

# Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2018 Kansas Legislature

**CHAIRPERSON:** Representative J. Russell Jennings

**VICE-CHAIRPERSON:** Senator Molly Baumgardner

**RANKING MINORITY MEMBER:** Representative Dennis “Boog” Highberger

**OTHER MEMBERS:** Senators Ed Berger, Oletha Faust-Goudeau, Pat Pettey, Mary Pilcher-Cook, Mary Jo Taylor, and Rick Wilborn; and Representatives Larry Campbell, Sydney Carlin, Leo Delperdang, Gail Finney, and Susan Humphries

## **CHARGE**

KSA 2017 Supp. 46-2801 directs the Committee to monitor inmate and juvenile offender populations and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections. In addition, the Committee is to study:

- Implementation of juvenile justice reform;
- Offense proportionality in the adult sentencing grid; and
- The impact of juvenile immediate intervention programs (diversions) and adjudications on future employment and their use for impeachment of witnesses (review and consider Judicial Council Report on 2017 HB 2352).

# Joint Committee on Corrections and Juvenile Justice Oversight

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee recommended:

- The House Committee on Appropriations and the Senate Committee on Ways and Means consider a plan to restore \$1.5 million in funding for inmate treatment programs in state institutions for each of the next three years;
- The House Committee on Corrections and Juvenile Justice not pass HB 2352 as proposed or as amended, but continue to study the issue and consider legislation changing how juvenile dispositions are treated with regard to future application of the offender;
- The House Committee on Corrections and Juvenile Justice monitor the state budget and, if possible, recommend passage and funding of 2017 HB 2087, HB 2088, and HB 2090, concerning modifications to the SB 123 program;
- The House Committee on Corrections and Juvenile Justice recommend to the full House a bill similar to 2017 HB 2092, aligning all financial loss crimes with the current threshold of \$1,500;
- The Joint Committee on State Building Construction and the State Finance Council delay the process for approving construction at the Lansing Correctional Facility until February 15, 2018, to give the Legislature an opportunity to more fully vet and approve plans for construction;
- The House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary meet jointly to discuss human trafficking with input from the Attorney General's Human Trafficking Advisory Board, representatives of the Wichita State University Center for Human Trafficking, and other stakeholders;
- The House Corrections and Juvenile Justice and Senate Judiciary Committees continue to study possible changes to Kansas' Romeo and Juliet laws; and
- The Kansas Sentencing Commission reconvene its proportionality committee and make recommendations based on the category and severity of crimes to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight and the 2019 Legislature.

The Joint Committee also recommended sending letters to Chief Justice Lawton Nuss concerning implementation of multidisciplinary teams required to be appointed pursuant to KSA 2016 Supp. 38-2393; the Secretary for Children and Families concerning the placement of runaways and status offenders in detention; and the Secretary of Corrections asking for more detail on the

substantial increase in capacity at El Dorado Correctional Facility without the need for additional staff.

**Proposed Legislation:** The Committee requests legislation to:

- Stay limits on overall case lengths for juvenile offenders who abscond from supervision such that the case timeline does not begin until the dispositional order is entered;
- Clarify a fee may be assessed as part of applications under the Immediate Intervention Program, specify the fee shall not exceed \$100, and allow juvenile corrections advisory boards to determine the amount of the fee;
- Amend KSA 2017 Supp. 75-52,161(d)(7) to change “calculate” to “monitor,” as requested by the Juvenile Justice Oversight Committee; and
- Allow a juvenile’s attorney to waive appearance at the 14-day detention review hearing in KSA 2017 Supp. 38-2343, or allow the juvenile to appear *via* audio-video communications.

## BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the Secretary of Corrections. Statewide, there are eight correctional facilities: El Dorado Correctional Facility (EDCF), Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs.

There is one operational juvenile correctional facility (JCF): Kansas Juvenile Correctional Complex. Individuals as young as 10 and as old as 17 years of age may be adjudicated as juvenile offenders (JOs) and remain in custody in a JCF to age 22.5 and in the community to age 23.

The Joint Committee is comprised of 14 members, with 7 members each from the House and the Senate. In odd years, the chairperson and ranking minority member are House members and the vice-chairperson is a Senate member; in even years, the chairperson and ranking minority member are Senate members and the vice-chairperson is a House member.

The Committee’s duties, as outlined in KSA 2017 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC’s programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under KDOC’s control and supervision. The Committee is also charged to review and study the adult correctional programs, activities, and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

Similarly, the Committee is charged to review and study programs, activities, and plans involving

JOs, including the responsibility for their care, custody, control, and rehabilitation, and the condition and operation of the JCFs. Further, the Committee is charged to review and study the JO programs, activities, and facilities of counties, cities, school districts, and other local governmental entities, including programs for the reduction and prevention of juvenile crime and delinquency; programs and activities of private entities operating community juvenile programs and facilities; and the condition and operation of local governmental residential or custodial facilities for the care, treatment, or training of JOs.

## COMMITTEE ACTIVITIES

The Committee requested three meeting days and was granted two by the Legislative Coordinating Council. In addition to its statutory duties, the Committee was charged to study the following topics:

- Implementation of juvenile justice reform;
- Offense proportionality in the adult sentencing grid; and
- The impact of juvenile immediate intervention programs (diversions) and adjudications on future employment and their use for impeachment of witness (review and consider Judicial Council Report on 2017 HB 2352).

The Committee met November 1 and 2, 2017.

### November 1

#### *KDOC Operations*

The Committee began with an update regarding KDOC operations provided by the Secretary of Corrections (Secretary). The Secretary discussed efforts toward population management, including the use of double bunking to increase adult bed space capacity. He stated the EDCF added 660 beds through double bunking, and he discussed the costs associated with the additional beds, including the avoidance of costly construction. He presented a graph showing that, from 2013 to 2016, there were more inmates than

beds, and in 2017 the number of beds available will be more than is needed due to this change. The Secretary noted that in October 2017, an Association of State Correctional Administrators survey showed 39 state correctional agencies cited lack of space due to cell size as the reason for not utilizing double-bunked cells.

The Secretary also spoke about KDOC programs and provided a graph showing the funding available for such programs from 2008 to 2018. He reviewed the unmet needs of programs, noting the graph shows GED and vocational training programs combined with sustained employment result in significant reductions in recidivism.

The Secretary discussed the mental health needs of inmates, indicating 39 percent of adult inmates have identified mental illnesses. KDOC's goal is to help this population transition into the community as opposed to going to a mental health facility. The Secretary noted the addition of high-acuity behavior health beds at the EDCF in FY 2017 and FY 2018 and described how these units work with newly developed restrictive housing diversion programs for offenders with serious mental illness. He also noted a plan at Lansing to add similar beds and staff training provided through the American Correctional Association's Correctional Behavior Health Certification Program.

The Secretary discussed 2017 turnover rates and recent pay raises, noting turnover rates are a correctional issue nationally, not just a local issue. He presented information showing EDCF has the highest turnover at 46.11 percent, and Winfield Correctional Facility has the lowest at 25.38 percent. The Secretary continued by discussing positive signs at EDCF, including fewer open positions after the pay raise. He provided a snapshot of other states' salaries compared to their turnover rates and stated private facilities with higher pay rates also have vacancies and staffing issues. Data showed turnover rates were high across all prisons, whether operated by the State or a private company. The Secretary stated one of his biggest concerns about high turnover is the level of experience that goes along with this, noting 52.94 percent of staff have less than two years of experience. He provided slides that show specific correctional officer pay, including the difference in

pay for uniformed and non-uniformed positions that require a bachelor's degree. This shows a disincentive for staff to move into higher responsibility positions as the pay rates are similar.

The Secretary also presented information on the serious incidents at EDCF in 2017 and gave a brief update on the contract process for construction at the Lansing Correctional Facility. The Secretary stated he hoped to complete contract negotiations this month [November] and present to the budget committees for further approval. He said KDOC hoped to award a contract in December and start construction in May or June, and KDOC estimates completion after 18 months, in December 2019.

Committee members expressed concerns about a possible correlation between double bunking and the EDCF incident and a lack of additional staff while capacity had increased significantly. The Secretary stated he did not believe there was a correlation, noting the inmates are not new to double bunking. Further, at Larned Correctional Mental Health Facility, staff have found double bunking in the mental health population decreased suicide rates. Committee members also asked questions about the Lansing Correctional Facility construction project and the savings the project is meant to capture, noting concerns about Lansing's turnover rate, the availability of staff to fill vacancies, and other long-term issues. Given these concerns, members asked what the impact would be if there were a delay in the project to allow more time to look at these issues. The Secretary identified issues such as the cost of materials going up, noting the estimated increase for next year is 5 or 6 percent.

### ***Juvenile Services and Ongoing Implementation of Juvenile Justice Reform***

The Deputy Secretary of Corrections (Deputy Secretary) discussed the multi-year process of implementing the juvenile justice reforms of 2016 SB 367 and 2017 House Sub. for SB 42 and noted Kansas is in the 17th month of this process. The Deputy Secretary reviewed the scope of reform and implementation research, updated the Committee on juvenile services' contributions to implementation of those reforms, highlighted data

trends in juvenile justice and efforts to increase data capacity, and recognized the efforts of the many stakeholders who are reforming the system. The Deputy Secretary also discussed strengthening community supervision to align with the bills and noted examples, such as an emphasis on program or services delivery, while reducing the use of standard contacts in probation work and graduated responses and incentives.

The Deputy Secretary discussed reinvestment in community-based services and funding for specific statewide contracts, such as functional family therapy, sex offender assessment and treatment, and moral reconnection therapy. The Deputy Secretary detailed efforts to build on pilot projects that began as early as 2013, investing in a core group of evidence-based programs accessible by all counties. He also reviewed new grant funding for community-based services, listed dollar amounts for approved Reinvestment Grants, and provided total amounts of reinvested dollars.

Finally, the Deputy Secretary discussed training and stated it is essential to implementation of evidence-based programs and practices, noting KDOC had provided more than 9,500 hours of training in FY 2017.

### ***Prisoner Review Board***

The Chairperson of the Prisoner Review Board presented testimony on the Board's primary work areas, including parole suitability hearings, final violation hearings and revocation waiver review, special conditions of post-incarceration supervision, and other file reviews such as pardon, discharge, functional incapacitation, and medical release. He also provided data on specific offender populations; parolees; public forums for those eligible for parole; final violation hearings, including offender rights and standard of proof information; and other file reviews, such as revocation hearings.

The Chairperson of the Prison Review Board responded to questions from Committee members concerning repeat offenders, parole supervision, program participation and completion as a factor in the release determination, and whether lack of access to these programs has hindered offenders being released.

## ***Ongoing Implementation of Juvenile Justice Reform***

The Director of Trial Court Programs (Trial Court Programs Director), Office of Judicial Administration (OJA), discussed Judicial Branch efforts toward implementation of 2016 SB 367. The Trial Court Programs Director also serves as chairperson of the SB 367 Judicial Branch Implementation Team and the OJA representative on the Juvenile Justice Oversight Committee. She provided updates on collaborating with KDOC, the Supreme Court's approved graduated response grid, the earned discharge credit, the inter-rater reliability and validation study, and the development and implementation of the detention risk assessment tool. The Trial Court Programs Director also presented updates on new training protocols for judges, county and district attorneys, and defense attorneys and court service officers.

A representative of the Kansas Community Corrections Association (KCCA) endorsed the impact of SB 367, but emphasized the need for sustained funding of community-based programs as the legislation has eliminated other options. Additionally, the KCCA identified the following concerns: a lack of services targeted at lower-risk youth and consistency and availability of services statewide, particularly in rural areas; a lack of emergency placement options for youth who cannot return to their homes and the possibility some youth are diverted to the child welfare system; scheduling, transportation, and cost issues related to the 14-day hearing required for virtually every youth in detention; conflicts between KDOC procedures and forms concerning the Immediate Intervention Program (IIP) and district attorney concerns that these forms violate legal authority and responsibilities, as well as possible statutory conflicts with IIP standards; and the utility of the response grid.

A representative of Riley County Community Corrections stated "the premise behind SB 367 . . . was long overdue in Kansas," but also identified the following concerns: limited access to adequate records to complete the Kansas Detention Assessment Instrument (KDAI), particularly during non-business hours; lack of emergency placement options; delays in implementing multidisciplinary teams; inability to immediately impose graduated responses; and a lack of

resources for cognitive-behavioral programs in small- to mid-sized districts.

A representative of Juvenile Services for the Sedgwick County Division of Corrections stated he agreed with the Riley County representative and identified additional problematic areas in implementation of SB 367, including the lack of training and coordinated implementation in line with the rolling dates in the bill; inability to share the entirety of the KDAI with the court as requested; lack of consensus surrounding the IIP; loss of funds for detention center operation costs with the replacement of the Juvenile Detention Facility Fund with the Alternatives to Detention Fund; and lack of a state data exchange contemplated by the law.

The Chairperson of the Juvenile Justice Oversight Committee (JJOC) presented an update from the JJOC. The JJOC Chairperson emphasized implementation of the report will take time and that, while not everyone is happy with SB 367, he hopes everyone will work on implementing the bill as enacted and improving on it. He noted he does not have the authority to ensure all agencies are working towards this implementation. The JJOC Chairperson stated his only suggested change to the law would be to not ask the JJOC to calculate anything, but rather to let the agencies themselves do their own calculations.

A representative of the Kansas County and District Attorneys Association (KCDAA) discussed concerns with the ability to place an offender in secure detention, case and probation term limits, waiver to adult status and extended juvenile jurisdiction prosecution, the detention risk assessment tool, and co-occurrence of child in need of care and juvenile offenses and recommended amendments in each of these areas.

## ***Adult Inmate Prison Population Projections***

The Executive Director of the Kansas Sentencing Commission presented information on current prison population characteristics; changes in population from FY 2016 to FY 2017; five-year prison admission trends; information on guideline new commitments; a comparison of admission types from FY 2016 and FY 2017 for males and females; information on parole and post-release supervision condition violators; and adult prison

population trends and projections. Projections indicate population will exceed capacity within the ten-year projection window.

### ***Proportionality in the Sentencing Grid***

The Executive Director of the Kansas Sentencing Commission also presented information on proportionality of sentences within Kansas statutes. He presented information on the Sentencing Commission's efforts on this issue, beginning in 2007, when the Kansas Criminal Code Recodification Commission asked the Sentencing Commission to review proportionality, to the present time. The Executive Director stated the Sentencing Commission recommends it reestablishes a proportionality committee to study the issue in preparation for the 2019 Legislative Session as well as collaborate with stakeholders to explore merging grids. A representative of the KCDAA also provided testimony on proportionality issues in the Kansas Criminal Code and indicated the KCDAA and its members are in the position to assist if needed or asked.

### ***Preliminary Committee Comments and Recommendations***

A Committee member expressed her interest in the issue of eliminating human trafficking, asked whether the Committee should be involved, and recommended the founder and Executive Director of the Wichita State University Center for Combating Human Trafficking. Committee members stated their interest in joint informational hearings.

## **November 2**

### ***Impact of Juvenile Adjudications and Diversions***

The Chairperson of the Kansas Judicial Council's Criminal Law Advisory Committee presented the Judicial Council's report on 2017 HB 2352, which was approved by the Judicial Council on October 17, 2017. The report recommends against the passage of HB 2352 in its original form or as amended, noting the barrier is in the regulations governing the certification of law enforcement officers, as well as some constitutional issues, and amending KSA 60-421 would not change that.

Two private citizens presented testimony concerning how a juvenile adjudication has limited future employment opportunities, specifically employment as a law enforcement officer. A Committee member identified the issue of sealing records as another approach.

### ***Romeo and Juliet Laws***

Representative Highberger addressed the Committee about the current Romeo and Juliet law in Kansas, how it can still negatively impact youth, and the need to change the current language. Romeo and Juliet statutes generally provide lesser penalties for minors who engage in voluntary sexual conduct. Staff of the Kansas Legislative Research Department presented information on these laws in other states and identified different approaches in other states.

A concerned citizen and parent spoke about his concerns that under current Kansas law, a minor can be convicted of a felony for consensual sexual exploration. He shared details of how his son was almost convicted of such a crime and how it has affected his son's life.

A representative of the Kansas Association of Criminal Defense Lawyers presented testimony on the Association's belief that laws need to change in order to address the penalties youth suffer for consensual acts with other youth. She presented information on the current law, the changes proposed in 2017 HB 2290, and areas of the law on which the Association encourages discussion. Specifically, Romeo and Juliet laws do not include such acts as texting or electronic solicitation.

### ***Efforts to Address Opioid Abuse in Kansas***

The Kansas Attorney General provided testimony on Kansas' and national efforts to address the opioid abuse crisis. He noted methamphetamine remains the most problematic substance abuse issue in Kansas, and he asked lawmakers to focus on efforts to ensure opioid abuse in Kansas does not reach epidemic levels as it has in other areas of the country. The Attorney General also discussed efforts to dispose of unused medications, legislative changes to opioid overdose-reversal medication laws, encouraging insurance companies to review related policies, and urging congressional leaders to make

treatment for drug addiction more affordable and accessible by passing new legislation in the Medicaid program, specifically the “Road to Recovery Act.”

### ***Legislation to Expand the SB 123 Program***

The Executive Director of the Kansas Sentencing Commission presented testimony on legislation expanding the SB 123 program. He explained the program’s mission to ensure public safety while effectively addressing recidivism by providing community-based substance abuse treatment to targeted, non-violent drug offenders. He also described 2017 legislation introduced by the Sentencing Commission: HB 2087, HB 2088, and HB 2090.

## **CONCLUSIONS AND RECOMMENDATIONS**

As information from KDOC indicates, a significant number of offenders are in need of and would benefit from treatment programs provided in the state correctional facilities as funds for such programs have been reduced in recent years. The Committee recommends the House Committee on Appropriations and Senate Committee on Ways and Means consider a plan to restore funding for inmate treatment programs in Kansas institutions in the amount of \$1.5 million each over the next three years. Funds could be used for vocational programs, including those involving partnerships with private industries, and should be used to provide programs recommended for inmates to be eligible for parole. In the event such appropriations are made, the Committee requests the Secretary of Corrections report to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight on how those funds are being used to implement and expand programs.

In light of the report provided by the Kansas Judicial Council, the Committee recommends the House Committee on Corrections and Juvenile Justice not pass 2017 HB 2352 as proposed or as amended, but should continue to study the issue and consider legislation changing how juvenile dispositions are treated with regard to future application of the offender. As part of its consideration, the House Committee should consider information on how other states have addressed these issues, including automatic

expungement and the potential financial impact of these reforms.

Given the potential cost avoidance that would result from modifications to the SB 123 program via 2017 HB 2087, HB 2088, and HB 2090, but also acknowledging the current state budget may not be able to fully fund these three bills, the Committee recommends the House Committee on Corrections and Juvenile Justice monitor the state budget and, if possible, recommend passage and funding of the bills.

Given the long-term impact of construction on state operations, the lack of transparency in the bidding process, and notwithstanding the proviso in 2017 HB 2052 Sec. 39 concerning the sale of certain property in Leavenworth County, the Committee recommends the Joint Committee on State Building Construction and the State Finance Council delay the process for approving construction at the Lansing Correctional Facility until February 15, 2018, to give the Legislature an opportunity to more fully vet and approve plans for construction. Specifically, consideration should be given to whether Lansing is the appropriate location for the construction, the availability of sufficient staff and competitive pay for such staff, the potential cost avoidance or savings, and how the project will be funded until these savings are realized.

The Committee recommends the standing House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary meet jointly to discuss human trafficking with input from the Attorney General’s Human Trafficking Advisory Board, representatives of the Wichita State University Center for Human Trafficking, and other stakeholders.

The Committee requests the Kansas Sentencing Commission reconvene its proportionality committee and make recommendations based on the category and severity of crimes to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight and the 2019 Legislature.

Similarly, the Committee recommends the House Committee on Corrections and Juvenile Justice recommend for passage a bill similar to

2017 HB 2092, aligning all financial loss crimes with the current threshold of \$1,500. During the 2017 Legislative Session, the House Committee recommended the bill favorably for passage; however, the bill was enacted without its original contents.

The Committee recommends the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary continue to study possible changes to Kansas' Romeo and Juliet laws, with Representative Highberger helping to develop background information to bring about a thoughtful change.

The Committee will send letters (included in the appendix to this report) to:

- The Kansas Chief Justice, explaining concerns had been brought to the Committee about implementation of multidisciplinary teams required to be appointed pursuant to KSA 2017 Supp. 38-2393; encouraging judicial districts to comply with this part of the law in order to execute the law uniformly across the state; and requesting a report by February 1, 2018, of any progress or failure of districts to perform as required under the law;
- The Secretary for Children and Families concerning the placement of runaways and status offenders in detention; reminding the Secretary of the fast-approaching implementation date of July 1, 2019, and the need for short-term care for children in need of care who fall in this category; stating the Committee expects the Department for Children and Families (DCF) and its contractors to be prepared to implement the law; and strongly encouraging DCF to find a permanent solution for how it provides necessary services to runaways and victims of human trafficking; and
- The Secretary of Corrections asking for more detail on the substantial increase in capacity at EDCF without the need for

additional staff; expressing concerns that a lack of staffing will lead to further burnout, turnover, and violent episodes within the facilities; and encouraging the Secretary to ask for additional staffing if needed. In addressing capacity issues, the Committee encourages KDOC to consider electronic surveillance, as permitted by law, to help ease demand for lower security beds and to inform the Legislature of any necessary changes of law to facilitate creation or expansion of such programs.

The Committee requests legislation to:

- Stay limits on overall case lengths for juvenile offenders who abscond from supervision such that the case timeline does not begin until the dispositional order is entered and, in the event a juvenile absconds, time does not toll until the juvenile is found and brought back to the jurisdiction;
- Clarify a fee may be assessed as part of applications under the Immediate Intervention Program; specify the fee shall not exceed \$100; provide that in the event a juvenile is unable to pay the fee in whole, the juvenile may negotiate to pay a portion of the fee or participate in community service to satisfy the obligation; prohibit KDOC from reducing the amount of grants awarded by the amount of fees collected and from transferring funds to KDOC or the State General Fund; and allow juvenile corrections advisory boards to determine the amount of the fee;
- Amend KSA 2017 Supp. 75-52,161(d)(7) to change "calculate" to "monitor," as requested by the JJOC; and
- Allow a juvenile's attorney to waive appearance at the 14-day detention review hearing in KSA 2017 Supp. 38-2343, or allow the juvenile to appear *via* audio-video communications.