

# **Committee Reports to the 2020 Kansas Legislature**

# **KLRD**

*Providing objective research and fiscal  
analysis for the Kansas Legislature*

**Special Committees;  
Selected Joint Committees;  
Other Committees, Commissions,  
and Task Forces**

**Kansas Legislative Research Department  
January 2020**

## **2019 Legislative Coordinating Council**

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Anthony Hensley, Senate Minority Leader  
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Daniel Hawkins, House Majority Leader  
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**Special Committees;  
Selected Joint Committees;  
Other Committees,  
Commissions, and  
Task Forces**

Special Committee on Financial Institutions and Insurance  
Special Committee on Judiciary  
Special Committee on Natural Resources

Joint Committee on Corrections and Juvenile Justice Oversight  
Joint Committee on Kansas Security  
Joint Committee on State Building Construction

Capitol Preservation Committee  
Health Care Stabilization Fund Oversight Committee  
Kansas Criminal Justice Reform Commission



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# Foreword

In the 2019 Interim, the Legislative Coordinating Council appointed six special committees to study nine study topics. Legislation recommended by the committees will be available in the Documents Room early in the 2020 Session.

Joint committees created by statute met in the 2019 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2020 Session.

This publication also contains reports of other committees, commissions, and task forces that are not special committees created by the Legislative Coordinating Council or joint committees.

Reports of the following are not contained in this publication and will be published in a supplement:

- Special Committee on Federal and State Affairs
- Special Committee on Health
- Special Committee on Medicaid Expansion  
(The final report of the Senate Select Committee on Healthcare Access will be appended to this report.)
- Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight
- Joint Committee on Information Technology
- Legislative Budget Committee
- Joint Committee on Pensions, Investments and Benefits
- Legislative Task Force on Dyslexia
- Statewide Broadband Expansion Planning Task Force

Minutes of the meetings of the special committees, joint committees, other committees, commissions, task forces, and panels are on file in the Division of Legislative Administrative Services. A summary of each reporting entity's conclusions and recommendations may be found beginning on page i.

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## *Summary of Conclusions and Recommendations*

### *Special Committee on Financial Institutions and Insurance*

**Healthcare benefits and costs.** The Committee made no formal recommendations. The Committee recognized the broad scope of the assigned healthcare benefits and costs topics and appreciated the information provided by a representative group of healthcare providers, insurers, agencies, and other stakeholders. The Committee submits its report for consideration to standing committees of the 2020 Legislature.

**Kansas financial institutions' privilege tax.** Following public hearings and discussion, the Committee made no recommendation on 2019 SB 238 (privilege tax deduction for interest from certain business loans). The Committee did not recommend 2019 SB 239 (imposing a tax on certain state credit unions for the privilege of doing business). The Committee directs its report to the House Committee on Financial Institutions and Pensions, the Senate Committee on Financial Institutions and Insurance, the Senate Committee on Assessment and Taxation, and the House Committee on Taxation.

### *Special Committee on Judiciary*

The Committee recommended Kansas voters be provided the opportunity to vote on a constitutional amendment that would reverse the holding of the Kansas Supreme Court in *Hodes & Nauser, MDs, P.A. v. Schmidt* regarding the existence of a right to an abortion under the *Kansas Constitution*; the Legislature continue to study the issue of the Supreme Court selection process; and the Legislature continue to evaluate the ramifications of the Kansas Supreme Court's decision in *Hilburn v. Enerpipe Ltd.* prior to determining what, if any, action to take.

### *Special Committee on Natural Resources*

The Committee recommended the Kansas Water Office conduct a basin-by-basin evaluation of Kansas reservoirs to determine where flooding is occurring, what damage has occurred as a result of flooding, and possible actions that could be taken to prevent or provide remediation for flooding events. The Committee also recommended the Kansas Water Office provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding Iowa's system for reporting flooding events and Kansas sedimentation issues. Additionally, the Committee recommended the Kansas Department of Wildlife, Parks and Tourism provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding damage to state property and infrastructure due to 2019 flooding events.

The Committee recommended the House Committee on Appropriations and the Senate Committee on Ways and Means consider a plan to restore the \$8.0 million statutory transfer to the State Water Plan Fund and recommended the State Water Plan include efforts to combat the build-up of sedimentation in Kansas reservoirs.

The Committee also recommended the Legislature adopt a joint resolution urging the Kansas federal delegation to make appropriations for the 2019 flood damage in Kansas and to ask for congressional authority for the Tulsa Division, U.S. Army Corps of Engineers, to create a study similar to the study being conducted by the Kansas City Division, U.S. Corps of Engineers, on river bed degradation.

## ***Joint Committee on Corrections and Juvenile Justice Oversight***

The Committee recommended legislation to allow detention of runaway juveniles for 24 hours. The Committee made recommendations to the 2020 Legislature related to appropriations from the Evidence-Based Programs Fund; software information management systems for child welfare agencies; legislative study of current record requirements and data collection for youths in the child welfare system; strategies to address the behavior of unruly, disruptive, and potentially dangerous children within the child welfare system; legislative presentations concerning child brain development; payments for kinship placements; access to treatment and training by female inmates; salary equity and education-level requirements of positions within the Department of Corrections; and expanded career programs for inmates within facilities of the Department of Corrections.

## ***Joint Committee on Kansas Security***

The Committee made no formal recommendations, but requests information be provided at its next meeting on the topics of election security, certification and training of public safety answering point operators and dispatchers, information security at state agencies, and Kansas crime trends.

## ***Joint Committee on State Building Construction***

All five-year capital improvement plans and leases were recommended, except for the following:

- The recommendation for the Kansas Department of Corrections five-year plan deleted the conversion of the juvenile correctional complex and deleted \$144.9 million for a new 1,200-bed facility;
- The recommendation for the Kansas Insurance Department deleted all expenditures beyond fiscal year (FY) 2020 due to the agency relocating into a leased building during Fall 2019;
- The recommendation for the Kansas Highway Patrol five-year plan deleted all expenditures for replacing the fleet car wash for FY 2021;
- The recommendation for the Department for Children and Families included moving the LED lighting replacement project up to occur with the lobby remodel; and
- The recommendation for the Kansas Department for Aging and Disability Services/state hospitals deleted the renovation of the Biddle Building at Osawatomie State Hospital.

## ***Capitol Preservation Committee***

The Committee approved a form for public use, display of the state symbols exhibit outside the Office of Revisor of Statutes, and an updated Capitol restoration plaque. The Committee did not recommend approval of an Amelia Earhart statue project. The Committee directed various parties to have follow-up discussions concerning the Fallen Firefighters Memorial and the Overmyer mural restoration project, the Department of Administration to continue to explore options for signage to the entrance to the Capitol building, the Chairperson of the Committee to discuss possible destination guide signage for the Visitor Center with the Kansas Department of Transportation and the State Historical Society to ensure [www.travelks.com](http://www.travelks.com) is easily accessible.

The Committee recommended the *Official Kansas State Travel Guide* and the state map as the primary information provided at the Visitor Center and made recommendations for its distribution. The Committee directed the Visitor Center to keep other community brochures available at the information desk. The Committee supported the completion of the *Ad Astra* Plaza project on Capitol grounds and recommended exploration during the 2020 Legislative Session of legislative approval for a 1<sup>st</sup> Kansas (Colored) Volunteer Infantry mural in the Capitol building.

### ***Health Care Stabilization Fund Oversight Committee***

The Health Care Stabilization Fund Oversight Committee considered two items central to its statutory charge: whether the Committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF) is necessary. This oversight committee continues in its belief the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request an independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report, the Board's actuary, and health care provider and insurance company representatives and made recommendations and comment.

### ***Kansas Criminal Justice Reform Commission***

The Commission made recommendations concerning funding for the creation of geriatric or cognitive-care prison beds, funding for the creation of substance abuse treatment beds, funding for creation of a substance abuse treatment center, planning to address hospital inpatient capacity needs, documents needed to obtain a replacement driver's license, restricted driver's license fees and suspension, assessment of data sharing between criminal justice agencies, assessment of initiatives to improve outcomes of offenders with mental illness or substance use disorders, expansion of certified substance abuse treatment programs, drug grid penalties, tampering with an electronic monitoring device, the threshold for felony loss, domestic violence qualifying conditions, and the addition of a public defender member of the Commission.

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# Report of the Special Committee on Financial Institutions and Insurance to the 2020 Kansas Legislature

**CHAIRPERSON:** Senator Robert Olson

**VICE-CHAIRPERSON:** Representative Jim Kelly

**OTHER MEMBERS:** Senators Rick Billinger, Bruce Givens, Eric Rucker, and Mary Ware; and Representatives Elizabeth Bishop, Tom Cox, Leo Delperdang, Cindy Neighbor, Bill Rhiley (substitute, October 3, 2019, meeting only), and Jene Vickrey

## STUDY TOPIC

The Committee is directed to:

- Identify policies and approaches that have failed to address the high costs of healthcare benefits;
- Identify measures that could be expected to lead to more affordable and accessible healthcare benefits;
- Consider the implications of the recent *Hilburn v. Enerpipe Ltd.*, No. 112,756 (*Hilburn*) decision on healthcare costs on Kansas;
- Conduct an interim hearing on 2019 SB 238—privilege tax deduction for interest from certain business loans; and
- Conduct an interim hearing on 2019 SB 239—imposing the privilege tax on certain state credit unions.

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# Special Committee on Financial Institutions and Insurance

## HEALTHCARE BENEFITS AND COSTS

### Conclusions and Recommendations

The Special Committee on Financial Institutions and Insurance recognizes the broad scope of the assigned healthcare benefits and costs topics and appreciates the information provided to the Committee by a representative group of healthcare providers, insurers, agencies, and other stakeholders.

The Committee submits its final report for consideration to standing committees of the 2020 Legislature.

**Proposed Legislation:** None

### BACKGROUND

The charge to the Special Committee on Financial Institutions and Insurance was to review and make recommendations on two topics assigned by the Legislative Coordinating Council (LCC):

- Identify policies and approaches that have failed to address the high costs of healthcare benefits, identify measures that could be expected to lead to more affordable and accessible healthcare benefits, and consider the implications of the recent *Hilburn v. Enerpipe Ltd.*, No. 112,756, (*Hilburn*) decision on healthcare costs on Kansas (healthcare benefits and costs topic); and
- Conduct hearings on 2019 SB 238—privilege tax deduction for interest from certain business loans, and 2019 SB 239—imposing the privilege tax on certain state credit unions (privilege tax topic).

The Special Committee was authorized to meet on three days. [*Note:* The request for interim study of healthcare benefits was made by the Chairperson of the Senate Committee on Financial Institutions and Insurance. The LCC assigned the

other topic of this report, which pertains to implications of *Hilburn*.]

### COMMITTEE ACTIVITIES

The Special Committee met September 12, October 3, and October 29, 2019. The Committee considered the healthcare benefits and costs topic at its September 12 and October 29, 2019, meetings. As part of its review of the healthcare benefits and costs topic, the Committee received a presentation on the State Employee Health Plan (SEHP), information from stakeholders on cost-containment strategies and healthcare benefits, and information on the Kansas Supreme Court decision in *Hilburn*.

#### State Employee Health Plan

The Director of the SEHP provided an overview of the SEHP on September 12, 2019. He discussed the evolution, structure, and functions of the SEHP, which provides benefits and services to approximately 85,000 covered lives (employees, retirees, Consolidated Omnibus Budget Reconciliation Act [COBRA] participants, and their dependents). He stated the SEHP was founded in 1984 with the legislative creation of the 5-member Kansas State Employees Health Care Commission (HCC), which is supported by a 21-

member Employee Advisory Committee. Since July 1, 2011, the Kansas Department of Health and Environment (KDHE) has had oversight over the SEHP. He noted more than 140 different entities participate in the SEHP, including school districts, cities, counties, public libraries, public hospitals, and water districts.

The Director summarized SEHP member benefit offerings, including medical benefits (offered through Aetna and Blue Cross and Blue Shield of Kansas [BCBSKS]); Medicare plans for direct bill members (Aetna and BCBSKS); dental benefits (Delta Dental of Kansas); pharmacy benefit management (CVS Caremark); vision benefits (Surency Vision, wholly owned by Delta Dental); voluntary benefits (MetLife); health savings accounts (HSAs), health reimbursement accounts (HRAs), and flexible spending accounts (FSAs) (NueSynergy); preferred lab program (Quest Diagnostics and Stormont Vail); COBRA administration (Total Administrative Services Corporation); long-term care insurance (ACSIA Partners LLC); on-site health clinic (Marathon Health); and the HealthQuest program (Cerner). He also highlighted various transparency tools and programs in detail.

### **Cost-containment Strategies and Healthcare Benefits**

Over the course of the two meetings dedicated to the healthcare benefits and costs topics (held September 12 and October 29, 2019), the Committee heard from a variety of interested parties on cost-containment strategies and healthcare benefits. Presentation topics included drivers of healthcare costs; hospital pricing, reimbursement, and cost shifting; prescription drugs; pharmacy benefit managers (PBMs); health platforms; the health insurance market; market regulations; Patient Protection and Affordable Care Act (ACA) regulations; Medicaid expansion; surprise medical billing; additional policy options; and community health access and care.

**Drivers of healthcare costs.** A health program policy specialist from the National Conference of State Legislatures (NCSL) attributed the trend of increasing healthcare benefit costs to two cost drivers: population-based factors (*e.g.*, aging population, population growth, and chronic disease, including obesity, unhealthy behaviors,

mental illness, and substance use disorder) and systems-based factors (*e.g.*, industry consolidation, utilization, hospital costs and pricing, and prescription drugs).

A BCBSKS representative also cited prescription drugs and other cost drivers: the 132 percent increase in the cost of prescription drugs since 2008, expensive new technology, an aging population, lifestyle choices (*e.g.*, tobacco use, obesity, lack of exercise), an increasing demand for services, and the effect of ACA requirements.

**Hospital pricing, reimbursement, and cost shifting.** The NCSL policy specialist provided information on hospital prices and noted charges differ not only across the United States, but vary within a region. She provided information on how other states are addressing hospital pricing, including global budgeting (*e.g.*, Maryland), reference-based pricing (*e.g.*, Montana and North Carolina), and a community purchasing collaborative (*e.g.*, Colorado).

Representatives of the Kansas Hospital Association (KHA) provided information on the distribution of Kansas discharges by payer: Medicare (42.8 percent), commercial (33.0 percent), Medicaid (14.2 percent), and other (10.0 percent). They also provided information on hospital pricing, including charge, payment, and cost. They said although every hospital payer is charged the same, no two payers pay the same rate because government payers pay below the cost of care, commercial payers negotiate rates based on their market share and ability to negotiate, and charity care and other payments impact the overall cost for everyone else. Payer mixes can be different across regions in Kansas because some regions have a higher mix of government payers and a lack of commercial business. They described the challenges facing rural hospitals and communities, including low patient volume, payer mix, workforce shortages, behavioral health, violence in communities, and the opioid epidemic.

The KHA representatives explained the primary income sources for hospitals are from inpatient and outpatient services; stated some hospitals also derive revenue from gift shops, cafeteria sales, donations, grants, and investments; and stated about 70 percent of hospitals in Kansas receive some type of tax subsidy, mill levy, or

sales tax to offset the cost of operations. They reviewed deductions or adjustments to hospital revenues as charity care (when the patient has no insurance or is not able to pay co-pay or deductible amounts), bad debt (when the patient is unable or unwilling to establish a payment plan), and contract adjustment or write-off (the difference between what is charged and what is actually received in payment).

The KHA representatives discussed key revenue drivers, internal (*e.g.*, flu season) and external (*e.g.*, natural disasters). They stated most Kansas hospitals rely heavily on payments for services provided to Medicare and Medicaid patients. They stated Medicare pays based upon the type of service rendered and with different methodologies for critical access hospitals (CAHs), sole community hospitals, Medicare dependent hospitals, and special rural payments. Medicare reimburses 101 percent of allowable costs to the 82 CAHs in Kansas. They noted, in 2017, the average Medicare margin for Kansas hospitals was a negative 4.88 percent and only 18 percent of Kansas hospitals had a positive margin. They noted a 4 percent positive margin overall is the standard for a hospital to remain viable.

The KHA representatives provided information on cost shifting and stated there are negative margins in hospitals because there is not enough money to cost shift. They stated shortfalls and losses impact the ability of hospitals to attract and retain staff; contain health costs; update technology, infrastructure, and facilities; and contribute positively to the local economy. They summarized specific challenges in rural hospitals, including that rural hospitals have a higher proportion of Medicare and Medicaid patients and rural areas have smaller and aging populations. They also noted the burden of administrative costs.

A representative of America's Health Insurance Plans (AHIP) stated one issue with healthcare is the federal government provides lower reimbursement rates to hospitals and physicians, which shifts costs to states. He suggested a short-term solution would be to increase the amount of money available for healthcare and to utilize telemedicine.

A representative of BCBSKS referenced cost shifting as a driver of increased premium costs. He

explained hospitals are required to shift costs to private insurers in order to cover the difference between low reimbursement rates (*i.e.*, Medicaid, Medicare, and uncompensated care) and the costs of medical services. Another representative of BCBSKS noted cost shifting is inevitable due to an aging population.

**Prescription drugs.** The NCSL policy specialist provided information on prescription drugs, noting the U.S. Food and Drug Administration approves drugs, but it does not get involved in the pricing of drugs.

A representative of the Pharmaceutical Research and Manufacturers of America (PhRMA) stated the pharmaceutical industry has invested more than \$800 billion in research and development since 2000, including \$71.4 billion in 2017. She noted it can take 10 to 12 years to bring a drug to market, costing more than \$2.6 billion for a single drug. She provided information on the pricing of medicines, noting it is a complex process that includes factors such as capital costs, discounts and rebates, utilization, research and development costs, and clinical trial costs.

The PhRMA representative noted 4,000 drugs were in development; there are 535 clinical sites in Kansas with 13,255 clinical study participants; the Medicine Assistance Tool is a web platform providing patients, caregivers, and providers with cost and financial assistance information for brand name medications; manufacturer coupons are helpful to patients; the list prices of certain drugs, such as insulin, are reported in the media, but those prices do not account for negotiated rates and discounts; drug rebates are important; there is a debate on whether the rebate structure should change; insurance benefits should promote health and not inhibit it (*e.g.*, first dollar coverage for chronic conditions such as diabetes); coupons and discounts should be counted toward the patient out-of-pocket cost; and PhRMA is taking note of potential changes related to bulk pricing and subscription-based models. She also provided information on the federal requirement for drug manufacturers to pay a rebate for all drugs dispensed to Medicaid beneficiaries; this rebate amount is 23.1 percent of the drug's average manufacturer price.

**PBMs.** The NCSL policy specialist provided information on PBMs, including on the pharmacy supply chain and the role of PBMs. She noted three diverse companies controlled the PBM market in 2017 (Express Scripts—28 percent, CVS Caremark—26 percent, and OptumRx—19 percent). She provided examples of state action related to PBMs, including comprehensive bills in Louisiana, Maine, and Minnesota to prohibit gag clauses and clawbacks, prohibit spread pricing, require licensure and registration of PBMs, require transparency and reporting, and assert fiduciary duties on the PBM. She also noted price transparency is an emerging theme for cost containment and provided information on action related to capping co-payments for prescription drugs (*e.g.*, California, Colorado, and the District of Columbia).

A pharmacist and representative of the Kansas Pharmacists Association expressed concerns with PBMs, including that PBMs control almost every aspect on the cost of the drug; PBMs receive money from drug manufacturers, pharmacies, sponsors, and payors; the three largest PBMs process nearly 90 percent of prescriptions in the country; PBMs have no fiduciary responsibility or liability to the pharmacy business or the consumer; PBMs are not transparent; PBMs are experiencing record profits; and savings promised by PBMs have not been realized by consumers. He suggested the Legislature should remove gag clauses so pharmacies can talk to sponsors and employers and new requirements be placed on PBMs to make them more transparent, require them to treat providers at a reasonable rate, prohibit clawbacks from inside the store, and prohibit price spreading.

A pharmacist and representative of Prime Therapeutics, a PBM contracted with BCSBKS, described a PBM as a healthcare organization that contracts with plan sponsors and payers (*e.g.*, insurers, employers, unions, and government) to administer the prescription drug health benefits. She explained plan sponsors contract, create, and audit PBM agreements that extend buying power and competitive prices through the selection of a PBM and plan design. She reviewed the core services of a PBM as claim processing, formulary management, drug utilization review, disease management and adherence initiatives, negotiation with manufacturers and pharmacies, pharmacy

networks, and mail-service and specialty pharmacy services.

The representative of Prime Therapeutics stated the drug manufacturer sets the price for the drug, whether it is a brand name, specialty, or generic drug; the ability for a PBM to go to a manufacturer for a lower price depends on a competitive market; and prescription drugs are paid by two entities: the consumer (*i.e.*, co-pay) and payers. She also provided information on the drug supply chain, noting a majority of profits reside with manufacturers. She stated 80 percent of independent pharmacies contract with PBMs through pharmacy services administrative organizations (PSAOs). The PSAOs pool purchasing power of many independent pharmacies to negotiate contracts with PBMs. She noted drug wholesalers (McKesson, AmerisourceBergen, and Cardinal Health) own the three largest PSAOs.

The representative of Prime Therapeutics provided information on 2018 Kansas law related to information a pharmacy may provide to a consumer (known as “gag clauses”) and clawback for PBMs; federal gag legislation was passed in 2019; rebates depend on the contract but, nationally, 98 to 99 percent of rebates go back to the plan sponsor; pharmacies do not receive rebates; pharmacies contract directly with PSAOs; audits must adhere to state law; enacted Kansas PBM-related laws apply to the commercial market and not to self-insured plans; and requirements for contracts, including transparency, depend on the services the plan sponsor has selected for its PBM benefit.

Committee staff from the Kansas Legislative Research Department (KLRD) noted the PBM contract for the SEHP is a three-year contract that was discussed by the HCC in Summer 2019; CVS/Caremark is the PBM for the SEHP through December 31, 2019; and, in February 2015, the Kansas Legislative Division of Post Audit conducted an audit on whether Kansas had sufficient controls to minimize the State’s costs and enhance benefits through its PBM.

**Health platforms.** A representative of NuWin Care and its associates (medZERO, ModRN Health, SPEC\*KC, and Springbuk) gave a joint presentation on their health platforms. The NuWin

Care representative noted the U.S. healthcare system requires innovative transformation and has problems related to affordability, accessibility, and outcomes. He stated hospitals, insurance carriers, and brokers have aligned incentives to encourage increasing prices and fees, which are passed to the consumer; medical bills are causing financial distress for American families; and the “fee-for-service” model for hospitals encourages a focus on the number of services provided instead of the quality of the health outcome for patients. He stated NuWin Care has developed a comprehensive platform of services they believe will lower costs and increase healthcare outcomes. The associated representatives provided information on their health platforms, which are focused on care coordination (ModRN Health), price transparency (SPEC\*KC), payment of medical costs (medZERO), and data (Springbuk).

**Health insurance market.** Representatives of the Kansas Health Institute (KHI) provided information on the health insurance market in Kansas in 2017, noting the number of Kansans receiving private coverage (1,813,373), receiving public coverage (815,529), and uninsured (243,305). They stated the basic formula for what drives healthcare spending is the number of people multiplied by the volume of services per person multiplied by the price per service.

**Market regulations.** A representative of Americans for Prosperity-Kansas stated the cost of health insurance has skyrocketed; since 2014, the average cost of an individual health insurance plan had increased 131 percent, from \$196 to \$453. She stated restrictive market regulations that do not impact public safety also drive up the costs of medical care, including Kansas’ scope of practice laws.

**ACA regulation.** A representative of BCBSKS stated health insurance changed once the ACA was enacted in 2010. She provided a timeline and the major milestones that have occurred since the enactment of the ACA. She noted on September 23, 2010, a number of consumer protections for non-grandfathered plans took effect, including coverage for dependents to age 26, essential health benefits, first-dollar preventative services without cost sharing for the patient (e.g., annual wellness visits without co-payments, co-insurance, or deductibles), and no

lifetime benefit maximums on a policy (including for high-risk policyholders).

The BCBSKS representative stated the most significant change in the individual market took place on January 1, 2014, with guaranteed issue (a requirement on health insurers to issue a plan to an applicant regardless of the applicant’s health status or other factors). She noted the Kansas Insurance Department (KID) has determined and approved seven rating factors, including geography, tobacco usage, and age. She noted subsidies also became available January 1, 2014, for those who qualify for such subsidies.

The representative of BCBSKS stated the ACA required all non-grandfathered fully insured individual and small group plans to cover ten essential health benefits. These benefits are unlimited as long as they are medically necessary. She also provided information on uninsured rates in Kansas and the United States before and after the enactment of the ACA.

The representative of BCBSKS provided information on the types of private health plans; noted large group plans are regulated by the ACA, but their rating factors are different; and stated self-funded groups are not regulated by KID and state mandates do not apply to these plans. She provided information on association health plans (AHPs) and compared AHPs with plans meeting requirements of the ACA. She also compared and contrasted “health insurance” with a “health benefit plan.”

The representative of BCBSKS provided information on required eligible providers and benefit mandates in Kansas and discussed other possible mandates. She noted, under the ACA, if a state legislature adds a new benefit mandate, the state must pay the additional cost of that mandate. She provided information on the statutory process for assessing a mandate in Kansas (KSA 40-2248, 40-2249, and 40-2249a).

**Medicaid expansion.** A representative of BCBSKS commented BCBSKS could not subsidize all of Medicaid expansion, but also wants to provide Kansans with access to care. She stated it is not possible to predict the impact of an influx of 150,000 new Medicaid expansion consumers until a specific plan is implemented;

BCBSKS has not completed an intense study to determine how Medicaid expansion would affect the private insurance market. A KHA representative stated there is uncertainty on how Medicaid expansion would impact hospital costs, revenues, and the payer mix.

**Surprise medical billing.** A KHA representative stated surprise medical billing is an issue on the federal agenda to provide transparency to patients. A BCBSKS representative indicated surprise medical billing is confusing and, if the problem cannot be solved at a federal level, she hoped it could be solved at the state level.

**Additional policy options.** The KHI representatives noted various states have addressed controlling healthcare costs and quality, including public health and cost outcomes scorecards, adopting payment and delivery system reform goals, instituting global budgets for hospitals, and launching all-payer claims databases.

The KHI representatives suggested the Committee consider what perspective is being discussed when attempting to control healthcare costs: State General Fund moneys, private insurance, the SEHP, the cost of the uninsured, or some other combination. They provided some policy options, including suggestions by the American Enterprise Institute and Brookings Institute (*e.g.*, improve incentives for cost-effective private insurance, remove state regulatory barriers to provider market competition, and improve the choice environment for buying insurance), options that would require new federal law, and other options (*e.g.*, right-to-shop programs, direct patient care models, reinsurance programs and high risk pools, association health plans, and short-term limited duration insurance).

**Community health access and care.** The Director of Community Health Access, KDHE, stated the mission of Community Health Access is to aid Kansas' rural and medically underserved communities in building sustainable access to quality, patient-centered primary health care services. She expressed a commitment to work through key partnerships to support the retention of a quality rural workforce and strengthen performance improvement capacity systemwide.

She provided information on various KDHE programs.

A representative of Community Care Network of Kansas (Community Care) provided information on Community Care, noting the organization represents 37 State-funded clinics with 100 sites and is committed to providing all Kansans access to high quality, whole-person healthcare. She stated one in ten Kansans rely on a community care clinic for their healthcare; in the past five years, the number of patients served increased by 25 percent and visits increased by 20 percent; and, in 2018, the clinics provided \$46 million in uncompensated care. She stated these clinics receive funding from the State, patient payments, local contributions, grants, and fundraising; in 2018, state funding accounted for 12 percent of total revenue for Kansas community health centers. She also provided information on school-based and telehealth services. She stated these clinics are a cost-effective alternative to expensive healthcare services, especially unnecessary emergency room visits.

### **Hilburn Decision**

The Committee heard information on the June 14, 2019, *Hilburn* decision at its October 29, 2019, meeting.

**Topic overview.** Committee staff from KLRD noted the Special Committee on Judiciary discussed the decision at its October 2, 2019, meeting, and the Health Care Stabilization Fund Oversight Committee discussed the decision at its October 24, 2019, meeting. Committee staff from the Office of Revisor of Statutes summarized the *Hilburn* decision, noting the Kansas Supreme Court held the cap on noneconomic damages in civil actions (for personal injury or death) imposed by KSA 60-19a02 was facially unconstitutional because it violated Section 5 of the *Bill of Rights* within the *Kansas Constitution*. The senior assistant revisor explained the Court held the statute violates the right protected by Section 5 because it intrudes upon the jury's determination of the compensation owed to plaintiffs to redress their injuries; provided the historical background of noneconomic damages caps; and noted the 3-1-2 plurality decision of the Court was indicative of the complexity of the decision.

**Stakeholder comments.** A representative of the Kansas Medical Society (KMS) provided comment on behalf of KMS and the Kansas Medical Mutual Insurance Company (KAMMCO). She stated the Health Care Stabilization Fund (Fund), enacted in 1976, was designed to ensure all medical independent health care providers could purchase professional liability insurance; noted the Legislature passed a cap on noneconomic damages following the establishment of the Fund; and provided information on the history of the cap placed on noneconomic damages.

The KMS and KAAMCO representative stated a common-sense reading of *Hilburn* would be the cap has been struck down, but the opinion does not specifically overrule *Miller v. Johnson* (2012) or state the cap does not apply to medical malpractice. She expressed concerns the *Hilburn* decision and press release from the Office of the Supreme Court make it difficult to ascertain the outcome of future medical malpractice cases. She stated the medical community is awaiting further clarification from the Supreme Court to see how future cases, including medical malpractice, would be ruled upon by the Court.

A representative of the Kansas Trial Lawyers Association noted Section 5 of the *Bill of Rights* of the *Kansas Constitution* and the Seventh

Amendment of the *Bill of Rights* within the *U.S. Constitution* entrust power with citizens and allow jurors to decide a multitude of complex issues and disputes. He stated when a plaintiff's recovery is limited, it is more likely the burden will shift to society. He also stated 14 or 15 states have a constitutional provision related to jury trials; of those states, half have found the cap on noneconomic damages to be contrary to their state constitutions.

Written-only comments were received from representatives of Kansas Advocates for Better Care, the Kansas Association of Property and Casualty Insurance Companies, the Kansas Chamber, KHA, and Mothers Against Drunk Driving.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recognizes the broad scope of the assigned healthcare benefits and costs topics and appreciates the information provided to the Committee by a representative group of healthcare providers, insurers, agencies, and other stakeholders.

The Committee submits its final report for consideration to standing committees of the 2020 Legislature.

# Special Committee on Financial Institutions and Insurance

## KANSAS FINANCIAL INSTITUTIONS' PRIVILEGE TAX

### Conclusions and Recommendations

Following public hearings and Committee discussion:

- The Committee makes no recommendation on **2019 SB 238**; and
- The Committee does not recommend **2019 SB 239**.

The Committee directs its report to the House Committee on Financial Institutions and Pensions, the Senate Committee on Financial Institutions and Insurance, the Senate Committee on Assessment and Taxation, and the House Committee on Taxation.

*Proposed Legislation:* None

### BACKGROUND

The charge to the Special Committee on Financial Institutions and Insurance was to review and make recommendations on two topics assigned by the Legislative Coordinating Council:

- Identify policies and approaches that have failed to address the high costs of healthcare benefits, identify measures that could be expected to lead to more affordable and accessible healthcare benefits, and consider the implications of the recent *Hilburn v. Enerpipe Ltd.*, No. 112,756, (*Hilburn*) decision on healthcare costs on Kansas (healthcare benefits and costs topic); and
- Conduct hearings on 2019 SB 238—privilege tax deduction for interest from certain business loans, and 2019 SB 239—imposing the privilege tax on certain state credit unions (privilege tax topic). The Special Committee was authorized to meet on three days.

Both 2019 SB 239 and 2019 SB 239 were introduced by the Senate Committee on Assessment and Taxation and, on April 5, 2019, the bills were referred from that committee to the Senate Committee on Financial Institutions and Insurance. [*Note:* The request for interim study of the privilege tax topic was made by the Chairperson of the Senate Committee on Financial Institutions and Insurance.]

### SB 238—Privilege Tax Deduction for Interest from Certain Business Loans

SB 238 would permit national banking associations, state banks, trust companies, and savings and loan associations, for all taxable years commencing after December 31, 2019, to deduct from net income the interest received from business loans to the extent such interest is included in the Kansas taxable income of a corporation. The bill would create definitions for the term “interest” and “business” and assign “net income” its definition from KSA 79-1109 as updated in the bill.

These definitions are as follows:

- “Business” would mean any entity operated primarily for commercial or agricultural purposes and is not an individual obtaining a loan primarily for personal, family, or household purposes;
- “Interest” would mean interest on indebtedness incurred in the ordinary course of the active conduct of any business; and
- “Net income” would mean the Kansas taxable income of corporations, as defined in KSA 79-32,138, and amendments thereto, and the provisions of KSA 79-32,117(c)(xiv), and amendments thereto, plus income received from obligations of this state or a political subdivision of this state that is exempt from income tax under the laws of this state, less dividends received from stock issued by Kansas Venture Capital, Inc., to the extent such dividends are included in the Kansas taxable income of a corporation, interest paid on time deposits or borrowed money, and dividends paid on withdrawable shares of savings and loan associations to the extent not deducted in arriving at Kansas taxable income of a corporation.

**Fiscal information — programming.**

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue (KDOR) indicates the bill would require a total of \$147,745 from the State General Fund (SGF) in fiscal year (FY) 2020 to implement the bill and modify the automated tax system.

**Fiscal information — privilege tax.** In this fiscal note, issued in April 2019, KDOR also indicates interest income is one of the largest revenue sources for financial institutions and an interest income deduction would result in a decrease in taxable income and SGF privilege tax collections beginning in FY 2020. KDOR notes privilege tax collections totaled \$45.5 million in FY 2018; however, the overall reduction in tax collections could not be estimated due to a lack of data on interest income from business loans.

**SB 239—Imposing a Tax on Certain State Credit Unions for the Privilege of Doing Business**

SB 239 would impose a privilege tax on those state credit unions located or doing business within the state having assets equal to or exceeding \$100.0 million. The tax would be measured by the credit union’s net income attributable to interest income it received from all business loans for the next preceding taxable year.

The bill would require the tax to consist of a normal tax and a surtax that would be computed as follows:

- The normal tax would be an amount equal to  $2\frac{1}{4}$  percent of such net income; and
- The surtax would be an amount equal to  $2\frac{1}{8}$  percent of such net income in excess of \$25,000.

The definitions for “business” and “interest” would be identical to those found in 2019 SB 238.

**Fiscal information — programming.**

According to the fiscal note prepared by the Division of the Budget, KDOR indicates the bill would require a total of \$147,745 from the SGF in FY 2020 to implement the bill and modify the automated tax system.

**Fiscal information — privilege tax.** In this fiscal note, issued in April 2019, KDOR also indicates enactment of the bill would increase revenue to the SGF in FY 2020 and beyond. However, the fiscal effect cannot be estimated because of insufficient data regarding credit unions in Kansas. [Note: This report includes revised fiscal information presented at the time of the bill hearing for SB 238 and SB 239.]

**COMMITTEE ACTIVITIES**

The Special Committee met October 3, 2019, to consider the privilege tax topic. The Special Committee made its formal recommendations on this topic at its October 29, 2019, meeting.

## **History of the Privilege Tax, Permissible Credits, and Receipts; Overview of Privilege Tax Legislation**

Committee staff from the Kansas Legislative Research Department (KLRD) provided an overview of the Kansas financial institutions' privilege tax (privilege tax), which was enacted in 1963 and became effective January 1, 1964, imposing this tax on banks, savings and loan associations, and trust companies "for the privilege of doing business within the state" (KSA 79-1106 and 79-1107). The privilege tax is placed on income earned the preceding year. Financial institutions subject to the tax are exempted from the payment of a corporate income tax (KSA 79-32,113). Information presented by KLRD staff also included collection requirements and discussion of the tax base, the definition of net income, historical and present rates, and credits against and the calculation of a financial institution's tax liability. The analyst also provided prior legislative study responses and a summary of relevant privilege tax law.

**Net collections and tax filer data.** The KLRD memorandum also highlighted the FY 2000-FY 2019 actual tax receipts and the Consensus Revenue Estimating Group's April 2019 estimates for FY 2020 and FY 2021. Net collections ranged from a low of \$16.5 million in FY 2010 to \$48.7 million in FY 2019. In tax year 2016 (the most recent reported data), privilege tax filers included banking institutions (339) and savings and loan associations (25), for a total of 364 filers.

The KLRD analyst noted conferees to the bills were asked to provide relevant comment and data, where available, on local, state, and federal taxes applicable to their member institutions.

**Overview and fiscal information.** A representative of the Office of Revisor of Statutes provided an overview of the two bills (described previously in this report). A KLRD analyst discussed the fiscal impact of both of the bills, stating specific numbers were not yet available for SB 238. The analyst discussed the updated background, assumptions and methodology, and fiscal impact of SB 239. The updated analysis from KDOR indicated there are 60 state-chartered credit unions, including 2 Missouri-based credit unions, in Kansas. Additionally, there are 19

federally chartered credit unions (which would be exempt from the proposed privilege tax). Of the eligible credit unions, only 12 would meet the assets' threshold established in SB 239. KDOR estimates the bill would increase SGF privilege tax collections by \$0.1 million annually.

### **SB 238 and SB 239 Hearing: Proponents**

A combined bill hearing was held October 3, 2019, with proponents appearing on both SB 238 and SB 239 in the morning session and opponents to SB 238 and SB 239 appearing in the afternoon session.

The Committee received proponent testimony from representatives of the Kansas Bankers Association and the Community Bankers Association of Kansas and officials from the Citizens Bank of Kansas, Farmers & Drovers Bank, First National Bank, Freedom Bank, Heartland Tri-State Bank, and Kaw Valley Bank.

**Proponent testimony.** Proponents indicated their support for a "level playing field" for Kansas financial institutions, noting Kansas community banks are competing with financial institutions that enjoy preferential tax treatment. This treatment includes: 1) Kansas credit unions are exempt from paying state and federal income taxes on their retained net income; 2) Farm Credit System lenders are exempt from state and federal taxes and are exempt from paying federal income taxes on income derived from real estate lending; and 3) Kansas banks are required to pay state income taxes in the form of the privilege tax (4.375 percent) and C corporation (C-Corp) banks are also required to pay federal corporate income taxes (21 percent). A conferee further pointed out the majority of Kansas banks are Subchapter-S (Sub S) banks and pay the privilege tax before any distributions are passed on to bank shareholders, whose personal incomes are taxed at rates as high as 37 percent at the federal level. A banking association conferee stated it was not necessary for both bills to be passed to achieve tax equity and fairness on business loans, as SB 239 would level the playing field by requiring all competing financial institutions to pay the privilege tax on commercial loans, while SB 238 would achieve tax equity without raising taxes on any financial institutions.

Various bankers provided examples of the costs of the separate tax treatment:

- Regarding one loan scenario, a banker estimated the privilege tax assessed on his institution can represent a 0.26 percent to 0.44 percent difference in the loan rate and an additional cost of \$4,000 to \$6,500 over the course of a farm real estate loan of an average amount (\$145,500);
- While the amount paid by banks is not a large sum, one banker commented, to the consumer it can translate to 28 basis points in a loan or maybe 2 additional employees to her bank;
- Credit unions do not contribute to the local communities in the same manner the banks do, another banker stated, and take money out of both the local economy and the Kansas tax base by undercharging on loans and overpaying on deposits; and
- Large credit unions are acting like commercial banks and are larger than many community banks, one banker noted, further explaining the large credit unions can spend as much as ten times more on marketing and more on key-person salaries than a privilege-tax-paying community bank can afford.

Speaking to the ability to compete with the Farm Credit System, one banker shared an account of how Farm Credit converted a long-time agricultural borrower with lower rates, a higher line of credit, and less paperwork. The banker called for the removal of a portion of taxes imposed on banks, which would in turn allow his bank to offer lower loan rates and higher deposit returns for rural consumers. A banking association representative distributed three maps illustrating the representation of financial institutions statewide, highlighting the commercial and agricultural lending concentration of community banks in rural areas: (1) 228 charters and 1,200 branches of commercial, savings and loan, and savings banks; (2) 80 charters and 159 branches of credit unions; and (3) 19 Kansas Farm Credit System institutions.

## **SB 238 and SB 239 Hearing: Opponents**

The Committee received opponent testimony from representatives of Heartland Credit Union Association and officials from Azura Credit Union, Catholic Family Federal Credit Union, Credit Union of America, Farmway Credit Union, Frontier Community Credit Union, Kansas Cooperative Council, Mainstreet Credit Union, Meritrust Credit Union, Skyward Credit Union, and Stearns Super Center.

Written-only opponent testimony was submitted by representatives of Ark Valley Credit Union, Bluestem Community Credit Union, Farmers Credit Union, Forbes Field Credit Union, Kansas Teachers Community Credit Union, MidAmerican Credit Union, Midwest Regional Credit Union, Stutzmans Greenhouse and Garden Centers, Topeka Firemen's Credit Union, and Topeka Police Credit Union. Written testimony was also submitted by a military retiree's spouse from Fort Leavenworth.

**Opponent testimony.** Opponents addressed the separate and distinct corporate structures of financial institutions and taxation policy. A credit union association representative noted, as not-for-profit cooperatives, credit unions are subject to different taxation than banks, but are also subject to a different set of structural rules than banks. The conferee highlighted key structural features of credit unions, including they are member-owned and managed by a volunteer board of directors; return earnings to members; are prohibited from having outside investors or raising outside capital; are subject to limitations that are not applicable to banks, such as the federal business lending cap of 12.25 percent on the portion of a credit union's assets that may be used for commercial and agricultural loans; and are limited by field of membership laws on geography and persons served. The conferee also noted Kansas law does not allow public entities to deposit local tax dollars in a credit union. The conferee noted banks' market share of commercial lending in Kansas, which she estimated at 99.06 percent of the \$29.9 billion marketplace. The conferee also spoke to the decline of credit unions in Kansas, from 322 in 1969 to 78 today, and regulatory and market changes, including compliance with Dodd-Frank regulations and the emergence of fin-tech and companies such as Walmart and Amazon in the

digital payment sector (“non-FIs”). Finally, the conferee noted SB 238 could make the case for other for-profits to seek not-for-profit status, while SB 239 similarly would set the stage for other not-for-profit cooperatives (e.g., agricultural, electric, and grocery) to be taxed as for-profit entities regardless of purpose or structure.

Various credit union officials commented on credit union organization and business lending:

- One credit union’s member business portfolio is less than 2 percent of its total loan portfolio, with an average balance of \$29,000; nearly 75 percent of these loans do not meet the minimum threshold to be considered business loans by regulators;
- Credit union earnings are paid to members and members work, live, and pay taxes. Credit unions, another official noted, are transparent and held accountable by regulators and members; and
- A tax increase on credit unions would reduce a credit union’s ability to meet its not-for-profit mission and provide such services (SB 239) and a tax exemption of entities like banks (SB 238) would shift more of the tax burden onto families that

credit unions seek to protect and serve. Conferees spoke to “neighbors helping neighbors,” including assistance to particular employees and industries, such as aviation.

One additional cost noted by the credit union association representative, should SB 239 be enacted, is the move of credit unions to a federal charter (exempted from state taxation), costing the State revenue from taxes and regulatory exam fees.

## CONCLUSIONS AND RECOMMENDATIONS

Following public hearings and Committee discussion:

- The Committee makes no recommendation on SB 238; and
- The Committee does not recommend SB 239.

The Committee directs its report to the House Committee on Financial Institutions and Pensions, the Senate Committee on Financial Institutions and Insurance, the Senate Committee on Assessment and Taxation, and the House Committee on Taxation.

# Report of the Special Committee on Judiciary to the 2020 Kansas Legislature

**CHAIRPERSON:** Senator Eric Rucker

**VICE-CHAIRPERSON:** Representative Fred Patton

**OTHER MEMBERS:** Senators Elaine Bowers, Julia Lynn, Vic Miller, and Rick Wilborn; Representatives John Carmichael, Pam Curtis, Nick Hoheisel, Bradley Ralph, and Kellie Warren

## STUDY TOPIC

The Committee is directed to:

- Review the impact of recent Supreme Court decisions on the citizens of Kansas.

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# Special Committee on Judiciary

## REPORT

### Conclusions and Recommendations

#### Legislative Response to *Hodes & Nausser, MDs, P.A. v. Schmidt*, No. 114,153

It is the recommendation of the Special Committee on Judiciary that Kansas voters be provided the opportunity to adopt a constitutional amendment that would reverse the holding of the Kansas Supreme Court in *Hodes & Nausser, MDs, P.A. v. Schmidt* regarding the existence of a right to an abortion under the *Kansas Constitution*.

#### Supreme Court Selection Process

It is the recommendation of the Special Committee on Judiciary that the Legislature continue to study the issue.

#### Legislative Response to *Hilburn v. Enerpipe Ltd.*, No. 112,765

It is the recommendation of the Special Committee on Judiciary that the Legislature continue to evaluate the ramifications of the *Hilburn* decision prior to determining what, if any, action to take.

*Proposed Legislation:* None

## BACKGROUND

The charge to the Special Committee on Judiciary by the Legislative Coordinating Council (LCC) was to review the impact of recent Supreme Court decisions on the citizens of Kansas.

The LCC approved two meeting days for the Special Committee.

## COMMITTEE ACTIVITIES

The Committee held meetings on October 1 and 2, 2019, at which it heard overviews from staff and testimony from conferees regarding the Kansas Supreme Court's decisions in *Hodes & Nausser, MDs, P.A. v. Schmidt*, 309 Kan. 610 (2019) and *Hilburn v. Enerpipe Ltd.*, 309 Kan. 1127 (2019), as well as the Supreme Court

selection process. [Note: Because the Committee considered each topic on both meeting days, the following summary is organized by topic, then by meeting day.]

### Supreme Court Decision and Possible Legislative Response: *Hodes & Nausser, MDs, P.A. v. Schmidt*, No. 114,153

#### October 1

Staff from the Office of Revisor of Statutes provided an overview of the case history of *Hodes & Nausser MDs, P.A. v. Schmidt* (*Hodes*) and the Supreme Court's decision in the case, including the following information. The 2015 Legislature passed, and the Governor signed, SB 95, which prohibited dismemberment, or dilation and evacuation (D&E) method, abortions. The legislation was immediately challenged by the plaintiffs, who are doctors who performed

abortions using this method. The plaintiffs requested a temporary injunction to prevent enforcement of SB 95 pending the outcome of the lawsuit. The district court issued the requested injunction, and the State appealed to the Kansas Court of Appeals, which heard the case *en banc*. Due to a 7-7 split decision by the Court of Appeals, the injunction was upheld. The State then petitioned the Kansas Supreme Court (Supreme Court) for review, which granted the petition.

In April 2019, the Supreme Court issued its 6-1 decision concluding that section 1 of the *Kansas Constitution Bill of Rights* protects judicially enforceable rights, including a right to personal autonomy that includes the right to decide whether to continue a pregnancy. Turning to the question of the standard of review for the question of whether a statute infringes on a fundamental constitutional right, the Court concluded the undue burden standard used in federal cases is difficult to understand and apply, and therefore the strict scrutiny standard should be applied. Under this standard, the State must show the statute furthers a compelling government interest and is narrowly tailored to further that interest. The Supreme Court concluded the district court correctly ruled the plaintiffs were substantially likely to prevail on their claims and thus upheld the injunction. However, the Supreme Court instructed the district court on remand to conduct further proceedings in the case under the strict scrutiny standard. On remand, the State will now have the opportunity to present evidence of a compelling government interest and that SB 95's provisions are narrowly tailored to further that interest.

Staff responded to Committee questions regarding the differences between federal and Kansas standards of review for abortion restrictions; the potential effect, given the *Hodes* ruling, if the U.S. Supreme Court's ruling in *Roe v. Wade* were to be reversed; whether federal or Kansas courts have extended constitutional rights to unborn children; and whether unborn children are extended any protections under Kansas criminal law.

The Chief Deputy Attorney General reviewed the case history of *Hodes* and provided a summary of the Kansas Supreme Court's holding. He stated the use of the strict scrutiny standard in cases involving a suspect classification or fundamental

interest is critical, because it removes the presumption of constitutionality when examining a statute. This shifts the burden of proof onto the defendant to show the statute satisfies the strict scrutiny analysis.

In response to questions from the Committee, the Chief Deputy stated the rights in the *Kansas Constitution* stand independently of the *U.S. Constitution*, even though Kansas courts often look to interpretation of the *U.S. Constitution* in interpreting the *Kansas Constitution*; the standard of review articulated in *Hodes* will make it more difficult to defend statutes involving fundamental rights; various abortion-related legislation and regulations are likely to be subject to the strict scrutiny standard; and some of the more detailed arguments and issues involved were not made during the consideration of the temporary injunction, but will be raised and more fully fleshed out during the district court's consideration upon remand.

A representative of the Family Policy Alliance of Kansas stated her organization's concerns with the *Hodes* decision. She stated the Supreme Court replaced a historical understanding of the common law with its own understanding of the words and context in which the words were written; read malicious intent and prejudice into the actions of any governmental body if it disagreed with the outcome; and created great uncertainty rather than providing clarity. She stated the Supreme Court's conclusions regarding rights to personal autonomy or bodily integrity opens the door for anything imaginable. She urged the Legislature to work to reverse the *Hodes* ruling by passing a constitutional amendment and by reviewing the Supreme Court selection process.

In response to questions from Committee members, the Family Policy Alliance representative discussed some of the early criminal laws regarding abortion; stated suffrage in Kansas was enacted in 1919, but it was not until the cultural change of the 1950s or 1960s that liberalization of abortion laws became a possibility; and stated a lack of clear legal reasoning in the *Hodes* decision connecting the right to abortion to the common law right of personal autonomy opened the door to other rights.

A representative of Kansans for Life (KFL) stated her organization's belief that abortion is the ultimate exploitation of women contrasts with the Supreme Court's statement regarding personal autonomy. She provided information on KFL's pregnancy care centers and KFL's educational and legislative efforts, including various laws enacted in Kansas related to regulation of abortion facilities and procedures. She stated the majority of women serving in the 2015 Legislature supported SB 95, which received bipartisan support. She stated the remedy for the Supreme Court's ruling in *Hodes* was to reverse the ruling through a constitutional amendment, returning the power to enact pro-life laws to the people of Kansas through their elected representatives and senators. She also stated KFL's support for reforming the Supreme Court selection process to require Senate confirmation.

In response to questions from Committee members, the KFL representative stated she would provide the Committee with additional information regarding rates of sterility following multiple abortions and on legislation KFL has supported; addressed the use of the terms "unborn child" and "preborn child"; and stated KFL's goal through a constitutional amendment would be to allow the Legislature to continue considering legislation regulating abortion.

The Committee received written-only testimony from representatives of Concerned Women for America and the Kansas Catholic Conference criticizing the *Hodes* decision and supporting an amendment to the *Kansas Constitution* responding to the decision. A representative of the MainStream Coalition submitted written-only testimony opposing introduction of a constitutional amendment addressing abortion in response to the *Hodes* decision.

### **October 2**

A representative of Planned Parenthood Great Plains Votes (PPGPV) expressed her organization's opposition to any constitutional amendment that would remove access to abortion. She stated that, contrary to what some supporters of a constitutional amendment asserted, the *Hodes* decision did not prohibit the Legislature from regulating abortion, and that while the right to personal autonomy is fundamental, it is not

absolute. Thus, any regulation would be subject to strict scrutiny and abortion could be regulated as any other medical procedure. She stated states have a compelling interest in protecting maternal health, but a number of laws regulating abortion do not address patient safety. She stated 90 percent of abortions in Kansas occur during the first trimester and, for later abortions, the D&E method at issue in *Hodes* is needed. The PPGPV representative stated any proposal to take away women's personal autonomy is unjust, but states are attempting to take away these rights in light of the new composition of the U.S. Supreme Court, and the past eight years in Kansas show what the Legislature might attempt in restricting abortion rights without state or federal constitutional protections against undue government intrusion into personal rights. She stated it is disheartening to observe attempts to amend the *Kansas Constitution* to remove, rather than protect, personal rights.

In response to questions from Committee members, the PPGPV representative stated the following:

- The *Hodes* decision is the first time the *Kansas Constitution* has been interpreted to include a natural right to personal autonomy; such rights primarily lie with the woman carrying the child; there should be federal guarantees for access to abortion; she does not believe the D&E prohibition from SB 95 will be upheld upon remand to the trial court;
- Planned Parenthood clinics are inspected by the Kansas Department of Health and Environment; the first abortion-restricting laws in Kansas, discussed in the *Hodes* decision, were passed by the "bogus legislature" and based on Missouri bills, and it had been expected these laws would be reviewed by a later Legislature;
- Planned Parenthood is exploring an option to open a health center in Wyandotte County, providing a full spectrum of care and attempting to fill a gap in care in that area;
- Planned Parenthood operates under strict medical standards and guidelines, and thus

has not seen a need to advocate for government regulation of its services;

- Recent polling data shows 54 percent of Kansans think abortion should be legal in all or most circumstances, but she agrees the divided Court of Appeals in *Hodes* could indicate some of the public might have been surprised by the Supreme Court's decision;
- There are professional organizations for abortion providers, including the National Abortion Federation and the American College of Obstetricians;
- The Planned Parenthood Federation of America and the National Abortion Federation both accredit providers; and
- 97 percent of Planned Parenthood's service is preventative in nature, and 3 percent is abortion service. She also outlined the organizational and funding structure for Planned Parenthood's federation and affiliates.

One of the co-counsel for plaintiffs in the *Hodes* case provided the Committee with a brief procedural overview of the case and the decisions by the trial court, Court of Appeals, and the Supreme Court. She noted all decisions to date had been with regard to the temporary injunction, and there has not been a final determination on the merits of the case. She stated no evidence was presented to the trial court other than affidavits provided by the plaintiffs and, because the case has been remanded, there will be the opportunity for additional evidence to be presented and arguments to be made regarding the merits of the case. She stated the Supreme Court performed a "natural rights" analysis based upon the language of section 1 of the *Kansas Constitution Bill of Rights*, finding these rights included a right to personal autonomy, including the right to choose whether to conclude a pregnancy. She noted that while the Court also examined the proper standard to apply, it did not hold that the State cannot regulate abortion. Rather, the State must show a compelling state interest, and that the statutes enacted regarding this interest are narrowly

tailored for that purpose. She stated this strict scrutiny standard applies because the Court found the right to personal autonomy is a fundamental right, and the case is returned to the trial court for further consideration under the standard articulated by the Supreme Court.

In response to questions from Committee members, plaintiffs' co-counsel stated the Supreme Court has not yet ruled on the constitutionality of SB 95; observing how courts apply the standard articulated by the Supreme Court in cases going forward could help inform the Legislature whether a constitutional amendment is needed; Tennessee has attempted to respond to a decision by the Tennessee Supreme Court regarding abortion with a constitutional amendment, but litigation continues; and the plaintiffs advocated for a strict scrutiny approach and a right to abortion under the *Kansas Constitution*, but not necessarily the personal rights approach taken by the Court.

## Supreme Court Selection Process

### *October 1*

Staff from the Kansas Legislative Research Department provided an overview of the current judicial selection methods for the Kansas Court of Appeals and the Kansas Supreme Court and recent legislative efforts to amend the selection process. Since 1958, under the *Kansas Constitution*, Supreme Court vacancies are filled by the Governor's appointment of one of three candidates nominated by the Supreme Court Nominating Commission (Commission). The Commission has nine members: a chairperson who is an attorney chosen by members of the Kansas bar (attorneys licensed to practice law in Kansas), an attorney member from each congressional district chosen by members of the Kansas bar who reside in that district, and one non-attorney member from each congressional district appointed by the Governor.

The process for filling vacancies on the Kansas Court of Appeals is governed by statute amended in 2013 (KSA 2019 Supp. 20-3020) to allow the Governor, with the consent of the Senate, to appoint a qualified person to fill a vacancy. The statute sets out time frames within which a vote to consent must be held by the Senate.

Supreme Court justices and Court of Appeals judges are both subject to retention elections following their first full year in office and at the end of each term (six-year terms for justices and four-year terms for judges).

Because Supreme Court selection is governed by the *Kansas Constitution*, a constitutional amendment is required to modify the process. During the 2013, 2015, and 2016 Sessions, concurrent resolutions to modify the process were considered. The resolutions that progressed the furthest in the legislative process would have applied the current Court of Appeals selection method to the Supreme Court, but no resolution progressed further than adoption by the House Committee on Judiciary (in 2013 and 2015). In 2019, SCR 1610, containing similar provisions, was introduced and initially referred to the Senate Committee on Judiciary. On May 29, the Senate voted to withdraw the concurrent resolution from the Judiciary Committee and refer it to the Senate Committee of the Whole, but no further action was taken on the resolution.

In 2016, House Sub. for SB 128 added a variety of requirements related to the selection of attorney members of the Commission and information that must be provided by licensed attorneys to participate in Commission elections. The bill also adjusted Kansas Open Records Act and Kansas Open Meetings Act (KOMA) provisions related to Commission proceedings and required the Governor to make public the name and city of residence of each applicant to the Court of Appeals. Legislation introduced in 2017 and 2019 would have eliminated many of the changes made by this bill and restored previous law in those areas.

A law professor from the University of Kansas (KU) School of Law, speaking on his own behalf, stated the current Supreme Court selection process is undemocratic, extreme, and secretive. He noted that various judicial selection systems use different methods and combinations for initial selection and retention of judges. He stated such methods should be chosen while acknowledging that the political leanings of judges influence the direction of the law through making the common law and by filling gaps left in constitutions and statutes. He stated Kansas has the most undemocratic method of Supreme Court selection among the states. He

noted a majority of the members of the Commission are selected through elections open to only about 10,000 people, the members of the Kansas bar, and Kansas is the only state that provides members of the bar majority control of its nominating commission. The KU law professor stated the Supreme Court selection process should be reformed and reform options could include reducing the number of members of the Commission selected by the Kansas bar, adding Senate confirmation to the current process, or replacing the Commission with a Senate confirmation process.

In response to questions from Committee members, the KU law professor stated some states with less bar involvement in their nominating commissions provide various elected officials with authority to appoint members; acknowledged the federal selection model could lead to difficulty in successfully confirming appointees, as has occurred recently in New Jersey, but stated that confirmation votes in most states using a form of the federal model tend to be unanimous or near-unanimous, with compromise and consensus; and stated removing Kansas bar control of a majority of the Commission membership would satisfy many of his concerns, although he would prefer a system analogous to the federal process.

A representative of the Kansas Bar Association (KBA) stated the American judiciary was established to provide insulation from the political branches of government, and decisions such as *Brown v. Board of Education* show the value of such insulation. He stated states began using merit selection systems because of concerns regarding increasing political influence under executive appointment-based systems. Judicial elections were the initial response to these concerns, until political scandals led reformers to propose merit selection systems. Kansas was the second state to adopt such a system, following Missouri, following the “Triple Play” in 1956, in which a defeated governor arranged to be appointed as Chief Justice of the Kansas Supreme Court. He noted that currently 34 states and the District of Columbia use nominating commissions in some form, and no state has moved away from the use of a commission. New Jersey is the purest form of a federal model selection system used by a state, and it has encountered a ten-year-long struggle to have nominees successfully confirmed.

The KBA representative stated a 2015 poll of likely Kansas voters showed 53 percent favored merit selection, 27 percent favored a change, and 20 percent were undecided. Additionally, 76 percent opposed a constitutional amendment to a model similar to the federal model. He briefly summarized a 2012 study regarding judicial merit selection systems and a 2019 study regarding judicial nominating commissions. He stated the current Supreme Court selection process is more transparent than either the federal model or the current process used for the Court of Appeals.

In response to questions from Committee members, the KBA representative stated the “Kansas bar,” in the context of judicial selection, means licensed lawyers in Kansas’ congressional districts eligible to vote in nominating commission elections, whereas the KBA is a voluntary association of Kansas attorneys with no role in the judicial selection process; Senate confirmation would add another political layer to the selection of judges; while the current selection system does not mean no politics in the process, it does minimize the impact of politics; the *Kansas Constitution* should be amended only in extraordinary circumstances, and while many of the current citizens of Kansas did not vote to implement the Commission, the polling data cited suggests there is not public clamoring for a change; and while there is not polling data regarding public perception of the Commission, the data indicate the public views courts as fair and impartial, which is also supported by retention election results.

A representative of the Kansas Trial Lawyers Association (KTLA) stated he had served twice as the chair of the Commission and the KTLA supports the current Supreme Court selection process. He noted recent chairpersons of the Commission had come from different political parties and areas of legal practice. He stated he does not want to have to be concerned about the political persuasion of the judges or justices before whom he argues. He noted judges make common law, which can be modified by the Legislature, within the bounds of the *U.S.* and *Kansas Constitutions*. He stated he does not support the Governor having free reign to appoint anyone the Governor chooses to the Supreme Court, regardless of the Governor’s political affiliation, and the integrity and independence of the Supreme

Court must be protected. He commended the written materials provided by the KBA to the Committee. He stated a rule of the Commission while he served was that political party affiliation (of both Commission members and nominees) was never discussed, and that other past chairs of the Commission have told him this remained the practice until recently.

In response to questions from Committee members, the KTLA representative reviewed the party affiliations of the current Commission members that have been disclosed, as well as the party affiliation of recent Commission nominees sent to the Governor; stated justices and judges do not have to recuse themselves when attorney members of the Commission who were involved in their selection appear before their court; and noted Johnson County voters have voted overwhelmingly multiple times to retain merit selection for their district court judges.

A representative of the Kansas Association of Defense Counsel (KADC) stated his organization’s support for the Kansas nonpartisan merit selection system. He stated attorneys want fair judges and the judges and justices deciding *Hodes* and *Hilburn* were fair and impartial. He said he believes Kansas judges do what they think is right, fair, and just.

In response to questions from Committee members, the KADC representative clarified his organization’s membership is primarily civil defense attorneys, rather than criminal defense attorneys; stated the level of attorney involvement in the current selection process is appropriate because attorneys provide valuable input regarding the value of the judicial candidate as an attorney; expressed concern regarding the issues surrounding campaign contributions in judicial elections; and agreed the discussion of adopting a federal-type system for Kansas had not included adoption of lifetime appointments.

A representative of the MainStream Coalition (MainStream) stated his organization’s concern that injecting additional politics into the judicial selection system would lessen the quality of judges and would cause the citizenry to see everything in government as political. MainStream believes the current system avoids this and is the least political of the various options under

discussion. He stated it is important for citizens to leave court with a sense that justice has been provided, and a more political selection process could diminish that sense. He noted most cases before the Supreme Court are not political matters.

In response to questions from Committee members, the MainStream representative stated he considers his organization purposely bipartisan, rather than nonpartisan, and the decision to take a position on this issue is made by the complete board of the organization.

The Committee received written-only testimony from a representative of the Greater Kansas City Chamber of Commerce supporting the current Supreme Court selection process. A representative of the Kansas Catholic Conference submitted written-only testimony urging the Committee to explore reform of the selection process.

### *October 2*

In response to a Committee question from the previous day, staff from the Office of Revisor of Statutes outlined KOMA requirements for the Commission. KOMA requires meetings be open to the public, and the Commission may take no binding action by secret ballot. Further, the Commission is prohibited from taking binding action during executive session. The Commission has further restrictions on executive session than are provided generally in KOMA. Because the duty of the Commission is to make nominations and certify those to the Governor, this duty would constitute the binding action that must be done in a public meeting by the Commission, by means other than secret ballot.

A law professor from the Washburn University (Washburn) School of Law presented his views on Kansas' judicial selection process compared to various alternatives. He stated improvements could be made to Kansas' current system, but overall it is better than the federal system or partisan election options. He noted Kansas' current system is at one end of the spectrum of commission-based systems, due to the number of members selected by the Kansas bar. Indiana and Alaska have similar systems. Addressing the drawbacks of the federal system, the professor stated it was the result of a compromise due to the

demands of federalism, demands not present in a state such as Kansas. The federal system is subject to political maneuvering and can reduce diversity. He noted the similar educational backgrounds of the first two appointments to the Kansas Court of Appeals after a model similar to the federal system was implemented for that court. He concluded by stating that while the current Kansas system works well, if changes were needed, he would suggest studying ways to balance the attorney representation with those tied to the political process and to include minority party representation.

In response to questions from Committee members, the Washburn law professor stated representativeness is a key principle of the judicial system, but it must be balanced with other key principles, such as judicial independence; most citizen education that exists with regard to Supreme Court justices occurs during the judicial retention process, rather than during the selection process; any changes to the current selection system should be made through a deliberate process with stakeholder involvement; structural changes to the current system would require a constitutional amendment, although some procedural changes relating to transparency or open meetings could be made statutorily; and, to his knowledge, Kansas courts have historically ranked well on surveys by chambers of commerce and business organizations.

Senator Masterson next addressed the Committee, noting all the supporters of the current Supreme Court selection system who had addressed the Committee were attorneys. He stated the Kansas bar is a small select group of individuals when compared to the citizens of the state, and nearly half of the members of the Kansas Senate were attorneys when the current selection system was adopted. He stated that no proponents of changing the selection system had suggested using a partisan election system, and he noted the U. S. Supreme Court, using the federal selection process, appears to have more diversity than the current Kansas Supreme Court. He stated a nominated judge about whom controversy became known would have been on the Kansas Court of Appeals if not for the Senate confirmation process, and the nomination and confirmation process for a second nominee went smoothly.

In response to questions from Committee members, Senator Masterson reaffirmed he was not advocating for partisan elections; stated court decisions should be made according to the law and should not be created out of thin air; and stated that while he favored the federal model of selection, if the will of the Legislature is to retain the Commission in some form, then the organization of the Commission should be changed.

### **Supreme Court Decision and Possible Legislative Response: *Hilburn v. Enerpipe Ltd.*, No. 112,765**

#### ***October 1***

The Chief Deputy Attorney General presented an informational briefing regarding the Supreme Court's decision in *Hilburn v. Enerpipe Ltd. (Hilburn)*, including the following information.

In *Hilburn*, a jury awarded the plaintiff \$355,000.00, including \$301,509.14 in noneconomic damages, for injuries from a car accident. Applying the noneconomic damages cap (cap) in KSA 60-19a02, the district court reduced the noneconomic damage award to \$250,000.00. The plaintiff appealed, challenging the constitutionality of the cap under sections 5 (right to trial by jury) and 18 (right to remedy by due course of law) of the *Kansas Constitution Bill of Rights*. The Court of Appeals upheld the statute based on the *quid pro quo* analysis applied by the Kansas Supreme Court in *Miller v. Johnson*, 295 Kan. 636 (2012), which upheld the constitutionality of the damages cap in a medical malpractice action.

The Supreme Court granted review and refused to extend its holding in *Miller*. Instead, it held the *quid pro quo* test does not apply to challenges based on the section 5 right to trial by jury. The Chief Deputy noted the four-justice majority was made up of a three-justice plurality opinion and a concurring opinion that expressed disagreement with some of the plurality's analysis. While he agreed the statute as written was unconstitutional, the concurring opinion suggested the Legislature may be able to limit noneconomic damages by modifying the substantive cause of action. Two dissenting justices would have applied the *quid pro quo* test from *Miller* to uphold the cap's constitutionality.

The Chief Deputy noted the concurring opinion appears to be the controlling opinion and that the Chief Justice recused himself, but that no other judge was assigned to serve in his place. Thus, the case was decided by a six-member Court.

In response to questions from Committee members, the Chief Deputy outlined circumstances under which a judge or justice might recuse; provided detail regarding the elements of the *quid pro quo* test; and noted uncertainty regarding whether the *Hilburn* holding would apply in medical malpractice cases or in other scenarios such as workers compensation. He noted a withdrawn Judicial Branch press release stating the *Hilburn* decision did not apply to medical malpractice actions, as well as the dissenting justices' apparent understanding that the majority was overruling *Miller*.

#### ***October 2***

Staff from the Office of Revisor of Statutes provided a summary of the factual and procedural background in *Hilburn* and the Supreme Court's decision, noting the Supreme Court's statement that it recently held the presumption of constitutionality of a statute does not apply in cases dealing with "fundamental interests" protected by the *Kansas Constitution*, such as the right protected by section 5. Staff stated the Legislature may want to keep this new standard in mind with regard to future legislative actions. Staff reviewed the history of Kansas' noneconomic damages caps, which have existed in some form since 1986. The current cap structure was established by the Legislature in 1988, and the Legislature added phased-in increases to the cap in 2014, responding to the opinion in *Miller*.

A representative of the Kansas Medical Mutual Insurance Company (KAMMCO) noted Kansas has had caps for more than 30 years, creating a stable tort environment for the medical care community while allowing injured patients to be fairly compensated. He stated the *Hilburn* decision has raised questions about the applicability of the caps in medical malpractice cases. He pointed the Committee to a press release issued by the Kansas courts the morning of the *Hilburn* decision stating the decision "struck down the statutory noneconomic damages cap in personal injury cases other than medical

malpractice actions.” He stated striking the caps for medical malpractice actions will create upward pressure on system costs. At this stage, KAMMCO believes there is a reasonable argument to be made that the *Hilburn* decision does not apply to medical malpractice decisions, as the decision is careful not to say it “reverses” *Miller*. He noted the concern expressed in the concurring opinion with lack of jury notification of the caps and focus on procedural versus substantive measures. Because of the uncertainty, he stated it is difficult at this time to make a recommendation to the Legislature as to the best way to proceed.

In response to questions from Committee members, the KAMMCO representative stated plaintiffs’ attorneys in current district court cases are refiling their damages requests in medical malpractice cases to increase their requests while arguing *Hilburn* has eliminated the caps in such cases; KAMMCO was not asking for anything from the Committee, but is awaiting more clarity regarding the application of the *Hilburn* decision; KAMMCO currently writes about 38 percent of the medical malpractice insurance premiums in the state and is the largest medical malpractice insurance provider in the state; 75 percent to 80 percent of cases covered by KAMMCO are dismissed with no payment to the plaintiff, with payments made in about 20 percent of the cases, mostly through negotiated settlements; it is anticipated elimination of the caps would increase upward pressure on settlement amounts and frequency of claims; and the medical malpractice environment in Kansas is unique due to the Health Care Stabilization Fund, which is operated as a state agency.

A representative of the Kansas Medical Society (KMS) noted medical malpractice law is a separate subset of personal injury law. She stated KMS asks the Legislature to wait to respond to the *Hilburn* decision to avoid a possible negative impact on medical malpractice causes of action. She noted her written testimony contains a history of professional medical liability in Kansas, and the noneconomic damages cap has helped provide a stable medical malpractice environment in Kansas. KMS believes the court intentionally specified its decision in *Hilburn* was a personal injury case, not a medical malpractice cap, so that the noneconomic damages caps potentially still apply in medical malpractice cases.

In response to questions from Committee members, the KMS representative stated KMS wants to continue to examine whether the effect of *Hilburn* on personal injury caps can be addressed without affecting medical malpractice cases, and KMS was not requesting a constitutional amendment or other legislative remedy to address *Hilburn*.

A representative of the Kansas Chamber stated the Chamber wants a “fix” for the *Hilburn* decision, but is not yet certain what the fix should be. He stated the Chamber has assembled a working group to continue examining the issue. He noted Kansas had dropped from number 18 to number 32 in the latest liability legal climate rankings by the U.S. Chamber Institute for Legal Reform. He drew attention to a report commissioned by the Chamber and produced by fellows of the Kansas Chamber of Commerce Foundation to examine the history of Kansas’ noneconomic damages caps, the economic impact of the decision, likelihood of future litigation, and impact on the cost of medical malpractice.

In response to questions from Committee members, the Chamber representative stated the Chamber would make a request to the Legislature once it had determined an appropriate course of action.

A representative of the KTLA stated the most important aspect of the *Hilburn* decision was that it found there was a fundamental right under the *Kansas Constitution* to a trial by jury. He outlined the history of the Seventh Amendment to the *U.S. Constitution* and section 5 of the *Kansas Constitution Bill of Rights*. He noted various questions that are left to a jury and stated juries should similarly be trusted and allowed to decide the full measure of damages in a civil case. He stated Kansas’ largest drop in the 2019 U.S. Chamber Institute for Legal Reform’s rankings was in the category called “treatment of class actions and mass consolidation lawsuits.”

In response to questions from Committee members, the KTLA representative stated his organization’s view that the *Hilburn* decision was clear that the noneconomic damages caps are unconstitutional as to all cases, including medical malpractice; it will likely take years, rather than months, before another appellate case is decided

applying the *Hilburn* decision in the medical malpractice context; products liability and some medical malpractice cases may require \$80,000-\$100,000 in capital to pursue for a plaintiff; noneconomic damages caps limit the ability to achieve the objectives of tort litigation, which include justice, making plaintiffs whole, promoting good behavior, and discouraging bad behavior; and liability may be avoided by not being negligent.

The Committee received written-only testimony from a representative of the Kansas Hospital Association summarizing the *Hilburn* decision and stating the Association would continue to monitor any impact the decision has on future insurance rates and jury awards. Representatives of Kansas Advocates for Better Care, the law firm of Bretz & Young (on behalf of two clients), and the Disability Rights Center of Kansas submitted written-only testimony supporting the *Hilburn* decision and opposing caps on noneconomic damages.

## CONCLUSIONS AND RECOMMENDATIONS

At the end of its October 2 meeting, following discussion, the Committee adopted the following recommendations.

### **Legislative Response to *Hodes & Nausser, MDs, P.A. v. Schmidt*, No. 114,153**

It is the recommendation of the Special Committee on Judiciary that Kansas voters be provided the opportunity to adopt a constitutional amendment that would reverse the holding of the Kansas Supreme Court in *Hodes & Nausser, MDs, P.A. v. Schmidt* regarding the existence of a right to an abortion under the Kansas Constitution.

### **Supreme Court Selection Process**

It is the recommendation of the Special Committee on Judiciary that the Legislature continue to study the issue.

### **Legislative Response to *Hilburn v. Enerpipe Ltd.*, No. 112,765**

It is the recommendation of the Special Committee on Judiciary that the Legislature continue to evaluate the ramifications of the *Hilburn* decision prior to determining what, if any, action to take.

# Report of the Special Committee on Natural Resources to the 2020 Kansas Legislature

**CHAIRPERSON:** Senator Jeff Longbine

**VICE-CHAIRPERSON:** Representative Ron Highland

**OTHER MEMBERS:** Senators Marci Francisco, Dan Goddard, Dan Kerschen, and Carolyn McGinn; Representatives J.R. Claeys, John Eplee, Shannon Francis, Annie Kuether, and Jason Probst

## **STUDY TOPIC**

The Committee is directed to:

- Review the flood damage caused by 2019 flooding events concerning:
  - The relationships between local, state, tribal, and federal entities regarding flood control and flood prevention, including state compacts;
  - The role of state government in flood control and response to flooding events; and
  - The availability and need of resources.

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# Special Committee on Natural Resources

## REPORT

### Conclusions and Recommendations

The Committee recommends:

- The Kansas Water Office conduct a basin-by-basin evaluation of Kansas reservoirs to determine where flooding is occurring, what damage has occurred as a result of flooding, and possible actions that could be taken to prevent or provide remediation for flooding events. Such an evaluation should include possible use of floodplain easements and long-range planning for future flood events. When basins are located in more than one county, the evaluation should focus on the entire basin regardless of county lines;
- The House Committee on Appropriations and the Senate Committee on Ways and Means consider a plan to restore the \$8.0 million statutory transfer to the State Water Plan Fund;
- The State Water Plan include efforts to combat the build-up of sedimentation in Kansas reservoirs. The Kansas Water Office should provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding sedimentation, including the estimated timeline for clearing sedimentation to increase reservoir capacity and the associated costs. The sedimentation removal planning should include preventive activities such as streambank stabilization and prevention of field erosion;
- The Kansas Water Office provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding Iowa's system for reporting flooding events and providing resources to affected citizens and landowners. Such information should include suggestions for how Kansas citizens can best access information on flood events as they occur; and
- The Kansas Department of Wildlife, Parks and Tourism provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding damage to state property and infrastructure due to 2019 flooding events.

### *Proposed Legislation:*

- Adopt a joint resolution urging the Kansas federal delegation to make appropriations for the 2019 flood damage in Kansas and to ask for congressional authority for the Tulsa Division, U.S. Army Corps of Engineers, to create a study similar to the study being conducted by the Kansas City Division, U.S. Corps of Engineers, on river bed degradation.

## BACKGROUND

The 2019 Legislature created the Special Committee on Natural Resources (Committee) to evaluate damage caused by the 2019 flood events and consider possible options to repair flood damage and prevent future major flood events in Kansas.

The Legislative Coordinating Council approved two meeting days, and the Committee met in the Statehouse November 12, 2019.

## COMMITTEE ACTIVITIES

The Committee held an all-day meeting on November 12, 2019. During the meeting, the Committee received testimony from both Kansas and federal agencies on impacts of 2019 flooding activities and the responsibilities of these agencies regarding flood disaster prevention and response efforts.

### 2019 Flooding Events

#### *Flood Year in Review*

After staff from the Kansas Legislative Research Department provided an overview of the Committee's charge, the Committee began with an overview of conditions that led to the 2019 major flooding events in Kansas. The Kansas Adjutant General (Adjutant General) and the Warning Coordination Meteorologist (meteorologist) with the National Weather Service in Topeka described strong storm systems early in the year that saturated the ground. Significant rainfall in March and May, combined with the melting snow pack, created major flooding as the rainwater created runoff because it could not soak into the already completely saturated ground.

The meteorologist stated May 2019 was the wettest month on record for Kansas, with rainfall of as much as two feet in certain areas, far exceeding the typical four to six inches of rainfall for the month. The Adjutant General stated approximately 200 miles of compromised levies across Iowa, Kansas, Missouri, and Nebraska contributed to the flooding.

The Adjutant General described action taken by the Kansas Division of Emergency Management (KDEM) State Emergency Operations Center (SEOC) in response to the flooding events. The SEOC was activated for 65 days between April 29, 2019, and July 1, 2019—the longest time it had been activated since the 1993 flood events. He described challenges faced by the SEOC and lessons learned, including the need for pet sheltering (people will refuse to evacuate if there is not a safe place for their pets) and the important role mapping programs played both in predicting where water will go and in convincing residents to be proactive with flood prevention. He explained where improvements need to be made with the SEOC to increase space, technology, and bandwidth to handle multiple disaster events, as well as the need for automated river gauges to understand when the water is rising in certain rivers or reservoirs so that local, state, and federal organizations can respond early.

The Adjutant General also stated the National Guard can be deployed if the community (the local county emergency manager) requests support and the National Guard is the available resource to provide support.

#### *State Agency Responsibilities*

Representatives of the Kansas Department of Agriculture (KDA), Division of Water Resources (DWR); the Kansas Department of Health and Environment, Bureau of Water (KDHE); the Kansas Water Office (KWO); and the Kansas Department of Wildlife, Parks and Tourism (KDWPT) presented information on the responsibilities of state agencies in flood prevention, management, and response.

**KDA, Division of Water Resources.** The Water Structure Program Manager of the DWR, KDA, discussed the National Flood Insurance Program (NFIP) and stated only approximately 10.0 percent of homes in a floodplain carry NFIP flood insurance. He stated, in 2019, there were 287 NFIP claims totaling \$3.78 million.

He discussed the KDA's utilization of light detection and ranging (LIDAR) grants to create flood risk maps using elevation data and the utilization of community assistance grants to contact communities and inform them of areas at

risk of flooding. He stated there are approximately 170 significant-risk dams and 220 high-risk dams in Kansas. He informed the Committee that, other than major levees, only eight agricultural levees reported damage from the flood events.

**KDHE, Bureau of Water.** The Director of the Bureau of Water, KDHE, discussed the statewide stream advisory issued after the flood events warning people to stay out of streams due to the increased risks of sewage contamination, debris in the water, and rapids.

He explained there were a large number of facility discharge limit violations due to the wet weather conditions, but the number of permit limit violations decreased as the flood events ended.

He described the effects of the flood events on local communities, including the issuance of 14 boil water advisories as a result of water line breaks, pressure loss, inundated wells, or loss of chlorine residual. He stated three communities near Perry Lake required alternative water supplies during the flooding, and one community, Lakeside Village, continued to require fresh water to be hauled to the community on a daily basis.

**KWO.** The Acting Director of the KWO stated the KWO's statutory responsibility as it pertains to flooding is established in KSA 74-2608 and includes collecting and compiling information and planning. He explained the planning component involves developing a plan for the state's water resources, but dealing with floods has not been a major responsibility of the KWO for years.

He explained, while Kansas sustained damage from the flood events, the damage pales in comparison to damage in Iowa, Missouri, and Nebraska, and the KWO will continue to work with those states to repair damage and for future flood prevention.

He described sedimentation in Kansas reservoirs and stated sedimentation levels are much higher than average in 2019, especially in Tuttle Creek (475.0 percent higher than average), John Redmond and Pomona (both around 370.0 percent higher than average), Melvern, and Elk City lakes.

The Acting Director outlined KWO requests and potential recommendations for the Committee, including:

- Streamgaging network enhancement;
- SEOC enhancement;
- Geographic information system enhancement at the cost of \$75,000 with ongoing costs of \$75,000 to \$100,000;
- Flood inundation modeling;
- A basin-by-basin evaluation and plan at a cost of approximately \$200,000 per basin; and
- Public water supply emergency planning, including alternative water sources and contingencies.

Reservoir sedimentation, the Acting Director noted, affects the ability of the agency to respond to flooding because the majority of sedimentation (around 90.0 percent) moves during flooding. While sedimentation is typically seen as a water supply issue, the 2019 flood events caused more sediment to build in reservoirs than has ever been seen before, and he anticipates this will cause more loss of the flood pool than KWO has previously seen.

**KDWPT, Law Enforcement Division.** The Director of the Law Enforcement Division (Division), KDWPT, stated the Division deployed under the KDEM to conduct rescues, searches, and welfare checks. He stated the Division also provided equipment to local governments, including life jackets and rescue air boats.

**KDWPT, State Parks Division.** The Director of Kansas State Parks, KDWPT, described the effects the flooding events had on state park operations, infrastructure, and tourism in the state. She stated state parks usually average 6.8 million to 7 million visits per year but received only 4.6 million visits in 2019. She stated there was flooding in U.S. Army Corps of Engineers (USACE) parks, Bureau of Reclamation parks,

and KDWPT-owned parks, as well as significant damage to nine Kansas marinas.

She explained the Kansas Department of Transportation is assessing damage to roads and is assisting the KDWPT in assessing damage to roads within parks, but the extent of damage remained unclear as some roads remained covered in water. She described damage to KDWPT cabins and stated the cost to repair four cabins is \$25,000.

She also described the significant erosion damage that resulted from the long period of time high water levels were sustained, combined with high winds, which caused not only significant erosion, but damage to assets that had never before been damaged.

She stated the Kansas State Parks Division has averaged revenues of about \$1 million a month for the five busiest months in recent years, with a June average of \$1.5 million, but revenues were \$1 million less than average in June 2019 and also below expectations in the remaining busiest months of 2019.

### ***Federal Agency Responsibilities***

Representatives of the U.S. Department of Agriculture (USDA), the Kansas City District of USACE, and the Tulsa District of USACE provided information to the Committee on federal disaster and flood response efforts and federal emergency management programs.

**Natural Resources Conservation Service, USDA.** A State Conservationist with the Natural Resources Conservation Service (NRCS), USDA, provided an overview of federal programs regarding natural resources and disaster response.

She described the Environmental Quality Incentives Program (EQIP) as NRCS' main program. EQIP was not designed to be a disaster response program but, she stated, there is flexibility to use resources in times of disaster and the program has been used for both wildfire and drought initiatives. She stated EQIP's Kansas Disaster Flood Recovery Initiative provided assistance to agriculture producers in disaster-declared counties. She stated this program focused on cover crops and was granted approximately \$1.0 million.

She described the Emergency Conservation Program (ECP) administered by the Farm Service Agency. The ECP provides financial and technical assistance to farmers and ranchers to restore farmland damaged by natural disasters.

She also described the Emergency Watershed Protection Program (EWPP), which includes two response programs: a Recovery program and a Floodplain Easements program. These response programs are utilized to remove hazards and restore stream hydrology back to pre-disaster conditions. The EWPP requires a sponsor with land rights (generally, a local unit of government). Criteria applying to the EWPP Recovery Program include the presence of a natural disaster, sudden watershed impairment, and an imminent hazard to life or property, and the utilization of the program must be economically, socially, and environmentally defensible. The EWPP Floodplain Easements Program has rarely been used in Kansas, but it allows landowners to voluntarily enter into a perpetual easement that provides the NRCS with the full authority to restore and enhance the floodplain's functions and values. The EWPP cannot be used for conditions existing before the natural disaster, for operation and maintenance problems, for federal aid highway projects, for private transportation facilities, or to rebuild infrastructure.

Finally, she described the Kansas PL-566 Watershed Program. This program provides technical and financial assistance to project sponsors to develop and implement planned watershed activities in a specific geographic area to benefit the general public. The program has a limited scope and can be used only for watersheds with a size of less than 250,000 acres.

Responding to a question regarding watersheds that span more than one county, she stated in order for federal funds to be disbursed equitably, they are based on counties, not watersheds. She noted there can be opposition from counties to distribute funds based on the watershed boundaries as counties will not want to use funds allocated to them for projects outside of their county lines.

**Tulsa District, USACE.** The Hydrology and Hydraulics Engineering Section Chief of the Tulsa District, USACE, discussed Tulsa District flood

control reservoirs in Kansas. He explained releases from reservoirs are based on the principle of “water on the ground,” rather than on rainfall forecasts, as the uncertainty of future rainfall is considered an unacceptable risk.

He described the 2019 rainfall as historic—areas of Oklahoma received almost three feet of water in May (the highest amount in the 125 years on record). He explained reservoirs are for flood control, not prevention, and without the reservoir system, the downstream control point in Van Buren, Arkansas, would have approached 1.0 million gallons per second during the May flooding event. He also described USACE aid provided to Coffeyville to protect the oil refinery. The Oklahoma National Guard filled sandbags and the Tulsa District trucked them to Coffeyville.

**Kansas City District, USACE.** Three representatives of the Kansas City District, USACE, provided information to the Committee: the Hydrologic Engineering Branch Chief, the Readiness and Contingency Operations Office Chief, and the Plan Formulation Section Chief.

The Hydrologic Engineering Branch Chief discussed reservoirs under control of the Kansas City District, USACE, in the Missouri River Basin. He mentioned streams traversing approximately 165,000 square miles in the Missouri River Basin are unregulated and do not pass through a federal reservoir and this played a part in the May flooding.

He stated 65.0 percent to 95.0 percent of reservoir storage space is dedicated to flood control. He described USACE flood control zones, where the only operation conducted is flood control. There are three flood control phases: Phase 1, where 50.0 percent of available storage space is filled; Phase 2, where 50.0 percent to 80.0 percent of storage space is filled; and Phase 3, where 80.0 percent to 100.0 percent of storage space is filled. He explained Kansas reservoirs were holding water in March and April and could not then make releases, so when the record rainfall began in May, there were numerous places where the storage space exceeded 100.0 percent.

He explained USACE water control manuals; each reservoir has a water control manual and there is also a master control manual that instructs

the USACE on how to operate all reservoirs in the system. He explained there can be deviations from the manual and the Kansas City District requested and received approval from the district office to make four deviations in the spring and fall of 2019.

He stated the reservoirs operated as designed during the May 2019 flooding events, in that the reservoirs caught water and held it until it could be released downstream without any major structural failures. He also stated the Kansas City District is making efforts to evacuate water in reservoirs before the freezing season and next spring’s rainfall.

Responding to a question concerning sediment buildup in reservoirs during the 2019 flooding events, he stated while it is best to keep waters flowing to prevent a buildup of sedimentation, based on the flooding, they had to hold water in the reservoirs for months and were not able to deal with sediment as they were focused solely on flood control.

Regarding the sedimentation in the Tuttle Creek Reservoir, he stated the sediment in that reservoir is in the multi-purpose zone and will have an effect on recreation and long-term water use, but is not currently affecting flood control.

The Readiness and Contingency Operations Office Chief provided information on Kansas City District emergency management operations, including that the Kansas City District utilizes the “risk management lifestyle approach” of preparation and training, response, recovery, and mitigation. He explained the Kansas City District responds to disasters and has a 24-hour number so it can respond quickly and coordinate efforts even if it cannot mobilize immediately.

He stated the Kansas City District has supplies for floods, including sandbags, automatic sandbag filling machines that fill 25 sandbags per minute, hoses, and other equipment that can be deployed rapidly. He stated the USACE response operations are supplemental to state and local efforts and USACE worked with the KDEM during the 2019 flooding events. He explained the USACE has two types of assistance: technical assistance (sending people to provide aid) and direct assistance (providing equipment or machinery, which is

covered at 100.0 percent federal cost during a flood).

The Readiness and Contingency Operations Office Chief stated the Kansas City District's Emergency Operation Center (EOC) was activated for flood response on March 13, 2019, when an emergency was declared in Kansas, and as of the date of the meeting, the EOC had been activated for 245 days. He stated because of the 2019 flooding events, 45 levees in the Kansas City District system were overtopped and breached, and another 21 levees were overtopped, but did not breach.

He explained federal levees are constructed by the USACE but are maintained by local governments. He stated the 500-R federal levee in the Missouri River Levee System was the first levee to breach in the Kansas City District since the 1993 floods.

He explained the USACE rehabilitates only levees that were active in the USACE system before a disaster event damaged the levee. The Readiness and Contingency Operations Office Chief stated federal levees are repaired at 100.0 percent federal cost and non-federal levees are repaired at 80.0 percent federal cost and 20.0 percent local cost. He explained Hays and Marysville have non-federal levees that are treated like federal levees because of the potential danger to the community if those levees breach.

The conferee addressed the time frame to repair damaged levees, stating it could be up to two years to fully rehabilitate certain areas. He explained, in most years, 75.0 percent of the annual rainfall occurs from March to August, but by March 2019, there was already record runoff from March rain and there was no time to release water before more heavy rainfalls in April and May.

The Plan Formulation Section Chief provided information on both the 2019 flood events response and future plans for the Kansas City District.

He explained there were three phases for response and recovery for the 2019 floods. Phase 1 was the initial response, and the objective was to handle the levees that had breached and assess

initial damage. Phase 2 was the recovery, and the objective was to rehabilitate the damaged levee systems and conduct a full system repair. Phase 2 will last until 2021 and has an estimated cost of \$1.1 billion. Phase 3 is the long-term planning for future actions and challenges and the objective is to reduce long-term flooding risks.

He also described a study the USACE is conducting from Gavin's Point Dam in South Dakota to the Missouri River endpoint in St. Louis, Missouri. The Omaha District, USACE, was conducting this study to evaluate past flooding and to make recommendations for possibly adopting new flow frequency estimates for the Missouri River Basin. As part of this study, the USACE is looking into how reducing sedimentation can increase flood resiliency.

The Plan Formulation Section Chief described another study of the Kansas River Basin to plan for flood risks, to study the impact of sediment in lakes, and to improve lake sustainability and storage protection.

He also stated both the State of Kansas and the USACE are conducting the study, and any work done by the USACE will be vetted by Kansas state agencies.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends:

- The Kansas Water Office conduct a basin-by-basin evaluation of Kansas reservoirs to determine where flooding is occurring, what damage has occurred as a result of flooding, and possible actions that can be taken to prevent or provide remediation for flooding events. Such an evaluation should include possible use of floodplain easements and long-range planning for future flood events. When basins are located in more than one county, the evaluation should focus on the entire basin regardless of county lines;
- The House Committee on Appropriations and the Senate Committee on Ways and Means consider a plan to restore the \$8.0

million statutory transfer to the State Water Plan Fund;

- The State Water Plan include efforts to combat the build-up of sedimentation in Kansas reservoirs. The Kansas Water Office should provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding sedimentation, including the estimated timeline for clearing sedimentation to increase reservoir capacity and the associated costs. The sedimentation removal planning should include preventive activities such as stream bank stabilization and prevention of field erosion;
- The Kansas Water Office provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding Iowa's system for reporting flooding events and providing resources to affected citizens and landowners. Such information should include suggestions for how Kansas citizens can best access information on flood events as they occur; and
- The KDWPT provide information to the House Committee on Agriculture and the Senate Committee on Agriculture and Natural Resources regarding damage to state property and infrastructure due to 2019 flooding events.

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# Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2020 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, Vic Miller, Mary Pilcher-Cook, Mary Jo Taylor, and Rick Wilborn; Representatives Sydney Carlin, Gail Finney, Kyle Hoffman, Stephen Owens, and John Resman

## **CHARGE**

KSA 2018 Supp. 46-2801 directs the Joint 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. The 2019 Committee is additionally charged with studying the following topics:

- Review reports concerning juvenile justice reform (2016 SB 367);
- Review the impact of juvenile justice reform on the Department for Children and Families, child welfare system contractors, and the Judicial Branch;
- Review adult offender population, facilities, contracts, programs, and the employees needed; and
- Tour the Topeka Correctional Facility.

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# Joint Committee on Corrections and Juvenile Justice Oversight

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee on Corrections and Juvenile Justice Oversight recommends the Legislature ensure the Evidence-Based Programs Account of the State General Fund, created by KSA 75-52,164, be protected to serve the purposes set forth in that statute and that moneys from that fund be accessible only through an appropriation approved by the Legislature. The Committee further recommends the Secretary of Corrections ensure there is a public process for application for moneys from the fund, and the Secretary and the Juvenile Justice Oversight Committee be vigilant and engaged in assessing needs for development of programs with moneys from the fund.

The Committee notes its concern regarding information received from conferees suggesting youth within the child welfare system are subject to repeated and multiple moves and placements that do not serve this population well and place them at higher risk to becoming crossover youth. In light of this concern, the Committee recommends, as agencies who serve this population develop software information management systems, the agencies should ensure such systems are capable of sharing and extracting data regarding this population so it may be used in a meaningful way. The Committee further recommends the Legislature continue to study current requirements regarding records, the variables and agencies that should be included in data collection and records requirements, and whether elements of military compact provisions regarding educational records could be adapted for use in this context.

The Committee notes its disappointment at the lack of equity in the treatment of female inmates in Kansas, and recommends female inmates receive similar access to treatment and training as male inmates and the Secretary of Corrections be asked to develop a strategy so male and female inmates have the highest access to programs designed to mitigate risks. The Committee notes if strategies such as increased good time credit are authorized by the Legislature, the legislative budget committees should be aware of the need there will be for community services.

As correctional workforce stability is achieved, the Committee requests the Secretary of Corrections consider and develop a plan to address the unintended consequences of recent salary increases on salary equity based on education level requirements and inform the Legislature whether additional resources are needed to implement such a plan.

The Committee recommends, if progress has not been made by the start of the 2020 Legislative Session on a plan to provide expanded career programs through Pell Grants, the Legislature adopt a joint resolution encouraging the development of such a plan.

The Committee recommends further study by appropriate legislative committees of the issue of unruly, disruptive, and potentially dangerous children and limitations on alternatives for short-term care and custody.

To help inform the Legislature regarding the other issues addressed in its recommendations, the Committee requests legislative leadership invite Dr. Elizabeth Cauffman from the University of California, Irvine, to present to both legislative chambers on the topic of brain development.

The Committee notes its concern regarding information received from conferees with regard to payments for kinship placements and, notwithstanding the agency's incremental increase, the Committee recommends further study of the topic to determine whether additional enhancement of payments is necessary.

**Proposed Legislation:** The Committee requests legislation to allow detention of runaways for a 24-hour period.

## 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, 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 (JO) and remain in custody in a JCF until age 22.5 and in the community until age 23.

The Committee is composed 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 2018 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 juvenile offenders, 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 juvenile offenders.

## COMMITTEE ACTIVITIES

The Committee requested three meeting days and an additional day to tour the Topeka Correctional Facility. The Legislative Coordinating Council granted the Committee a total of two meeting days. In addition to its statutory duties, the Committee was charged to study the following topics:

- Review reports concerning juvenile justice reform (2016 SB 367);
- Review the impact of juvenile justice reform on the Department for Children and Families (DCF), child welfare system contractors, and the Judicial Branch;
- Review adult offender population, facilities, contracts, programs, and the employees needed; and
- Tour the Topeka Correctional Facility.

The Committee met October 16 and 17, 2019, at the Statehouse. Before its October 17 meeting, the Committee toured the Topeka Correctional Facility.

### October 16, 2019, Meeting

#### *SB 367 (2016) Overview*

The meeting began with an overview of 2016 SB 367 (SB 367) presented by legislative staff. Staff discussed the Kansas Juvenile Justice Workgroup, which was appointed to advance goals related to juvenile justice reform. The group gathered input and reviewed research on juvenile recidivism. In November 2015, the group issued its final report to the Legislature with recommendations. Staff noted a number of items from the report were included in SB 367, and the Legislature also made further adjustments to the provisions in 2017 and 2018.

Staff discussed processes within juvenile offender law regarding the process of obtaining a warrant and immediate intervention program standards. Staff further noted juvenile detention must be 45 days or less cumulatively and prosecution for offenses is limited to the most

serious charges. Staff discussed graduated responses and supervision levels. Staff noted part of the 2018 update was to include provisions related to juvenile crisis intervention centers and the Evidence-Based Programs Account was changed to allow annual funding of up to \$2 million to be allocated to fund the centers. Staff also stated technical violations of probation by juvenile offenders were handled differently than new crimes, which would start the process over.

#### *Crossover Youth*

The Director of the Center for Juvenile Justice Reform at Georgetown University appeared before the Committee to discuss the Center's work with crossover youth. He defined "crossover youth" as any youth who has experienced maltreatment and engaged in delinquency, regardless of whether he or she has come to the attention of the child welfare, delinquency systems, or both.

The Director discussed his background in working with juvenile offenders and that he founded the Center to focus on juvenile offenders with histories of abuse and neglect. He discussed social work research, such as the Ecological Nesting Model, which considers various social and community influences on the lives of juveniles.

The Director noted when juveniles have negative experiences in their families, there is a higher probability they will become a delinquent. He stated religious experiences are also considered with school experiences in the community section of the model. He also noted if a child has a family that is positive and pro-social, there could be problems in the community or schools that outweigh the family's efforts.

The Director also discussed the demographics of crossover youth. He noted while females are roughly 25 percent of the justice-involved youth population, they make up nearly 40 percent of the crossover youth population. He stated other groups are also over-represented in the crossover youth population, including African Americans, youth who identify as LGBTQ, and children who qualify for special education. He stated crossover youth have higher risk factors for suicide and substance abuse, and they are more likely to have mental health challenges. He also stated children in need of care who are at risk of becoming crossover

youth may experience higher risk levels if placed in a group setting as opposed to a family setting. He noted children who can stay at home with their own family have the lowest risk level and more frequent placement changes can have an impact.

Committee members discussed whether children who frequently change schools and who fall behind as a result are more likely to become crossover youth. The Committee also discussed introduced legislation that would allow children to use the address of the local DCF office for school enrollment so children may continue to attend the same school, even if their placement is in a different school district or attendance zone. The Chairperson stated KDOC has entered into a contract to implement the crossover youth model in Kansas.

The Director next discussed the phases of the practice model. He stated the model is designed to address the needs of approximately 85 percent of the crossover youth population. He also discussed the phases of the model and noted positive outcomes associated with implementation of the model, including reduced recidivism and improved educational and social outcomes. He stated the model has been implemented in 23 states and 119 jurisdictions.

### ***Overview—Juvenile Services, KDOC***

The Acting Secretary of Corrections (Acting Secretary) introduced himself to the Committee as Governor Kelly's nominee for the position of Secretary. He stated he spent 30 years working in the Idaho Department of Corrections. He stated the Deputy Secretary of Juvenile Services would discuss the Juvenile Services section of KDOC. He also noted the agency has reorganized parts of the section and has added a new unit to focus on research and behavior analytics.

The Deputy Secretary of Juvenile and Adult Community-Based Services, KDOC, began her presentation by discussing an organizational chart of the juvenile justice system. She discussed statistics related to intake, noting KDOC has served 5,899 children in need of care (CINC) and 2,912 juvenile offenders. She also stated KDOC has served 3,023 youth through intervention and supervises 831 youth in community supervision. She further noted the Kansas Juvenile Correctional

Complex has a current population of 166 juvenile offenders.

The Deputy Secretary also discussed the evidence-based funds. She stated a subcommittee of the Juvenile Justice Oversight Committee (JJOC) is making recommendations to the Governor and Legislature regarding the reinvestment of funds. She stated counties would implement their own programs and communities would determine what they want to fund through community advisory boards. She discussed programs started as a result of SB 367 and discussed the approval of subsequent programs.

The Deputy Secretary discussed the current approval process and noted the JJOC subcommittee receives requests through KDOC. Such requests were first vetted in local community corrections agencies and then sent to KDOC. She further noted the subcommittee will present program requests to the full JJOC for approval.

Additionally, the Deputy Secretary discussed data systems within KDOC. She stated the juvenile services data system is antiquated, but KDOC is working to develop new data systems to meet the needs of KDOC.

The Deputy Secretary also discussed crossover youth and stated KDOC is working to understand the barriers and difficulties. She stated KDOC has worked with DCF and has developed memorandums of understanding for functional family therapy (FFT). She stated the therapy has both a justice and child welfare track. She indicated three pilot sites will implement the Georgetown model developed by Professor Bilchik.

The Deputy Secretary also discussed the effects of the implementation of SB 367. She stated between 2015 and 2019, there were 649 fewer youth detained, 491 fewer in out-of-home placements, and 114 fewer juveniles confined in the JCF.

The Deputy Secretary stated the goal of the SB 367 reforms is to keep juveniles out of the system, but there will always be youth in need of a correctional system. She also discussed specific questions about expenditures by the agency.

The Deputy Secretary discussed other statistics related to juveniles. She stated in the past year, 88.5 percent of intensive intervention participants were successfully discharged. With regard to juveniles who live in youth residential centers, 46 percent of youth were successfully discharged and within six months, 51.2 percent were still in an out-of-home placements. She also stated that of juveniles participating in FFT, 83 percent met all three outcomes of being at home, in school or working, and without having a new arrest within a year of therapy. She stated the Kansas Bureau of Investigation (KBI) reported 3,613 fewer juvenile arrests between 2015 and 2018.

### *Overview—JJOC*

The Vice-chairperson of the JJOC appeared before the Committee to discuss the work of the JJOC over the past year and the items the JJOC expects to include in its annual report.

The Vice-chairperson stated performance measures indicate the State is making strides toward the policy goals of SB 367 and is reinvesting resources to make communities safer. She discussed the overall effects of SB 367, noting the population in the juvenile correctional facility has dropped 24 percent overall and juvenile offenders with misdemeanor offenses are no longer being committed. With respect to risk levels, she stated 91 percent of youth in the juvenile correctional facility have been assessed as moderate or high risk. She stated those moderate-to high-risk youth are the target population of the reforms.

The Vice-chairperson also discussed the length of probation for juvenile offenders, noting the average length is now 15 months, down from an average of 21 months, pre-reform. She stated the reforms have also resulted in a downward trend in case filings. She discussed the distribution of funds, noting the JJOC has established a reinvestment subcommittee that has studied juvenile community advisory boards (JCABs). She stated JCABs consist of stakeholders within the juvenile justice system. The JJOC has decided to recommend funding and provide support to local JCABs. She stated an additional goal is to support a community-based provider that can provide a family guide that would help families navigate the judicial system.

The Vice-chairperson stated JCABs are responsible for reporting their needs and applying for grants; stated the difference between crisis intervention centers and continuing community mental health services is that community services keep the community safe and the bulk of juveniles in the system are in the community; and, regarding the definition of “community,” stated judicial districts are recognized as communities for JCAB purposes.

### *Overview—Child Welfare Agencies*

#### *DCF*

The Deputy Secretary for Family Services, DCF, appeared before the Committee to discuss juvenile justice reform from the viewpoint of DCF. She began by discussing crossover youth. She noted there is no centralized data system that tracks crossover youth. However, the agency has measured the number of youth served by the agency who later have contact with juvenile intake and assessment. She stated since fiscal year (FY) 2009, 6 percent of youth leaving the foster care system have had contact with juvenile intake and assessment, but the agency does not have a reliable way to measure the number of youth still receiving services who have had contact with juvenile intake and assessment. She also stated the agency is excited to implement the Georgetown model.

The Deputy Secretary also stated the Kansas Department for Aging and Disability Services has a request for proposal (RFP) for juvenile crisis intervention centers that will close at the end of October 2019. She stated such centers would provide wraparound services and DCF is collaborating with stakeholders to help families.

The Deputy Secretary stated juvenile crisis intervention centers provide both mental health and behavioral services.

#### *Saint Francis Community Services*

The Vice President of Saint Francis Community Services appeared before the Committee to discuss juvenile justice reform from the viewpoint of child welfare system providers.

The Vice President stated once a child has been found to be a CINC, they are presumably

treated before they can go home. She stated Saint Francis has a goal of reducing out-of-home placements. Regarding crossover youth, she stated 410 youth in their family preservation or reintegration services would be considered crossover youth. She also stated Saint Francis has received at least 160 referrals to foster care from the juvenile justice system.

Committee members discussed inappropriate sexual behaviors and the crime of aggravated indecent liberties with a child, noting the court can commit a juvenile to a JCF or the court can label the child a CINC.

#### *KVC Kansas*

The President of KVC Kansas (KVC), appeared before the Committee to discuss juvenile justice reform from the viewpoint of child welfare system providers.

The President stated the reforms in SB 367 have led to a 63 percent decrease in child confinement, but her concern is with the rising numbers of children in foster care. She stated KVC serves approximately 200 crossover youth, and there may be up to 500 statewide. She stated children with complex issues may not have their needs fully met in the foster care system.

The President noted KVC has created new positions to help crossover youth, but there are issues with placing some of the children in foster homes. She also stated KVC has created a new level of acute psychiatric care that is not reimbursed by Medicaid and KVC would like a more flexible definition of reinvestment dollars.

The President stated she thinks the Georgetown model is a step in the right direction and she especially appreciates the communication between systems. She also stated family preservation services need to reach families sooner.

#### ***Kansas County and District Attorneys Association***

An assistant district attorney for Johnson County, on behalf of the Kansas County and District Attorneys Association, discussed juvenile justice reform from the viewpoint of county and

district attorneys. He began by discussing his experience working with juvenile offenders.

The assistant district attorney noted he has worked with juvenile offenders for more than 30 years and has worked through previous reform efforts. He stated one good aspect of the SB 367 reforms is there are fewer juveniles in detention. He also stated there have been more local services administered by communities and treatment focuses on juveniles and their families.

The assistant district attorney also noted some concerns, including runaway children and issues with the interstate compact hold requirements. He also discussed concerns with the risk assessment tool as it relates to crossover youth.

The assistant district attorney also stated, in his opinion, the law needs to allow for more prosecutorial discretion. He noted the juvenile equivalent of diversion is intermediate intervention programs (IIP). He stated the law requires every juvenile misdemeanor be granted an IIP, which, in his opinion, eliminates judicial discretion.

The assistant district attorney discussed other concerns, including mid-level crimes. He noted crimes such as aggravated assault and possession of drugs with the intent to sell would not score a juvenile high enough to be detained. He stated, in his opinion, juveniles are selling drugs more often and some choose to commit robberies during drug transactions. He noted Johnson County has prosecuted more juveniles on murder charges in 2019 than in years past, which he would attribute to drug sales and associated robberies. He stated his proposed solution would be to reexamine directives for mid-level crimes.

The assistant district attorney stated courts need additional discretion and provided an example of a youth who had stabbed someone. He stated if the youth has a low Youth Level of Services (YLS) inventory score, the juvenile could receive six months probation, but he feels the prosecutor should be able to prosecute based on circumstances rather than have a base punishment determined by law.

Committee members also discussed assessment tools, whether special circumstance

rules are necessary, and treatment of juveniles from other compact states.

### ***Office of Judicial Administration***

The Director of Trial Court Programs and the Court Services Specialist, Office of Judicial Administration (OJA), appeared before the Committee to discuss juvenile justice reform from the viewpoint of the Judicial Branch.

The Director stated IIP is offered statewide and a graduated response grid is utilized to determine the next steps for the juvenile. She also stated training protocol has been put in place for judges, prosecutors, and defense attorneys. She discussed the uniform risk and needs assessment and training for community supervision officers. She stated OJA has gathered statistics for 2018 and is now compiling data for 2019. She stated during 2018, there were 7,230 CINC filings and 6,708 juvenile offender filings, with CINC cases seeing a 5 percent increase since 2016.

The Director also discussed the number of adjudications by plea or trial, the number of juvenile offenders on probation in 2018, the number of diversions, the number of waivers to adult court, and the amount of discharge credit earned statewide in 2018.

The Court Services Specialist discussed training, stating court services officers participated in 24 in-person trainings in FY 2019, which were mainly related to supervision of juveniles. She noted OJA also offers module training through the University of Cincinnati. She discussed the prevalence of services across the state, noting the challenges in particular geographic areas. She stated there is a lack of resources in rural and frontier areas, but telemedicine may help in those areas.

The Director next discussed data, stating OJA is working to organize the information they have already compiled and there may be other data points they will need to collect in the future that are not currently collected. She stated continued training for attorneys and judges is needed along with continual monitoring of reform. She stated there are challenges in communication between DCF and KDOC systems. She noted a particular challenge is the amount of data associated with

particular journal entries that are hosted on servers in 110 courthouses across the state. She stated a new software system that is currently being put in place would hold all data in one place.

### **October 17, 2019, Meeting**

#### ***Topeka Correctional Facility Tour***

Before its October 17 meeting, the Committee toured the Topeka Correctional Facility.

#### ***KDOC Operations***

The Acting Secretary discussed challenges his agency is facing. He noted staff have expressed dissatisfaction with benefits, but the agency is working to improve staff retention. He said his team has identified areas of interest, including staff development, improvement of reentry and workforce readiness, and capacity issues. He also noted issues with aging agency technology and issues with facilities. Committee members discussed the challenges of older buildings and the agency's technology plan.

The Acting Secretary also discussed the Kansas Criminal Justice Reform Commission and partnerships with the Council for State Governments and the National Governors Association.

The Acting Secretary discussed the capacity of agency facilities, noting particular capacity issues. He stated the agency has examined the option of using available space at a facility in Larned and at the JCF for females. He stated the agency has also considered buildings adjacent to the Winfield facility and honor camp facilities that are currently closed.

The Acting Secretary discussed current efforts to alleviate population concerns. He stated the agency has put out an RFP for contract beds, noting the agency has contracted with county jails to house some inmates. He also discussed an agreement with CoreCivic to house inmates in a facility in Arizona. Committee members discussed concerns over the cost of contract beds and with moving inmates to remote locations. The Acting Secretary noted, in response, a group of 120 inmates will be moving to Arizona and beds will be opening up at Lansing in phases, beginning in December 2019.

The Deputy Secretary of Facilities Management, KDOC, appeared before the Committee. He discussed facility demographics, noting the Hispanic population is growing. He also noted the average age of inmates is 39 years old. He discussed the Lansing facility and stated the re-opening of beds at Lansing will help reduce stress on inmates and staff.

The Deputy Secretary discussed other initiatives in the agency. He stated the agency would like to align mental health offender beds for treatment and use best practices to implement reform for segregation placements. He further stated the agency would like to eliminate long-term segregation currently in place at Hutchinson. He stated protective vests have been procured for staff, the agency is developing a companion program for suicidal inmates, and the agency is also evaluating the custody classification instrument that has been in place since 2005. Committee members discussed capacity topics and beds that will be brought online at Lansing.

The Executive Director of Programs and Risk Reduction, KDOC, appeared before the Committee. She discussed recidivism, stating the rate of recidivism has been lowered from 55 percent to 34 percent between 2001 and 2015. She stated the agency has employed additional evidence-based programming. She also noted approximately 5,000 inmates are released each year and, of those released, 75 percent need job services, 75 percent need substance abuse and recovery programming, and 20 percent will leave with an unstable housing situation.

The Executive Director discussed employment and education. She stated a study found those who obtain a General Equivalency Diploma (GED) or complete other education while incarcerated have a lower rate of recidivism because it helps offenders with obtaining employment. She stated the U.S. Department of Education has recently implemented a change that would lift the ban of using federal Pell Grant dollars to pay for classes within prisons. She stated the agency is working with offenders to set goals and motivate them to complete courses. Committee members discussed participation in educational courses and reasons for non-participation in programming.

The Deputy Secretary of Juvenile and Adult Community-Based Services, KDOC, appeared before the Committee to discuss supervision topics. She stated probation is supervised by three entities: the Judicial Branch, county commissions, and KDOC. She also stated the population is increasing in community corrections, which is supervision for moderate- to high-risk offenders.

The Deputy Secretary noted challenges her office faces, including treatment availability across the state, flat funding, and administration of 31 different agencies.

The Deputy Secretary discussed field services. She stated compact services are unified under KDOC, with all intake and outtake being coordinated through the agency. She noted most compact supervision is for those on probation, which is 27 percent of the population. She stated the majority of compact supervision cases are from Missouri, Oklahoma, and Texas. She also discussed the costs of GPS monitoring and issues with caseload amounts. She stated domestic violence is an issue and the agency has made recommendations for domestic violence assessments.

The Acting Secretary discussed capacity. He stated there are no vacant beds in the system, but he hopes opening portions of the new Lansing facilities will help. He also stated the employees of the agency are happy with the pay raise, which allowed El Dorado to end its mandatory 12-hour shifts. He stated the agency has lowered the number of vacancies, but there are still pay compression issues between certain positions. Committee members discussed degrees required for parole and case management positions and whether Medicaid expansion would affect the services provided to inmates or the cost to the State for inmate healthcare.

### ***Sentencing Commission***

The Executive Director of the Sentencing Commission appeared before the Committee to discuss his agency's annual report. He stated the Sentencing Commission is made up of a cross-section of the criminal justice community. He stated the agency provides bed space impacts for legislation during the legislative session and is also the statistical analysis center for the State for

data related to criminal justice. He also stated the agency maintains a database of journal entries and annually publishes the *Kansas Sentencing Guidelines Desk Reference Manual* that is used for sentencing in the state.

The Executive Director discussed the sentencing guidelines. He stated the guidelines establish presumptive sentences, which provide equity among offenders in typical cases. He stated the guidelines also allow for departures in atypical cases and allow for more certainty in predicting prison populations. He next discussed sentencing trends, stating there was a rise in felony sentences in FY 2018 of 1 percent from FY 2017. He also stated there were fewer prison sentences in 2019, but more probation sentences, with a total increase in sentences of 3 percent in FY 2019.

The Executive Director also discussed statistics related to offenses. He stated the top offenses are: drug offenses, theft, burglary, aggravated battery, driving under the influence (DUI), and other (encompasses all other categories of crime). He noted Johnson County has the highest number of DUI offenses in the state. He stated the agency is also able to look at gender and race distribution, with the largest age cohort being offenders between 31 and 40 years old. He also noted nearly 75 percent of drug offenses are for possession.

The Executive Director discussed population projections. He stated overall court commitments and probation condition violators are going down, but the system will have a 13.8 percent increase in population due to drug and lower-level crimes. He stated there could be a number of factors driving the increase, and noted persons convicted of non-violent offenses are sometimes sent to prison due to their criminal history. He stated the system is currently over capacity with a present population of 10,044 and a current capacity of 9,916. He stated the population is projected to reach 11,428 by 2029.

The Executive Director stated the agency uses a unique identifier for each offender that is assigned by the KBI. He stated it would be more difficult to implement that tracking system in the juvenile system. Committee members discussed whether income is tracked along with race and gender and chronic DUI offenders.

The Executive Director stated KDOC has developed policy recommendations for the 2020 Legislative Session related to strategies to lower the prison population. He noted one proposal is to raise the good time credit to a maximum of 50 percent, which could result in a bed savings of up to 2,020 beds by 2030. Members also discussed the education level of offenders and whether the good time credit proposal would affect programming.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the Legislature ensure the Evidence-Based Programs Account of the State General Fund, created by KSA 75-52,164, be protected to serve the purposes set forth in that statute and moneys from that fund be accessible only through an appropriation approved by the Legislature. The Committee further recommends the Secretary of Corrections ensure there is a public process for application for moneys from the fund, and the Secretary and the JJOC be vigilant and engaged in assessing needs for development of programs with moneys from the fund.

The Committee notes its concern regarding information received from conferees suggesting youth within the child welfare system are subject to repeated and multiple moves and placements that do not serve this population well and place them at higher risk to becoming crossover youth. In light of this concern, the Committee recommends as agencies who serve this population develop software information management systems, the agencies should ensure such systems are capable of sharing and extracting data regarding this population so it may be used in a meaningful way. The Committee further recommends the Legislature continue to study current requirements regarding records, the variables and agencies that should be included in data collection and records requirements, and whether elements of military compact provisions regarding educational records could be adapted for use in this context.

The Committee notes its disappointment at the lack of equity in the treatment of female inmates in Kansas, and recommends female inmates receive similar access to treatment and training as

male inmates and the Secretary of Corrections be asked to develop a strategy so male and female inmates have the highest access to programs designed to mitigate risks. The Committee notes if strategies such as increased good time credit are authorized by the Legislature, the legislative budget committees should be aware of the need there will be for community services.

As correctional workforce stability is achieved, the Committee requests the Secretary of Corrections consider and develop a plan to address the unintended consequences of recent salary increases on salary equity based on education level requirements, and inform the Legislature whether additional resources are needed to implement such a plan.

The Committee recommends, if progress has not been made by the start of the 2020 Legislative Session on a plan to provide expanded career programs through Pell Grants, the Legislature adopt a joint resolution encouraging the development of such a plan.

The Committee recommends further study by appropriate legislative committees of the issue of unruly, disruptive, and potentially dangerous children and limitations on alternatives for short-term care and custody.

To help inform the Legislature regarding the other issues addressed in its recommendations, the Committee requests legislative leadership invite Dr. Elizabeth Cauffman from the University of California, Irvine, to present to both legislative chambers on the topic of brain development.

The Committee notes its concern regarding information received from conferees with regard to payments for kinship placements and, notwithstanding the agency's incremental increase, the Committee recommends further study of the topic to determine whether additional enhancement of payments is necessary.

The Committee requests legislation to allow detention of runaways for a 24-hour period.

# Report of the Joint Committee on Kansas Security to the 2020 Kansas Legislature

**CHAIRPERSON:** Representative Eric Smith

**VICE-CHAIRPERSON:** Senator Dan Goddard

**OTHER MEMBERS:** Senators Kevin Braun, Mike Petersen, Pat Pettey, and Mary Ware; Representatives Dave Baker, Michael Houser, Jarrod Ousley, and Louis Ruiz

**CHARGE**

## *Review Various Security Matters*

KSA 2019 Supp. 46-3301 directs the Joint Committee to study, monitor, review, and make recommendations on matters related to the security of state officers or employees, state and other public buildings, and other property and infrastructure in the state, and to consider measures for the improvement of security for the state. In addition, the Committee is authorized to address these additional topics:

- Cybersecurity;
- Implementation of updates to emergency communications capabilities across the state; and
- The safety of students and state employees.

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# Joint Committee on Kansas Security

## ANNUAL REPORT

### Conclusions and Recommendations

The Committee made no formal recommendations but requested additional information on specific topics at a future meeting.

*Proposed Legislation:* None

### BACKGROUND

The 2004 Legislature created the Joint Committee on Kansas Security (KSA 2019 Supp. 46-3301) to study, monitor, review, and make recommendations for the following:

- Matters relating to the security of state officers and employees;
- Security of buildings and property under the ownership or control of the State;
- Matters relating to the security of a public body or agency, public building, or facility;
- Matters relating to the security of the infrastructure of Kansas, including any information system; and
- Measures for the improvement of security for the state.

The Legislative Coordinating Council also directed the Committee to study emergency communications, cybersecurity, and the safety of students and state employees in 2019.

### COMMITTEE ACTIVITIES

The Committee met in the Statehouse on October 2, 2019. All presentations summarized below were given during that meeting.

### Statehouse Security Update

The Superintendent of the Kansas Highway Patrol (KHP) and the Lieutenant of KHP Troop K (Capitol Police) reviewed Statehouse security. The Lieutenant provided an update on Statehouse security personnel, Statehouse video monitoring equipment, call boxes, and Visitor Center security screening equipment. He reported the Capitol Police's Central Monitoring has moved into a more functional office space, with more monitors to view images provided by various cameras around the Capitol complex. The Lieutenant also provided an overview of new screening equipment purchased as a result of actions taken by the Legislature in 2019:

- Two new Astrophysics x-ray machines for the Visitor Center;
- Two new metal detectors for the Visitor Center; and
- One new large Astrophysics x-ray machine for the loading dock.

He reported there were issues with new x-ray machines due to a miscommunication by the vendor, and the issue would be resolved by the end of October 2019.

### Executive Agency Information Systems

The Information Technology (IT) Audit Manager, Legislative Division of Post Audit (LPA), provided information on IT security audits completed by LPA staff. She noted 2015 HB 2010 placed into statutes requirements LPA perform IT

audits as directed by the Legislative Post Audit Committee, and reports of those audits are permanently confidential.

The IT Audit Manager provided additional information to the Committee in an executive session.

### **Review of Agency Security Policies**

The Acting Secretary of Administration (Secretary) provided the Committee with a review of agency security policies. The Secretary reported, since the previous update given to the Committee by the former Secretary at the January 2018 meeting, the Department of Administration (Department) has seen an increase in monitoring and surveillance with an expanded network of cameras; more training, such as deescalation training, completed by agency personnel; and new safety policies and procedures implemented in agencies with high public traffic and access. The Secretary noted some agencies have had more opportunity to examine their security policies and the biggest challenge for the Department is making the process more systematic.

**Strategic plan.** The Secretary stated Department staff have met with representatives of the KHP, the Office of Information Technology Services, and agency partners to develop a comprehensive approach to deploying security enhancements using the following tiers:

- Tier 1—Capitol Complex;
- Tier 2—Leased space in downtown Topeka;
- Tier 3—Leased space in Shawnee County; and
- Tier 4—State facilities outside of Shawnee County.

The Secretary reported the Department would like to develop a security checklist for facilities outside of Shawnee County that would include notifying local law enforcement that a building houses a state agency. She also reported staff are instituting a safety audit when in the process of looking at a leased property. She noted there also

are opportunities to address security as leases are amended.

**Infrastructure gap analysis.** The Secretary reported the Department was then reviewing responses to a gap analysis survey sent to all agencies located in Topeka to better understand the agency's usage of space, implementation of best practices, and certain security protocols with the goal of understanding potential security concerns.

**Short-term security goals.** The Secretary identified short-term security goals for the Department, such as implementing security training programs for employees, working with agency partners on policies and procedures for enhanced security, and consulting with local and state law enforcement. She also identified future needs, such as evaluating and upgrading surveillance systems, determining fiscal impacts of implementing security enhancements, and assessing staffing needs.

### **Overview of Kansas 911 Act and Next Generation 911 Technology**

The Administrator of the Kansas 911 Coordinating Council (Council) provided an overview of the Kansas 911 Act (Act) and Next Generation 911 (NG911) technology.

The Administrator provided background information and a timeline of major milestones of NG911, including various mapping projects. He reported there were 97 public safety answering points (PSAPs) on the State-hosted system at the end of 2018 and, in 2019, there were plans to increase the number of PSAPs on the state system to 102; he noted a few counties in the Kansas City metropolitan region are participating *via* the Mid-America Regional Council system, which will interconnect with the Kansas system. Background information on technical aspects of the State-hosted system and a comparison of annual costs between operating a standalone PSAP and hosting on a statewide system also were provided.

The Administrator reviewed changes to the Act enacted in 2019 HB 2084, including increases in the 911 fee per subscriber account per month and changes to its distribution, authorizing the Council to require PSAPs to maintain geographic information systems data, and authorizing the Council to withhold a portion of a PSAP's 911 fee

distribution if the PSAP fails to meet certain expenditure reporting requirements.

The Administrator also reviewed 911 projects being implemented or planned, including those regarding mapping and migration to “i3” contact using non-voice-using technologies and geospatial call routing. He also reported on FirstNet and other broadband network interface projects, annual security audits of both the voice and data networks, incident management plan updates and revisions to be presented to the Council for approval, and development of guides for PSAP troubleshooting and problem reporting.

### **FirstNet and Public Safety Broadband in Kansas**

The Response and Recovery Branch Director (Director), Division of Emergency Management, Adjutant General’s Department, provided an update on FirstNet and public safety broadband in Kansas. He noted the federal Public Law 112-96, enacted in 2012, directed the establishment, deployment, and operation of a nationwide broadband wireless network for public safety communications. He described FirstNet as a secure, interoperable communications network that supports voice, data, text, and video communications. FirstNet is being built with AT&T in a public-private partnership with the FirstNet Authority, helping public safety agencies connect to voice and data information that would be critical during an emergency. He reported approximately 60 percent of the network had been completed and all 50 states have chosen to use FirstNet as their public safety communications network, rather than building separate networks as P.L. 112-96 would have allowed.

The Director provided an overview of how FirstNet operates for a public safety official end user. He described two types of users for FirstNet: priority and extended. Priority users include first responders, such as police and fire officials, while extended users include nonprofits and other entities that may be called upon to assist in an emergency. Both groups would have priority status on the network but only the priority group of users would have network preemption status over users who are not first responders. Priority users also can temporarily designate an extended user a priority user.

The Director provided information about the subscription plan structures for career and volunteer first responders and the various additional FirstNet assets, such as portable network vehicles.

He also reported future FirstNet Authority approved investment areas include:

- Expanding the FirstNet fleet of deployable resources for better network coverage and capacity for public safety during emergencies and events; and
- Completing upgrades to the FirstNet core to enable 5G network capabilities.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Committee made no formal recommendations but requested the following be addressed at a future meeting:

- The security of the state’s elections, voting machines, and voting places, and the impact of changing polling places in certain counties;
- Certification and training of the state’s PSAP operators and dispatchers, with more information provided by the state’s law enforcement associations;
- The Department’s plan for IT security compliance of state agencies; and
- Kansas crime trends. [*Note: This item was expected to be included on the October 2, 2019, agenda, but the Kansas Bureau of Investigation requested it be presented at a later date for reasons outside the agency’s control.*]

Committee members also discussed the possibility of examining state procurement procedure and law, and partnering more with rural communities to increase their purchasing power with regards to security-related equipment. Accountability for training and implementing agency security measures also was discussed.

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# Report of the Joint Committee on State Building Construction to the 2020 Kansas Legislature

**CHAIRPERSON:** Representative J. R. Claeys

**VICE-CHAIRPERSON:** Senator Rick Billinger

**OTHER MEMBERS:** Senators Marci Francisco, Tom Hawk, Carolyn McGinn, and John Skubal;  
Representatives John Alcalá, Eileen Horn, Michael Houser, and Marty Long

## **CHARGE**

The Committee is authorized by KSA 46-1701, which includes provisions allowing the Committee to meet on the call of its Chairperson at any time and any place within the state and to introduce legislation. The Committee is authorized to:

- Study, review, and make recommendations on all agency five-year capital improvement plans, leases, land sales, and statutorily required reports by agencies; and
- Review possible designs for the Docking State Office Building.

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# Joint Committee on State Building Construction

## ANNUAL REPORT

### Conclusions and Recommendations

All five-year capital improvement plans and leases were recommended by the Committee, except for the following:

- The recommendation for the Department of Corrections five-year plan deleted the conversion of the Kansas Juvenile Correctional Complex and deleted \$144.9 million for a new 1,200-bed facility;
- The recommendation for the Kansas Insurance Department deleted all expenditures beyond fiscal year (FY) 2020 due to the agency relocating into a leased building during Fall 2019;
- The recommendation for the Kansas Highway Patrol five-year plan deleted all expenditures for replacing the fleet car wash for FY 2021;
- The recommendation for the Department for Children and Families included moving the Topeka LED lighting replacement project up to occur with the lobby remodel; and
- The recommendation for the Kansas Department for Aging and Disability Services/state hospitals deleted the renovation of the Biddle Building at Osawatomie State Hospital.

*Proposed Legislation:* None

### BACKGROUND

The Joint Committee on State Building Construction was established during the 1978 Session. The Special Committee on Ways and Means recommended the bill creating the Committee, 1978 HB 2722, as a result of its interim study of state building construction procedures.

The Committee was expanded from six members to ten members by 1999 HB 2065. It is composed of five members of the Senate and five members of the House of Representatives. Two members each are appointed by the Senate President, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader. The Chairperson of the Senate Committee on Ways and Means and the

Chairperson of the House Committee on Appropriations serve on the Committee or appoint a member of such committee to serve (KSA 46-1701).

Terms of office are until the first day of the regular legislative session in odd-numbered years. A quorum of the Committee is six members. The chairperson and vice-chairperson are elected by the members of the Committee at the beginning of each regular session of the Legislature and serve until the first day of the next regular session. In odd-numbered years, the chairperson is to be a representative and the vice-chairperson is to be a senator. In even-numbered years, the chairperson is to be a senator and the vice-chairperson is to be a representative (KSA 46-1701).

The Committee may meet at any location in Kansas on call of the Chairperson and is authorized to introduce legislation. Members receive the normal *per diem* compensation and expense reimbursements for attending meetings during periods when the Legislature is not in session (KSA 46-1701).

The primary responsibilities of the Committee are set forth in KSA 2018 Supp. 46-1702. The Committee is to review and make recommendations on all agency capital improvement budget estimates and five-year capital improvement plans, including all project program statements presented in support of appropriation requests, and to continually review and monitor the progress and results of all state capital construction projects. The Committee also studies reports on capital improvement budget estimates that are submitted by the State Building Advisory Commission. The Committee makes annual reports to the Legislature through the Legislative Coordinating Council (LCC) and other such special reports to the appropriate committees of the House of Representatives and the Senate.

Each state agency budget estimate for a capital improvement project is submitted to the Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each estimate includes a written program statement describing the project in detail (KSA 2018 Supp. 75-3717b). The budget estimate requirement does not apply to federally funded projects of the Adjutant General or to projects for buildings or facilities of the Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund. In those cases, the Adjutant General reports to the Committee each January regarding the federally funded projects, and the Director of Kansas Correctional Industries advises and consults with the Committee prior to commencing such projects for the Kansas Correctional Industries (KSA 2018 Supp. 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects, including all actions relating to change orders or changes in plans. The Secretary of Administration is required to first advise and consult with the Committee on each change order or change in plans having an increase in project

cost of \$125,000 or more, prior to approving the change order or change in plans (KSA 2018 Supp. 75-1264). This threshold was increased from \$25,000 to \$75,000 in 2000 HB 2017 and to \$125,000 in 2008 HB 2744. Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and state educational facilities (KSA 2018 Supp. 76-786) and in 2004 for projects undertaken by the Kansas Bioscience Authority (KSA 2018 Supp. 74-99b16).

If the Committee will not be meeting within ten business days, and the Secretary of Administration determines it is in the best interest of the State to approve a change order or change in plans with an increase in project costs of \$125,000 or more, 2000 HB 2017 provided an alternative to prior approval by the Committee. Under these circumstances, a summary description of the proposed change order or change in plans is mailed to each member of the Committee, and a member may request a presentation and review of the proposal at a meeting of the Committee. If, within seven business days of the date the notice was mailed, two or more members notify the Director of Legislative Research of a request to have a meeting on the matter, the Director will notify the Chairperson of the Committee, who will call a meeting as soon as possible. At that point, the Secretary of Administration is not to approve the proposed action prior to a presentation of the matter at a meeting of the Committee. If two or more members do not request the proposed matter be heard by the Committee, the Secretary of Administration is deemed to have advised and consulted with the Committee and may approve the proposed change order, change in plans, or change in proposed use (KSA 2018 Supp. 75-1264).

The “comprehensive energy bill,” 2009 Senate Sub. for HB 2369, required the State to establish energy-efficient performance standards for State-owned and -leased real property, and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all State-owned property, and the Secretary of Administration is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building. Each year, the Secretary of Administration shall submit a report to the

Committee that identifies properties where an excessive amount of energy is being used (KSA 2018 Supp. 75-37,128).

## COMMITTEE ACTIVITIES

The LCC approved three meeting dates for the Committee. The Committee met on two days, August 2 and October 28, 2019. The Committee reviewed agencies' five-year capital improvement plans, reviewed leases, received an update on the Docking State Office Building, and received the Department of Transportation's Excess Right-of-Way Annual Report. The Committee also toured the Kansas Department of Health and Environment's (KDHE's) lab and the Insurance Department Building before it was vacated. All agency five-year capital improvement plans were recommended, except for the following:

- The recommendation for the Department of Corrections five-year plan deleted the conversion of the Kansas Juvenile Correctional Complex and deleted \$144.9 million for a new 1,200-bed facility;
- The motion for the Kansas Insurance Department deleted all expenditures beyond fiscal year (FY) 2020 due to the agency relocating into a leased building during Fall 2019;
- The recommendation for the Kansas Highway Patrol five-year plan deleted all expenditures for replacing the fleet car wash for FY 2021;
- The recommendation for the Department for Children and Families included moving the light-emitting diode (LED) lighting replacement project up to occur with the lobby remodel; and
- The recommendation for the Kansas Department for Aging and Disability Services/state hospitals deleted the renovation of the Biddle Building at Osawatomic State Hospital.

## Five-Year Plans

**Kansas Department of Corrections (KDOC).** An agency representative stated the number one priority for KDOC is the five-year Rehabilitation, Remodeling, Renovation, and Repair Program (Program). It receives \$5 million per year for Program. Of the \$5.0 million, \$500,000 has gone to bond payments that will be paid off in 2020. The agency representative requested the funds that had been used to pay the bond go back into the agency's Program projects in subsequent years. The \$5.0 million per year was statutorily capped approximately 20 years ago. Construction inflation has reduced buying capacity to about \$0.43 for every \$1.00. As a result, KDOC cannot complete the same number of projects it was able to 20 years ago.

The agency representative discussed two specific capital improvement projects KDOC requested be deferred until Fall 2022 or later: the Kansas Juvenile Correctional Complex conversion project and new construction of a 1,200-bed facility at a total cost of \$144,931,549.

**Kansas Insurance Department.** An agency representative stated the capital improvement plan was developed without knowing what the Committee may do regarding the proposed lease. Since the Committee recommended the lease, the agency representative noted the yearly \$35,000 for maintenance should be removed for FY 2021 and future years. The representative asked the Committee to keep the maintenance fund through FY 2020 to cover maintenance needs through the end of calendar year (CY) 2019.

**State Historical Society.** An agency representative shared with the Committee the agency owns 58 buildings and structures across the state, as well as a combined 600 acres. The agency has no bonds. The first priority is the annual funding used for emergency repairs. For example, in FY 2019, storms caused severe damage to two historic sites. The representative expressed appreciation for the funding support and noted the funds from the State are used to leverage funding from other sources. The representative highlighted two specific projects in the capital improvement plan. First, the Kaw Mission and the Last Chance store are both on the Santa Fe Trail, which will celebrate its 200th anniversary in 2021.

Both sites are currently undergoing rehabilitation at a projected cost of \$400,000. Of that total, 21 percent is from state funds while 79 percent is from grants and private donations. The second project is the Kansas Museum of History on the west side of Topeka. The plan is for a \$7.0 million upgrade of exhibits with most funds being raised from Kansas business and individuals. For FY 2021, the agency is requesting \$650,000 from the State to replace the heavily traveled lobby floor and reconfigure the lobby as part of a much needed upgrade. The request represents about 9.0 percent of the total cost of the project

**Kansas Bureau of Investigation (KBI).** The Director of the KBI stated the KBI owns three facilities of approximately 94,000 square feet. The agency has about a \$100,000 yearly budget for rehabilitation and repair to maintain and keep the buildings as efficient and functional as possible. The Director stressed the importance of this funding, as the KBI's oldest building was built in 1929 and received a major upgrade in 1984. The agency also leases six additional buildings for a total space of about 128,000 square feet.

The Director reported the agency completed its project to renovate 2,500 square feet of the first floor of the KBI Headquarters. The renovation was completed in December 2018 and houses the newly developed Northeast Child Victims Task Force. The agency will be able to enhance its capacity to focus investigative efforts on cases where children are victimized in the northeast region of the state. The KBI has four facility priorities in FY 2020, which are outside the scope of what it can accomplish with the allocated rehabilitation and repair moneys. The first project is the Forensic Laboratory at the Great Bend regional office. The renovation will include replacement of the heating, ventilation, and air conditioning (HVAC) system, plumbing and electrical, new room layouts, replacement of existing cabinets, and new LED lighting. The projected cost is \$950,000 with completion by the end of CY 2020.

The second project is the HVAC replacement in the Topeka Headquarters. The current unit was installed in 1984 and is well beyond its estimated life expectancy of 20 years. Through the support of the Legislature and the Governor, the KBI received \$286,000 to replace the existing unit with

a chiller-based unit and the completion will be within FY 2020.

The third project is the modernization of the Headquarters auditorium. With cosmetic updates and minor structural changes, the KBI will create a usable, cost-effective, multi-functional space to be used for meetings, trainings, and special events. The estimated project cost is \$50,000.

The final project is repairing the parking lot outside the Topeka Annex. The lot has deteriorated beyond repair and is a hazard to both employees and customers. It will be replaced with new six-inch reinforced concrete. The estimated cost is \$50,000. The representative emphasized the agency focuses its five-year capital improvement plan on critical items it has no means to address within existing resources.

**Kansas Department of Commerce.** An agency representative presented the five-year capital improvement plan. All projects are supported by U.S. Department of Labor's Wagner-Peyser Act funding. In FY 2021, the second phase of the elevator replacement project at the Topeka Workforce Center is anticipated. In FY 2022, the HVAC system in the Topeka Workforce Center will be replaced. In FY 2023, the roof will be replaced in the Dodge City Job Center; in the Topeka facility, the brick veneer will be resealed and waterproofed. In FY 2024, new carpet and an electrical improvement project is planned for the Hays Workforce Center. In FY 2025, electrical improvements, including installing LED lighting, are scheduled for the Topeka facility. The project includes replacing the exterior door frame for better energy efficiency.

**Kansas Department of Labor.** An agency representative addressed the agency's five-year capital improvement plan. The agency owns three buildings with significant-sized parking lots. The buildings and lots need much routine maintenance and general repair to keep them in good, usable condition. She noted some renovation projects, which had been previously approved, were moved from FY 2019 to FY 2020 due to the initial lack of adequate bids. The agency was able to obtain adequate bids and the project has been awarded. As a result of the delay, other projects were reduced due to funds and timing. A parking issue was resolved at the Eastman building (2650 E.

Circle Drive South) in Topeka. Concrete work on the stairs of the main building at 401 SW Topeka Blvd. was started. The agency is requesting an additional \$70,000 in FY 2020.

Other changes include inserting the overlay of the parking lot and moving installation of the intercom system at Eastman building from FY 2019 to FY 2021. In FY 2022, the agency will spread out the Eastman project in phases across three years through FY 2025. In FY 2023, projects include replacing windows and repairing brick walls on all buildings. In FY 2024, the air conditioning unit will be replaced at the main building. All projects will be paid for by program funds.

**Kansas Highway Patrol (KHP).** An agency representative presented the agency's five-year capital improvement plan. The representative stated the plan represents a request of \$5.3 million across the next five years. There are six general projects of less than \$50,000 each. First, Troop J Training Academy in Salina will include removal of current asphalt and installation of a concrete pad at the shooting range and replacement of the chiller, flooring, kitchen equipment, and the gym stairs. A second project at the Troop J is for routine maintenance and repair that includes wireless access points, upgrading security, demolishing an innkeeper's house, and upgrading electrical service on the campus. The third request includes a summary of major projects at KHP-owned buildings, including installing air conditioning at the hangar in Topeka, paving the Chanute shooting range, replacing the fleet car wash, painting the exterior, replacing lighting and windows in several phases, and upgrading security. The fourth request involves maintenance and repair projects, including window security, the intercom system, and the security access system. The fifth request includes routine maintenance and repair for Troop I scales in Topeka. Due to operations running 24 hours per day and 365 days per year, the scales must constantly be certified and eventually replaced.

The final request is for new construction for three projects. The first project is a storage building for Troop E in Garden City. This project was deferred from FY 2019 to FY 2020. The building will be used to store a variety of security vehicles. The total estimated project cost is

\$300,653 and will be sponsored with federal forfeiture funds in FY 2020, contingent upon having sufficient funds available. The second project is a storage building at Troop A headquarters in Olathe that will also house security vehicles. The estimated project cost is \$302,400 and will be from federal forfeiture funds in FY 2021, as available. The third project is an evidence facility at Troop C in Salina. Due to current health and environmental concerns and the challenges of housing evidence, more effective and efficient evidence management is needed. The estimated budget is \$1.2 million and also will be from federal forfeiture funds in FY 2021.

**Adjutant General's Department.** An agency representative of the Adjutant General's Department outlined the five-year capital improvement plan for the agency, noting the total estimated project cost at \$133,074,415. The representative stated the Bond Debt Service is payment of all bonds within the Debt Service Program. This is the last year for payments on the Great Plains Joint Training Center bonds. Only the \$6 million in armory renovation bonds is left to be paid; it will be paid in FY 2030.

Most of the plan is for rehabilitation and repair of the agency's 38 armories and other Kansas National Guard facilities. The Adjutant General's Department has a cooperative agreement between the State and the National Guard Bureau, which requires mostly a 50.0 percent state match; however, a few are a 25.0 percent state match. The state funds will go toward physical security requirements, grounds keeping, code compliance, and utility infrastructure. New construction will be built on Forbes Field and Fort Leavenworth and will be funded by the federal government.

Another agency representative stated the agency is statutorily charged with coordinating emergency operations through all phases of emergency management. Since January 2019, the Kansas Division of Emergency Management (KDEM) has been activated four times. In 2018, it was activated 12 times. Nine days were consecutive due to wildland fires. The KDEM has outgrown its current facilities and is requesting a new facility as part of the Adjutant General's Department's five-year capital improvement budget plan. The new facility will provide

continuity during emergency operations, as well as incorporate security measures.

**Kansas Commission on Veterans' Affairs Office (KCVAO).** An agency representative presented the agency's FY 2020 capital improvement projects. The Kansas Veterans' Home, located in Winfield, projects are to replace the boiler, install a covered walkway to accommodate wheelchairs, replace the roof, resurface parking lots, and construct a new maintenance building. The estimated cost is \$920,000 in FY 2020.

The Kansas Soldiers' Home is located in Fort Dodge. The projects include replacing automatic doors, completing building renovations, installing parking lot overlay, and upgrading an elevator. The estimated cost is \$780,000 in FY 2020. The cemetery projects include a new columbarium at the Winfield Cemetery, installing cameras at all state veterans cemeteries, and installing a storage unit at the Winfield Cemetery. The estimated cost is \$91,000 in FY 2020.

There are additional projects at these facilities scheduled for FY 2021. These include four projects at the Kansas Veterans' Home, four projects at the Kansas Soldiers' Home, and one project for the Cemetery Program. The representative noted one of the buildings of the Kansas Soldiers' Home was slated for demolition. The State Historical Society, Dodge City, and others were interested in seeing if the building could be saved; this group has put a request for proposal out to determine the feasibility of saving the building. If that goes through, the building will no longer be a project of the KCVAO.

**Kansas Department for Children and Families (DCF).** An agency representative for DCF reported the DCF Topeka Service Center is located at 500 SW Van Buren and serves the East Region. The agency leases the building from the Topeka Public Building Commission on a lease-to-buy agreement. The State will own the building in 2029. The agency is responsible for capital improvements and the lease requires the agency to set aside \$64,725 annually, in a state fund, to provide the improvements as needed. Pursuant to federal rules, expenditures are made using state funds when incurred. These funds are then

amortized to leverage federal funds. The fund has a current balance of \$794,564.46.

The representative outlined the capital improvement projects, which include a lobby remodel in FY 2020 to increase security, replacement of two boilers in FY 2021, parking pavement in FY 2022, and replacing the air handler in FY 2023 and FY 2024. In FY 2025, the project will be to replace lighting to LED, which will reduce utility costs by approximately 30 percent.

**Judicial Branch.** An agency representative presented the five-year capital improvement plan for the Kansas Judicial Center. He discussed two projects: relocating the security guard station at a cost of \$200,000 in FY 2019 and relocating two Court of Appeals judicial offices at a cost of \$340,000 in both FY 2019 and FY 2020.

**Department of Administration.** The Director of the Office of Facilities and Property Management discussed the Department of Administration's focus on rehabilitation and repair projects for state buildings around the Capitol Complex. Projects include elevator modernizations, air handlers, restroom remodeling and plumbing replacement, window replacement, and concrete repair.

**Department for Aging and Disability Services (KDADS) and state hospitals.** An agency representative stated the four state hospitals house and treat 1,100 Kansans every day and the four campuses include nearly 200 buildings. Many of the buildings are 50 years old or older. In addition to the routine requests for maintenance and repair projects, the agency would like to request \$5.3 million to renovate the Biddle Building at Osawatomie State Hospital. The building was built in 1952 and is in need of major renovation.

The representative stated it was not certain whether the requested renovation of the Biddle Building would bring it up to code for federal certified beds, or whether the renovations would only make it so other patients could be accepted for those beds.

**Kansas Department of Transportation (KDOT).** The Deputy Secretary, KDOT, stated the

primary focus of the agency's five-year capital improvement program is on preservation of buildings and some construction. A total of \$14,808,018 is requested for FY 2021. The agency owns 981 buildings, including everything from sheds to the district offices. Improvements include electrical systems, re-roofing, modernization, and larger repair shop capacity, as vehicles are bigger than in the past.

**Kansas State School for the Blind.** The Chief Operating Officer, Kansas State School for the Blind, summarized the projects for the agency. In FY 2020, \$304,000 is requested for safety and security systems, \$410,589 for HVAC upgrades, and \$419,215 for rehabilitation and repair work. The representative plans on grounding the buildings to protect from lightning strikes, which occur frequently and cause damage or loss of internal electrical systems. Energy efficiency is a priority. Specifically, projects include moving from a centralized boiler to zone heating and cooling, as well as shifting to LED lighting.

**Kansas State School for the Deaf.** The agency representative noted the School for the Deaf has the same overall priorities as the School for the Blind, but with differences in the particulars. The agency will be retiring a debt this year that was used to replace the boiler. For FY 2020, \$202,300 is requested for safety and security. This school utilizes color-coded visual notifications, televisions, phone, and phone apps to communicate with students. It requests \$513,000 for rehabilitation and repair work, including minor renovations and code upgrades of the 1960s era high school. A total of \$903,000 is requested for a major renovation to Roth Auditorium, including repairs to damage caused by a steam rupture and to make the stage area accessible for students. Projects in later years include changing the security locks from a magnet system to an electrical strike. The current system becomes non-secure when there is a loss of power. Upgrades are needed to the gym, which would enable the school to generate income by renting out the gym.

**Kansas Department of Wildlife, Parks and Tourism (KDWPT).** The Budget Director, KDWPT, summarized the five-year capital improvement plan. Funding comes from a variety of fee funds. In FY 2020, the request is

\$17,047,660 and, for FY 2021, it is \$14,800,500. Projects are divided between new construction and additions, and rehabilitation and repair of current assets. There was quite a bit of water damage earlier this year from storms. The agency is working with both the Federal Emergency Management Administration (FEMA) and the Kansas Division of Emergency Management to assess the condition of electrical, water, and sewer systems in affected areas. Revenues from visitors were down \$1.0 million in June 2019. For July and August 2019, the revenues were about the same as they were in 2018, so they are slowly recovering. Kansas is similar to the national trend in declining purchases of hunting and fishing licenses. The agency re-structured fees in the past several years to offset the lower number of licenses. Due to the damage to Lake Perry and other areas, the agency is anticipating some financial reimbursement from FEMA.

**Kansas State Fair.** The Board President, Kansas State Fair, presented the agency's five-year capital improvement plan. The Kansas State Fair owns 280 acres, has 70 buildings, and serves about 500,000 persons annually. The request is \$628,167 in FY 2020 and each year through FY 2024. The representative highlighted three projects. The agency is considering the removal of the racetrack to make room for a multi-use arena; the removal of a storage facility, which could increase green space; and repurposing the Bison Building, which can no longer be used as it is due to fire concerns. An additional project is to pursue maintenance of the fairground roads

**Kansas Board of Regents.** An agency representative shared the capital improvement requests and five-year plans for all seven universities. Representatives from each school highlighted their individual plans. In response to an inquiry about Educational Building Fund (EBF) moneys not being used for new construction, the agency representative responded universities raise private funds and donations for new building construction.

**University of Kansas.** An agency representative discussed formerly deferred maintenance projects that had been completed, which included replacing aging utilities, parking improvements, and roof replacement. These projects were funded by EBF. Parking lot

improvement was funded by parking fees. Current projects include an overall master plan for land acquisition and program development. Other projects include re-roofing, chiller replacement, pavement maintenance, phased mechanical upgrades, electrical and safety systems, building renovations, and classroom conversions. Funding sources include EBF, student fees, grants, and endowment funds. Future projects include parking improvements, razing an administrative building for which changes to bring it up to code are not feasible, utilities improvements, and chilled water plant. The University Master Plan will also be updated.

**University of Kansas Medical Center.** An agency representative discussed the deferred maintenance, noting only about five buildings have roofs that are more than 20 years old, which helps in keeping maintenance costs down. Other projects include replacing obsolete HVAC controls, developing Americans with Disabilities Act (ADA)-compliant restrooms, a new anatomy lab, a new entry, and parking. Future projects include a \$17.0 million upgrade to the School of Medicine on the Wichita campus to accommodate expanding enrollment. Expansion plans for Dykes Library in Kansas City would create classroom, clinic, and faculty space for a new dental school; funding for the dental school is yet to be determined. The representative noted Kansas currently does not have a dental school and it impacts the shortage of dentists, especially in rural areas of the state. Another future project is the solar array project, which is projected to gain utility savings.

**Kansas State University.** An agency representative noted joint projects among the university, the National Bio and Agro-defense Facility (NBAF), athletics, and the City of Manhattan for several road projects. The university has a major \$20.0 million energy management project that includes infrastructure and systems upgrades and retrofitting the entire campus to LED lighting. Energy savings is expected. The university will use a design, bid, and build process. The project will be funded by a campus bond with an anticipated payback of five to seven years. Deferred maintenance includes restroom renovations for ADA compliance, fire alarms, and roof replacements. Current projects include several renovations on the main campus; a

\$3.1 million runway replacement on the KSU Polytechnic campus in Salina, funded by KDOT and private funds; and a \$5.0 million facility for a new Multi-Cultural Student Center, also funded by private funds. Future projects include a \$5.7 million expansion and remodel of McCain Auditorium. A second project is a \$49.9 million expansion and remodel of the Bill Snyder Family Stadium South End Zone. The third project is a \$150.0 million new Agricultural Research and Extension facility. These three projects are funded by private funds

**Wichita State University (WSU).** An agency representative outlined seven current capital improvement requests for WSU:

- Replacement of cooling tower fans, with an estimated cost of \$1.8 million. The funding source is yet to be determined;
- Upgrades to systems for the National Institute for Aviation Research (NIAR) Crash Dynamics Laboratory, with the cost of \$6.3 million funded by private industry and federal grants;
- Phase V improvements to Eck Stadium at \$3.2 million, funded by private gifts;
- Renovation and expansion of Koch Arena at \$13.8 million, funded by private gifts;
- A research lab in the NIAR Advanced Technologies Laboratory for Airspace Structures Building, Sector C, at \$1.2 million, funded by grants and restricted funds;
- A \$50.0 million new school of business, funded by private funds and revenue bonds. It is anticipated to be ready for classes in 2022; and
- Parking improvements at \$500,000 per year from parking funds.

The agency representative highlighted three updates on projects. The Partnership 3 Building shell is complete. The YMCA and WSU Student Wellness Center has an anticipated completion of

December 2019. The Partnership 3 Building with a 106-room Hyatt Place hotel is expected to be completed in Summer 2020. In response to an inquiry, the representative said the school is evaluating the long-term maintenance activity.

**Emporia State University.** An agency representative discussed the recently completed projects, current capital projects, and future improvement projects. Schallenkamp Hall is complete; it will house 324 students and has common learning space, as well as other amenities. Other completed work included updating lab equipment and refurbishing theater seating. Current projects include proceeding with the Master Plan to adapt and re-use existing buildings or demolish them if necessary. Phase II of the new Aquatic Research and Outreach Center is under way, utility lines are being buried, and new LED lighting is being installed. The Breidenthal University House is nearly completed. It houses the university president. Future projects include a new tennis facility, building a new maintenance facility to move it from the middle of the campus, building an addition for a new wet laboratory, and adapting a large building in the center of campus for new usage.

**Pittsburg State University (PSU).** An agency representative noted several partnerships and the momentum to make capital improvements on campus. All buildings are on the 400-acre campus with the exception of project Block 22, which is in downtown Pittsburg. PSU is replacing water-cooled chillers that serve three academic buildings using EBF rehabilitation and repair moneys. Emergency repairs were necessary due to storm and water damage caused by high winds, and \$50,000 of rehabilitation and repair funding was used to replace 1970s-era exhaust fans. Current projects include a \$1.0 million renovation to the library, partially funded by EBF rehabilitation and repair funds; an \$18.0 million renovation and expansion of the Kelce College of Business, funded by both private funds and EBF rehabilitation and repair; and other renovations from private funds. Future projects include several expansions of current buildings with private funding, which will be determined at a later time. One of the expansions will accommodate the growth of the School of Nursing.

**Fort Hays State University.** An agency representative outlined the projects for rehabilitation and repair, which include roof replacement, exterior lighting upgrades, and repairs to the pedestrian bridge guardrails. The current capital improvements include \$15.25 million from university funds and bonds for the expansion of the union to house the Center for Student Success. The second project will be \$1.0 million from university funds and rehabilitation and repair to renovate Rarick Hall. Future projects include replacing asphalt with concrete and renovation of Forsyth Library using both university funds and educational building funds.

### **Statutorily Required Reports**

The State Transportation Engineer, in accordance with KSA 2018 Supp. 75-3516, reported on KDOT's inventory system for real property and real estate transactions. The representative highlighted the agency's Bureau of Right of Way (Bureau), which maintains the inventory system for all real property and is responsible for acquiring property rights for infrastructure and non-infrastructure projects. The Bureau also disposes of excess right-of-way (ROW) property. The agency is working to digitize its records. The representative explained there is a tiered decision-making process in place to dispose of excess ROW property. Funds from sales have gone back into the State General Fund, to the agency, or to the federal government.

### **Leases and Land Sales**

The State Lease Administrator, Office of Facilities and Property Management, presented the following leases, all of which were recommended by the Committee:

- Lease for KDHE in Topeka, Kansas;
- Lease for the Kansas Department of Revenue Driver's License Examination Office in Atchison, Kansas;
- Lease for KDADS in Topeka, Kansas;
- Lease for DCF in Topeka, Kansas;
- Lease for DCF in Hutchinson, Kansas;

- Lease for the Kansas Insurance Department in Topeka, Kansas;
- Lease of office space by Pheasants Unlimited, Inc., from KDWPT; and
- Lease between WSU and the YMCA for the Student Wellness Center and the Wesley Healthcare Urgent Care Center.
- The motion for the Kansas Insurance Department deleted all expenditures beyond FY 2020 due to the agency relocating into a leased building during Fall 2019;
- The recommendation for the KHP five-year plan deleted all expenditures for replacing the fleet car wash for FY 2021;

## CONCLUSIONS AND RECOMMENDATIONS

All agency five-year capital improvement plans were recommended by the Committee, except for the following:

- The recommendation for the KDOC five-year plan deleted the conversion of the Kansas Juvenile Correctional Complex and deleted \$144.9 million for a new 1,200-bed facility;
- The recommendation for DCF included moving the Topeka LED lighting replacement project up to occur with the lobby remodel; and
- The recommendation for KDADS/state hospitals deleted the renovation of the Biddle Building at Osawatomie State Hospital.

# Report of the Capitol Preservation Committee to the 2020 Kansas Legislature

**CHAIRPERSON:** Jennie Chinn

**LEGISLATIVE MEMBERS:** Senator Elaine Bowers; and Representatives Fred Patton and Valdenia Winn

**NON-LEGISLATIVE MEMBERS:** Melinda Gaul, Tim Graham, Harrison Hems, Will Lawrence, Jeremy Stohs, and Sharon Wenger

**EX OFFICIO MEMBERS:** Frank Burnam and Peter Jasso

## **CHARGE**

The Committee will review various issues regarding the Capitol and its grounds, including:

- A study of a proposed new exhibit on Kansas symbols in the Visitor Center, a plaque commemorating the Capitol restoration, and brochure displays; and
- Receiving updates on the law enforcement memorial and *Ad Astra* plaza project.

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# Capitol Preservation Committee

## ANNUAL REPORT

### Conclusions and Recommendations

The Committee makes the following recommendations:

- The Committee approves a form that shall be used by persons wishing to propose long-term or permanent changes to the Capitol or grounds;
- The Committee recommends the State Historical Society display the state symbols exhibit outside the Office of Revisor of Statutes in the Capitol building;
- The Committee did not recommend approval of the Amelia Earhart statue project at this time, but reserves the idea for future consideration;
- The Committee recommends the updated restoration plaque be installed on the wall of the first floor of the rotunda and recommends the offering of the previous plaque to the Brownback family first, but it would otherwise become part of the collection at the State Historical Society;
- The Committee recommends the Committee review the master plan of the Capitol grounds at the next Committee meeting;
- The Committee recommends the State Historical Society and the Department of Administration have follow-up discussions concerning the Fallen Firefighters Memorial;
- The Committee recommends the Director of Legislative Administrative Services, the Chairperson of the Committee, and the Department of Administration follow up with the Legislative Coordinating Council concerning the Overmyer mural restoration project;
- The Committee recommends the Department of Administration continue to explore options for signage to the entrance to the Capitol building, including directional pavers on the Capitol grounds;
- The Committee recommends the *Official Kansas State Travel Guide* and the state map be the main forms of information to be provided to tourists at the Visitor Center and recommends those items be distributed around the Capitol building, including outside the House and Senate Chambers and in the Governor's office;
- The Committee recommends the Visitor Center keep other community brochures and information available at the desk to be distributed upon request and recommends the State Historical Society place signage related to additional brochures and information at the Visitor Center information desk;
- The Committee recommends the State Historical Society provide information at the Visitor Center information desk to direct visitors to [www.travelks.com](http://www.travelks.com);

- The Committee supports the completion of the *Ad Astra* Plaza project on the Capitol grounds to honor the State’s commitment to the project and artist; and
- The Committee recommends exploration of legislative approval for a 1<sup>st</sup> Kansas (Colored) Volunteer Infantry mural in the Capitol building during the 2020 Legislative Session.

The Committee also directs the Chairperson of the Committee to discuss possible destination guide signage for the Visitor Center with the Kansas Department of Transportation for placement on the interstate to reflect the easiest way for visitors to get to the Capitol building.

***Proposed Legislation:*** None

## BACKGROUND

The Capitol Preservation Committee was created by the Kansas Legislature in 2010 to approve renovation proposals in all areas of the Capitol, the Capitol Visitor Center, and the Capitol grounds to ensure the historical beauty of the areas is preserved, preserve the proper decor of those areas, assure any art or artistic displays are historically accurate and have historic significance, approve the location and types of temporary displays, and oversee the reconfiguration of committee rooms within the Capitol. As provided by KSA 75-2269, the Division of Legislative Administrative Services (LAS) is responsible for implementing the recommendations of the Committee.

The Committee is composed of 12 members, with the Governor appointing 3, the President of the Senate and the Speaker of the House each appointing 2, and the Minority Leaders of the House and Senate each appointing 1. The Committee’s three ex officio members are the Statehouse Architect, the Executive Director of the State Historical Society, and the Director of the Kansas Creative Arts Industries Commission. The Governor has the authority to appoint the chairperson from the Committee’s membership.

The Committee was granted one meeting day during the 2019 Interim by the Legislative Coordinating Council (LCC).

## COMMITTEE ACTIVITIES

The Committee met on September 25, 2019, at the Statehouse. During the meeting, the Committee discussed a form; heard proposals for a symbols exhibit in the Visitor Center, placement of a statue of Amelia Earhart on the Capitol grounds, and replacement of the current Capitol restoration plaque with an updated plaque; heard project updates for the Law Enforcement Memorial and the Fallen Firefighters Memorial; received an update of the Overmyer murals restoration project; heard an update on Visitor Center signage; discussed brochure racks in the Visitor Center; received an update on the *Ad Astra* Plaza project; and discussed legislative exploration of a 1<sup>st</sup> Kansas (Colored) Volunteer Infantry regiment mural in the Capitol building.

### **Form to Request Changes at the Capitol**

The Committee reviewed a draft form to be used by the public to request approval to place artwork or an exhibit either on a long-term basis or permanently in the Capitol, including the Visitor Center and grounds. The draft form combines previous forms into one document to simplify the process. The Committee revised the form to include how the artwork would be displayed and for how long the artwork would be on loan. The Committee also granted permission to the Chairperson to make any revisions to the form she believed necessary resulting from the Committee’s discussion. The Chairperson indicated the form would be available on the State Historical Society website.

## **Proposed Symbols Exhibit in Visitor Center**

A representative of the State Historical Society provided an overview of a proposed state symbols exhibit in the Visitor Center. She reviewed a document listing the official state symbols; stated the proposed site for the exhibit would be the small room outside of the Office of Revisor of Statutes; and noted items that would be included in the new exhibit, including a chair made from the famous cottonwood tree that stood on the Statehouse grounds for more than a century and the *Tylosaurus* fossil.

The Chairperson indicated the State Historical Society is seeking permission to do the project, but no additional funds are being requested to complete the project.

## **Request to Place Statue of Amelia Earhart on Capitol Grounds**

The Committee reviewed a request from John Forsythe, an artist, to commission a statue of Amelia Earhart to be placed permanently on the Capitol grounds.

The Committee discussed the potential costs involved with the artwork and installation of the statue. The Committee noted consideration is being given in Washington, D.C., to erect a statue of Amelia Earhart. A Committee member suggested this project should be postponed until such time as a statue of Amelia Earhart is placed in Washington, D.C., and a replica of that statue could be placed on the State Capitol grounds.

## **Capitol Restoration Plaque**

The Committee heard a proposal from Senator Hensley to replace the current plaque commemorating the Capitol restoration project with a larger plaque listing additional names of key persons involved in the restoration project. He noted the proposed plaque would include the names of Governors Graves, Sebelius, Parkinson, and Brownback, as well as the former Director of LAS, Jeff Russell; state architects William Groth and Barry Greis; architect Vance Kelley with TreanorHL; and Jim Rinner with J.E. Dunn Construction. He commented the proposed plaque is more inclusive and would give credit to the involved parties.

Senator Hensley stated the proposed plaque was constructed by Star Signs in Lawrence, Kansas. He noted the plaque cost \$995 and was privately funded by J.E. Dunn Construction and TreanorHL, and included the installation expense. He stated the plaque maker would be responsible for installing the new plaque.

The Chairperson provided a brief history of the current plaque. The Committee discussed placement of the new plaque and made suggestions for the removal of the current plaque.

## **Law Enforcement Memorial and Fallen Firefighters Memorial**

The Committee received updates on the Law Enforcement Memorial and Fallen Firefighters Memorial.

**Law Enforcement Memorial.** The Chairperson provided an update on the Law Enforcement Memorial, indicating the money for the project has been raised and a contract has been signed. A representative of the Department of Administration noted the quarry experienced an equipment problem, which delayed the project. The project would resume after receiving the stone from the quarry and is expected to be completed during Fall 2019.

**Fallen Firefighters Memorial.** The Chairperson discussed the Fallen Firefighters Memorial project, indicating the proposed design for the memorial is out of scale in comparison to the Law Enforcement Memorial and the rest of the Capitol grounds. A representative of the Department of Administration stated he discussed the scale issue with the State Fire Marshal and provided him with the potential costs for a base for the memorial; the State Fire Marshal had indicated the project committee would be reassembled and reconvene; and a local architect is donating time to assist the Topeka Fire Department in reviewing the scope, scale, and budget for the project.

A Committee member suggested the Committee review the master plan of the Capitol grounds at the next Committee meeting.

## **Overmyer Murals Restoration Project**

The Chairperson provided an update on the Overmyer murals restoration project, stating she wrote to the Chairperson of the LCC to explain the potential \$10,000 cost of the project. A representative of the Department of Administration stated an engineer looked at the Overmyer murals to determine whether there was an issue with areas behind the wall. He noted the murals are peeling off because they were painted onto the walls and the same issue has not occurred with Statehouse paintings that were not painted on the wall.

## **Visitor Center Signage Project**

The Chairperson stated visitors often complain about the difficulty in finding the front entrance of the Capitol. A representative of the Department of Administration said possible options to solve this problem could include directional information for those with smart phones, sidewalk pavers, and additional vertical signage.

The Committee discussed the possibility of signage on 10th Street directing visitors to the entrance and parking on the 8th Street side, free-standing kiosks, and partnering with the Kansas Department of Transportation (KDOT) to provide the destination guide signs on I-70 that would specify the Visitor Center is located on 8th Street.

## **Brochure Racks in Visitor Center**

A representative of the Kansas Department of Wildlife, Parks and Tourism addressed the topic of brochures to be available in the Visitor Center. The Chairperson explained it is important to provide information to visitors while maintaining the professional appearance of the Visitor Center and to not impede the flow of traffic in the building.

The representative suggested the *Official Kansas Travel Guide*, which is a comprehensive piece covering the entire state, as well as a map of Kansas provided by KDOT, be the two documents provided at the Visitor Center. She noted there are other small brochures from various Kansas communities that could be available upon request at the Visitor Center.

The Committee discussed the possibility and the challenges with trying to standardize the size

of informational brochures received from Kansas communities for distribution to visitors. It was noted an option could be to provide some racks that would contain community brochures. The Committee also discussed placing these documents outside of the House and Senate Chambers, placing informational signage at the Capitol Visitor Center information desk, and making an effort to alert travelers about the availability of digital information.

## ***Ad Astra* Plaza Project**

The Committee heard an update from Senator Hardy regarding the *Ad Astra* Plaza project. He reviewed the project's history; provided an update on fundraising, noting several sources have committed to raising the estimated \$215,000 needed to complete the project; and stated the project is planned to start in Spring 2020 with completion by the 2020 Election Day.

A Committee member suggested using the casting mold to make copies to be sold.

Senator Hardy stated the artist would be paid \$102,000 for the statue. He stated the fundraising would include the cost of the installation and there would be no state moneys required from the Department of Administration for the installation. He also noted a local treasurer and a bank account in Topeka were established to receive and disperse funds.

## **1<sup>st</sup> Kansas (Colored) Volunteer Infantry**

A Committee member suggested the 1<sup>st</sup> Kansas (Colored) Volunteer Infantry regiment mural should be revisited by the Committee. The Chairperson indicated the Legislature would need to approve a bill for the mural project because the original legislation did not authorize creation of the mural, only the creation of a report.

## **CONCLUSIONS AND RECOMMENDATIONS**

Following discussion, the Committee made the following recommendations:

- The Committee approves a form that shall be used by persons wishing to propose long-term or permanent changes to the Capitol or grounds;

- The Committee recommends the State Historical Society display the state symbols exhibit outside the Office of Revisor of Statutes in the Capitol building;
- The Committee did not recommend approval of the Amelia Earhart statue project at this time, but reserves the idea for future consideration;
- The Committee recommends the updated restoration plaque be installed on the wall of the first floor of the rotunda and recommends the offering of the previous plaque to the Brownback family first, but it would otherwise become part of the collection at the State Historical Society;
- The Committee recommends the Committee review the master plan of the Capitol grounds at the next Committee meeting;
- The Committee recommends the State Historical Society and the Department of Administration have follow-up discussions concerning the Fallen Firefighters Memorial;
- The Committee recommends the Director of LAS, the Chairperson of the Committee, and the Department of Administration follow up with the LCC concerning the Overmyer mural restoration project;
- The Committee recommends the Department of Administration continue to explore options for signage to the entrance to the Capitol building, including directional pavers on the Capitol grounds;
- The Committee recommends the *Official Kansas State Travel Guide* and the state map be the main forms of information to be provided to tourists at the Visitor Center and recommends those items be distributed around the Capitol building, including outside the House and Senate Chambers and in the Governor's office;
- The Committee recommends the Visitor Center keep other community brochures and information available at the desk to be distributed upon request and recommends the State Historical Society place signage related to additional brochures and information at the Visitor Center information desk;
- The Committee recommends the State Historical Society provide information at the Visitor Center information desk to direct visitors to [www.travelks.com](http://www.travelks.com);
- The Committee supports the completion of the *Ad Astra* Plaza project on Capitol grounds to honor the State's commitment to the project and artist; and
- The Committee recommends exploration of legislative approval for a 1<sup>st</sup> Kansas (Colored) Volunteer Infantry mural in the Capitol building during the 2020 Legislative Session.

The Committee also directs the Chairperson of the Committee to discuss possible destination guide signage for the Visitor Center with KDOT for placement on the interstate to reflect the easiest way for visitors to get to the Capitol building.

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**Report of the  
Health Care Stabilization Fund Oversight  
Committee  
to the  
2020 Kansas Legislature**

**CHAIRPERSON:** Gary Hayzlett

**LEGISLATIVE MEMBERS:** Senators Barbara Bollier and Gene Suellentrop; Representatives Henry Helgeson and Richard Proehl

**NON-LEGISLATIVE MEMBERS:** Darrell Conrade; Dennis Cooley, MD; Dennis George; Jimmie Gleason, MD; James Rider, DO; Jerry Slaughter

**CHARGE**

This Committee annually reviews the operation of the Health Care Stabilization Fund and reports and makes recommendations regarding the financial status of the Fund.

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# Health Care Stabilization Fund Oversight Committee

## ANNUAL REPORT

### Conclusions and Recommendations

The Health Care Stabilization Fund Oversight Committee considered two items central to its statutory charge: whether the Committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF or the Fund) is necessary. This oversight committee continues in its belief the Committee serves a vital role as a link among the HCSF Board of Governors (Board), the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report; the Board's actuary; and health care provider and insurance company representatives. The Committee agreed on the following recommendations and comments:

- **Actuarial report and status of the HCSF; marketplace analysis and trends.** The Committee notes the report provided by the Board of Governors' actuary reviewed the financial performance of the Fund in 2018, indicating its financial position was not as strong as believed to be one year earlier. Among negative indications cited was the transfer from the HCSF to the Availability Plan, declining investment returns, a higher loss experience, and a larger-than-anticipated decline in surcharge revenue. The Committee further notes the rate level indications for the calendar year (CY) 2020 surcharge did not include a "do nothing" option; the Board responded to the actuary's conclusions and implemented an option that requires, beginning on January 1, 2020, almost every health care provider to pay an additional 6 percent. [*Note: The actuary noted all of these conclusions were made prior to the June 2019 Hilburn decision.*]
  - The Committee notes its discussion with the actuary, Board staff, and health care providers and insurers on broader trends and concerns, including the costs to resolve medical malpractice claims on health care providers increasing nationwide and the upward pressure on settlements. The Committee shares these concerns—and notes the marketplace shows signs of strain—for the increased pricing for medical professional liability insurance, the increased frequency of high-severity claims, and reinsurance capacity concerns.
- **Contemporary issues and continued oversight.** The Committee notes two issues requiring continued oversight by the Board and this committee. The Committee acknowledges the June 2019 *Hilburn* decision and the uncertainty of this decision's impact on the HCSF, health care providers, medical malpractice cases and actions, and the medical malpractice insurance marketplace in Kansas. Additionally, the Committee notes the enactment of 2019 HB 2119 and recognizes the concerns stated by representatives of the Board with the language in present law. The Committee encourages

clarification on the criteria associated with the term “business entity,” including a requirement for participation by not only the individual healthcare provider, but also by the corporate practice (corporation of providers) in the HCSF. The Committee further notes the study and report on the impact of requiring business entities to participate in the HCSF are to be submitted by the Board prior to the commencement of the 2020 Session.

- **Health Care Provider Insurance Availability Act (HCPIAA).** Although no formal amendments were brought before the Committee, the Committee notes the Board must report its findings to the Legislature (HB 2119, discussed above). Should the HCPIAA be open to amendment, the Committee notes technical amendments cited in the Executive Director’s testimony.
- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the HCSF:
  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund (SGF). The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be “held in trust in the state treasury and accounted for separately from other state funds”; and
  - Further, the Committee believes the following to be true: all surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

The Committee requests its report be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate budget and subcommittees of the standing committees on appropriations.

***Proposed Legislation:*** None

## **BACKGROUND**

The Committee was created by the 1989 Legislature and is described in KSA 2018 Supp. 40-3403b. The 11-member Committee consists of 4 legislators; 4 health care providers; 1 insurance industry representative; 1 person from the general public at large, with no affiliation with health care providers or with the insurance industry; and the Chairperson of the Health Care Stabilization Fund (HCSF or the Fund) Board of Governors or another member of the Board designated by the Chairperson. The law charges the Committee to report its activities to the Legislative Coordinating

Council (LCC) and to make recommendations to the Legislature regarding the HCSF.

The Committee met October 24, 2019.

## **COMMITTEE ACTIVITIES**

### **Report of Willis Towers Watson**

The Willis Towers Watson actuarial report serves as an addendum to the report to the HCSF Board of Governors dated May 13, 2019, provided to the Board of Governors based on HCSF data as of December 31, 2018. The actuary addressed

forecasts of the HCSF's position at June 30, 2019, and June 30, 2020, based on the company's annual review, along with the prior estimate for June 2019. The HCSF's position at June 30, 2019, was as follows: the HCSF held assets of \$291.03 million and had liabilities of \$260.10 million, with \$30.92 million in reserve. The projection for June 30, 2020, is as follows: assets of \$289.86 million, liabilities of \$263.20 million, with \$26.66 million in reserve. The actuary noted, based on the analysis provided to the Board of Governors, the HCSF needs to raise its surcharge rates by 15 percent for calendar year (CY) 2020 in order to maintain its unassigned reserves at the expected year-end CY 2019 level (estimated at \$30 million).

The actuary explained the forecasts of unassigned reserves assume an estimated surcharge revenue in fiscal year (FY) 2020 of \$28.3 million, a 2.25 percent interest rate for estimating the tail liabilities on a present value basis, a 2.95 percent yield on HCSF assets for estimating investment income, full reimbursement for University of Kansas (KU)/Wichita Center for Graduate Medical Education (WCGME) claims, and no change in current Kansas tort law or HCSF law. Based on these conclusions, it was suggested the Board of Governors consider an increase in rates for CY 2020 ranging from 5 percent to 10 percent. The Board of Governors opted to raise rates 6 percent effective January 1, 2020. [Note: The actuary clarified the assumption regarding changes in law would no longer be correct, given the Kansas Supreme Court decision in *Hilburn v. Enerpipe Ltd.* (No. 112,765) (*Hilburn*).]

The actuary reviewed the HCSF's liabilities as of June 30, 2019. The liabilities highlighted included claims made against active providers as \$85.7 million; associated defense costs as \$15.6 million; claims against inactive providers as \$10.1 million; tail liability of inactive providers as \$139.5 million; future payments as \$12.0 million; claims handling as \$9.0 million; and other, described as mainly plaintiff verdicts on appeals, as \$0.2 million. Total gross liabilities were \$272.1 million. The HCSF is reimbursed \$12.0 million for the KU/WCGME programs, for a final net liability of \$260.1 million.

The actuary also reviewed the HCSF's (surcharge) rate level indications for CY 2020, noting the indications assume a break-even target.

The actuary highlighted payments, with settlements and defense costs of \$36.89 million; change in liabilities of \$2.44 million; administrative expenses of \$1.81 million; and transfers to the Health Care Provider Insurance Availability Plan (Availability Plan) and the Kansas Department of Health and Environment assumed to be \$0.2 million (the indication generally assumes no Availability Plan transfer); in total, the cost for the HCSF to break even is \$41.35 million. The actuary stated the HCSF has two sources of revenue: its investment income (assumption of \$8.43 million based on a 2.95 percent yield on those assets), and surcharge payments from providers (\$32.92 million needed to break even). The actuary explained the projected surcharge revenue of \$28.52 million would not meet the break-even scenario and explained the rate level indication; the Board of Governors would need to raise its rates an estimated 15.4 percent in order to achieve break-even status. [Note: Numbers above have been rounded; exact figures, when provided, are included in the Committee's October 24, 2019, minutes.]

The actuary reported on trends in the HCSF's loss experience for active and inactive providers from CY 2015 through CY 2018. The actuary pointed out CY 2018 active providers had both elevated payments on settlements and expenses with the year-end loss reserves up, as well as a higher number of open claims. The actuary noted this was significant and estimates of total HCSF costs had to be adjusted accordingly. The actuary indicated, beginning in 2017, there was a significant increase in the cost of settlements, with more claims being resolved for seven- and eight-figures than three or four years ago. The actuary also discussed the inactive providers, indicating in CY 2018, the payment of expenses and the year-end loss reserves were up slightly. The actuary highlighted trends in the HCSF loss experience for active and inactive providers by program year, noting active provider losses from 2005 to 2015 were fairly stable with no obvious upward trends or inflation in the cost per provider. The actuary pointed out, starting with 2016, Willis Towers Watson had to adjust loss experience to reflect the rate of inflation from those of the previous year with it continuing to escalate with 2017 and 2018, indicating concern there is a little more inflation in the business than thought in 2018.

The actuary reported the HCSF's investment yield over the past eight years continues to have a gradual decline. It was noted Willis Towers Watson lowered its assumed future yield rate from 3.05 percent in the 2018 study to 2.95 percent. The actuary spoke to the leveraged effect of the lowered investment income assumption, noting the Fund earning 4.0 percent instead of 3.0 percent would be equivalent to a 10-basis-point change in the surcharge rate.

The actuary provided an overview regarding indications by provider class and explained every year, Willis Towers Watson evaluates the experience by class to minimize subsidization from one class to another. From an actuarial perspective, the objective is for each provider class to stand on its own so no class is obviously subsidized by another class. The report states the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. The actuary indicated the company was pleased to see the number of classes whose increase or decrease is less than 13 percent has been growing over time as the HCSF has taken rate action both positively and negatively on some of the classes that have been undercharged or overcharged. The actuary also provided a history of surcharge rate changes since 2007.

The actuary provided an overview of the three options for CY 2020 surcharge rates that were provided to the Board of Governors. The actuary highlighted the Board of Governors' decision to implement Option 1 for its 2020 rates: beginning January 1, 2020, almost every provider would pay an additional 6 percent. The actuary commented this was the first year in some time there was not an option to "do nothing." The actuary further explained there may be a compounding impact for those in Classes 15-24 if their underlying basic coverage premium is also being increased. [Note: Classes 15-24 include Availability Plan insureds, medical care facilities, physician assistants, nurse midwives, and nursing facilities.]

### ***Discussion***

When presenting the report's conclusions, the actuary indicated 2018 was a "bad year" for the HCSF in many categories. The actuary explained the agency needed to make transfers from the HCSF to the Availability Plan (\$552,000), the

investment returns for the HCSF continued to decline, surcharge revenue in 2018 was down 4 percent from 2017 (a 2-percent decline had been expected), and the loss experience in 2018 was at a much higher level than seen in recent years and beyond what was anticipated. The actuary stated the conclusion was the HCSF's financial position, while still fine, was not as strong as it was believed to be one year earlier. Based on these conclusions, it was suggested the HCSF Board of Governors consider rate changes. The actuary noted all of these conclusions were made prior to the June 2019 *Hilburn* decision.

Committee members and the actuary discussed comparable actuarial analysis and Fund experience, including investment experience, for other states' funds similar to the HCSF, including the New Mexico Patient Compensation Fund (which has liabilities of about \$140 million, but assets of \$90 million). In response to questions regarding diminishing investment returns, the actuary indicated while he was not familiar with whether that fund has the same dedicated assets, noting the New Mexico fund has dedicated assets and is seeing a diminishing return and, more importantly, it does not have the assets to cover the present liability. Looking at the broader economy and investment returns, the actuary discussed the similarities with the U.S. Treasury ten-year note experience. In regard to the effective yield for 2019 as 2.67 percent and the rate level indication for CY 2020 of 2.95 percent return, the actuary explained Willis Towers Watson thought it made sense to take more of a longer-term perspective given that health care provider malpractice claims are going to be paid out over a number of years. The actuary further explained the company had been reducing its estimate of effective yield, but not as fast as the actual HCSF investment performance has come down.

Discussion topics also included the timing of surcharge revenue and the rate level indication options presented to the Board of Governors. The actuary explained the revenue in the second half of the fiscal year did come in better than was expected, likely due to a timing issue, and it did not impact any of the analysis. The actuary clarified the surcharge rate indications in the presentation, commenting 15 percent is what is needed for the HCSF to maintain its unassigned reserves at the same level, but the company did not

think there was a sense of urgency to do the full rate change; instead, the Board of Governors was given three options to consider ranging from 6 percent to 11 percent increases. The actuary indicated there would likely be another rate increase needed in the subsequent calendar year, such as 5 percent, when this analysis is done in February 2020.

## Comments

In addition to the report from the HCSF Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for its consideration. This included a memorandum from the Kansas Legislative Research Department (KLRD) outlining recent changes to law and legislation considered during the 2019 Session that was relevant to the HCSF Board of Governors or to health care providers in general (the KLRD analyst provided a summary of 2019 HB 2119, which, among other things, allows a business entity issued a certificate of authorization by the State Board of Healing Arts [BOHA] to employ or contract with one or more licensees of BOHA for the purpose of providing professional services for which such a licensee holds a valid license issued by BOHA, and she noted the report provisions outlined above); information from the KLRD *FY 2020 Appropriations Report* detailing the actual and approved Board of Governors' expenditures, including the related subcommittee reports; and the Committee's conclusions and recommendations contained in its most recent annual report. A copy of the decision issued by the Kansas Supreme Court in *Hilburn* and KLRD's associated analysis presented to the interim Special Committee on Financial Institutions and Insurance also was provided to supplement information presented by the Office of Revisor of Statutes.

A representative of the Office of Revisor of Statutes summarized *Hilburn*, indicating the Court issued an opinion holding that the cap on noneconomic damages found in Kansas law (KSA 60-19a02) is facially unconstitutional because it violates Section 5 of the *Kansas Constitution Bill of Rights* (the right of trial by jury). He provided factual and procedural background for the case. The district court reduced the judgment for noneconomic damages to \$250,000 pursuant to the noneconomic damages limitation in effect at the

time of the verdict, in KSA 60-1902(d). The revisor noted the decision of the Court was split; additionally, a concurring opinion agreed KSA 60-19a02 is facially unconstitutional. The revisor indicated the Court had acknowledged the two-part due process-based *quid pro quo* test in *Miller v. Johnson* (2012), but the Court found the *Miller* holding should not be followed, leading the Court to “abandon the *quid pro quo* test for analyzing whether the noneconomic damages cap is unconstitutional under section 5 . . .” He noted the concurring opinion agreed the statute was facially unconstitutional, but it left open the possibility the Legislature could achieve the policy goal of limiting damages in these cases in a more specific and different manner, stating in the opinion: “The Legislature remains free—within the bounds of section 18—to limit or otherwise modify the common law cause of action for damages. But it must do so clearly and straightforwardly.” [Note: Section 18 of the *Kansas Constitution Bill of Rights* is the right to remedy.]

During discussion, the revisor indicated the statute that was struck down as unconstitutional is a noneconomic damages cap as to all personal injury and wrongful death actions in the state; in response to an inquiry about the Court's press release issued concurrent with the opinion stating the Court was striking down the cap except in medical malpractice cases, the revisor clarified the statute does apply to all the cases and further indicated it is unclear, without further litigation and clarification by the Supreme Court in the specific arena of medical malpractice, how the Court might apply the new test the justices have laid out in that specific context.

## Chief Counsel's Update

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2019 medical professional liability experience (based on all claims resolved in FY 2019, including judgments and settlements). Of the 10 medical malpractice cases involving 14 Kansas health care providers tried to juries during FY 2019, 9 were tried in Kansas courts and 1 case was tried in a Missouri court. The trials were held in the following jurisdictions: Sedgwick County (4); Johnson County (2); Shawnee County (1); Ellis County (1); Ottawa County (1); and Jackson County, Missouri (1). Of the 10 cases tried, 9

resulted in complete defense verdicts and 1 case resulted in a mistrial.

The Chief Counsel noted FY 2019's 10 jury trials broke the prior year's record for the fewest cases that went to trial. She commented on trends for trials, indicating smaller damages cases tend to be the ones that go to trial, but the expense of going to trial keeps increasing; the potential for larger jury verdicts increases as economic damages could exceed the HCSF's coverage; and growing pressure is put on insurance carriers to settle a case for the cost of defense rather than go to trial.

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2019, 74 claims in 61 cases were settled involving HCSF moneys. Settlement amounts incurred by the HCSF totaled \$23,407,875 (not including settlement contributions by primary or excess insurance carriers). She noted the FY 2019 data represent one more settlement than the previous year, but the Fund incurred about \$800,000 less in claims costs. The Chief Counsel addressed severity of claims, noting, of the 74 claims, 11 cases fell into the top category of settlement of \$600,000 or more and indicating FY 2019 was similar to FY 2018 with the same large number of settlements. Of the 74 claims involving HCSF moneys, the HCSF incurred \$23,407,875; the primary insurance carriers contributed \$11,797,022 to these claims. In addition, excess insurance carriers provided coverage for one claim for a total of \$550,000. For these 74 claims involving the HCSF, the total settlement amount was \$35,754,897. Further testimony also indicated, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 120 claims in 107 cases. The total amount of these reported settlements was \$8,779,783. The Chief Counsel's testimony also included a historical report of HCSF total settlements and verdicts, FY 1977 to FY 2019.

The Chief Counsel also reported 323 new cases during FY 2019, noting since FY 2016, there has been an increase in the number of new claims. The Chief Counsel indicated this was to be expected due to the 2014 law that added five categories of health care providers to the HCSF: physician assistants, nurse midwives, nursing

facilities, assisted living facilities, and residential health care facilities.

### ***Self-insurance Programs***

The Chief Counsel addressed the self-insurance programs and reimbursement for KU Foundations and Faculty and for residents. She stated the FY 2019 KU Foundations and Faculty program incurred \$2,761,718 in attorney fees, expenses, and settlements: \$500,000 came from the Private Practice Reserve Fund and \$2,261,718 came from the SGF. The Chief Counsel indicated this was a little over \$1.0 million more than in FY 2018 due to the number of settlements: 12 settlements involving full-time faculty members as compared to 4 in FY 2018. She noted the number of pending claims against full-time faculty members has remained fairly constant through the past several years.

In regard to the self-insurance programs for the KU/WCGME resident programs including for the Smoky Hill Family Medicine Residency Program in Salina, the total amount for FY 2019 was \$1,877,297, which was about \$250,000 more than the previous year. The Chief Counsel pointed out there were five settlements in FY 2019 with 12 pending claims against residents. She noted attorney fees and expenses for the residents in training was \$1,052,297, indicating that is more than the attorney fees and expenses for the foundations and faculty. She noted a recent case in Wichita involving several defendants, including one resident, and after almost six weeks in trial, the plaintiffs dismissed the resident as a defendant. She indicated there was no judgment against the resident, but it is expensive to try these cases.

The Chief Counsel provided a list of the historical expenditures by fiscal year for the KU Foundations and Faculty and the residents in training and indicated the 10-year average for the faculty and foundations self-insurance programs is about \$1.8 million, making FY 2019 an above-average year. For the residency program, the 10-year average is about \$1.0 million a year, so FY 2019 saw another substantial increase. She provided information about moneys paid by the HCSF as an excess carrier, reporting three claims in FY 2019 involving residents for which the claim was greater than \$200,000, involving HCSF coverage for \$622,500, and six claims for faculty

members in FY 2019 exceeded the \$200,000 primary coverage limit, for \$2,110,000.

During Committee discussion, the Chief Counsel indicated there are two foundations—University of Kansas Physicians, Inc., and Wichita Medical Practice. She explained the three criteria to be eligible as a member of the self-insurance program: the healthcare professional must be a member of the foundation, employed by the University of Kansas Medical Center (*i.e.* the State of Kansas), and have a full-time faculty appointment. She indicated when the University of Kansas took over St. Francis Hospital in Topeka, six members of the staff were qualified to be in the foundation under the self-insurance program. She stated she was not aware of any physicians in the Great Bend or Hays facilities who qualify under the criteria for self-insurance. Regarding those providers who became defined health care providers due to 2014 law changes, the Chief Counsel indicated from 2015 to 2019, there were 134 suits against these new health care providers; 39 of these cases were resolved and were settled within the primary limits, 6 settlements involved the HCSF, 65 claims remained pending, and 24 were dismissed.

### **Medical Malpractice Insurance Marketplace; Availability Plan Update**

A representative of the Kansas Medical Society (KMS) presented testimony on behalf of the President and CEO of the Kansas Medical Mutual Insurance Company (KAMMCO). The KAMMCO remarks included an overview of market conditions, with the representative stating Kansas continues to have a healthy competitive market for medical professional liability insurance for all types of health care providers. She indicated the industry is well-capitalized, but annual operating results from the medical professional liability insurance line of business continue to deteriorate. She further described the medical professional liability insurance market conditions and also highlighted recent claims in Kansas. She discussed the *Hilburn* decision, indicating it is difficult to predict how quickly that impact will be felt and how much premiums will increase as a result. She highlighted testimony to the interim Special Committee on Judiciary, noting KAMMCO submitted its analysis of *Hilburn* and how it might impact medical malpractice.

The KAMMCO comments outlined how the HCSF and the cap on noneconomic damages go hand in hand. The conferee stated, previously in upholding the cap on noneconomic damages, the HCSF was the basis for that decision as the adequate *quid pro quo* established that ensures the constitutionality of the cap. She indicated KMS still believes that to be true: the HCSF serves an extremely important role in stabilizing the marketplace, and the continuation of the HCSF is extremely important. She concluded the KAMMCO testimony, stating the market is changing, the company does expect increases in premiums, and it does not know how much or how soon. She indicated it will take time and experience to see how these different factors, including the change in the capitalization of the reinsurance market, the impacts of *Hilburn*, and the increase in the number of high severity claims, compounded, are going to create upward pressure on premiums and the affordability of coverage for health care providers.

An illustration of Availability Plan insureds, from 1990 to 2019, was submitted with KAMMCO's testimony. [*Note:* Additional comment on the Availability Plan is provided in the summary of the Board of Governors' statutory report.]

### **Comments from Health Care Provider Representatives**

The KMS representative addressed the Committee's role, indicating KMS believes the HCSF Oversight Committee should continue and does not believe there is a need for another independent actuarial analysis. She urged the continuation of the Committee for another year. She stated her appreciation for the Committee discussion about the bill on corporate practice of medicine, which would introduce a new body of providers into the HCSF. She indicated KMS believes it is important to protect the soundness of the HCSF, and as those new provider types are added in, it will be important they cover the costs of their own claims. She stated it will require experience to better ascertain costs for coverage, but KMS believes it is appropriate for the business entities to participate in the HCSF. She further indicated the entity itself should carry coverage the same way all medical individual providers do, so the entities are not just exposing the physicians that they employ to the cost of that coverage. She

stated KMS would appreciate the Committee's support of that in its report.

The Executive Director of the Kansas Association of Osteopathic Medicine concurred with the KMS comments, and her testimony also noted the success of the HCSF's public-private partnership, stating it has done what it was envisioned to do: provide compensation to patients for unintended medical outcomes, give Kansas health care providers access to professional liability insurance coverage, and create a favorable environment for responsible professional liability insurance companies.

Written-only testimony submitted by the Kansas Hospital Association (KHA) provided additional comment on *Hilburn*, indicating KHA will continue to closely monitor any perceived impact the decision has on future insurance rates and jury awards.

### **Board of Governors' Statutory Report**

The Executive Director of the Board of Governors (Executive Director) provided a brief history of the HCSF law and its governance and explained when the law was passed in 1976, it had three main functions: 1) to require all health care providers, as defined in KSA 40-3401, to maintain professional liability insurance coverage; 2) to create a joint underwriting association, the "Health Care Provider Insurance Availability Plan," to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and 3) to create the HCSF to provide excess coverage above the primary coverage purchased by health care providers, and to serve as reinsurer of the Availability Plan.

The Executive Director provided the Board of Governors' statutory annual report (as required by KSA 40-3403(b)(1)(C) and issued October 1, 2019).

The FY 2019 report indicated:

- Net premium surcharge revenue collections amount to \$28,896,286. The lowest surcharge rate for a health care professional was \$100 (for a first-year provider selecting the lowest coverage

option) and the highest surcharge rate was \$17,336 for a neurosurgeon with three or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas resident neurosurgeon (if licensed in Missouri) would result in a total premium surcharge of \$22,537 for this health care provider;

- The average compensation per settlement (61 cases involving 74 claims were settled) was \$316,323. These amounts are in addition to compensation paid by primary insurers, typically \$200,000 per claim. The report stated amounts reported for verdicts and settlements were not necessarily paid during FY 2019 and total claims paid during the fiscal year amounted to \$28,918,065; and
- The balance sheet, as of June 30, 2019, indicated total assets of \$294,148,935 and total liabilities of \$254,631,909.

### ***Availability Plan***

The Executive Director's report also included an update on the Availability Plan; the Availability Plan, a joint underwriting association, is a major component of the Health Care Provider Insurance Availability Act (HCPIAA) and assures health care providers always have access to a basic professional liability insurance policy. The Executive Director reported in 2004, there were more than 600 participants in the Availability Plan; as of October 1, 2019, there were 287 participants. In years when Availability Plan losses exceed income, the HCSF is required by law to transfer the net loss to the Availability Plan. At the conclusion of FY 2019, \$603,222 was transferred from the HCSF.

### ***Contemporary Issues***

The Executive Director provided an update on HB 2119 and its provisions relating to what is commonly known as the "corporate practice of medicine." He indicated during the 2019 Legislative Session, the Board of Governors expressed concerns regarding the impact the new law would have on the actuarial stability of the HCSF, as well as on pricing and claims exposure,

noting the reporting requirement to the Legislature. He indicated the Board of Governors has two broad concerns regarding HB 2119:

- The law, as enacted, does not require the authorized business entities to participate in the HCSF, plus they are not defined in law as healthcare providers, so language would need to be enacted for this participation to occur; and
- The new law needs to clearly define the three types of business entities to avoid any unintended consequences related to liability for services delivered out of the state by an entity with locations outside of Kansas.

He requested the Committee consider expressing these two items are of concern and encouraging the Legislature to take action at the appropriate time in its own report.

The Executive Director next addressed the *Hilburn* decision and the Court's press release. He indicated the press release used the words "struck down the statutory noneconomic damages cap in personal injury cases other than medical malpractice." He indicated the Board does not know how it would impact medical malpractice cases or the HCSF, or how the Legislature may choose to react to the Supreme Court decision, so the Board is watching the issue very closely. He stated he believes the HCSF has been a very successful agency that plays a vital role in helping health care providers with the ability to provide health care in Kansas, and it also is helpful, when there are unintended medical outcomes, that the residents of Kansas have adequate recourse.

During discussion about the provisions of HB 2119, the Executive Director indicated the Board of Governors is of the belief it would create an additional classification to be included into the HCSF. He clarified the business entity itself, not just the health care professionals the entity employs, would need to participate in the HCSF. He then compared business entities to a partnership of physicians who open a clinic, hospitals, and other entities that are required to participate in the HCSF, and he indicated business entities would be put into the same category as these other entities providing medical services.

The Board would set an appropriate surcharge and monitor it just as with any classification. The Chief Counsel also noted, if those entities are made defined health care providers, they would be required to have primary coverage. She explained the insurance they already have may or may not qualify, as a person or entity participating in the HCSF must have insurance from an admitted insurance carrier in Kansas; that insurance must be a claims-made policy, not occurrence-based; and the HCSF coverage by law would be excess of whatever applicable coverage that policy met.

## HCPIAA Amendments

No formal amendments were brought before the Committee. The Committee notes the Board of Governors is required to report to the Legislature. Should the HCPIAA be open to amendment, the Committee notes the technical amendments cited in the Executive Director's testimony (the words "healthcare" and "health care" are inconsistent in usage throughout this act).

## CONCLUSIONS AND RECOMMENDATIONS

The Committee considered two items central to its statutory charge: whether the Committee should continue its work and whether a second, independent analysis of the HCSF is necessary. This oversight committee continues in its belief the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report; the Board of Governors' actuary; and health care provider and insurance company representatives. The Committee agreed on the following recommendations and comments:

- **Actuarial report and status of the HCSF; marketplace analysis and trends.** The Committee notes the report

provided by the Board of Governors' actuary reviewed the financial performance of the Fund in 2018, indicating its financial position was not as strong as believed to be one earlier. Among negative indications cited was the transfer from the HCSF to the Availability Plan, declining investment returns, a higher loss experience, and a larger-than-anticipated decline in surcharge revenue. The Committee further notes the rate level indications for the CY 2020 surcharge rates did not include a "do nothing" option; the Board of Governors responded to the actuary's conclusions and implemented an option that requires, beginning on January 1, 2020, almost every health care provider to pay an additional 6 percent. [Note: The actuary noted all of these conclusions were made prior to the June 2019 *Hilburn* decision.]

- The Committee notes its discussion with the actuary, Board of Governors staff, and health care providers and insurers on broader trends and concerns, including the costs to resolve medical malpractice claims on health care providers increasing nationwide and the upward pressure on settlements. The Committee shares these concerns—and notes the marketplace shows signs of strain—for the increased pricing for medical professional liability insurance, the increased frequency of high-severity claims, and reinsurance capacity concerns.
- **Contemporary issues and continued oversight.** The Committee notes two issues requiring continued oversight by the Board of Governors and this committee. The Committee acknowledges the June 2019 *Hilburn* decision, and the uncertainty of this decision's impact on the HCSF, health care providers, medical malpractice cases and actions, and the medical malpractice insurance marketplace in Kansas. Additionally, the Committee notes the enactment of 2019 HB 2119 and recognizes the concerns stated by representatives of the Board of

Governors with the language in present law. The Committee encourages clarification on the criteria associated with the term "business entity," including a requirement for participation by not only the individual healthcare provider, but also by the corporate practice (corporation of providers) in the HCSF. The Committee further notes the study and report on the impact of requiring these entities to participate in the HCSF are to be submitted by the Board prior to the commencement of the 2020 Session. Should the HCPIAA be open to amendment, the Committee notes technical amendments cited in the Executive Director's testimony.

- **Fund to be held in trust.** The Committee recommends the following language to the LCC, the Legislature, and the Governor regarding the HCSF:
  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the SGF. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be "held in trust in the state treasury and accounted for separately from other state funds"; and
  - Further, the Committee believes the following to be true: all surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

The Committee requests its report be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate budget

and subcommittees of the standing committees on appropriations.

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# 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 Osawatomie 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 1<sup>st</sup> 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, 20<sup>th</sup> 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**

<b>FY 2019</b>	1,469	offenders sentenced to SB123 Mandatory Drug Treatment
<b>FY 2018</b>	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**

<b>FY 2021</b>	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**

<b>COURT</b>	<b>Judicial District</b>	<b>COUNTIES SERVED</b>	<b>TYPE</b>
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, 23<sup>rd</sup> Judicial District Court Judge, Honorable Marty Clark, 20<sup>th</sup> 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

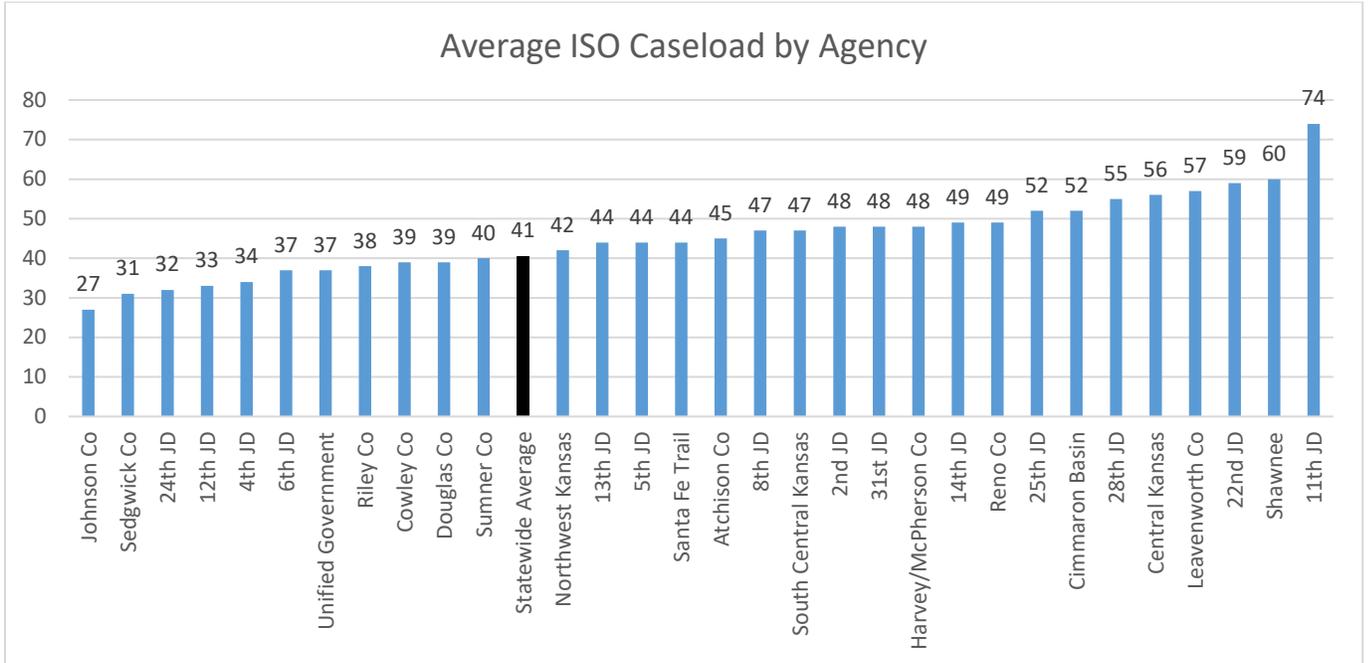
##### **FY18 Outcomes**

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.

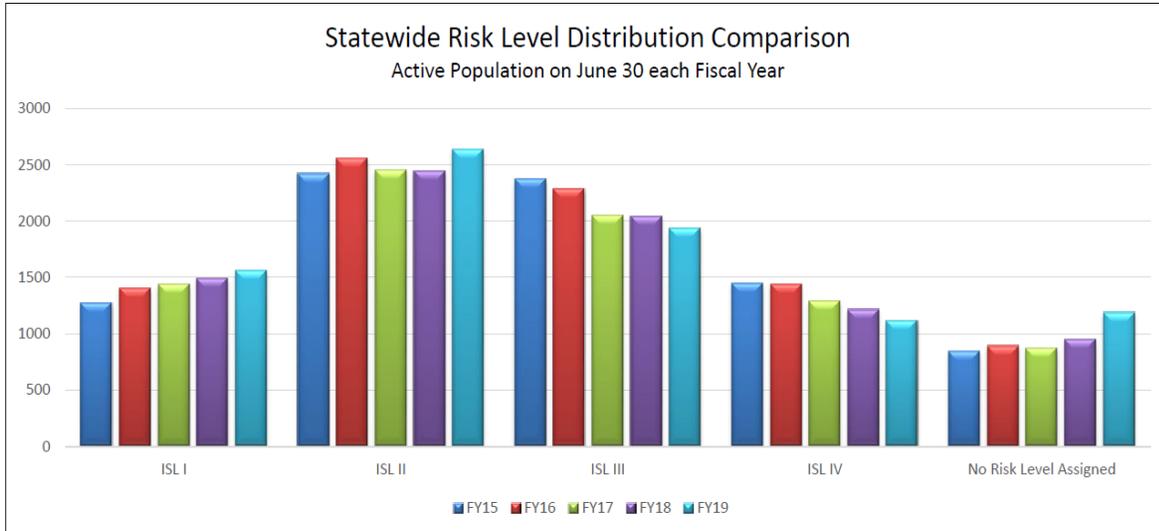
The average statewide Community Corrections caseload was 41 offenders per officer, with the highest caseload being 74 and the lowest 27. There are a total of 209 positions funding through Community Corrections state allocation.



TOADS caseload reports ran on 101019 (active cases only)

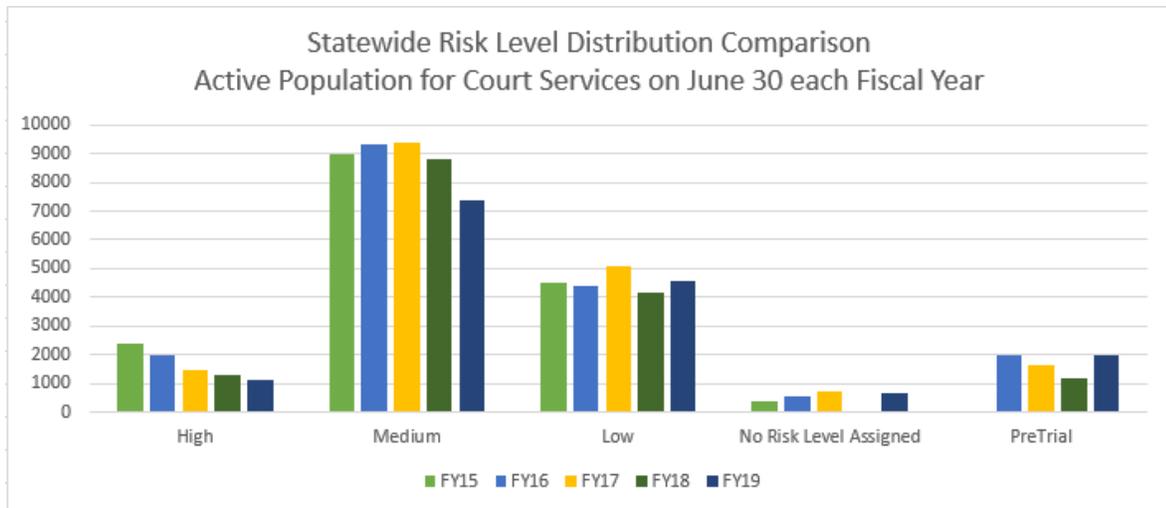
Jo Co numbers combined for ISP & ARC

Sg Co numbers combined for ISP, ARC & Drug Court

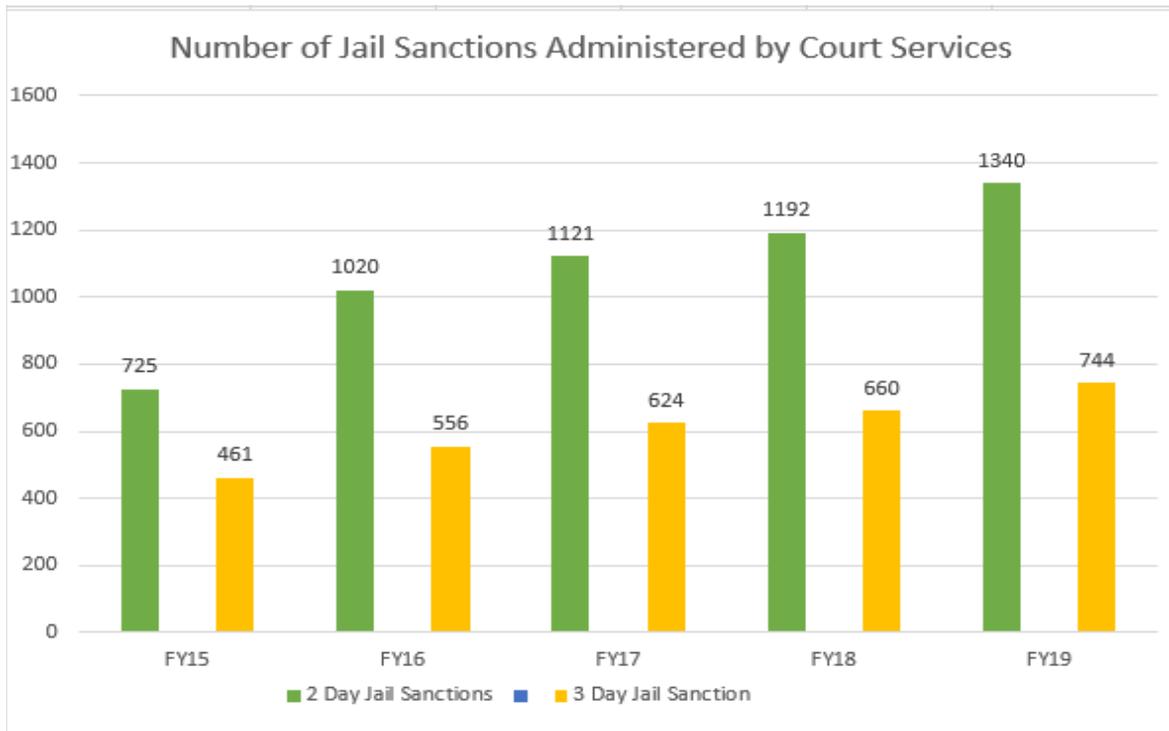


	ISL I		ISL II		ISL III		ISL IV		No Risk Level Assigned	
	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%
FY15	1272	15.2%	2420	29.0%	2372	28.4%	1448	17.3%	842	10.1%
FY16	1406	16.4%	2554	29.8%	2285	26.6%	1440	16.8%	892	10.4%
FY17	1438	17.8%	2451	30.3%	2048	25.3%	1288	15.9%	872	10.8%
FY18	1492	18.3%	2445	30.0%	2038	25.0%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

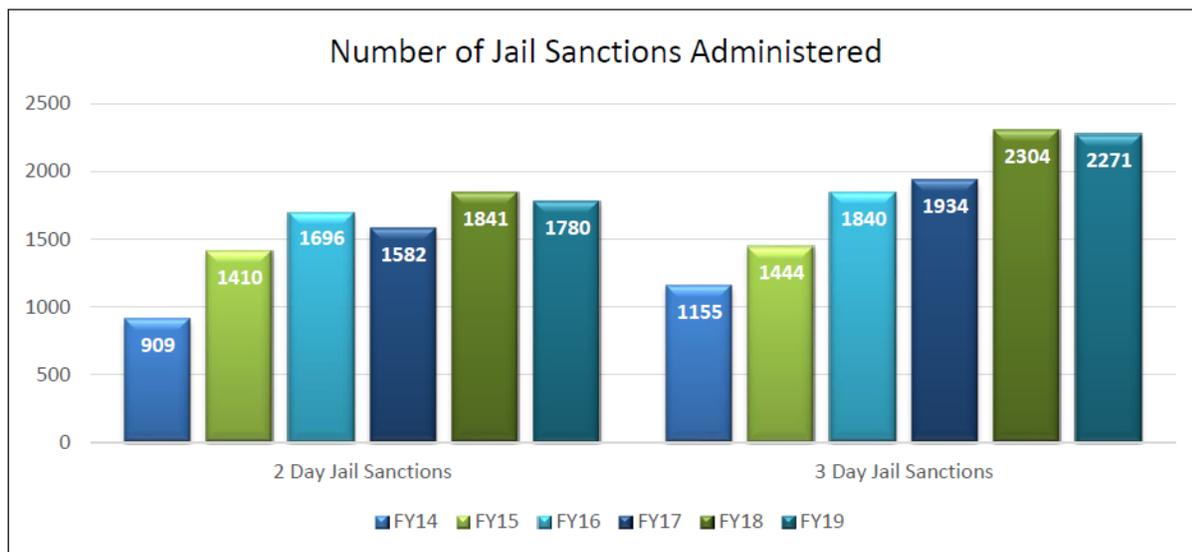
Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population



	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%

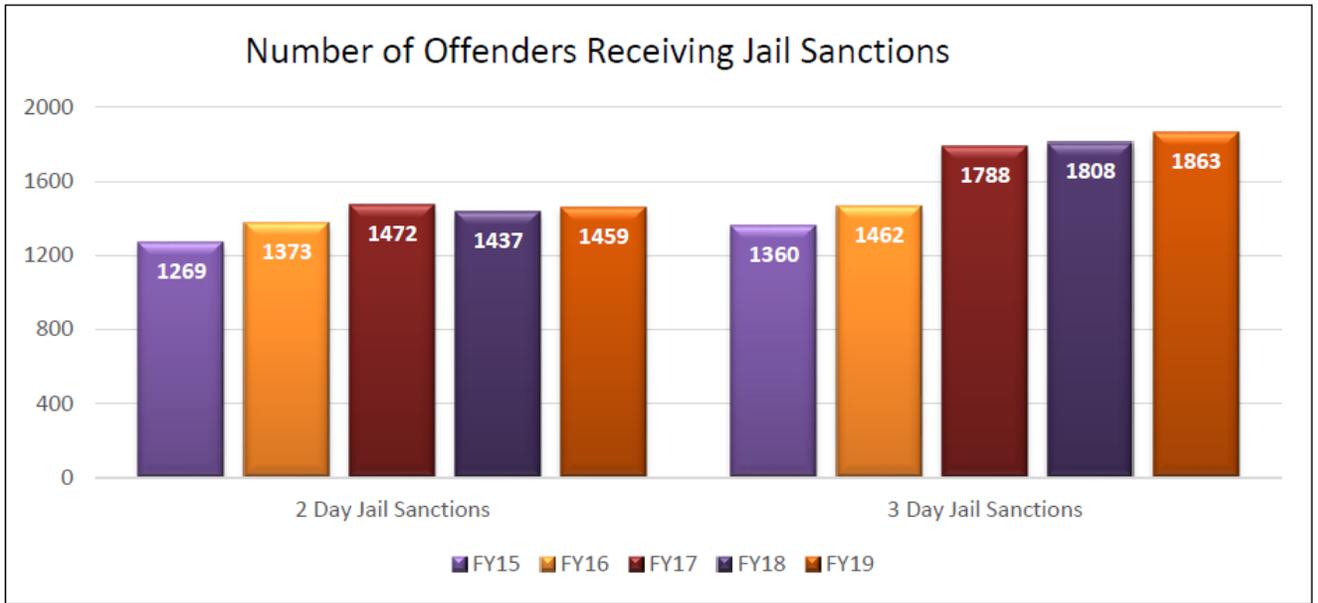


<b>JAIL SANCTIONS</b>					
	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
<b>2 Day Jail Sanctions</b>	725	1020	1121	1192	1340
<b>3 Day Jail Sanction</b>	461	556	624	660	744

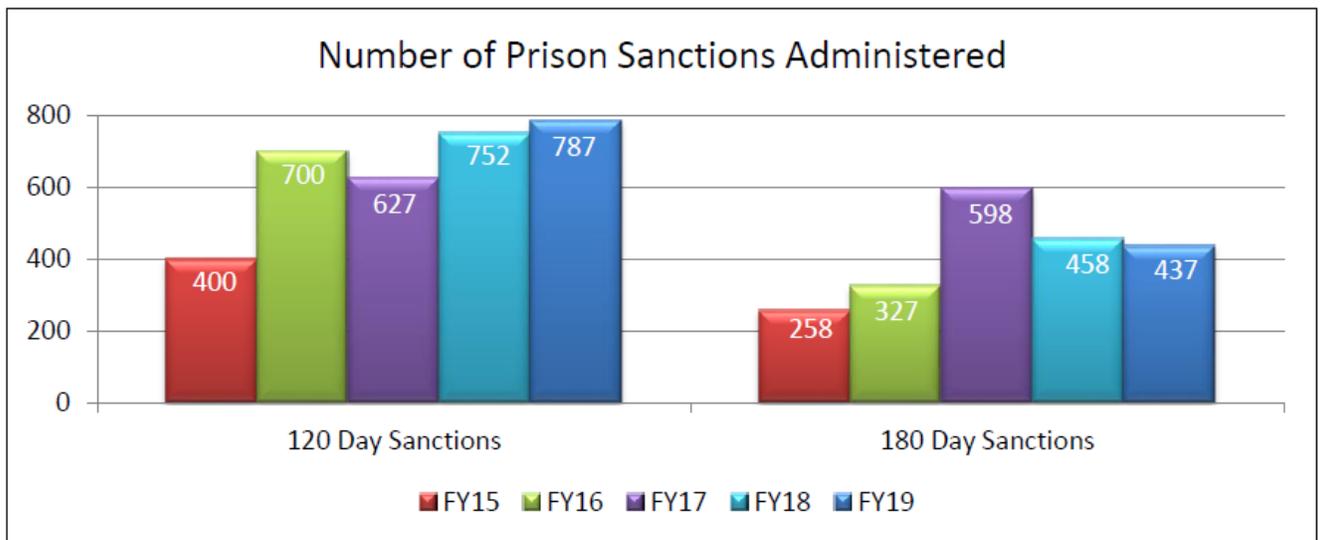


\* Number of Sanctions Administered = Total Number of 2 and 3 day sanction interventions entered in TOADS during each fiscal year.

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

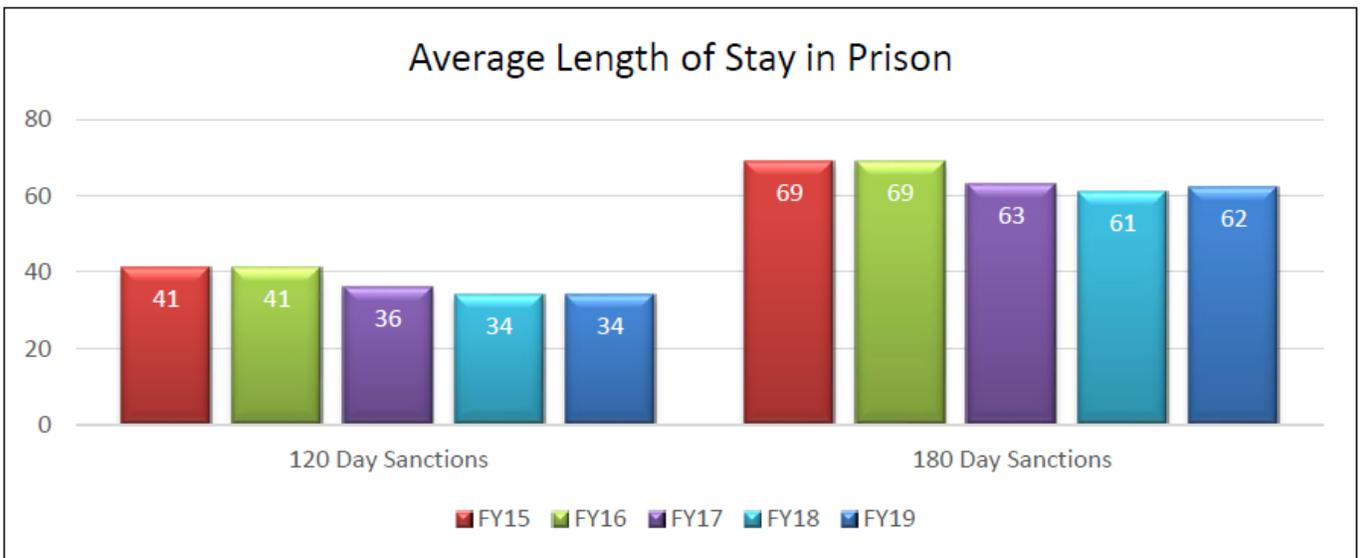
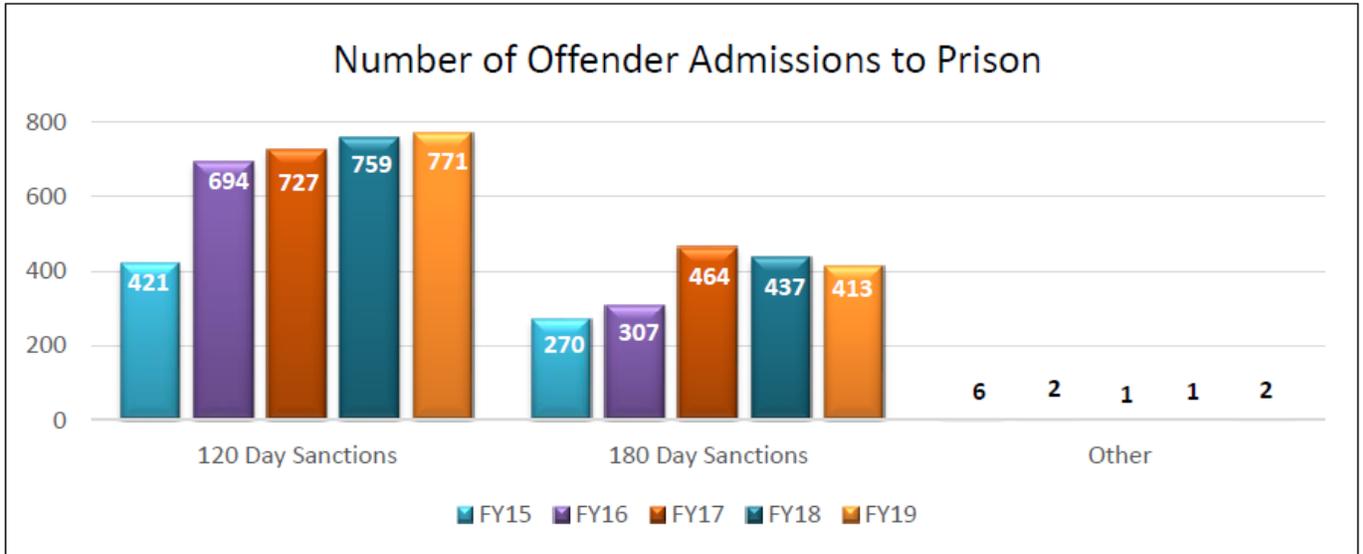


Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population



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

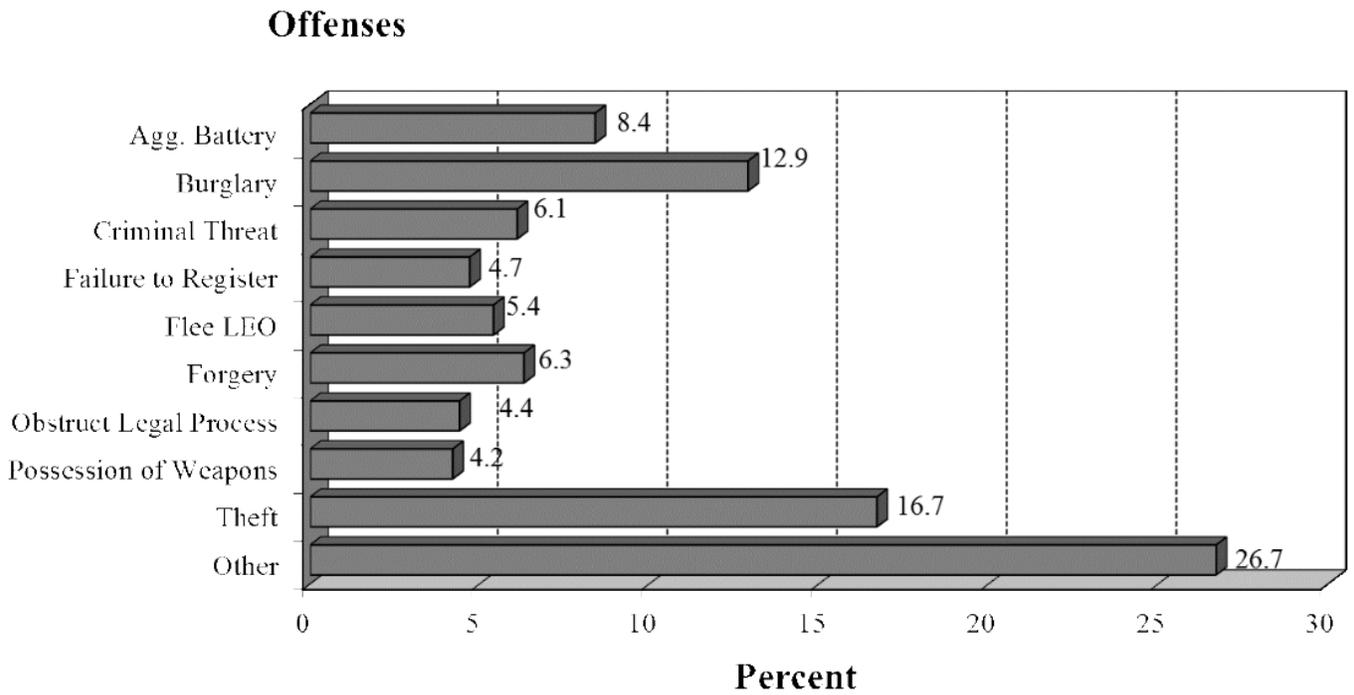
Kansas Department of Corrections, Statistical Summary FY19, Community Corrections Adult Offender Population



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

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.

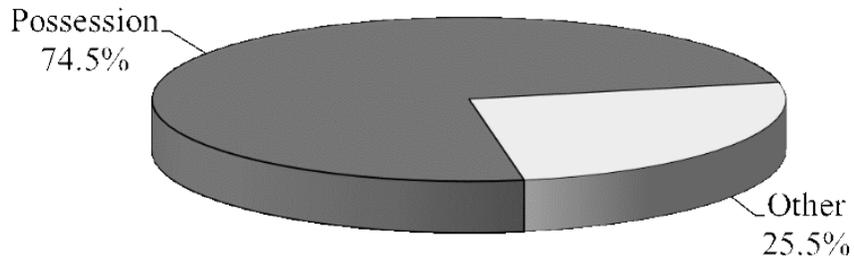
**Figure 32: FY 2018 Top Ten Offenses for Probation Nondrug Sentences**



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 1<sup>st</sup> Day of December, 2019.

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Rep. Stephen Owens  
Chairman

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Professor John Francis  
Washburn Law

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Bill Persinger  
CEO Valeo Behavioral Health Care

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Pastor Adrion Roberson

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

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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 10<sup>th</sup> 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

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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.<sup>1</sup>
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.<sup>2</sup>
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.<sup>3</sup>
4. To be eligible to file a motion the defendant must have completed all programs required by the Secretary of Corrections.<sup>4</sup>
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.<sup>5</sup>
6. The decision to grant the motion shall be within the discretion of the trial court.<sup>6</sup>
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.<sup>7</sup>

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.<sup>8</sup>

### **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 addition 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 of 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.