care. There, inmates are provided mental health care and treatment in either the acute care or the residential rehabilitation program (RRP). The purpose of RRP is to provide psychiatric rehabilitation and vocational services to adult males referred from KDOC with the intent of preparing these individuals for successful reintegration into the community or

back into KDOC services as determined on an individual basis.

El Dorado Correctional Facility

Fundamental Lessons in Psychology (FLIP).

Directed at segregation inmates, FLIP consists of various psychological topics, including anger management; anxiety; assertiveness; cognitive self-change; depression; general mental health; grief; loss and forgiveness; men's issues, adjustment, or both; and self-esteem.

Behavior Modification Program (BMP).

BMP is designed to deal with transitioning segregation inmates in a stratified behavior modification program based on increased steps of privileges for demonstrated appropriate behavior and program compliance. The nine-month, cognitive-based program integrates inmates in a three-step process that includes portions of Thinking for a Change, Motivation for Change, Positive Attitude Development, and anger management programs. An additional three months of monitoring under intensive supervision is required under the program.

Ellsworth Correctional Facility

A variety of services are available, including mental health group counseling, intensive groups, individual counseling, psychiatric intervention, crisis intervention, psychological evaluations, activity therapy, discharge planning, and tele-psychiatry, to assist in the management of inmates on psychotropic drugs and on-call services. In addition, mental health professionals provide staff instruction on the assessment and management of the inmate population.

Norton Correctional Facility

The Behavioral Health Department provides individual and group therapy for inmates, including therapy groups for anger management and dialectical behavior therapy, and covering topics such as lifestyle changes, relationships, and parenting.

Alternative Sentencing Courts

Alternative sentencing courts, or specialty courts, are established as an alternative to incarceration for persons with mental health issues, substance abuse issues, or both, who are convicted of misdemeanors. These courts offer treatment, support, and counseling. Many times, those who suffer from mental health disorders also suffer from addiction to drugs, such as opioids. For some mental health courts, diagnosis of a major mental health disorder is required for participation. However, if the participant is also addicted to drugs, treatment for that addiction will coincide with treatment for the underlying mental health disorder. Kansas has not established a statewide program for drug treatment or mental health courts. However, ten judicial districts have established drug courts and two judicial districts have established a behavioral or mental health court. Additionally, the cities of Topeka and Wichita have developed their own municipal-level programs. Further detail regarding some of these programs follows.

Wyandotte County sets aside a care and treatment docket for those who would benefit from the program. Judges can decide to mandate outpatient treatment or order a trip to Osawatomie State Hospital. In Douglas County, the county commission developed a behavioral health program for its courts, which opened in January 2017. More than \$440,000 was set aside to fund the mental health court in 2016. The mission of the behavioral health court is to connect defendants with community support services and reduce criminal involvement of defendants who suffer from serious mental illness and co-occurring disorders, thereby enhancing public health and safety.

The City of Topeka developed its alternative sentencing court in 2015 with a \$91,000 grant from the U.S. Department of Justice and \$25,000 from the Kansas Health Foundation. The court provides treatment, rather than jail time, for those charged with misdemeanor offenses and who are mentally ill or addicted to drugs or alcohol. The City of Wichita developed its mental health court in 2009 with a federal grant. The program

is said to have improved the quality of life for its graduates, diminished recidivism, and saved taxpayers millions of dollars (<https://www.khi.org/news/article/advocates-of-kansas-mental-health-courts-say-lives-improved-taxpayer-dollar>).

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