

# Report of the Kansas Criminal Justice Reform Commission to the 2022 Kansas Legislature

**CHAIRPERSON:** Marc Bennett

**VICE-CHAIRPERSON:** Representative Stephen Owens

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

**NON-LEGISLATIVE MEMBERS:** Chief Todd Ackerman [until 9/8/21], Jennifer Baysinger, Honorable Glenn Braun, Sheriff Bill Carr, Honorable Marty Clark until [5/1/21], Professor John Francis, Chad Harmon, Chief Jeff Hooper [since 10/6/21], Spence Koehn, Honorable Rustin Martin [since 6/23/21], Tabitha Owen, Sylvia Penner, Bill Persinger, Professor Jean Phillips, Pastor Adrion Roberson, Jennifer Roth, and Shelly Williams

**NON-VOTING EX OFFICIO MEMBERS:** Derek Schmidt, Attorney General; Scott Schultz, Executive Director, Kansas Sentencing Commission; and Jeff Zmuda, Secretary of Corrections

## CHARGE

The Commission is directed 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 utilized throughout the state and recommend legislation that:
  - Requires pre-filing and post-filing diversion be an option in all counties;
  - Establishes minimum statewide standards for diversion; and
  - Provides a method for sealing or otherwise removing diversion records from criminal records;

- Review supervision practices for offenders who serve sentences for felony offenses on community supervision, including supervision by court services, community corrections, and parole;
- Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
  - Provide for incentives for compliant offenders to earn early discharge from supervision;
  - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;
  - Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
  - Provide for a means to consolidate concurrent supervision into one supervision agency; and
- Monitor the implementation of previously endorsed Commission recommendations, including those developed through justice reinvestment, and receive updates, review data, and identify opportunities for coordination, collaboration, or legislation as needed.

# Kansas Criminal Justice Reform Commission

## FINAL REPORT

### Conclusions and Recommendations

The Commission wishes to acknowledge the contributions made to the work of this Commission by the late Reginald Robinson, former Commission facilitator, and Representative Russ Jennings.

The Commission adopted the following recommendations. Additional discussion, observations, and topics for further study related to the recommendations may be found in the Conclusions and Recommendations section at the end of this report.

**Pre-filing diversions.** Permit pre-filing diversions to be filed with the district court, subject to database availability, for all misdemeanor and nonperson severity level 9 and 10 offenses, with the following exclusions:

- Domestic violence;
- Traffic violations;
- Driving while under the influence; and
- Sex offenses, including misdemeanor sex offenses.

Any legislation should encourage district and county attorneys to offer pre-filing diversions only to those individuals who appear to have a viable chance of success completing a diversion program. Court costs would be assessed for pre-filing diversions, a portion of which would be allocated to the Office of Judicial Administration (OJA) to cover the costs for tracking pre-filed diversions. The Kansas Bureau of Investigation (KBI) would record pre-filing diversions in the same manner that post-filing diversions are recorded.

### **Guidelines for consolidating supervision of persons under multiple supervision terms.**

Adopt the following guidelines for consolidating supervision under multiple supervision terms:

- Between district courts, the longest underlying incarceratory sentence is controlling;
- If a new sentence would place a person under supervision on concurrent supervision, control of the case should be determined after considering these factors:
  - Unless the severity of a new offense impacts the level of supervision, the defendant should remain under the supervision of the originating entity throughout the length of the sentence;
  - If the severity of a new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision entity and remain in place through the end of the supervision sentence;

- If concurrent supervision involves multiple cases with equal sentences, the supervision entities involved must agree on a controlling case after considering these factors:
  - The residency of the person on supervision;
  - The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority;
  - The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority; and
  - The level of supervision and resources available to the person on supervision by each supervising entity;
- The supervising entity enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:
  - Set a payment schedule consistent with ability to pay;
  - Apportion payments for each case; and
  - Allow one supervision fee, only for the entity providing supervision;
- The supervising officer enforces all conditions of supervision;
- Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case supervision entity. If supervision is revoked, all pertinent information shall be shared with the corresponding entities for appropriate action to be taken;
- The court with jurisdiction of the controlling case determines when supervision will be terminated;
- The Kansas Department of Corrections (KDOC) and OJA should enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of OJA shall be supervised exclusively by either KDOC or OJA:
  - The supervising authority will provide notice and supervision history documentation to the concurrent supervision entity upon initiation of revocation proceedings so the concurrent supervision entity can notify the appropriate court or Prisoner Review Board;
  - The supervising entity will provide notice and supervision history documentation to the concurrent supervision entity 30 days prior to the termination of supervision so that supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision;
- Prior to supervision responsibilities being transferred, the originating supervision entity is responsible for ensuring the risk and needs assessment and all data in the case file are current; and
- Upon transfer of supervision, the receiving entity has responsibility for overseeing supervision conditions and updating risk and needs assessments and the case plan as indicated.

**Standards for communication in dual supervision cases.** OJA Court Services (Court Services) KDOC Community and Field Services Division (Community Corrections), and KDOC Prisoner Review Board and Parole Services (KDOC) should develop standards for communication in dual supervision cases that include the following:

- The process for transfer should include the following information:
  - Journal entry;
  - Pre-sentence investigation;
  - Risk assessment;
  - Specialized assessments; and
  - Conditions of probation;
- Multidisciplinary team meetings should be scheduled by risk level. Prior to the meeting, a list of persons under supervision to be discussed should be distributed to appropriate supervisors or officials:
  - Monthly for high-risk persons under supervision;
  - Bimonthly for moderate-risk persons under supervision; and
  - Quarterly or as needed for low-risk persons under supervision;
- Agencies should outline expectations and processes for sharing case management progress based on the supervising entity’s policies and procedures related to conditions of probation and release; progress reports, which include violation reports; incentives and sanctions; and information sharing with law enforcement;
- Supervising entities should have access to client information maintained by other supervising entities; and
- Points of contact should be identified for dispute resolution within KDOC and OJA to resolve disagreements between entities.

**Proportional penalties.** Decrease the penalties from drug grid level 5 to be similar to nondrug level 8 for proportionality reasons by supporting the passage of provisions included in 2019 HB 2047 and 2021 HB 2139.

**Felony loss threshold.** Increase the felony loss threshold from \$1,000 to \$1,500 on 11 property crimes by supporting the passage of provisions in 2020 HB 2485 and 2021 HB 2028.

**Prior convictions — domestic violence designation.** Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation by supporting the passage of provisions in 2020 HB 2518 and 2021 HB 2029.

**Drug and nondrug sentencing grid amendments.** Amend the drug grid and nondrug grid by expanding presumptive probation and border box zones, in order to better reflect actual sentencing and reduce downward departures; and continue to ensure adequate prison capacity for people convicted of off-grid and other extremely serious crimes by supporting the passage of provisions of 2021 HB 2146 and 2021 HB 2350.

**Compassionate release.** Implement a more open and expanded compassionate release program by supporting the passage of provisions of 2020 HB 2469 and 2021 HB 2030.

**Sentencing grid consolidation.** Combine the drug and nondrug sentencing grids instead of utilizing separate drug and nondrug grids.

**Penalty for noncompliance with Kansas Offender Registration Act.** Decrease the penalty for noncompliance with the Kansas Offender Registration Act, as proposed in 2021 HB 2349.

**Exit mechanism for certain registered offenders.** Add an exit mechanism to the Kansas Offender Registration Act for non-violent offenders to be removed from the offender registry.

**Online offender registry search.** Request the KBI change its default setting on the online offender registry from having all categories checked for search purposes to having the users check the boxes for the categories they are interested in and that KBI track how many users search each category.

**Co-responder Program Advisory Board.** Create a statewide advisory board to monitor the development and implementation of co-responder programs across Kansas.

**Training for law enforcement, probation officers, parole officers, and licensed mental health providers.** Expand the use of crisis intervention training, implicit bias training, diversity training, de-escalation training, and encourage “guardian” training as opposed to “warrior” training for existing officers through the Kansas Commission on Police Officers’ Standards and Training (KSCPOST) and for new officers graduating from the Kansas Law Enforcement Training Center. Such expanded training should also be offered by KDOC and OJA for probation officers, parole officers, and licensed mental health providers.

**KSCPOST membership.** Expand the membership of KSCPOST to enhance its diversity.

**Criminal street gang — bail.** Amend KSA 21-6316 to change the requirement that bail be “at least \$50,000” when a criminal street gang member is arrested for a person felony to a requirement that bail be “appropriately set.”

**Criminal street gang definitions.** Reevaluate the definitions related to criminal street gangs found in KSA 21-6313.

**Offenses eligible for incentives and early discharge from probation.** Incentives and early discharge from probation should include both misdemeanor and felony offenses.

**KSA 21-6608(d) amendments not recommended (amendatory language shown below).** The House Committee on Corrections and Juvenile Justice should not move forward with certain amendments to KSA 21-6608(d) as proposed in 2021 HB 2084, specifically:

- On pages 2-3, amending KSA 21-6608(d): “In addition to the provisions of subsections (a), a defendant *may be discharged* early from probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction *if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant will have served 50% of such defendant’s term of supervision to determine if a defendant has been in substantial compliance with the defendant’s conditions of supervision.*”

The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.”

- On page 3, adding (e): “A defendant shall earn credit to reduce such defendant’s term of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction when the defendant has substantially complied with the conditions of such defendant’s supervision. A defendant shall be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant’s supervision.”
- On page 3, adding (f): “The Kansas sentencing commission shall adopt procedures and forms to standardize the process for calculating earned discharge credit pursuant to this section.”
- On page 3, adding (g): “The following factors apply and may be considered in determining whether substantial compliance with supervision exists: (1)(A) History of compliance with terms and conditions of supervision; (B) payment of fines, costs and restitution; and (C) successful completion of any required treatment program. (2) Completion of all terms and conditions of supervision is not required. (3) Offenders subject to the provisions of K.S.A. 2020 Supp. 21-6824, and amendments thereto, shall not be eligible for early discharge.”

**KSA 21-6608(d) amendments recommended (amendatory language shown below).**

Amend KSA 21-6608(d) by striking the following language:

- “A defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court.”

Amend KSA 21-6608(d) by adding the following language:

- A defendant who has a history of compliance with terms and conditions of supervision;
- Has successfully completed any required treatment or programming;
- Has completed 75% of their required supervision period except when prohibited by statute;
- After a review of all fines, costs, and restitution, may be eligible for discharge from such period of supervision by the court; and
- Early termination from probation shall be retroactive.

The intention of these amendments is to provide supervision officers a path to recommend early termination of probation following these benchmarks and not to limit the power of the court to terminate probation at any point.

**4:1 Behavior Management System.** Implement the 4:1 Behavior Management System developed by Carey Group Publishing statewide to guide and track responses to defendant prosocial and violation behaviors.

**Sanctions and incentives structure.** Encourage KDOC and OJA to collaborate on a sanctions and incentives structure to be used within the criminal justice system.

**Standardized terms and conditions of supervision.** Adopt the following standardized terms and conditions statewide:

- Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer;
- Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision;
- Report to your supervision officer as directed and be truthful in all matters;
- Remain within the state of Kansas and other specified area as defined by your supervision officer;
- Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information;
- Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner;
- Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test;
- Participate in assessments, treatment, programming, and other directives by the Court or your supervision officer;
- Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer; and
- You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

## **BACKGROUND**

In 2019, the Legislature enacted HB 2290, codified at KSA 21-6902, establishing 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 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 Kansas Department of Corrections (KDOC) policies for placement of offenders and make recommendations for specialty facilities, including geriatric, health care, and substance abuse treatment 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.
- Requires pre-filing and post-filing diversion to be an option in all counties;
  - Establishes minimum statewide standards for diversion; and
  - Provides a method for sealing or otherwise removing diversion records from criminal records.
- **Supervision.** The bill amended the requirement related to review of supervision levels and programming for offenders on community supervision for felony offenses by requiring the Commission to:
    - Review the supervision practices for offenders who serve sentences for felony offenses on supervision by Court Services, Community Corrections, and KDOC; and
    - Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
      - Provide for incentives for compliant offenders to earn early discharge from supervision;
      - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;
      - Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
      - Provide for a means to consolidate concurrent supervision into one supervision agency.

The bill required the Commission to submit a preliminary report, which was submitted to the 2020 Legislature on December 1, 2019, and a final report to the 2021 Legislature.

Subsequently, the 2021 Legislature passed HB 2077, which amended the charge to the Commission with respect to diversion programs and supervision:

- **Diversion programs.** The bill amended the requirement related to analysis of diversion programs to require the Commission analyze diversion programs utilized throughout the state and make recommendations for legislation that:

In addition, 2021 HB 2077 required the Commission to monitor the implementation of previously endorsed Commission recommendations and removed the statutory study requirements relating to specialty courts, evidence-based programming, specialty correctional facilities, and information management data systems. The bill also removed the requirement that the Commission study other matters it determines to be necessary.

## ORGANIZATION

KSA 21-6902, as amended by 2021 HB 2077, establishes 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 public defender appointed by the Executive Director of the Board of Indigents' Defense Services;
- One county or district attorney from an urban area and one county attorney from a rural area, each appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, each 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, each 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.

Non-voting ex officio members of the Commission include:

- 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.

KSA 21-6902 also requires 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. This position has been vacant since October 2020.

The initial appointments to the Commission were completed by August 1, 2019.

Chris Mechler was replaced by Amy Raymond as the Judicial Branch Court Services officer member after the November 2019 meeting; Spence Koehn was appointed to replace Amy Raymond as the Judicial Branch Court Services member before the April 2020 meeting.

Chad Harmon replaced Brenda Salvati as the drug and alcohol addiction treatment provider member at the June 2020 meeting. Reggie Robinson served as the facilitator until September 2020. Judge Marty Clark was replaced by Judge

Rustin Martin as the district magistrate judge member prior to the June 2021 meeting. Jennifer Roth was appointed as the public defender member after the June 2021 meeting. Chief Jeff Hooper replaced Chief Todd Ackerman as the chief of police member after the September 2021 meeting.

Staff and meeting support for the Commission was provided by the Division of Legislative Administrative Services, the Kansas Legislative Research Department (KLRD), and the Office of Revisor of Statutes.

## SUBCOMMITTEES

KSA 21-6902 authorizes the Commission to organize and appoint such task forces or subcommittees as may be deemed necessary to discharge the duties of the Commission.

At its June 28, 2021, organizational meeting, the Commission voted to establish six subcommittees to study specific topics assigned by KSA 21-6902, as amended by 2021 HB 2077. The subcommittees are as follows:

- Consolidation of Supervision (renamed Dual Supervision in September 2021);
- Diversion;
- Proportionality and Sentencing;
- Race in the Criminal Justice System;
- Research-Based Incentives; and
- Standardized Terms and Conditions.

After each subcommittee was established, Commission members volunteered to serve on specific subcommittees. In addition, each subcommittee chose to add non-voting ex officio members on an *ad hoc* basis to assist with their work.

In July 2021, the LCC approved 18 meeting days, including use of Statehouse facilities and technology for subcommittees to meet during the 2021 Interim. Subcommittees met at least monthly via videoconferencing with access provided to the public at the Statehouse or another pre-determined

public location. One subcommittee chose to meet via Zoom without use of Statehouse facilities or technology for all of its meetings, while the other five subcommittees utilized such assistance for at least one meeting.

Each subcommittee produced a final report, including recommendations it proposed the Commission consider for adoption as part of this report.

The Commission considered these proposed recommendations at its November 15 and November 22, 2021, meetings, as discussed below. The final reports produced by each subcommittee are attached to this report in the Appendix.

## COMMISSION MEETINGS

In addition to the initial organizational meeting that took place on June 28, 2021, the LCC approved six additional meeting days for the Commission during the 2021 Interim, and the Commission met seven times prior to the submission of this report:

- June 28, 2021;
- July 19, 2021;
- August 16, 2021;
- September 20, 2021;
- October 18, 2021;
- November 15, 2021; and
- November 22, 2021.

### JUNE 28, 2021

#### ***Discussion on KSA 21-6902, as amended by 2021 HB 2077***

An Assistant Revisor of Statutes provided an overview of changes made to the Commission by 2021 HB 2077 (HB 2077) and gave an update on the legislation requested by the Commission during the 2021 Legislative Session.

The Assistant Revisor stated a few additional bills were not specifically requested by the Commission but may be of interest to members.

Chairperson Marc Bennett requested the Assistant Revisor provide the Commission with a list of pending legislation of interest to the Commission before the next meeting.

### ***Identification of Subcommittees to Address Commission Charge in KSA 21-6902***

Chairperson Bennett opened discussion on how to handle the topics listed as the Commission's charge in KSA 21-6902, as amended by HB 2077. He stated the process of creating subcommittees for each topic and having them report back to the Commission on a monthly basis worked well during the 2020 Interim. As a result, the Commission agreed to create six subcommittees: one to study sentencing and proportionality topics; one to study diversion topics; three to study various aspects of supervision; and one to study the impact of race in the criminal justice system. Membership of each subcommittee was established, as well as identifying the facilitators who would set up the initial meeting of each subcommittee. Chairperson Bennett noted that each subcommittee would be allowed to add *ad hoc* members to carry out its work and to determine its chairpersons.

### ***Discussion of Goals for the December 2021 Final Report***

Chairperson Bennett outlined the expectations for subcommittees and noted each subcommittee chairperson would be tasked with preparing and presenting a report detailing its recommendations to the Commission in November.

**JULY 19, 2021**

### ***Discussion on Approved Meeting Days and Future Meeting Dates***

KLRD staff provided an overview of LCC approval of meeting dates for the Commission and its various subcommittees for the rest of 2021. Staff stated the LCC approved a total of 24 meeting days for the Commission, allocating 18 days for subcommittees' use of the Statehouse and related technology services. Chairperson Bennett stated subcommittee meetings do not have to be held in the Statehouse, and any such meetings would not require LCC approval and would not be counted against the 18 days. Regardless of where the meetings take place, Chairperson Bennett

advised members that KLRD staff must be notified by the subcommittee chairperson in order to send out proper public notice of the meetings.

### ***Discussion on Kansas Open Meetings Act and Kansas Open Records Act Requirements for Subcommittee Meetings***

An Assistant Revisor of Statutes provided an overview of the Kansas Open Meetings Act and the Kansas Open Records Act as a reminder of the rules for subcommittees to follow when scheduling and holding meetings.

### ***Discussion on Subcommittee Membership***

Chairperson Bennett stated that at the June meeting, the Commission designated six separate subcommittees, and following the pattern of previous interims, the full Commission will meet monthly until October, and the subcommittees will hold as many meetings as needed to get their work done prior to November. Commission members in attendance volunteered to serve on specific subcommittees, and a few other members expressed a desire via email to join subcommittees following the meeting. Three *ad hoc* members were added to the Race in the Criminal Justice System Subcommittee after they expressed interest following the meeting.

### ***Reports of Subcommittees***

**Research-Based Incentives Subcommittee.** Subcommittee chairperson Spence Koehn stated discussion focused on the purpose of the subcommittee. Council of State Governments (CSG) staff attended the meeting and planned to provide information on what other states are doing for compliance at the next meeting. He stated the goal for the next meeting is to review the notes of the supervision subcommittee from last year so that current subcommittee members understand what was discussed last year and what still needs to be accomplished.

Mr. Koehn also stated subcommittee members agreed to invite the president of the Kansas Association of Court Services Officers and a representative of the Kansas Community Corrections Association to serve as *ad hoc* members of the subcommittee.

**Consolidation of Supervision Subcommittee.** Subcommittee chairperson Professor John Francis agreed the group needed to examine mechanisms to consolidate concurrent supervision terms when multiple agencies are supervising one person on post-release and to recommend related policy. He stated one of the issues discussed was developing a structure in which jurisdiction would stay with the sentencing court even though supervision may be transferred. Currently, this is done as a courtesy, but the subcommittee hopes to build on the practice. He also stated CSG staff provided the subcommittee with information on how the State of Ohio consolidates supervision. It uses severity of sentencing as the metric; however, this subcommittee is looking at the possibility of using risk assessment as a metric instead.

Chairperson Bennett stated the subcommittee might also address how to consolidate supervision among federal, state, and municipal court jurisdictions. Professor Francis responded the subcommittee did discuss municipal courts last year and decided there might not be an attainable legislative resolution. Sheriff Bill Carr also noted the hesitancy of the subcommittee taking action on municipal court recommendations last year due to the lack of input from municipalities on the subcommittee and Commission.

**Proportionality and Sentencing Subcommittee.** Subcommittee chairperson Chief Todd Ackerman noted the subcommittee had not yet met but at the upcoming meeting scheduled, it planned to review last year's final report, the expectations for the report this year, and a PowerPoint presentation regarding disproportionality created by the Kansas Sentencing Commission.

**Standardization of Terms and Conditions Subcommittee.** Subcommittee chairperson Shelly Williams stated the subcommittee had not yet met but the members were sent the minutes from last year's subcommittee meetings for review. She noted KLRD staff provided legislative history of KSA 21-6607 so the subcommittee could see what changes had been made to the statute over time.

**Diversion Subcommittee.** Subcommittee chairperson Bill Persinger stated the subcommittee discussed judicial and statutory limits on programs

that can make a difference in criminal records, incarceration, recovery, and rehabilitation. CSG staff stated it is prepared to assist the subcommittee with review of what the research shows regarding diversion programs.

**Race in the Criminal Justice System Subcommittee.** Chairperson Bennett, chairperson of the subcommittee, stated the group agreed to add a representative of the Prisoner Review Board and a representative of Johnson County Pretrial Services as *ad hoc* members of the subcommittee. Members discussed whether they could incorporate standards such as banning chokeholds and making a duty to intervene mandatory by statute or require such training and continuing education for law enforcement officers.

Chairperson Bennett stated the subcommittee also discussed the possibility of more formal de-escalation training within law enforcement agencies. Other items discussed were possibly amending or repealing a statute requiring bond to be set at a certain amount when someone is designated a gang member and the potential use of co-responder programs in which officers respond with a mental health clinician or social worker in certain situations where mental health issues may be a factor.

Chairperson Bennett noted that he believes the Commission is aware of the utility of such programs at this point but would like to hear more about potential impediments to implementation of programs statewide.

### ***Discussion on Bureau of Justice Assistance Subaward Options***

Chairperson Bennett recognized CSG staff to advise the Commission on the Bureau of Justice Assistance (BJA) subaward options. Staff noted the state has the opportunity to apply for up to \$500,000 in subaward funds from BJA. Options include funding a Justice Reinvestment Initiative coordinator who would coordinate activities among the Commission, the Kansas Sentencing Commission, and other related agencies. Another option for spending the subaward would cover purchases, training, and data system upgrades and modifications, such as the Carey Group Publishing 4:1 Behavior Management System.

Chairperson Bennett voiced a concern whether the Commission has the authority to accept the BJA subaward due to its very specific role granted to it by the Legislature. CSG staff responded the grant would sit with a state agency, likely KDOC, and the state would be expected to make the commitment upfront and be reimbursed by subaward funds. The Commission would not make any decision on whether the subaward should be accepted, but to recommend how funds should be spent.

**AUGUST 16, 2021**

### ***Reports of Subcommittees***

**Diversion Subcommittee.** Mr. Persinger reported additional persons had been added to the subcommittee as *ad hoc* members. He stated members have discussed the legal issues of pretrial diversion filing, uniform reporting, and the privacy of records. He noted the subcommittee believes public safety is the first priority while the second priority is to find ways to move people out of jail and into recovery or other forms of rehabilitation. Mr. Persinger reports the subcommittee is trying to learn more about what is being done in current diversion programs in the state and considering scalability of such programs for small, medium, and large population areas.

**Proportionality and Sentencing Subcommittee.** Chief Ackerman reported the group reviewed the border box briefly and discussed the Kansas Offender Registration Act (Registration Act) at length. He noted subcommittee member Jennifer Roth has a number of ideas from a public defender's perspective and that Sheriff Carr and Ms. Roth will create a list for further discussion at the next meeting.

**Research-Based Incentives Subcommittee.** Mr. Koehn reported the group has added the president of the Kansas Association of Court Services Officers and a member of the Kansas Community Corrections Officers Association as *ad hoc* members and Ms. Roth as a voting member of the subcommittee. Mr. Koehn stated the subcommittee has focused most of its attention on reviewing relevant pending legislation such as a bill that would give a 50.0 percent time served review hearing for all offenders, as well as a 7-day credit for each 30 days of substantial compliance.

The subcommittee also discussed average lengths of probation around the country, which is three years, compared to Kansas' one-year average. Mr. Koehn noted CSG staff will report on what incentives have worked well and which have not shown results in other states at the next subcommittee meeting.

**Standardization of Terms and Conditions Subcommittee.** Mr. Koehn, reporting for the group on behalf of Ms. Williams, stated the subcommittee reviewed examples of probation conditions across the state, which included 66 different conditions imposed by Court Services, Community Corrections, and KDOC. He stated subcommittee members also reviewed best practices for conditions of probation, current Kansas statutes, and the conditions that are common throughout the state. Mr. Koehn noted there is no single document outlining best practices for supervision terms anywhere in the state, according to CSG staff. Mr. Koehn also reported the subcommittee agreed changes need to be made to improve consistency in supervision conditions throughout the state. Finally, Mr. Koehn reported the goal of the subcommittee for the next meeting is to narrow down the number of general conditions that should be included statewide using a standard form.

**Consolidation of Supervision Subcommittee.** Mr. Koehn, reporting for the group on behalf of Professor Francis, stated the subcommittee is focusing on cases that are supervised by more than one entity and determining which should be the controlling supervision entity when that occurs. Mr. Koehn noted members also discussed whether an offender's supervision term should be determined by risk or by sentence length when multiple supervision terms exist. After reviewing the Ohio model legislation provided by CSG staff, members discussed potential complicating factors if Kansas were to adopt a similar model.

**Race in the Criminal Justice System Subcommittee.** Chairperson Bennett reported the subcommittee identified some of the high-priority issues discussed last year that should not get lost in this year's discussion, specifically related to law enforcement training regarding de-escalation; standardization of law enforcement policies;

legislation regarding gang designations; and the impact of traffic stops on people of color.

### ***Discussion on Bureau of Justice Assistance Subaward Options***

Chairperson Bennett recognized CSG staff to speak on the BJA subaward options. Staff stated it would like to postpone this discussion to allow time for subcommittees to develop recommendations to inform the decision on how to spend the subaward.

**SEPTEMBER 20, 2021**

### ***Reports of Subcommittees***

**Diversion Subcommittee.** Mr. Persinger stated the subcommittee discussed what successful diversion programs looked like and held some technical discussions on the feasibility of such programs. Chairperson Bennett stated there was a consensus among members that it would be difficult to establish statewide diversion standards due to the inconsistent access to services and resources across the state. The subcommittee also discussed the need for a mechanism to grant a diversion without associating it with a crime charged, as under current law, prosecutors are not supposed to offer these type of diversions because there is no way to ensure transparency and equity in their application. In response to this, subcommittee members discussed the possibility of creating a distinct diversion case number to memorialize such diversions, but the feasibility of this must be further studied by Office of Judicial Administration (OJA). Finally, the subcommittee discussed what types of cases these diversions should be used for.

**Consolidation of Supervision Subcommittee.** Professor Francis first noted the name of the subcommittee had been changed to Dual Supervision due to the incorrect impression among some that the purpose of the subcommittee was to consolidate supervising agencies. Professor Francis stated the subcommittee reviewed data provided by CSG staff that found between 1,500 and 3,600 offenders in Kansas are on supervision with more than one court or agency, which undoubtedly has resulted in duplication of resources. Professor Francis stated CSG has been working with the subcommittee to gather information on how dual supervision works in

other states. CSG staff also noted CSG had conducted focus groups on the topic with chief court services officers (CSOs) around the state and would be sharing suggestions made during those groups with the subcommittee at the next meeting.

**Proportionality and Sentencing Subcommittee.** Ms. Roth reported the subcommittee is prepared to resubmit some of the suggestions the subcommittee made last year, as well as make new recommendations related to the penalties for failing to register pursuant to the Registration Act. Ms. Roth stated they also discussed whether an exit mechanism should exist for persons to eventually get off of the registry.

Jessica Domme, designee for the Attorney General, stated because Chief Ackerman is no longer employed as a police chief, the Office of Attorney General must appoint a replacement to comply with the statutory guidelines, but that Sheriff Carr has stated his intention to prepare the subcommittee report in the interim.

**Race in the Criminal Justice System Subcommittee.** Chairperson Bennett stated the group had not met since the last Commission meeting.

**Research-Based Incentives Subcommittee.** Ms. Williams, reporting on behalf of Mr. Koehn, stated CSG staff provided the subcommittee with research that shows early discharge is effective and has a positive impact on recidivism, but there is a lack of research on individual incentives. The subcommittee also reviewed the violations and noncompliance behavior grid used by KDOC. CSG staff noted this subcommittee will also receive an update regarding the information it has collected from chief CSOs relating to early discharge and incentives.

**OCTOBER 18, 2021**

### ***Reports of Subcommittees***

**Diversion Subcommittee.** Professor Jean Phillips reported the subcommittee was charged with looking at the following topics:

- Whether diversions should be sealed;

- Whether there should be statewide standards for post-filing diversions; and
- Whether pre-filing diversions should be allowed.

Professor Phillips stated the subcommittee decided against sealing diversions because the information needs to be available to prosecutors, and once an individual has successfully completed diversion, it is not accessible to the public. Professor Phillips stated the subcommittee decided against recommending statewide standards for post-filing diversions because that discretion should remain with the prosecutor based upon individual counties and needs. Professor Phillips stated the subcommittee agreed that legislation should be drafted to enable pre-filing diversions and the need to track such diversions. The subcommittee agreed pre-filing diversions would not be available for certain offenses or offenders who are not viable candidates for diversion.

**Standardized Terms and Conditions Subcommittee.** Ms. Williams reported the remaining subcommittee tasks include reviewing the final list of general conditions of supervision; finalizing the languages for searches and seizures and for waiving extradition; refining the sanctions and incentives language; and finalizing the financial obligations page. Additional recommendations the subcommittee plans to work on include fees, training, and statutory amendments to KSA 21-6607.

**Proportionality and Sentencing Subcommittee.** Sheriff Carr reported the subcommittee plans to recommend modifying the penalty for unlawful tampering with electronic monitoring devices; increasing the felony loss threshold for property crimes; including prior convictions with a domestic violence designation as a qualifying prior conviction under the domestic battery statute; combining the drug and nondrug sentencing grid into one grid; and implementing a compassionate release program. Sheriff Carr also stated the subcommittee discussed an option for modifying the Kansas Bureau of Investigation's (KBI) offender registry web interface to allow a user to distinguish between, sex, drug, and violent offenders when conducting a search on the database.

**Race in the Criminal Justice System.** Chairperson Bennett stated the subcommittee has been monitoring other subcommittee activity to ensure it is consistent with any recommendations this subcommittee might make. Other items the subcommittee continues to discuss are the current Kansas Commission on Police Officers' Standards and Training (KSCPOST) curriculum as it relates to the role race plays in the criminal justice system, and the possibility of enhancing the data that gets recorded by law enforcement when they have any contact with individuals rather than just when the officer makes an arrest. Chairperson Bennett stated the subcommittee will discuss the impact of gang lists at the next meeting. Chief Hooper stated he is a KSCPOST commissioner and would have some insight to share on KSCPOST's behalf at the next meeting if desired by the subcommittee.

**Research-Based Incentives Subcommittee.** Mr. Koehn reported the subcommittee had agreed to not recommend the passage of 2021 HB 2084 regarding automatic judicial review of 50.0 percent of supervision term served due to its fiscal impact. The subcommittee also decided it would not recommend the alternative early discharge option of allowing a 7-day credit for each 30 days of substantial compliance contained in that bill because it would be too burdensome to keep track of by supervision officers. Mr. Koehn stated the subcommittee also discussed what kind of standards could be implemented to ensure incentives are consistent throughout the state. One consideration the subcommittee discussed was making the 4:1 incentive system being rolled out by KDOC for those on parole available for offenders statewide and for OJA and KDOC to collaborate on a grid of incentives for both misdemeanors and felonies.

**Dual Supervision Subcommittee.** Professor Francis reported the subcommittee has been reviewing and discussing information compiled by CSG staff in developing a framework to address dual supervision cases. Professor Francis stated the subcommittee hopes that one of the benefits of reducing duplication of services and expenditures in these cases is cost-savings to the State. He noted the subcommittee is proposing to have the agency that imposes the most serious sentence be the controlling supervision agency due to the fact that such agency will likely have more resources

available for the offender. Professor Francis also noted another issue discussed by the subcommittee is the need for more efficient and standardized protocol for communication in dual supervision cases.

Chairperson Bennett asked Commission members if there was anything else left to discuss by the group before subcommittees begin to submit their recommendations. Representative Finney responded that she believes the Commission should hear from the Governor's Commission on Racial Equity and Justice (CREJ). Chairperson Bennett noted that report had been published earlier in the year and could be distributed to members. In addition, he welcomed a representative of CREJ to attend the next Race in the Criminal Justice System Subcommittee meeting to present its report. Chief Hooper stated he had reviewed the CREJ report as a KSCPOST commissioner and could provide his insights as well.

**NOVEMBER 15, 2021**

### ***Discussion and Consideration of Subcommittee Recommendations***

Chairperson Bennett stated the reports submitted by the subcommittees and a KLRD memorandum summarizing each subcommittee's recommendations had been distributed to Commission members and the public distribution list via email a week prior to this meeting. He stated the Commission would review the recommendations of five subcommittees (Diversion, Dual Supervision, Proportionality and Sentencing, Research-Based Incentives, and Standardized Terms and Conditions) at this meeting, and subsequently vote on which recommendations to approve as a Commission. The recommendations of the Race in the Criminal Justice System Subcommittee would be considered and voted on at the November 22, 2021, meeting.

The chairpersons of each subcommittee briefly summarized the recommendations contained in their respective reports. Following discussion, the Commission voted to approve all of the recommendations contained in the Diversion, Dual Supervision, and Standardized Terms and Conditions subcommittee reports.

The Commission voted to approve all recommendations of the Proportionality and Sentencing Subcommittee with the exception of a recommendation related to judicial review of 50.0 percent probation term served contemplated by 2021 HB 2084, as it conflicted with a recommendation made by the Research-Based Incentives Subcommittee.

Following discussion on a recommendation in the Research-Based Incentives Subcommittee report regarding a proposed amendment to KSA 21-6608, Mr. Koehn agreed to submit an amended report with modified language based on the Commission's discussion to be discussed and voted on at the November 22 meeting.

**NOVEMBER 22, 2021**

### ***Discussion and Consideration of Subcommittee Recommendations***

Chairperson Bennett stated the Commission must consider the Race in the Criminal Justice System subcommittee report as well as discuss and approve the amended language drafted by Mr. Koehn for the Research-Based Incentives Subcommittee report. Chairperson Bennett noted that Judge Glenn Braun had contacted him after the last meeting to add to the discussion regarding diversion to suggest the Legislature look into standardizing diversion fees across the state. Mr. Koehn described the changes he made to the subcommittee report with regard to language of KSA 21-6608(d). The Commission voted to approve the report in its entirety with that change.

Chairperson Bennett summarized the recommendations contained in the Race in the Criminal Justice Subcommittee report, and discussion on each recommendation followed. The Commission voted to adopt each of the subcommittee's recommendations, with modifications suggested by Commission members with respect to recommendations related to officer training and criminal street gang membership.

Sheriff Carr proposed adding a statement to the final report acknowledging the contributions of former Commission facilitator Reginald Robinson and Representative Russ Jennings to the Commission's work.

## CONCLUSIONS AND 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 in the Appendix).

At its November 15 and 22, 2021, meetings, the Commission discussed and approved the following recommendations based upon the subcommittees' proposals. The wording of some recommendations in this report was modified from the version submitted by the subcommittee for clarity and consistency.

[*Note:* The page numbers listed after each subcommittee heading indicate the corresponding page number of the Appendix in which the reports appear.]

### DIVERSION SUBCOMMITTEE (APPENDIX PAGES 2-5)

- Legislation should be drafted to permit pre-filing diversions that are filed with the district court, subject to database availability, for all misdemeanor and nonperson severity level 9 and 10 offenses, with the following exclusions:
  - Domestic violence;
  - Traffic violations;
  - Driving while under the influence; and
  - Sex offenses, including misdemeanor sex offenses;
- The legislation should encourage district and county attorneys to offer pre-filing diversions only to those individuals who appear to have a viable chance of success;
- Court costs should be assessed for pre-filing diversions, a portion of which should be allocated to OJA, to cover the costs for tracking pre-filed diversions; and
- The KBI should record pre-filing diversions in the same manner that post-filing diversions are recorded.

In addition to these recommendations, the subcommittee made the following observations:

- It would be difficult to establish statewide standards for post-filing diversions because individual counties have different needs and issues, and it is important that prosecutors have the discretion to appropriately resolve a criminal case according to the community's needs. The inconsistent access to services and resources across various areas of the state also would make it difficult to impose statewide standards; and
- For criminal history records, the current KBI procedure for diversion records strikes the appropriate balance between privacy and the need for prosecutors to have access to information about prior diversions.

### DUAL SUPERVISION (APPENDIX PAGES 6-14)

- Adopt the following guidelines for consolidating supervision of persons under multiple supervision terms:
  - Between district courts, the longest underlying incarceratory sentence is controlling;
  - If a new sentence would place a person under supervision on concurrent supervision, control of the case should be determined after considering these factors:
    - Unless the severity of a new offense impacts the level of supervision, the defendant should remain under the supervision of the originating entity throughout the length of the sentence;
    - If the severity of a new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision entity and remain in place through the end of the supervision sentence;
  - If concurrent supervision involves multiple cases with equal sentences, the supervision entities involved must agree on a controlling case after considering these factors:
    - The residency of the person on supervision;

- The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority;
- The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority;
- The level of supervision and resources available to the person on supervision by each supervising entity;
- The supervising entity enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:
  - Set a payment schedule consistent with ability to pay;
  - Apportion payments for each case; and
  - Allow one supervision fee, only for the entity providing supervision;
- The supervising officer enforces all conditions of supervision;
- Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case supervision entity. If supervision is revoked, all pertinent information shall be shared with the corresponding entities for appropriate action to be taken;
- The court with jurisdiction of the controlling case determines when supervision will be terminated;
- KDOC and OJA should enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of OJA shall be supervised exclusively by either KDOC or OJA:
  - The supervising authority will provide notice and supervision history documentation to the concurrent supervision entity upon initiation of revocation proceedings so the concurrent supervision entity can notify the appropriate court or Prisoner Review Board;
  - The supervising entity will provide notice and supervision history documentation to the concurrent supervision entity 30 days prior to the termination of supervision so the supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision;
- Prior to supervision responsibilities being transferred, the originating supervision entity is responsible for ensuring the risk and needs assessment and all data in the case file are current; and
- Upon transfer of supervision, the receiving entity has responsibility for overseeing supervision conditions and updating risk and needs assessments and the case plan as indicated;
- Adopt recommendations of the Standardized Terms and Conditions Subcommittee related to creating statewide conditions of probation;
- Court Services, Community Corrections, and KDOC should develop recommended standards for communication, including:
  - The process for transfer should include the following information:
    - Journal entry;
    - Pre-sentence investigation;
    - Risk assessment;
    - Specialized assessments; and
    - Conditions of probation;
  - Multidisciplinary team meetings should be scheduled by risk level. Prior to the meeting, a list of persons under supervision to be discussed should be distributed to appropriate supervisors or officials:
    - Monthly for high-risk persons under supervision;
    - Bimonthly for moderate-risk persons under supervision; and
    - Quarterly or as needed for low-risk persons under supervision;
  - Agencies should outline expectations and processes for sharing case management progress based on the supervising entity’s policies and procedures related to conditions of

- probation and release; progress reports, which include violation reports; incentives and sanctions; and information sharing with law enforcement;
- Supervising entities should have access to client information maintained by other supervising entities; and
- Points of contact should be identified for dispute resolution within KDOC and OJA to resolve disagreements between entities.

**PROPORTIONALITY AND SENTENCING (APPENDIX PAGES 15-47)**

- Decrease the penalties from drug grid level 5 to be similar to nondrug level 8 for proportionality reasons by supporting the passage of provisions included in 2019 HB 2047 and 2021 HB 2139;
- Increase the felony loss threshold from \$1,000 to \$1,500 on 11 property crimes by supporting the passage of provisions in 2020 HB 2485 and 2021 HB 2028;
- Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation by supporting the passage of provisions in 2020 HB 2518 and 2021 HB 2029;
- Amend the drug grid and nondrug grid by expanding presumptive probation and border box zones, in order to better reflect actual sentencing and reduce downward departures; continue to ensure adequate prison capacity for people convicted of off-grid and other extremely serious crimes by supporting the passage of provisions of 2021 HB 2146 and 2021 HB 2350;
- Implement a more open and expanded compassionate release program by supporting the passage of provisions of 2020 HB 2469 and 2021 HB 2030;
- Propose combining both sentencing grids instead of utilizing drug and nondrug grids;

- Allow early discharge from prison for nonviolent drug offenders after 50 percent of sentence is served as contemplated in 2020 HB 2484 and 2021 HB 2147;
- Decrease the penalty for the offense of noncompliance with the Kansas Offender Registration Act, as proposed in 2021 HB 2349;
- Add an exit mechanism to Kansas Offender Registration Act for non-violent offenders to be removed from the offender registry; and
- Request the KBI change its default setting on the online offender registry from having all categories checked for search purposes to having the users check the boxes for the categories they are interested in and that KBI track how many users search each category.

**RACE IN THE CRIMINAL JUSTICE SYSTEM (APPENDIX PAGES 48-58)**

- Create a statewide advisory board to monitor the development and implementation of co-responder programs across Kansas;
- Expand the use of crisis intervention training, implicit bias training, diversity training, de-escalation training, and encourage “guardian” training as opposed to “warrior” training for existing officers through Kansas Commission on Police Officers’ Standards and Training (KSCPOST) and for new officers graduating from the Kansas Law Enforcement Training Center. Such expanded training should also be offered by KDOC and OJA for probation officers, parole officers, and licensed mental health providers;
- Expand the membership of KSCPOST enhance its diversity;
- Amend KSA 21-6316 to change the requirement that bail be “at least \$50,000” to a requirement that bail be “appropriately set;”

- Reevaluate the definitions related to criminal street gangs found in KSA 21-6313;

In addition to these recommendations, the subcommittee made the following observations:

- The Governor’s Commission on Racial Equity and Justice (CREJ) should be acknowledged for its exhaustive work and would draw particular attention to those areas of overlap between this Commission and CREJ such as co-responder programs and enhanced training for law enforcement;
- The expanded use of co-responder programs would be beneficial to Kansans but the following issues must first be resolved:
  - Consistent funding sources for the implementation of co-responder programs and the hiring and retention of appropriately-trained mental health professionals; and
  - A deficit of qualified mental health professionals in both rural and urban areas of the state;
- The Legislature should review the report published by CSG entitled “Kansas Justice Reinvestment Initiative Co-Responder Programs— Focus Group Summary” attached as an appendix to this report for detailed suggestions regarding the implementation and expansion of co-responder programs;
- The subcommittee recognizes the exhaustive work of the Pretrial Justice Task Force chaired by Judge Karen Arnold-Berger, which published its report in November 2020; and
- More data needs to be collected by law enforcement when engaging with civilians, and such data needs to be maintained in an accessible, statewide database.

#### RESEARCH-BASED INCENTIVES (APPENDIX PAGES 59-62)

- Incentives and early discharge from probation should include misdemeanor and felony cases;
- The House Committee on Corrections and Juvenile Justice should not move forward with certain amendments to KSA 21-6608(d) as proposed in 2021 HB 2084, specifically:
  - On pages 2-3, amending KSA 21-6608(d): “In addition to the provisions of subsections (a), a defendant *may be discharged* early from probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction *if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant will have served 50% of such defendant’s term of supervision to determine if a defendant has been in substantial compliance with the defendant’s conditions of supervision.* The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.”
  - On page 3, adding (e): “*A defendant shall earn credit to reduce such defendant’s term of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction when the defendant has substantially complied with the conditions of such defendant’s supervision. A defendant shall be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant’s supervision.*”
  - On page 3, adding (f): “*The Kansas sentencing commission shall adopt procedures and forms to standardize the process for calculating earned*

- discharge credit pursuant to this section.”*
- On page 3, adding (g): *“The following factors apply and may be considered in determining whether substantial compliance with supervision exists: (1)(A) History of compliance with terms and conditions of supervision; (B) payment of fines, costs and restitution; and (C) successful completion of any required treatment program. (2) Completion of all terms and conditions of supervision is not required. (3) Offenders subject to the provisions of K.S.A. 2020 Supp. 21-6824, and amendments thereto, shall not be eligible for early discharge.”*
  - KSA 21-6608(d) should be amended by striking the following language:
    - “A defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court”;
  - KSA 21-6608(d) should be amended by adding the following language, with the intention of not limiting the power of the court to terminate probation at any point, but to provide supervision officers a path to recommend early termination of probation following these benchmarks:
    - A defendant who has a history of compliance with terms and conditions of supervision;
    - Has successfully completed any required treatment or programming;
    - Has completed 75% of their required supervision period except when prohibited by statute;
    - After a review of all fines, costs, and restitution, may be eligible for discharge from such period of supervision by the court; and
    - Early termination from probation shall be retroactive;
  - The 4:1 Behavior Management System developed by Carey Group Publishing should be implemented statewide to guide and track responses to defendant pro-social and violation behaviors; and
  - Encourage KDOC and OJA to collaborate on a sanctions and incentives structure to be used within the system.

**STANDARDIZED TERMS AND CONDITIONS  
(APPENDIX PAGES 63-73)**

- Adopt the following standardized terms and conditions of supervision:
  - Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer;
  - Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision;
  - Report to your supervision officer as directed and be truthful in all matters;
  - Remain within the State of Kansas and other specified area as defined by your supervision officer;
  - Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information;
  - Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner;
  - Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test;

- Participate in assessments, treatment, programming, and other directives by the Court or your supervision officer;
- Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer; and
- You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

In addition to these recommendations, the subcommittee identified the following issues that need further exploration by the Commission:

- Encourage KDOC and the Prisoner Review Board to adopt common language where appropriate from the proposed

standardized (general) conditions of supervision;

- Encourage a reform oversight committee to consider including safety- and liberty-restricting conditions that are not tied to risk or needs assessments;
- Encourage a reform oversight committee to create special conditions of supervision with consistent language and give guidance on how to apply such special conditions in an evidence-based manner;
- Encourage a reform oversight committee to develop a training around general and special conditions in Kansas to district and county attorneys, defense attorneys, and community supervision officers; and
- Collaborate with the Robina Institute of Criminal Law and Criminal Justice and the University of Cincinnati for statewide training on special conditions.

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Kansas Criminal Justice Reform Commission  
Diversion Subcommittee

**Background**

During the 2021 legislative session, 2021 HB 2077 was passed, which narrowed the scope of the Kansas Criminal Justice Reform Commission. At the June 29, 2021, meeting of the Kansas Criminal Justice Reform Commission, the Diversion Subcommittee was established.

HB2077 specifically asked for recommendations that 1) permit pre-filing and post-filing diversions be an option in all district courts, 2) set minimum statewide standards for diversion, and 3) provide a method for sealing or removing diversion from criminal records.

The Diversion Subcommittee held all meetings by zoom. The first meeting was July 13, 2021, and Bill Persinger was elected as the subcommittee's chairperson. The subcommittee then met on August 10, 2021, August 24, 2021, September 14, 2021, October 12, 2021, and October 29, 2021.

**Working Group Recommendations**

**I. Legislation**

The Diversion Subcommittee to the Criminal Justice Reform Commission recommends that legislation be drafted to permit pre-file diversions that are filed with the district court, subject to database availability, for all misdemeanor and non-person, severity level 9 and 10 offenses, with the following **exclusions**:

- a. domestic violence
- b. traffic tickets
- c. driving while under the influence
- d. sex offenses, including misdemeanor sex offenses.

The legislation should encourage district and county attorneys to offer pre-file diversions only to those individuals who appear to have a viable chance of success.

Court costs will be assessed for pre-filing diversions, a portion of which will be allocated to the Office of Judicial Administration to cover the costs for tracking pre-filing diversions.

The Kansas Bureau of Investigation will record pre-file diversions in the same manner that post-filing diversions are recorded.

**II. Discussion**

**A. Pre-filing Diversions**

According to the Kansas Attorney General's Opinion, 97-34, if a county or district attorney has a policy that permits the dismissal of charges pursuant to specific terms, then the county or district attorney is deemed to have a diversion program and they must comply with the requirements of K.S.A. 22-2907 *et. seq.* K.S.A. 22-2907(1) provides for diversions "after a complaint has been filed charging a defendant with commission of a crime. . ." If an individual receives a diversion, it is associated with a crime charged and filed with the clerk of the district

court. Currently, there is no mechanism for pre-charge filing of diversions and no method of recording those diversions with the district court.

The Diversion Subcommittee recommends the legislature pass a statute permitting pre-charge filing of diversions. There are circumstances where the filing of a charge, even if there is no conviction, can negatively impact an individual. Licensing boards or employers may hold the filing of charges against an individual. A district or county attorney should have the flexibility to not file criminal charges but allow the individual to enter a pre-filing diversion. If successful, the individual would not have to report that they had been charged with a crime.

This new tool for district and county attorneys should not be used for defendants with charges that would be hard to prove. In other words, district and county attorneys should not use this option for cases that would typically result in a dismissal. Cases that would typically be dismissed, should be dismissed. But for some cases that would usually result in formal charges, this is an opportunity to work with a client and give them an opportunity to succeed before getting pulled deeper into the criminal justice system.

Less stringent options than filing charges can also ease the burdens of a district or county attorney and may be appropriate to address low level conduct. For instance, a group of 18–20-year-olds could be issued citations for being in possession of alcohol at a party. The district or county attorney may want to offer them a chance to do community service to resolve the case. If the case is charged, formal diversion, with the attendant waivers of rights and court appearance would be required. See, K.S.A. 22-2907(1). For certain low-level offense, such as nonperson, nonviolent misdemeanors, diversion following formal charges may be unnecessarily burdensome.

Although a criminal charge would not be filed with a pre-file diversion, the subcommittee strongly suggests there should be a system in place to record and review these cases. Filing these cases in District Court would allow for transparency and tracking by the district or county attorney, as well as allow for the payment of restitution. When a criminal case is filed, it is given a formal criminal case number, whether that is CR for criminal cases, DV for domestic violence cases, or TR for traffic tickets. To track pre-file diversions and file them with the district court, a type of case number must be associated with the filing.

Input was sought from the Office of Judicial Administration. According to OJA, it is possible to give a pre-file charge a MISC or other designation for district court filing purposes. The question was whether OJA could absorb the new designation into the current database and the attendant costs. OJA also raised the issue of whether it is appropriate for the judicial branch to be involved with pre-filing. Like the individual who pays court costs for a post-filing diversion, the subcommittee recommends that court costs should also apply to pre-filing diversions. A percentage of the costs should be allocated to OJA to offset its increased costs.

Because post-charge diversion programs already exist for various offenses and pre-file diversion is a more lenient option, the pre-file option should apply only in certain circumstances. First, the district or county attorney should have reason to believe that the person is a good candidate and likely to be successful with the requirements of the pre-file diversions. Second, only certain crimes should qualify. After a review of various misdemeanors and low-level felony charges, the subcommittee agreed that all misdemeanors, except those considered sex offenses, such as misdemeanor sexual battery, should be included. The same holds true for nonperson severity level 9 and 10 offenses. Excluded from pre-file diversions would be all domestic violence offenses and all driving under the

influence offenses. In addition, traffic offenses would not be eligible for a pre-file diversion as the traffic ticket will already trigger a filing.

If the individual successfully completes the pre-file diversion requirements, no charges would be filed. However, the pre-file diversion should still be recorded so that district and county attorneys are aware of the conduct in evaluating future conduct. If the individual does not satisfy the requirements of the pre-file diversion, a criminal case is filed.

## **B. Standardizing Post-filing diversion**

The consensus of the subcommittee is that it would be difficult to establish statewide standards for post-file diversions. Once a charge is filed, it is in the prosecutor's discretion how to proceed with a case. Individual counties have different needs and issues, and it is important that district or county attorneys have the discretion to appropriately resolve a criminal case according to the community's needs. The inconsistent access to services and resources across various areas of the state would also make it difficult to impose statewide standards.

## **C. Sealing Diversion Records.**

The subcommittee was charged with examining whether diversion records should be sealed once the diversion is successfully completed.

The subcommittee learned that when an individual enters a diversion with the district or county attorney, the journal entry and order is sent to the Kansas Bureau of Investigation. The KBI records the diversion, and it is noted on the record that the diversion is in progress. Once the diversion is successfully completed, the record with the KBI is closed. A closed diversion record is not open to the public. If the record is later expunged, the record is sealed except for limited qualifying circumstances.

For criminal history records, the current KBI procedure strikes the appropriate balance between privacy and the need of district or county attorneys to have access to information about prior diversions. If an individual has successfully, but repeatedly, completed diversions, a prosecutor may decide that the individual should not be given repeated diversions. In the interest of transparency statewide, district and county attorneys from different counties need access to that information.

Although a successfully completed diversion does not appear in background checks, the subcommittee notes that the public can still gain access to those records by accessing district court records via public access portions of district court websites unless the individual expunges their record.

## **Conclusions**

This report represents the recommendations of the Diversion Subcommittee based on the specific charges of 2021 HB2077. We are aware that the ability to implement pre-file diversions will depend upon the ability to incorporate a new classification system into OJA's case management system and the ability to absorb the associated costs. The subcommittee believes that it is society's best interest to allow individuals who meet the criteria to avoid the collateral consequences of having a criminal case filed.

Page Break

Respectfully Submitted this 3rd day of November, 2021

Bill Persinger  
Diversion Subcommittee Chair  
CEO, Valeo Behavioral Healthcare

Marc Bennett  
Chair of the Commission  
District Attorney, Sedgwick County

Tabitha Owen  
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Ex-Officio Member

Kansas Criminal Justice Reform Commission  
Dual Supervision Subcommittee  
Report

**November 1, 2021**

To: Criminal Justice Reform Commission

Re: Report on this session's work

Members of the Criminal Justice Reform Commission,

This subcommittee picked up on work that was started last session, meeting 6 times over the past several months. (August 9, 2021; September 13, 2021; September 27, 2021; October 13, 2021; October 20, 2021, and October 28, 2021.) During these meetings, we received information and examined issues related to people being supervised by more than one supervision officer as conditions of sentences for more than one criminal conviction. The Council of State Governments (CSG) has been a tremendous resource, gathering relevant information for this subcommittee. CSG's information gathering included, among other things, conducting focus groups of Chief Court Services Officers and Community Corrections Directors from rural and urban supervision agencies. A report created by CSG titled *Consolidation of Concurrent Supervision*, guided this subcommittee and is attached as an exhibit to this report.

Problem Statement: In Kansas, it is estimated that 5 to 10 percent of the supervision population—1,500–3,600 people—are on supervision with more than one supervision officer. There is no consistent process for how concurrent supervision cases are handled. And no formal process exists to ensure coordination between supervision entities. This results in a lack of coordination, duplication of assessments, unnecessary or multiple drug and alcohol testing, conflicting conditions of supervision, multiple supervision entity fees, and duplicative case planning and supervision meetings. Duplication of supervision efforts expends unnecessary state resources. Reporting to multiple supervising officers can also interfere in a person's ability to maintain steady employment. This can have a cascading effect of negatively impacting housing and increasing the risk of recidivism.

Goal: To provide a statutory framework for judges to consolidate supervision of persons under multiple supervision entities so a person reports to one supervision officer as an extension of Kan. Stat. Ann. § 21-6610 (2020), which allows transfer of supervision. This proposal is intended to improve outcomes for persons under supervision and communities, with the expectation that by reducing duplication of services and expenditure of resources, there will also be a budgetary benefit.

Recommendation: This subcommittee recommends that procedures be adopted so that persons under dual or multiple supervision report to only one supervising officer. The supervising entity would oversee applicable terms of all cases for which the person under supervision is being supervised. For this to occur, standards need to be established to determine which supervising entity will supervise the individual, addressing issues surrounding jurisdiction, enforcement of sentence provisions, and collection of fees. In addition, standards should be established to improve communication between entities and to facilitate a ready means of sharing information about people under supervision.

The three supervising entities are: Community Corrections (county level probation with state oversight and funding by Department of Corrections), Parole (under the Department of Corrections), and Court Services (under the Office of Judicial Administration). Supervision philosophy, policies, program offerings, and resources are different among all three entities. In addition, the court has jurisdiction over those persons supervised by two entities (Community Corrections and Court Services) and the other (Parole) is under the authority of the Secretary of Corrections and jurisdiction of the Prisoner Review Board.

Dual or multiple supervision can occur under several circumstances, with several combinations of courts and agencies. A person may be under supervision from a municipal court and a district court, a person may be under supervision from district courts located in different judicial districts, or a person may be under supervision for multiple cases within a single district court, to identify a few. For example, if someone was sentenced in one case to supervision by Court Services and in another case to supervision by Community Corrections, the plan would be to have just one of the entities actively supervise the person under supervision.

To implement a plan in which people under multiple supervision would be supervised by one entity, guidelines must be established to determine which entity should supervise an individual.

*1. Considerations to determine which entity will supervise a person under dual or multiple supervision:*

a. Concurrent Municipal Court/District Court Sentences

The subcommittee spent minimal time addressing dual supervision involving municipal courts. There are challenges to creating legislation that will uniformly govern municipal courts throughout the state. This may be an area for the legislature (or implementation team following up on supervision reform) to explore in the future with input from all stakeholders, including municipalities.

b. Concurrent District Court/District Court Sentences

A challenge in any dual or multiple supervision situation is to match a person under supervision with the services and the supervising entity that is best tailored to the address the needs and rehabilitation of the person under supervision. As such, the subcommittee suggests that the case

involving the longest underlying incarceratory sentence should control which entity will supervise the sentences. The longest sentence will generally involve the most relevant risk and needs assessment. This in turn will identify the most appropriate services for a person under supervision. With that information, the entity best equipped to provide those services should be the entity that supervises all the concurrent sentences. Jurisdiction for each case will remain with each sentencing court, unless the courts with jurisdiction over each case agree to transfer jurisdiction.

The subcommittee proposes the following guidelines for consolidating supervision of persons under multiple supervision:

- i. Between district courts, the longest underlying incarceratory sentence is controlling. (See additional factors to consider below.)
- ii. If a new sentence would place a person under supervision on concurrent supervision, control of the case should be determined after considering these factors:
  - a. Unless the severity of a new offense impacts the level of supervision, the defendant should remain under supervision of the originating entity throughout the length of the sentence.
  - b. If the severity of a new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision entity and will remain in place through the end of the supervision sentence.
- iii. If concurrent supervision involves multiple cases with equal sentences, the supervision entities involved must agree on a controlling case after considering these factors:
  - a. The residency of the person on supervision
  - b. The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority
  - c. The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority
  - d. The level of supervision and resources available to the person on supervision by each supervising entity
- iv. Financial Obligations: The supervising entity enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:
  - a. Set a payment schedule consistent with ability to pay.

- b. Apportion payments for each case.
  - c. Allow one supervision fee, only for the entity providing supervision.
- v. Conditions of Supervision: The supervising officer enforces all conditions of supervision
- vi. Sanctions: Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case supervision entity. If supervision is revoked, all pertinent information shall be shared with the corresponding entities for appropriate action to be taken.
- vii. Termination of Supervision: The court with jurisdiction of the controlling case determines when supervision will be terminated.
- viii. Kansas Department of Corrections (KDOC) and Concurrent Supervision: KDOC and Office of Judicial Administration (OJA) enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of OJA shall be supervised exclusively by either KDOC or OJA
  - a. Revocation: The supervising authority will provide notice and supervision history documentation to the concurrent supervision entity upon initiation of revocation proceedings so the concurrent supervision entity can notify the appropriate court or Prisoner Review Board.
  - b. Termination of Supervision: The supervising entity will provide notice and supervision history documentation to the concurrent supervision entity 30 days prior to the termination of supervision so supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision.
- ix. Prior to supervision responsibilities being transferred, the originating supervision entity is responsible for ensuring that the risk and need assessment, and all data in the case file is current.
- x. Upon transfer of supervision, the receiving entity has responsibility for overseeing supervision conditions and updating risk and need assessments and the case plan as indicated.

## 2. *Develop Consistent Conditions of Supervision*

Conditions of supervision across the state are inconsistent. The lack of consistency presents challenges when control of the case moves from Court Services supervision to Community Corrections, or vice versa. There are occasions in which the originating court imposes a

condition or special condition that may not be a service provided by the supervising entity.  
The subcommittee recommends:

- a. The legislature should adopt the recommendations of the KCJRC Standardized Terms and Conditions of Supervision subcommittee as they have addressed this issue by creating statewide conditions of probation.

### *3. Improving Communication Between Supervising Agencies:*

Information gathered by CSG indicates that there is inconsistent sharing of information between agencies across the state. Lack of consistent communication between agencies makes proper supervision of multiple supervised persons a challenge. In addition, information received by the subcommittee indicates that information about persons under supervision is not consistently shared with law enforcement officers.

To facilitate better exchange of necessary and useful information, the subcommittee recommends that Court Services, Community Corrections, and Parole develop recommended standards for communication.

- a. Process for transfer should include the following information
  - Journal Entry
  - PSI
  - Risk Assessment
  - Specialized Assessments (WRNA, LSCMI, Drug and Alcohol Assessment.)
  - Conditions of Probation
- b. Requirement for multi-disciplinary team (MDT)(supervising officer, treatment provider, etc.) meetings should be scheduled by risk level. Prior to the meeting, a list of persons under supervision to be discussed should be distributed to appropriate supervisors or officials.
  - Monthly for high risk
  - Bimonthly for moderate risk
  - Quarterly or as needed for low risk
- c. Agencies should outline expectation and process for sharing case management progress based on the supervising entity's policies and procedures
  - Conditions of Probation/Release
  - Progress Reports
    - Violation Reports
      - Major violations
      - Minor violations
    - Incentives and Sanctions
  - Share information with Law Enforcement

- d. Supervising entities should have access to client information maintained by other supervising entities.
- e. Identify points of contact for dispute resolution within KDOC and OJA to resolve disagreements between entities.

## Consolidation of Concurrent Supervision

**Problem Statement:** In Kansas, approximately 5 to 15 percent of the supervision population—1,500–3,600 people—are on supervision with more than one supervision officer. There is no consistent process for how concurrent supervision cases are handled. And no formal process exists to ensure coordination between supervision entities, which results in a lack of coordination, duplication of assessments, unnecessary drug and alcohol testing, conflicting conditions of supervision, multiple supervision agency fees, and duplicative case planning and supervision meetings.

**Goal:** To provide a statutory framework for judges to consolidate concurrent supervision terms so a person on supervision is only reporting to one supervision agent as an extension of [Kan. Stat. Ann. § 21-6610 \(2020\)](#), which allows transfer of supervision.

### PROPOSED GUIDELINES FOR CONSOLIDATING CONCURRENT SUPERVISION CASES

#### Controlling Case:

1. District court case supersedes municipal court case as the controlling sentence regardless of sentence length.
2. Between district courts, the longest possible sentence is controlling. (*See additional factors to consider below.*)
3. If a new sentence would place a defendant on concurrent supervision, control of the case should be determined after considering these factors:
  - a. Unless the severity of the new offense impacts the level of supervision the defendant should be under, the originating agency should maintain control of the case throughout the length of the sentence.
  - b. If the severity of the new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision agency and will remain in place through the end of the supervision sentence.
4. If concurrent supervision cases have equal sentences, the courts involved must agree on a controlling case after considering these factors:
  - a. The residency of the person on supervision
  - b. The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority
  - c. The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority
  - d. The supervision intensity and resources available to the person on supervision by each supervising authority

**Financial Obligations:** The supervising court enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:

1. Set a payment schedule consistent with ability to pay.
2. Apportion payments to concurrent courts.
3. Allow one supervision fee, only for the agency providing supervision.

**Conditions of Supervision:** The supervising court enforces all conditions of supervision established by a concurrent court.

**Sanctions:** Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case. If supervision is revoked by the controlling case, all pertinent information shall be shared with the corresponding courts for appropriate action to be taken.

**Termination of Supervision:** The supervising court determines when supervision will be terminated.

**Kansas Department of Corrections (KDOC) and Concurrent Supervision:** KDOC and the court enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of the court shall be supervised exclusively by either KDOC or the court.

1. Revocation: The supervising authority will provide notice and supervision history documentation to the concurrent supervision agency upon initiation of revocation proceedings so the concurrent supervision agency can notify the appropriate court or Prisoner Review Board.
2. Termination of Supervision: The supervising authority will provide notice and supervision history documentation to the concurrent supervision agency 30 days prior to the termination of supervision so supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision.

## CONSIDERATIONS FOR THE SUBCOMMITTEE

### Controlling case:

1. Is there a process to ensure that all information can be made available from the originating court to the new court to determine case load assignment and conditions?
2. Prior to supervision responsibilities being transferred, should the originating court be responsible for ensuring that the risk and need assessment and case file are current?
3. Once the transfer of supervision takes place, should the receiving court take over responsibility of not just supervision conditions but updating risk and need assessments and the case plan?
4. Is there a time period that should be established for the receiving court/jurisdiction to reply to the originating court?
5. Is there a system that needs to be put in place to ensure there is an automatic process for the receiving court to provide all requested records to the originating court upon termination of supervision?

### Conditions of supervision:

1. Conditions of supervision across the state are inconsistent. In instances where control of the case moves from Court Services supervision to Community Corrections, or vice versa, what is the guidance on what to do should the originating court have a condition or special condition that is not within the conditions of the supervising agency?
2. If a violation of conditions occurs, does the receiving court have to notify the originating court within a certain period?

### KDOC and concurrent supervision:

1. Under [Kan. Stat. Ann. § 21-6606 \(2020\), 1b and 1c](#) state:
  - (b) It is within the power of the judiciary to decide whether those on supervision when convicted of a new misdemeanor offense can serve the sentence concurrently or consecutively.
  - (c) It is within the power of the judiciary to decide whether those on supervision when convicted of a new felony offense must serve the sentence consecutively to the previous sentence.

To adhere to this legislation, does the subcommittee think that drafted policy should specify and refer to this, stating that supervision would continue with the controlling agency prior to conviction of the concurrent case, unless the new conviction warranted a higher level of supervision? Or is the subcommittee interested in recommending that Kan. Stat. Ann. § 21-6606 (2020), 1b and 1c be changed to state that felony offenses may be served consecutively *or* concurrently?

*This project was supported by Grant No. 2019-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

**Report of the  
Kansas Criminal Justice Reform Commission  
Proportionality and Sentencing Subcommittee  
to the 2022 Kansas Legislature**

CHAIR: Sheriff Bill Carr

OTHER MEMBERS: Senator Rick Wilborn, Tabitha Owen, Jennifer Baysinger, Judge Glenn Braun, Scott Schultz, and Jennifer Roth

Past Member: Chief Todd Ackerman

Assisting agency: Counsel of State Governments (CSG)

**CHARGE:**

The Commission is directed by K.S.A. 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, health care, 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.

During the 2021 legislative session, HB2077 made some changes to the Kansas Criminal Justice Reform Commission. Section 2 of the bill amended K.S.A. 21-6902, adding a charge that pertains to the Proportionality and Sentencing Subcommittee: that the Commission monitor the implementation of previously endorsed commission recommendations and study other matters the commission determines are appropriate and necessary.

The Proportionality and Sentencing Subcommittee is interested in ensuring that existing policies and practices increase public safety. Subcommittee members have stated that people who commit crimes should be punished and held accountable, and that responses to crimes should be designed to provide punitive and corrective measures to change behavior of the offender, protect the public and be cost-effective for taxpayers.

### **Subcommittee Meetings:**

- June 28, 2021;
- July 23, 2021;
- August 30, 2021; and
- September 17, 2021

Listed below are the Proportionality and Sentencing Subcommittee's prior recommendations that were not finalized in the 2021 session, which the Subcommittee reaffirms, as well as a new addition. Additional recommendations approved in December 2020 are attached to this report.

### **Immediate (short term):**

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

Explanation: This recommendation is in support of 2019 HB2047 and 2021 HB2139 (the latter was heard on February 10, 2021, in House Corrections and Juvenile Justice Committee, where it remains). 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. Increase felony loss threshold from \$1,000 to \$1,500 on eleven (11) property crimes.

Explanation: This recommendation is in support of 2020 HB2485 and 2021 HB2028 (the contents of the latter were added to 2021 HB2229, which was stricken from the House calendar on March 5, 2021, as was HB2028 itself). This 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.

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

Explanation: This recommendation is in support of 2020 HB2518 and 2021 HB2029 (the latter passed the House on February 3, 2021, and was referred to Senate Judiciary). 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 K.S.A. 22-4616. As it stands currently, a defendant who has two prior convictions of aggravated battery under K.S.A. 21-5413 with a DV designation would not qualify as "prior convictions" if convicted of domestic battery under K.S.A. 21-5414. This change would ensure that the legislative intent of counting prior crimes against family members and intimate partners to determine the appropriate crime severity level at sentencing is followed.

4. Amend the drug grid and nondrug grid by expanding presumptive probation and border box zones, in order to better reflect actual sentencing and reduce downward departures; continue to ensure adequate prison capacity for people convicted of off-grid and other extremely serious crimes.

Explanation: These recommendations are in support of 2021 HB2146 (stricken from House calendar on March 5, 2021) and 2021 HB2350 (referred to House Corrections and Juvenile Justice Committee). The Subcommittee was committed to making informed decisions based on available data and research. An analysis of the sentencing grids showed that judges and prosecutors are already trying to ensure that people with addictions are sentenced to intensive supervision and treatment, in order to help them change their behavior, recover, and become productive citizens. The proposed changes allow judges and prosecutors to make the same decisions they are already making but allows them to be made easier without requiring the need for downward departures.

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

Explanation: This recommendation is in support of 2020 HB2469 and 2021 HB2030 (the latter passed the House on February 10, 2021, and was referred to Senate Judiciary). 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 are 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.

### **Long term:**

1. Propose combining both sentencing grids instead of utilizing drug and nondrug grids.

Explanation: Examination of the drug grid sentencing ranges discloses 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.

A survey was performed for this across the state of Kansas. Law Enforcement, Judges, Prosecutors, BIDS Attorneys, Private Defense Counsel were asked to participate. The survey shows 54.79% agreed they need to be combined. This percentage is low if you look at just the prosecutors and law enforcement. We also asked if the top five drug and nondrug offenses should have the incarceration ranges be re-worked. All ten offenses were overwhelmingly answered with a yes. (The survey is attached.)

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

Explanation: This is in support of 2019 HB2052 (including the Office of Judicial Administration balloon amendments proposed last legislative session) and 2021 HB2084 (referred to House Corrections and Juvenile Justice Committee). 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.

3. Early discharge from prison for nonviolent drug offenders after 50% of sentence is served.

Explanation: This is in support of 2020 HB2484 and 2021 HB2147 (the latter was heard on February 16, 2021, in House Corrections and Juvenile Justice Committee, where it remains). 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. Decrease Penalty to the Kansas Offender Registration Act.

Explanation: This is a new recommendation. The Subcommittee reviewed last year's survey (referenced earlier), which showed that 70% of respondents answered yes when asked if the penalties for the offense of noncompliance with the offender registration act should be re-worked.

The Subcommittee recommends the penalties proposed in 2021 HB2349 (stricken from House calendar on March 5, 2021). HB2349, as introduced, would make a violation of the Act a class B nonperson misdemeanor upon a first conviction and a class A nonperson misdemeanor upon a second conviction. A third or subsequent conviction, or an aggravated violation of the Act, would be a severity level eight, nonperson felony. A violation consisting only of failing to remit payment to the sheriff's office would be a class C nonperson misdemeanor. When the underlying crime for which the offender is required to be registered is a misdemeanor, an aggravated violation of the Act would be a class A nonperson misdemeanor.

HB2349 comes from a Judicial Council report published in December 2020. HB2349 would make many other changes to KORA, but the Subcommittee's recommendations do not extend to those because they were outside the charge, not discussed, or we did not reach consensus around them.

The Subcommittee does recommend that:

- a. KORA should include an exit mechanism for non-violent offenders to get off of the offender registry; and
- b. KBI change its default setting on its online offender registry from having all categories checked (for search purposes) to having the users check the boxes for the categories they are interested in, and that KBI keep track of how many users opt to search each category.

The Subcommittee would like to thank The Council of State Governments and former Chief Todd Ackerman.

## I. Violent Crime

**Policy Objective 1:** Understand violent crime in Kansas at the incident level to improve investigation and build community trust.

### Key Findings – September

- Reported violent crime in Kansas has increased in recent years driven by increases in aggravated assaults.
- While the Kansas property crime rate has been higher than the U.S rate for decades, it wasn't until 2015 that the violent crime rate in Kansas rose above the national rate.
- Between 2010 and 2018, Kansas had the seventh-highest violent crime rate increase in the nation.
- In 2018, the aggravated assault rate was 19.2 percent over the 10-year average aggravated assault rate and the number of reported violent crimes increased 30 percent in metropolitan areas.
- Law enforcement officials, victim advocates, and members of the legal community report recent challenges responding to violent crime across the state. Since March 2020, reports of violent crime, and more specifically reports of domestic violence, have increased while custodial response options have reportedly decreased.

### Key Findings – October

- Pressures on the state budget have delayed the timeline of the Kansas Bureau of Investigation's (KBI) transition to incident-based reporting statewide.
- Meanwhile, despite best efforts at collaborative cross-jurisdictional investigation, without incident-level data it is hard to track incidents of violent crime, and specifically domestic violence, statewide.
- Police chiefs and sheriffs statewide report increased calls for transparency in police data, practices, and policies that echo national conversations about trust in the law enforcement system.
- Reported violent crime in Kansas has increased in recent years driven by increases in aggravated assaults.
- While the majority of reported violent crime occurs in Kansas's most populous areas, rural and frontier regions have also seen dramatic increases in reported violent crime.

### Improve statewide data collection and data transparency

#### **Immediate Actions**

- **Prioritize the transition to an incident-based reporting system.** Support KBI's transition to Kansas Incident-Based Reporting System (KIBRS); provide technical assistance to local law enforcement agencies necessary to transition to incident-based reporting.
- **Use incident-based data to understand potential disparity.** Collect, analyze, and make publicly available incident-level crime data that breaks down crime incidents by sex, race, geography, and relationship between perpetrators and victims.

#### **Long-Term Goals**

- **Support local law enforcement.** Prioritize the ability of local and state law enforcement agencies to collect and report incident-based data through funding and technical assistance.
- **Support collaboration.** Use incident-based data to guide intervention strategies appropriate to geographic regions and to foster cross-jurisdictional collaboration.

**Policy Objective 2:** Hold people who commit crime accountable and ensure they receive interventions needed to change their behavior and not reoffend.

Key Findings – September

- Rates of domestic violence are high across the state, with urban centers, like Wichita, seeing the biggest increases.
- From 2010 to 2018, domestic violence homicides increased 16 percent, from 32 to 37. In 2018, 25 percent of all 146 homicides were domestic violence related.
- In recent months, safety regulations and public health concerns limit capacity of state prisons, county jails, and local lock-ups. Community-based services and supervision are over capacity and are working to remotely serve individuals in need of services, support, or supervision.

Key Findings – October

- Law enforcement report that the majority of aggravated assault and battery calls for service and arrests are for domestic violence offenses or are domestic violence related.
- Law enforcement also report that increased substance use, namely alcohol and methamphetamine, is connected to rising calls for service for serious domestic violence incidents.
- In recent months, there have been double to triple the number of calls for service for serious domestic violence incidents.
- Communities are using the coordinated community response model to strengthen the management of domestic violence in Kansas communities.
- BIP is regulated in Kansas through a statewide certification process, but orders for BIP assessment and to BIP programming vary jurisdictionally.

Hold people who commit crime accountable and ensure they receive interventions needed to change their behavior and not reoffend.

**Immediate Actions**

- **Disallow anger management programming** in cases of intimate partner violence. Replace anger management in these cases with batterer’s intervention programming.
- **Require BIP assessment and programming at the time of first offense.** People who perpetrate domestic violence should be sentenced to BIP. Providers of BIP should use evidence-based practices and collaborate closely with victim service providers and with parole and probation supervision agencies. Expand SB 123 to include provision of determination of need for BIP assessment and programming. Expand access to include pretrial access.
- **Fund BIP assessment and programming to alleviate cost burden on participants.** BIP must be mandatory and state subsidized. Allow domestic violence special program fees collected by judicial districts to be used to assist individuals sentenced to BIP with BIP provider fees.

Strengthen coordinated community response teams and increase local case coordination related to violent crimes, including homicide, child abuse, sexual assault, and domestic violence.

**Immediate Actions**

- **Require use of lethality assessments.** Statutorily mandate statewide adoption of lethality assessments. Use of lethality assessments should focus on assessing the risk of a person committing abuse as well as connecting victims to resources. Statutorily mandate statewide adoption of valid, reliable assessment instrument.

## II. Victims

**Policy Objective 1:** Increase the data available about victims in Kansas to ensure state funding priorities support victims' needs.

### Key Findings – September

- Kansas has three strategies to directly support victims of crime: services through grants, crime victim compensation, and restitution.
- The Kansas Crime Victim Compensation Board paid out \$3,341,390.31 to victims of crime in FY2019 and is an essential support for victims of violent crime.
- While applications to the Kansas Crime Victim Compensation Board have increased, the majority of victims of violent crime do not apply for compensation.
- Anecdotal evidence reveals that victim service agencies, law enforcement, and criminal justice agencies providing assistance to victims have faced increased pressures since March, including increases in the number of domestic violence incidents reported to law enforcement, increases in the number of domestic violence victims in community-based shelters, and backlogs for criminal justice-based protections like Protection From Abuse Orders (PFAs).

### Key Findings – October

- The Kansas Governor's Grants Program (KGGP) can use data and information from a Kansas victimization survey to ground surveys, interviews, focus groups, and other data-collection methods from the strategic needs assessment.
- The KGGP is currently conducting a comprehensive assessment to examine the service needs of crime victims.
- KGGP will use the assessment to develop a statewide implementation plan and determine Kansas funding priorities.
- Victims' experiences are shaped by their gender, race, class, and age and by the intersection of these identities. Talking to victims directly is the best way to learn about gaps in services and unmet needs.

### **Immediate Action**

- *Administrative:* Conduct a statewide victimization survey to understand the full scope of victimization across the state, capture polyvictimization that is occurring (people who experience multiple victimizations simultaneously), and identify survivor populations that systems may not currently be serving. This survey can inform priorities for statewide victim services funding. The victimization survey should be undertaken by the KGGP and should be conducted every five years.

**Policy Objective 2:** Strengthen victim-witness coordinator programs throughout the state.

### Key Findings – October:

- One hundred and two counties in Kansas have at least one designated staff person with victim-witness responsibilities; However, the depth of these responsibilities and victim-witness coordination varies from county to county by: funding source; individual job descriptions and competing job responsibilities; and hiring requirements.
- The Kansas Attorney General's Office provides technical assistance to victim-witness coordinators across the state, and resources for and responsibilities of victim-witness coordinators vary greatly by jurisdiction.

**Immediate Action**

- *Administrative:* Maximize technology to provide remote assistance to victim-witness coordinators in under-resourced areas.
- *Administrative:* Utilize the Kansas Academy of Victim Assistance provided by the KGGP to administer training on best practices to victim-witness coordinators across the state.

**Long-Term Goal**

- *Administrative:* Reinstate the Victim-Witness Coordinator Committee within the Kansas County & District Attorneys Association to increase best practices and peer support among victim-witness coordinators.

### III. Sentencing

#### Key Findings

##### Prioritizing Prison Space

- Prison population projections have changed based on the reduced population in 2020, with KDOC at 82 percent of capacity.
- Sustaining recent prison population reductions could save the state \$22 million in incarceration costs annually.
- Off-grid sentences to prison average 24 years in length, or over 2,000 bed years in a single year of sentencing for the most serious crimes.
- Nondrug grid analysis shows low rates of revocation for a new offense for people placed on community corrections in 2017.
- Research has shown that there is no public safety benefit to using incarceration for lower-risk people who can be supervised in the community.
- Nondrug grid analysis shows that sentences in 6C through 6I are usually non-prison sentences even though these are presumptive prison cells.

##### Drugs

- From FY2010 to FY2019:
  - The number of felony drug **cases filed** in district court **increased 125 percent**; and
  - The **proportion** of felony drug cases filed in district court, out of all felony filings, **increased from 13 percent to 27 percent**.
- From FY2010 to FY2019,
  - **Community Corrections (CC) starts** for felony drug offenses **increased 52 percent**;
  - The number of **women** starting CC for felony drug offenses **increased 91 percent**;
  - Felony **sentences** for drug offenses overall **increased 63 percent**;
  - **Sentences to prison** for drug offenses **increased 79 percent**; and
  - Drug offense **prison sentence lengths increased from 38 to 43 months**.

(\*Starts are counted per person and probation start date; i.e., if a person started more than one probation term on the same date, they are only counted once. Offense level and type are based on the most serious offense per person and probation start date.

\*\*Sentences to prison are based on admissions to prison to match Kansas Sentencing Commission analysis methodology. Figures here are based on admissions to prison by court action only (i.e., parole condition violations and interjurisdictional transfers are excluded).

\*\*\*Prison sentence length was only available for new court commitments.)

- Of all admissions to prison for drug offenses in FY2019, 27 percent were for people with no prior felonies.

- The number of people in prison for drug offenses has increased 3–4 times more than the number of people in prison for other types of offenses.
- The number of women in prison for drug offenses doubled between FY2010 and FY2019.
- Possession of drugs is by far the greatest volume driver in “high-growth” grid cells.
- It cost an estimated \$41 million to incarcerate people for drug offenses in FY2019.

### Geographic Variation

- There are counties that sent over half of all their felony cases to prison. In 2019, over 400 people went to prison from these counties.
- Douglas County has the highest rate of prison sentences and almost the highest rate of supervision revocation of the top 10 higher-volume counties.

### Revocation

- The majority of admissions to prison each year are for supervision condition violations.
- It cost an estimated \$43 million to incarcerate people who violated supervision conditions in FY2019.

### Recommendations

#### **Policy Objective 1:** Enact policies to prioritize prison space for the most serious crimes.

- Amend the drug grid and the nondrug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones; continue to ensure adequate capacity for people convicted of off-grid and other extremely serious crimes.
- Improve the SB 123 sentencing option by expanding eligibility to nondrug crimes and counting treatment time toward the sentence.
- Provide for “decay” of old criminal history so it is not counted in guideline scoring.
- Provide for jail or SB 123 treatment for marijuana sentences that currently are eligible for prison.

#### **Policy Objective 2:** Expand diversion options available to prosecutors and judges.

- Build on the SB 123 infrastructure to encourage more prosecutor diversions to certified treatment and provide treatment to more people before they commit more crimes.
- Adopt “deferred adjudication,” providing a judicial diversion option as a last opportunity to resolve a case without a criminal conviction.

#### **Supervision Workgroup Policy Objectives:** Strengthen supervision for a sentencing system that depends upon supervision to reduce recidivism.

- Ensure timely and consistent assessment of the risks and needs of women and men under supervision.
- Enable consistently strong, evidenced-based supervision practices.
- Anticipate a substantial quantity of technical supervision relapses among the relatively large population under supervision.
- Provide suitable incentives for compliance and consistent, measured sanctions for technical relapses by people under supervision.

Citation: Key findings and policy recommendations were provided by The Council of State Governments Justice Center and are based on presentations to the subcommittee on September 9, 2020, and October 7, 2020.

# Percent of sentences to prison per box in the drug grid illustrates dispositional departure patterns.

**FY2019 Felony Drug Sentences by Grid Cell - Percent Sentenced to Prison**

Severity Level	Criminal History Category								
	A	B	C	D	E	F	G	H	I
D01	75%	71%	50%	n/a	75%	100%	50%	100%	60%
D02	69%	75%	66%	50%	39%	36%	34%	27%	26%
D03	78%	59%	45%	29%	65%	38%	42%	32%	16%
D04	74%	67%	47%	32%	40%	33%	23%	12%	4%
D05	43%	37%	15%	3%	14%	10%	3%	1%	1%

0 - 10%
11 - 25%
26 - 50%
51 - 75%
76 - 100%

Presumptive Prison
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Border Box
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Presumptive Probation
-----------------------

**Criminal History Categories**

A	3+ Person Felonies
B	2 Person Felonies
C	1 Person & 1 Nonperson Felonies
D	1 Person Felony
E	3+ Nonperson Felonies
F	2 Nonperson Felonies
G	1 Nonperson Felony
H	2+ Misdemeanors
I	1 Misd. or No Record

The grid cell for 5 drug grid sentences could not be determined due to missing criminal history information.

CSG Justice Center analysis of Kansas Sentencing Commission felony sentencing data, September 2020.

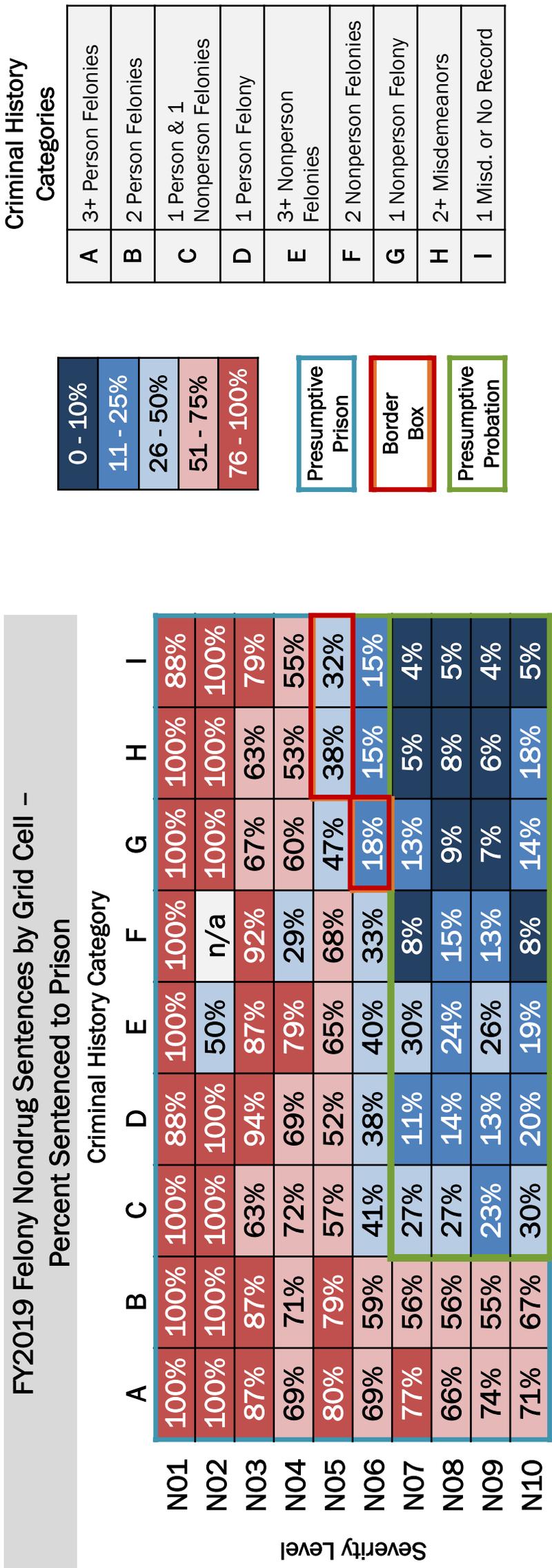
# Amend the drug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones.

Current and Proposed Drug Grid Designations

-  Current Probation
-  Current Border to Probation
-  New Probation
-  New Border

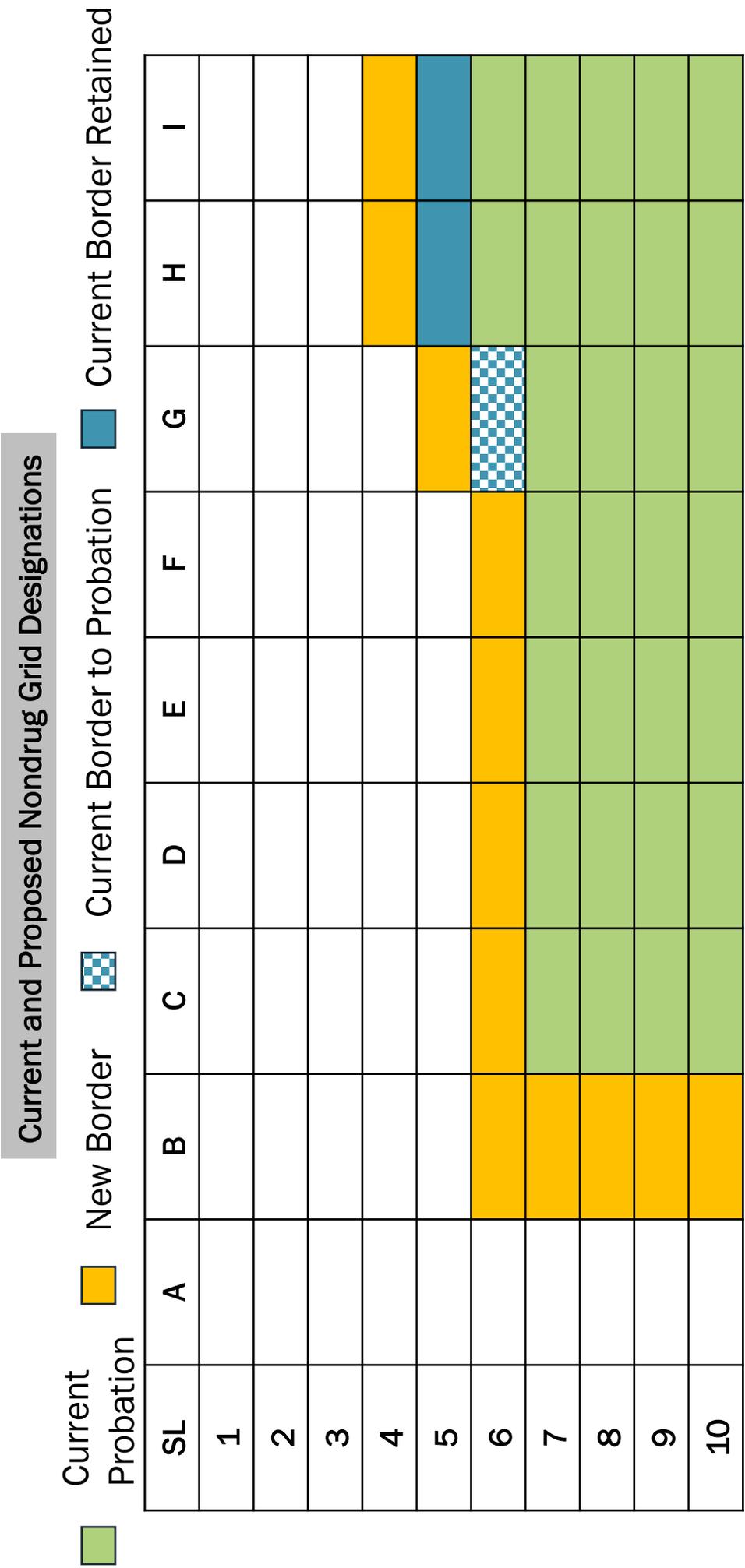
SL	A	B	C	D	E	F	G	H	I
1									
2									
3									
4									
5									

# Percent of sentences to prison per box in the nondrug grid illustrates dispositional departure patterns.



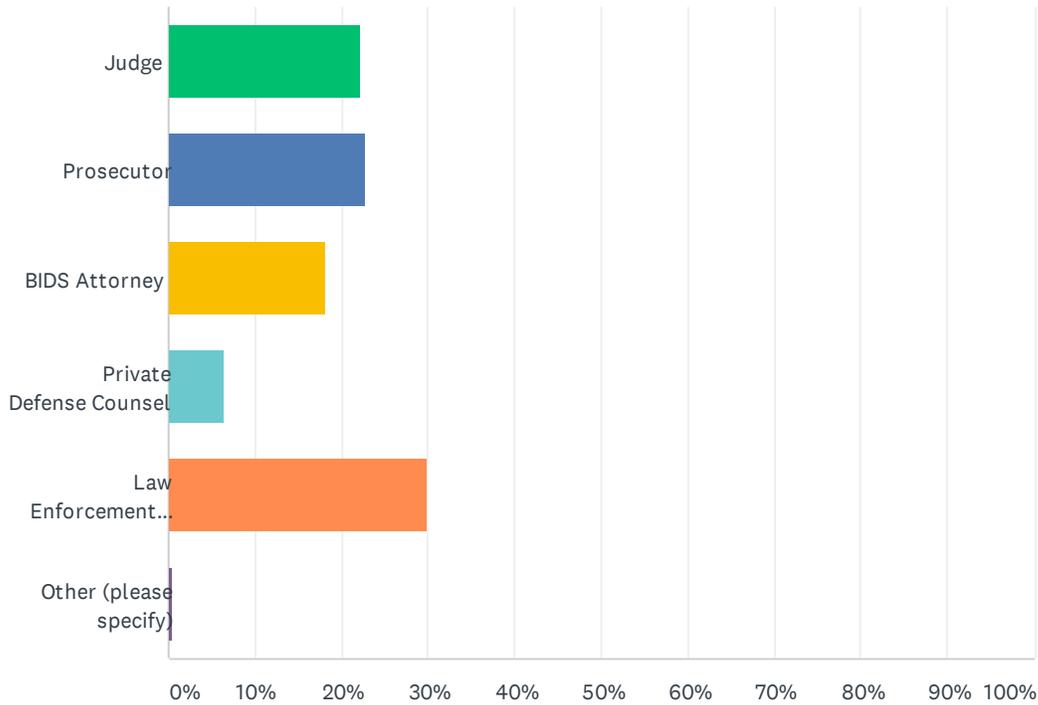
The grid cell for 7 nondrug grid sentences could not be determined due to missing criminal history information.

# Amend the nondrug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones.



### Q1 What best describes your role?

Answered: 297 Skipped: 0

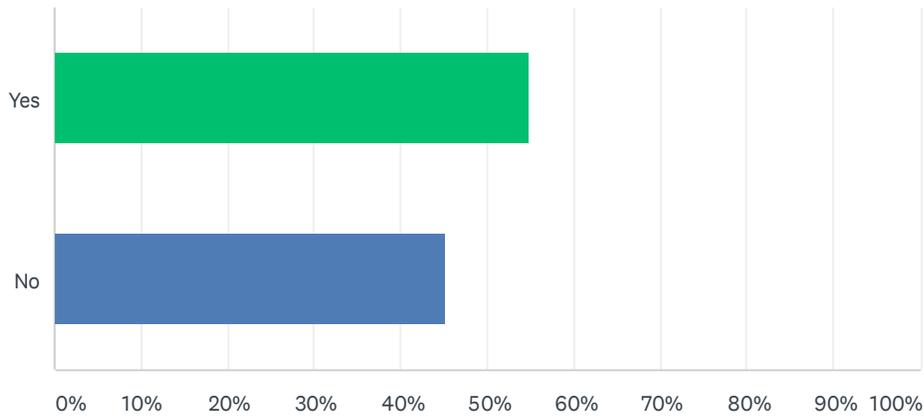


ANSWER CHOICES	RESPONSES
Judge	22.22% 66
Prosecutor	22.90% 68
BIDS Attorney	18.18% 54
Private Defense Counsel	6.40% 19
Law Enforcement Officer	29.97% 89
Other (please specify)	0.34% 1
<b>TOTAL</b>	<b>297</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	Sheriff	9/1/2020 1:38 PM

## Q2 Would you support combining the current nondrug and drug sentencing grids?

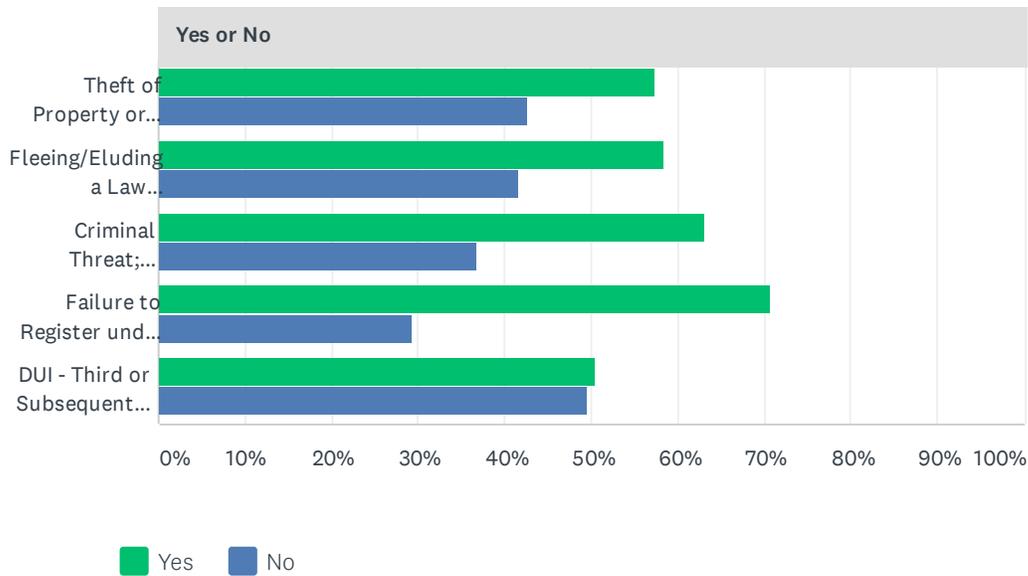
Answered: 292 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes	54.79%	160
No	45.21%	132
TOTAL		292

### Q3 Should the top five nondrug felonies in the state as set forth below have the incarceration ranges re-worked for proportionality?

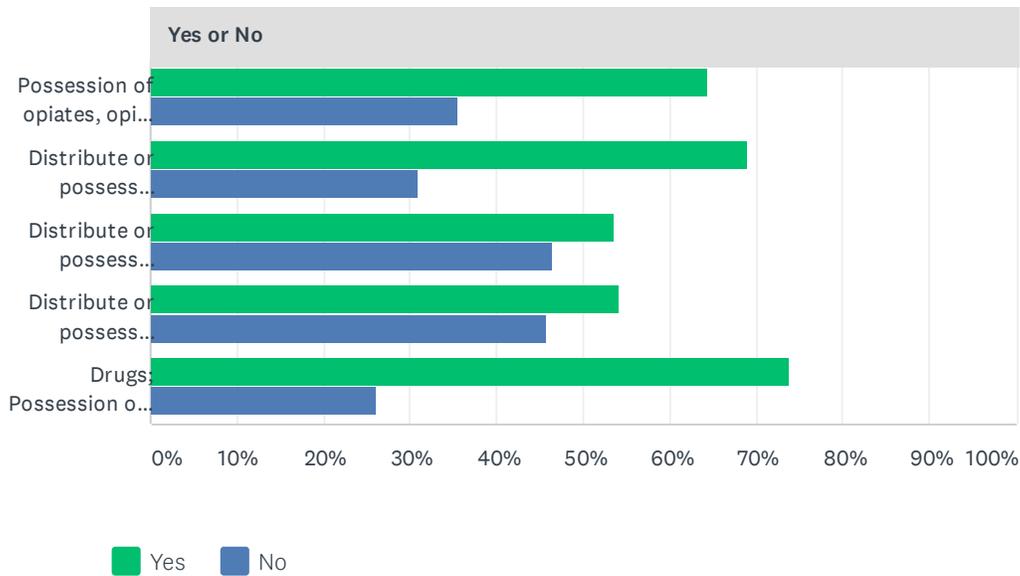
Answered: 293 Skipped: 4



Yes or No			
	YES	NO	TOTAL
Theft of Property or Services; Obtain or exert unauthorized control at least \$1,500 but less than \$25,000	57.39% 167	42.61% 124	291
Fleeing/Eluding a Law Enforcement Officer - 3rd or Subsequent	58.42% 170	41.58% 121	291
Criminal Threat; Threaten to commit violence w/intent to place another in fear, to cause evacuation, lock down	63.10% 183	36.90% 107	290
Failure to Register under the Kansas Offender Registration Act	70.79% 206	29.21% 85	291
DUI - Third or Subsequent Conviction	50.34% 146	49.66% 144	290

### Q4 Should the top five drug felonies in the state as set forth below have the incarceration ranges re-worked for proportionality?

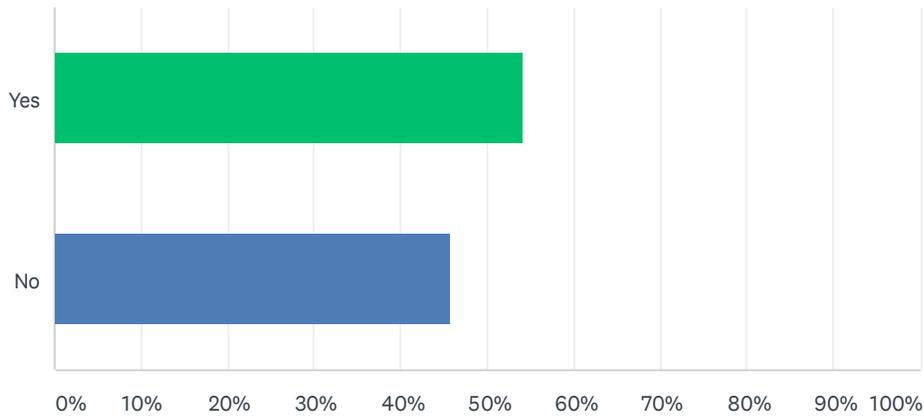
Answered: 295 Skipped: 2



Yes or No			
	YES	NO	TOTAL
Possession of opiates, opium, narcotic, stimulant (d)(1), (d)(3) or (f)(1) of 65-4107 or controlled substance analog	64.51% 189	35.49% 104	293
Distribute or possess w/intent to distribute; Marijuana; Quantity<25 grams	69.05% 203	30.95% 91	294
Distribute or possess w/intent to distribute; Heroin or Methamphetamine; Quantity=>1 gram<3.5 grams	53.58% 157	46.42% 136	293
Distribute or possess w/intent to distribute; Heroin or Methamphetamine; Quantity<1 gram	54.08% 159	45.92% 135	294
Drugs; Possession of hallucinogenic or analog; 3rd or Subsequent Offense-Marijuana	73.81% 217	26.19% 77	294

### Q5 Would you support severity level 5 drug possession crimes (not sales or distribution crimes) to be classified as nongrid, much like DUI?

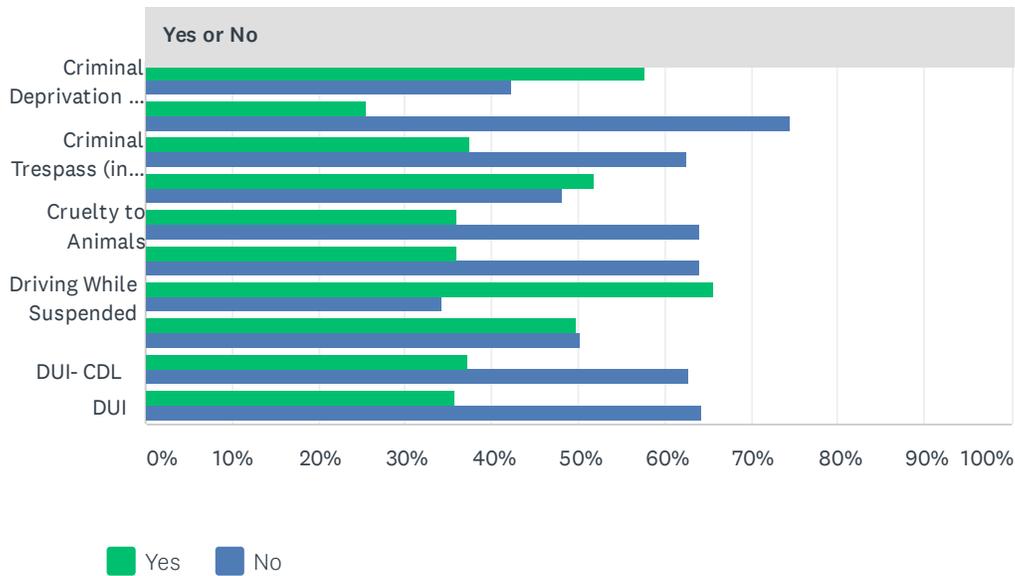
Answered: 293 Skipped: 4



ANSWER CHOICES	RESPONSES	
Yes	54.27%	159
No	45.73%	134
TOTAL		293

## Q6 Would you support removing mandatory minimums for certain misdemeanors?

Answered: 296 Skipped: 1



Yes or No			
	YES	NO	TOTAL
Criminal Deprivation of Property (Motor Vehicle) - 2nd	57.68% 169	42.32% 124	293
Domestic Battery - 2nd and 3rd	25.51% 75	74.49% 219	294
Criminal Trespass (in defiance of restraining order)	37.54% 110	62.46% 183	293
Forgery - 2nd and Subsequent	51.89% 151	48.11% 140	291
Cruelty to Animals	36.08% 105	63.92% 186	291
Harming or Killing Certain Dogs	35.96% 105	64.04% 187	292
Driving While Suspended	65.76% 194	34.24% 101	295
Habitual Violator	49.83% 145	50.17% 146	291
DUI- CDL	37.29% 110	62.71% 185	295
DUI	35.79% 102	64.21% 183	285

Q7 Please include comments on previous survey questions or any other proportionality concerns you would like the subcommittee to consider.

Answered: 111 Skipped: 186

#	RESPONSES	DATE
1	Drugs should be decriminalized. Since this won't happen, all but the most serious should be misdemeanors or infractions. There should be no registry for drugs. We do not take person crimes as seriously as we should. Domestic battery is less serious than theft of a lawnmower. How can that be right? Which is worth more a person or a mower? Person crimes should have longer sentences. Disobeying a lawful order should have mandatory minimums with no tolerance. No client I have ever had has been rehabilitated from a drug addiction by being sent to prison.	9/16/2020 7:28 PM
2	I don't see the point of making possession crimes a non-grid. Should have more treatment options and maybe make the range on all charges bigger so the judges have more discretion. DUI's third or more should possibly have harsher sentences, especially with a high BAC (Say double or more of the limit). Eluding should be a much higher crime or sentence given the overall danger to the community, especially for people with subsequent convictions or if they cause a wreck. The drug grid needs to be reworked but not combined. When a possession charge can get the same (or more) amount of time as an agg assault at some criminal history levels, there's something wrong.	9/16/2020 5:31 PM
3	Mandatory minimums cannot be removed from DUI violations withing exposing the state to federal penalties. The State's current minimums comport with federal minimums and are not in excess of those requirements. Simple possession of drugs should be a level 9 or 10 felony. Get rid of the special rule that makes a third offense presumptive prison. Minimum mandatory jail sentences can be an important tool for crimes such as DV Battery so I oppose removing them from some crimes. Other violations, such as DWS, I have no problem removing the minimum mandatory. You inquire as to essentially 3rd possession of marijuana; marijuana penalties need to be scaled downwards as more and more communities choose not to enforce marijuana laws at all. These creates a significant statewide proportionality issue.	9/15/2020 2:20 PM
4	Vehicular Homicide should be a felony, there should be an aggravated section for when it is done with a CDL holder. Rape should not have to prove lack of consent. Furthermore force or fear should be aggravating factors, not the standard.	9/15/2020 1:05 PM
5	Some penalties should be increased, some should be decreased. This survey does not include how they should be modified.	9/15/2020 11:22 AM
6	We need to make sure we prioritize prison space for violent offenders.	9/15/2020 10:49 AM
7	I said yes to number 5 but they should in all reality be made misdemeanors.	9/15/2020 10:44 AM
8	It is too easy for theft and especially criminal damage to property to become a felony with the monetary limits at their current state. Most vehicles incur felony-level damage at the slightest amount of force. This should be reviewed frequently. The punishment for DUI homicide is disproportionately low. It is often hard to explain to a family why their deceased loved one's life is worth such a short sentence.	9/15/2020 10:43 AM
9	You can tinker with the numbers, but to get real change that helps offenders and public safety you need resources to work with them and time to allow change to happen. Inadequate resources=little likelihood of lasting change.	9/15/2020 10:38 AM
10	I support removal of mandatory minimum jail sentences for non-violent property crimes that do not pose a public safety risk - forgery, temp dep, ect. DUI and DV Battery are another matter, though. As for registration offenses, and possession drug crimes, making them non-grid would be fine (more thoughts on possession drug crime below). I'd be careful about making flee and elude a nonperson offense -- as the risk that crime poses to the public and LEOs is substantial. Another possibility for SL5 drug possession cases would be to create a new category -- not non-grid (which pushes responsibility back to the county jail) but maybe a range that goes up only incrementally if at all. 6-9-12 months per conviction, from criminal history E or below, with 9-12-18 for CH A or B. Get creative. Keep Crim Threat a person felony. Its a great plea negotiation tool for all parties. The Agg Assault or DV assault charges plead to that because its a PF but defendants like it because its only a SL9, not a SL7. Change that and your other, more serious PF convictions (and consequent incarceration) will go up exponentially.	9/15/2020 10:15 AM
11	End the war on drugs, End the war on the poor	9/14/2020 1:01 AM
12	Distribution of meth/heroin/opiates should not be touched. Even though touted as "non-violent" offenses they most certainly are accompanied with violence and other crimes committed in	9/11/2020 12:50 PM

conjunction with it. Criminal possession of a weapon (firearm) penalties need to increase especially if the prior felony is for a person crime or for a drug crime. Our current penalty for that offense is a joke.

13	I really think there needs to be a fix to Special Rule #26 (3rd or subsequent conviction for felony drug offense). The PSI writers are told to mark that the Special Rule applies when the three drug felonies are all in the same complaint. I don't think that was the legislative intent. Please look at replacing the language "third or subsequent" with "prior convictions." I think that could eliminate that issue, and actually penalize repeat offenders instead of someone who happens to possess three kinds of felony drugs at once. (Or what I usually see is that they have one prior, and then have two pending meth cases. For purposes of plea, I combine the meth cases into one complaint because the person needs treatment. Instead, they're put into the presumptive prison category.) Additionally, if you're looking at forgeries anyway, the same could be done there, which could help reduce the frequency of minimum jail penalties.	9/11/2020 12:47 PM
14	The drug grid is so harsh compared to other crimes. Felon in possession of a firearm is HALF the punishment of simple possession of drugs. Need to be much harsher on person crimes and need to chop level 4 and 5 drug offenses in half.	9/11/2020 9:54 AM
15	With respect to the drug crimes, the jump in quantity the moves a distribution from a level 3 to a level 2 and a level 1 is HUGE. I think the drug grid would be more reasonable if the quantities were more evenly spread out. Sometimes major distributors are getting level 2's (with 50-100g) and sometimes "smaller" street level distributors are getting the same level 2 charge for having 4 - 10g. ALSO, the grid time for level 5 possessions is pretty extreme for someone who's NOT a dealer, but primarily a user. There has been discussion that the D5 possession might change to be closer to regular-grid level 8 - I think that is a great idea. Many Judges hesitate to ever impose the underlying time because it's such a long amount of time; thus, most D5 probationers know they will rarely face any type of revocation no matter how many times they violate probation.	9/11/2020 9:52 AM
16	The drug grid is absolutely draconian and needs to be substantially revamped.	9/11/2020 9:48 AM
17	Felony flee/elude should be higher on the grid, it usually is incredibly dangerous; the maximum penalty for 3rd and subsequent DUI should not be one year, there needs to be some proportionality to intoxication and number of priors convictions that does not exist when the maximum is the same for second and subsequent offenses; drug distribution sentences are fine where they are, felony drug possession could be reworked from "A-D" on the grid to where the maximum sentence was consistent with what is now a 5E or 5D box.	9/11/2020 8:45 AM
18	No additional comments	9/11/2020 8:42 AM
19	We should move away from non-grid felonies in general, but particularly felony DUI.	9/11/2020 8:26 AM
20	Meth is a problem. Do not lessen the punishment. We have seen manufacturing go down, in part, because of the severe punishment. Now distribution is up (filling the demand). Lessening the consequence would be unwise. The vast majority of theft cases are tied to individuals who are involved with meth. Victims of theft feel violated by the criminal and ignored by the justice system with little punishment to the criminal other than probation requiring them to simply follow the law. This typically results in years of probation violations resulting in very little repayment to the victim. Criminal prosecution of marijuana is an inefficient use of resources unless tied to dui or what would be the equivalent of an open container charge. Criminal threat is too broad and can turn a heated argument into a felony prosecution. Driving while suspended is a vicious cycle for most and the system feels broken. People who can't pay fines, lose their right to drive which inhibits their ability to get to work to pay the fines. They drive out of desperation and it snowballs. We should re-work what can cause a suspension and limit the use of that restriction. Fleeing and alluding is an extremely dangerous crime putting officer and civilian lives in danger. It is not punished proportionately.	9/10/2020 10:45 PM
21	None	9/10/2020 8:55 PM
22	Property crimes need more severe/mandatory jail/prison. It makes no sense that you have to do 48 hours for a DUI 1st, but a Residential Burglary has no minimum	9/10/2020 8:02 PM
23	It is a shame that we treat addiction so harshly. To receive the same sentence as an addict, a person must pull a deadly weapon on another (If they are an I).	9/10/2020 6:26 PM
24	Nothing good comes from reducing the penalties for most of the offenses referenced above given that most involve presumptive or agreed probation by plea agreement and there is little	9/10/2020 5:09 PM

to no likelihood that prison sentence will ever be served. If prison is ordered after multiple probation violations the defendant inevitably receives a McGill modification substantially reducing prison time. I am unsure of basis for concern about "proportionality" as it strikes me as just another reason to continue going softer on crime and criminals.

25	Felony DUIs need a greater range in maximum sentence. It is incomprehensible that a 7th offense DUI has the same maximum sentence of 12 months as a 3rd offense DUI (or even 2nd offense DUI). Courts should be permitted to sentence repeat felony DUI offenders to more than 12 months jail.	9/10/2020 4:49 PM
26	None	9/10/2020 4:43 PM
27	I think exit mechanisms for lifetime postrelease and parole would be advisable. Not having lifetime postrelease on lower level (6+) felonies may also be advisable. The sentence for attempts, conspiracies, and solicitations to commit offenses (especially Jessica's law offenses) should not be the same as completed offenses. Removing that would allow for better plea deals. And some Jessica's law offenses should not carry life sentences. Be careful removing low-level felonies from the grid. You may well end up with longer jail sentences if they become misdemeanors. Low-level offenses are typically mandatory probation, whereas the court has absolute discretion to impose jail time for misdemeanors.	9/10/2020 4:23 PM
28	I would like the subcommittee to consider removing the 3rd or subsequent felony drug possession conviction special to requires imprisonment. I would also like the subcommittee to consider implementing a mandatory minimum imprisonment for any kind of felony domestic battery including strangulation.	9/10/2020 4:05 PM
29	n/a	9/10/2020 3:59 PM
30	Please keep marijuana illegal.	9/10/2020 3:57 PM
31	the juvenile sentencing matrix needs attention, including reworking the habitual violator provisions.	9/10/2020 3:52 PM
32	Dui should become a grid charge and come with heavy penalties, flee and elude as well	9/10/2020 3:50 PM
33	Place DUI - 3rd on the grid, as Level 9 offenses. put on a mandatory minimum jail sentence and fine (like we do with forgery-3rd or subsequent) if you feel that is necessary, but get rid of Post-Imprisonment Supervision and just make it post-release. On offender registration violations, remove the special rule under 21-6804(m) that requires all of these convictions to be presumptive imprisonment (but it allows for border box findings on Level 5 offenses, which are second offenses - this is not allowed on Level 6 first time offenses, which seems unjust). Allow the placement on the grid control prison/probation, not the special rule. Also, first offenses could be a level 7, second offenses could be a level 5, and third or subsequent offenses could be a 3.	9/10/2020 3:49 PM
34	There should be more time on severity level 3 crimes; there is a big jump from a 3 to a 2. Also should be a more gradual jump from a "C" to a "B" on level 5-1 (adjustment made to "C" and down).	9/10/2020 3:46 PM
35	I selected yes, but want to be sure my thoughts are understood. There are crimes I actually feel to be quite low on the underlying time with presumptive probation, that I think should be re-worked to increase the time (criminal threat and aggravated domestic battery are two that come to mind.) Likewise, there are many I find to be disproportional and should be lowered (the idea that the A history necessarily supports the time listed for simple possession offenses has always confused me.) If a kid gets a few person felonies as a teen and then at 30 has a drug problem, it's hard for me to say he deserves an A-5 drug box sentence and a person who habitually possesses and is convicted for possessing drugs routinely never gets over the "E" amount. Not to say they should be higher, but that the A person's time doesn't seem that proportional.	9/10/2020 3:45 PM
36	There is no reason to lighten any sentences anywhere, offenders get too many chances at probation as it is. Too many departures granted.	9/10/2020 3:44 PM
37	On question 5, my answer would be, "It depends." I believe that the current penalties for felony drug possession offenses on the grid are disproportionate and need to be substantially reduced. But it's hard to answer that question without knowing what the penalties under the nongrid scheme would be.	9/4/2020 12:10 PM
38	N/A	9/3/2020 8:30 AM

39	Simple drug possession crimes should all be misdemeanors. The state should fund treatment centers similar to JOCO's Residential Center for drug possession violators.	9/2/2020 11:27 AM
40	Failure to register should be a non-person crime, without a \$20 fee, and it should go back to a level 10 felony. There is absolutely no scientific data to back up the idea that registration makes our communities safer or that it reduces recidivism. There should be no registration for violent crimes or drug crimes at all. If anything, the registries for drug/violent crimes should be for law enforcement only. These laws on registration are Draconian. As for sex offenders, there should definitely be a way for people to apply to be removed from the registry, but again, there is no data to support the idea that registration helps anyone.	9/2/2020 9:19 AM
41	The guidelines are a joke. A felony fleeing and eluding a level 9 is stupid, it should be a 5 or higher. People want people that commit crimes to be in prison, not probation all the time. The Court takes blame for this, but it is what the legislature does.	9/2/2020 8:09 AM
42	I personally do not support the lessening or removal of mandatory minimums. It provides the public with a sense of "wiggle room" when it comes to committing crime. If anything I would like to see some of these options be taken more seriously rather than being diverted.	9/2/2020 6:28 AM
43	Sections 3 and 4, I feel some could have the range lowered and some could be raised. But all of them should be considered for change.	9/2/2020 2:28 AM
44	I believe that, if we have to prioritize measures, that modifications to the drug statutes and sentencing grid and eliminating mandatory minimums should receive the most focus. The drug statutes and distribution presumptions are based on outdated information and product costs. What used to be distribution level amounts are now commonplace and not indicative of an intent to distribute, only that they got a bonus on Friday and have some extra cash to spend. Another huge problem is the weight difference between a level II and a level III. It's illogical that someone who has 3.6 grams is going to be charged and potentially convicted at the same level as someone with 99.5 grams.	9/1/2020 11:37 PM
45	25 grams of marijuana is FAR TOO SMALL an amount to be designated a Level 3 drug sales felony. The sales "presumption" is 450 grams, so a small quantity distributor is designated as a distributor in the criminal charge, but is not, by law, presumed to be a distributor. Why is meth and heroin singled out from cocaine and other drugs for harsher treatment as to levels charged based on quantity? They should be treated the same. Re Marijuana: There is no limit to how much a person can possess (just limits on sales amounts) but I find that any arrestee who possesses more than a small quantity (less than an ounce) is charged with distribution, even with no evidence of sale or possession with intent to sell. The reality is that marijuana users have increasing access to "quality" product and oftentimes will buy quantities for personal use when they find something they like. If people are arrested based on quantity, the levels should be increased. The statutes on drugs are aimed at cartel level distributors, and are too harsh for the reality of the small time Kansas weed seller, which is the majority of arrests and reflects reality. Weed should not be illegal to possess, but as long as it is illegal, the laws should be realistic. For example, I have a college age client with NO criminal history, who sold \$80.00 of "dab" and is charged with a Level 4 distribution crime! Another client sold 40 grams and no criminal history, and is charged at a Level 3. The sentences are presumptive prison in both cases, though neither client has ever been in trouble. These are 21 year old kids who make a stupid error and who are punished so disproportionately it is incredible. Both graduated from college this year and face a dismal employment future due to selling a friend a bit of weed. This hurts Kansas, it is unfair, and needs to be corrected.	9/1/2020 7:00 PM
46	The huge disparity in possible juvenile sentencing options for felonies needs attention, and likely closing of the gap.	9/1/2020 4:57 PM
47	The survey was not well constructed! For example, what do you mean about combining the drug and non-drug grids? Does this were to mean that there would be 15 severity levels or just 10. Also, what does proportionality mean in this context? A sentence for a particular crime must be tied to some other sentence in order to consider proportionality. If the questions were intended to determine if survey members think certain sentences are too harsh then that's a different conversation.	9/1/2020 3:45 PM
48	Having watched the time portion of the Grid grow and minimum sentences being added over 30 years of practicing law, it is well pass time to rethink locking people up for long periods of time, and for driving while poor.	9/1/2020 2:11 PM
49	Drug offenses are very disproportionate to other offenses. Burglary of a dwelling should be	9/1/2020 1:57 PM

more severe - registration should be less so. Often times the offense for failing to register is greater than the crime for which registration is required - more drug offenses should be presumptive probation with treatment - should allow SB 123 treatment without the necessity of a conviction.

50	Sentences have over the years been reduced and it seems as though few are really being held accountable for much of anything these days. The more leniency shown, the bigger joke this system of ours is becoming. Offenders already know if you have a simple drug charge nothing will happen, or if you commit a property crime, nothing much happens. There is very little accountability already. Let's not make it worse.	9/1/2020 1:57 PM
51	I'm not sure it matters much how crimes are classified, as counsel will simply craft plea agreements and amend charges (even with no factual basis) to obtain the sentence they agree on.	9/1/2020 1:41 PM
52	I would like a definition of proportionality!!	9/1/2020 1:38 PM
53	I think we need to rethink the length of incarceration on all of our guidelines. There should be some factor for how old the prior convictions are that are increasing the criminal history. All the math is used to increase sentences and that should no longer be the norm. Supervision is cheaper than incarceration and more effective. Parole is underfunded and overworked and too many people are a in the revolving door of violation, back to prison.	9/1/2020 1:36 PM
54	Please change (lower) the sentencing range for Level 5 possession and mandatory prison for third offense. Prison does very little to address the underlying issue of addiction. We also need a better mental health system so folks don't self-medicate with illegal substances and could instead get the mental health treatment they often need.	9/1/2020 1:26 PM
55	The penalties should be more harsh. Anyone having been convicted of two or more felonies should not be eligible for probation. After you have been convicted of possession of CDS three times you should go to prison and not fall into a probation box. Defendants know the grid and they know what they can do and not do to fall into a prison box.	9/1/2020 1:21 PM
56	Mandatory minimums on misdemeanors are a bad idea. Also, we should allow diversions for 1st time DUI's for people with CDL's.	9/1/2020 1:18 PM
57	The Sentencing "Special Rules" like mandatory imprisonment for drug crimes, etc. need to be changed.	9/1/2020 1:15 PM
58	drug felonies should have weight increased in each offense to reduce penalties	9/1/2020 1:09 PM
59	A felony should be prison, not jail. Possession of drugs should be less severe, distribution more severe, but prosecutors will simply plea the distribution to possession.	9/1/2020 1:00 PM
60	Many Qs left black due to lacking adequate knowledge or a strong position.	9/1/2020 12:54 PM
61	In light of the public safety risk posed by the crime, the maximum sentence in a felony DUI case should be longer than 12 months. The maximum sentence should increase with each additional conviction instead of remaining the same whether it is the fourth or the fourteenth.	9/1/2020 12:42 PM
62	Fleeing and eluding should be presumptive prison.	9/1/2020 12:42 PM
63	Do not reduce mandatory penalties.	9/1/2020 12:32 PM
64	The questions regarding proportionality are not good questions. I am not sure my understanding of what "reworked for proportionality" means is the same of what it means in this questionnaire.	9/1/2020 12:32 PM
65	The issue with drug possession being non-grid crime is the burden it would impose on the local jails for incarceration. If reclassified as a non-grid crime you shift financial responsibility to county jails that cannot handle the burden.	9/1/2020 12:20 PM
66	The missing piece is providing appropriate therapy: drug therapy, anger management, etc. In order to promote rehabilitation, therapy is essential & unavailable to the extent necessary.	9/1/2020 12:20 PM
67	Judges should have more discretion in sentencing.	9/1/2020 12:04 PM
68	We need to address registration violations. They should not carry a more severe sentence than the original underlying crime in some offenses.	9/1/2020 11:54 AM
69	1 jury trial 2019, if judges would work it would be helpful, and prosecutors do nothing but plea	9/1/2020 11:42 AM

	deals	
70	The drug felonies really need to be reworked. The quantities used to separate the severity levels are not realistic, especially meth and marijuana. The prosecutors even think they are ridiculous.	9/1/2020 11:25 AM
71	Safety of others beyond the individual should be considered. Would this put others at risk if the current were to be changed?	9/1/2020 11:08 AM
72	MJ poss. (Even 3rd subsequent) Should be infraction.	9/1/2020 11:05 AM
73	The KORA registration penalties are out of proportion and basically punish people who are poor and have mental health issues. We are locking up homeless people because they fail to register. These laws are inhumane. The laws for sex offenders who go to prison--life time post release with ankle bracelet--are ridiculous. While there may be some sex offenders who may deserve this, others are given no hope of ever getting out of the system. This is particularly true for young men who get caught in the system over a he said/she said case. We should not be locking people up for selling marijuana when it is legal in other states. I have represented people stopped in Greenwood county for possession of drugs with intent to distribute. These are not big quantities which are found, but there they are locking up out of state people in our prison. I doubt Kansans would want to pay to incarcerate people for years in our system when they don't even live here. This county stops everyone who has an out of town plate and then they proceed to impound their vehicles and have them forfeited to our state. The aggravated burglary statute should not include inherently dangerous felony of stalking in it. I see people charged with going back to their own home and then charged with aggravated burglary which carries a penalty which is too severe. Proportionality concerns--I currently have a case where the client beat up his girlfriend, posted bond, they got back together and the cycle repeated. Now, he is looking at spending more time in prison than he would had he killed her. There should be a maximum to how the State may stack charges when the person is out on bond and picks up new offenses.	9/1/2020 10:48 AM
74	You ask "reworked for proportionality" ... that is a bad question and means different things to different people. It should ask "increase or decrease." Any small quantity drug possession should be a misdemeanor. Failure to register is an absolute joke. It's nothing more than a tool of oppression, and cannot be said to do anything for public safety. Kansas is one of only a few states that require violent and drug offender registration.	9/1/2020 10:44 AM
75	Mandatory minimums should be eliminated and DUIs should be treated as all other cases that can be plea bargained.	9/1/2020 10:43 AM
76	I don't think this survey appropriately allows for the right questions to be asked and answered. The sentences are not proportional to the crimes committed, but some are more disproportional than others (KORA, for example). Additionally, mandatory minimums are an absolute travesty that do not actually deter future conduct, similar to three-strikes rules. Finally, it is clear that the "war on drugs" has failed and just leads to mass incarceration. Drug crimes should not be punished as harshly as they are. While I said the two grids should be combined, I could be persuaded that different grids are appropriate if the drug grid takes into consideration actual needs of those who are investigated and convicted of drug crimes and doesn't simply chuck someone in prison based on an arbitrary weight set by a legislature that seems to change the grids on a whim.	9/1/2020 10:40 AM
77	There needs to be a difference between DWS due to inability to pay fines and DWS because of DUI. The current law unfairly lumps the two groups together.	9/1/2020 10:36 AM
78	Mandatory sentencing has really removed the ability of the lawyers and the judges to manage cases well. In jurisdictions where I practice my hands are largely tied when it comes to sentencing due to mandatory sentences combined with judges who are very reluctant to do departures. And, further, mandatory sentences do not necessarily take into account relatively reformed behavior (i.e. 2x DUI in 2005 then a 3rd in 2020 will require 90 days in jail despite 15 years of sobriety. The court is unable to take into account individual circumstances of the defendant which might have caused the issue. ).	9/1/2020 10:35 AM
79	Need to work on reducing the amount of special rules and mandatory minimums	9/1/2020 10:30 AM
80	Criminal offenses need to have proportional sentences attached. Probation in its current form is a failure as it does nothing to discourage future criminal acts.	9/1/2020 10:29 AM
81	We need to have more punishment especially for repeat offenders	9/1/2020 10:28 AM

82	I did not answer many of the questions. I am concerned that my support for attempts to achieve proportionality or remove minimums will not lead to less crime, and there is no information regarding increases in mandatory treatment for drug and alcohol crimes that could reduce crime. All of these concerns are not based on how I personally feel, but I believe these well-intentioned efforts neglect past, current and future victims. Are we asking them (at least past and current victims) how they feel about these changes? Forty years ago, mental health hospitals began to empty with the promise that reduce costs in MH hospitals would be redirected to communities where local treatment would be provided. We saw what happened around the country and the mess was laid at the feet of law enforcement, families and new victims. I may be digressing so I will stop what may read like a rant, but I assure you it is genuine concern for the safety of our communities.	9/1/2020 10:15 AM
83	Drug sentencing is way out of line, and needs to come down significantly. Criminal threat needs to be a misdemeanor, or needs to have some sort of equivalent misdemeanor available. Mandatory minimums are a problem that make it a lot harder to negotiate palatable pleas.	9/1/2020 9:44 AM
84	We must take dramatic action if we want to meaningfully address our mass incarceration crisis. I'm concerned that "combining the grids" will increase sentences for nondrug felonies, rather than dramatically reduce sentences for drug crimes. Our drug grid is absolutely draconian. The prevalence of the special rules, which apply more often than not and always increase the controlling sentence, is another reason to dramatically reduce sentences. I urge the committee to seek input from public defenders in a more substantive and meaningful way than this survey.	9/1/2020 9:26 AM
85	If you build up regional resources for mental health instead you will likely not need to rework the crime issue as those who really need help will get it instead of leaving it up to law enforcement to solve. Spend your time wisely working on that issue instead. Mental Health is a MEDICAL issue; not a Law Enforcement issue.	9/1/2020 8:56 AM
86	Drug offense's need to be tied to rehab!	9/1/2020 8:11 AM
87	What are the ranges of proportionality you are considering. These are very open ended questions!	9/1/2020 7:45 AM
88	The system is broken....the lack of sentencing has sent the wrong "impression" to criminals, thus creating the sense nothing will happen....build more prisons.....society is out of hand....	9/1/2020 7:36 AM
89	Need to make the charges more severe	9/1/2020 6:31 AM
90	If you don't make drug users spend time in jail and prison they will not change. Not enough time clean. You can not reduce penalties on victim crimes. If an offender has no consequence he will continue to strike. This will cause the death of many victims. Property crime should be punished harder. The offender never learns and believes that is their only way of life	8/31/2020 9:41 PM
91	The fleeing and eluding laws should be strengthened. Pursuits have become to common place.	8/31/2020 9:09 PM
92	This is poorly written. Answers can easily be misinterpreted.	8/31/2020 8:49 PM
93	NA	8/31/2020 8:33 PM
94	The sentencing guidelines should be firm and proportional to the crime and less ability for deviation agreements by attorneys or judges. The lack of fear for the criminal justice system enables criminals and subverts justice. It should be called the "victim/society justice system. But then defense attorneys would be out of a job.	8/31/2020 7:36 PM
95	Drug crimes are currently disproportionate to non-drug crimes. Sentencing on drug possession would be better as a non-drug as long as drug treatment was still provided. Also, remove the 3rd or subsequent special rule. It prevents treatment in some situations which is greatly needed and unjust (for example two priors from many years ago or two picked up in a very short time so only one chance at treatment because the first two were sentenced together).	8/31/2020 7:11 PM
96	Drug offenses, if off grid, would make drug offenders spend too much time in the county jail.	8/31/2020 7:07 PM
97	Build more prisons. Drugs are the underlying issues with most crimes. Need more mental health facilities as it is ridiculous to have officers sit with patience for up to 16-24 hours before can get them into state hospital. Need more drug treatment facilities. Focus on the issues and quit bashing law enforcement wjmhen they don't have resources to do the job.	8/31/2020 6:43 PM
98	The penalties on the drug grid are ridiculous. I understand the intent to punish people who are	8/31/2020 5:34 PM

selling drugs to prevent others from being addicted or over-dosing. But most cases we see are possession with the intent and not actual selling. Most of the time, they are drug addicts themselves who are struggling to get by and support their own addiction. It's ridiculous that person who has over 3.5 grams of meth or heroin--which is NOT a large amount to get to-- could do more time in prison than people charged with high-level, violent offenses. In fact, it's not a could do more time-- it does happen. All the time. In doing this job, I don't think I've ever seen a meth PWID case be charged from the beginning as a level 3 drug felony. Most of the time, they are level 2s because the minimum gram requirement is so low that it easily bumps up to a level 2. As far as making the level 5 drug felony a non-grid-- I'm torn. It has positives and negatives. Clients would lose good-time credit they would otherwise receive and no opportunity for program credit. Serving the sentencing in KDOC vs. the county jail. I'm sure the county isn't going to want to pay for that since those cases are numerous. However, it would cap the penalty at 12 months as opposed to the 42 months that is the current maximum. It's ridiculous that a person with two or more priors for marijuana can go to prison for 42 months (incorporates another survey question) or someone who possesses a small quantity of meth/heroin/cocaine could face that much time. Once again, that's more time than what some people could/would do for higher-level person/violent offenses. They're addicts--they need treatment. It's a waste of resources to incarcerate them for the amount of time the grid currently requires. On the other hand, they won't get the KDOC programming in the jail. The best solution would be just to re-work the drug grid or at least a MINIMUM re-work the level 5 drug grid (or incorporate the grids and put this at lower level) so the client would be subjected to less time overall, but could still receive the benefits of KDOC should the person be remanded to serve time. Another negative of making it nongrid is the graduated sanctions don't apply, though they don't exist much anymore anyway. The courts wouldn't be required to do a two/three-day sanction before remanding a client to serve a sentence. Plus, most of my clients prefer to go to KDOC and serve time as opposed to in the county jail. Penalties under KORA are also ridiculous. Especially since it's supposedly not punishment to require people to register. Clients can and do have larger sentences for failing to register than for the original offense that required registration in the first place. Criminal threat being a felony is absurd. If a person physical touches/injures a person, it's a simple misdemeanor battery. But using words instead is a felony? And a person felony at that where the client's criminal history is more significantly impacted. Not sure why forgery requires the mandatory jail time. However, that's preferred than if it were mandatory imprisonment like ID theft. The "fleeing/eluding a third or subsequent" current rule is bizarre and doesn't really do much. It's just mandatory imprisonment and imposed consecutively. However, that's just obvious anyway. Fleeing and eluding is a person felony. So if it's a third or subsequent, then that person has 2 prior felony convictions for fleeing/eluding. So they should be presumptive prison anyway based on criminal history. If it elevated the severity level of the offense from a 9 to something a little higher, that would make more sense. Or if there were aggravating factors, that would make more sense.

99	I believe that offender registration violations should be severely reduced in penalties. I believe that DUI should have an escalating penalty and be moved to the grid. I believe that criminal threat should also be a misdemeanor.	8/31/2020 4:30 PM
100	Most of my clients are in prison for drug crimes. I do not believe they are a harm to the public and they should not incarcerated, at least not at the length at which they are currently sentenced.	8/31/2020 3:52 PM
101	none	8/31/2020 3:45 PM
102	I'm not sure what you mean by "proportionality". You should not increase L9 sentences to match the current 5Ds. You should reduce the 5D crime to match the L9s. In fact, consider making 1st time possession of ANY drug a misdemeanor. Also, Drug Distribution should not be chargeable as a 3D or 4D on weight alone.	8/31/2020 3:43 PM
103	I am not quite sure what the thinking is on question 3--is it asking whether I think sentences are currently too high and need to be reduced for proportionality purposes, or too low and need to be adjusted upward? If it is that they are currently too high, I would agree. Not addressed by the survey: There needs to be adjustment to shrink the gap between the sentence for A and B offenders and the sentence for C offenders on higher level crimes. Where there are aggravating factors, the state has the ability to up-depart, but baseline sentences shouldn't start out so high. Definitely shouldn't be so high when comparing them to C box offenders. Also, not all person crimes are equal--there is a huge difference between someone who is in the A box because of 3 prior attempted murders or even aggravated batteries committed at different times and someone who is in the A box because of 9 prior violations of a protection order that	8/31/2020 3:27 PM

have been converted or 3 prior criminal threats. These less serious, nonviolent "person" crimes should be treated differently and shouldn't result in a person being presumptive for prison on all cases.

104	Possession and use of illicit drugs should be properly addressed as a public health issue, meaning individuals should be given access to effective medical treatment. Many of the crimes committed stem from or are related to drug use. Incarceration does not address or treat the underlying addiction/mental health issues, instead it often worsens the individual's condition and makes it more difficult for them to recover/lead a productive life.	8/31/2020 3:27 PM
105	The overall length of sentences has spun out of control, particularly on the left hand side of the grid, and we incarcerate people for entirely too long. Frankly, almost every sentence in the A, B, and C ranges are incredible punitive, and probably longer than can be justified for any peneological reason but retribution, which is the least important justification in my opinion. It makes absolutely no sense to have grid sentences that are longer than the hard 25, and just shows how ridiculous some of the grid sentences are. In fact, when the grid was introduced in 1993, the highest sentence possible was around 200 months, whereas now it is over 600. This is simply outrageous, as i do not think we are any more criminal in 2020 than we were in 1993, and if i had to guess, would guess that we are less so. Also, regarding Number 5, i do not think that any sort of drug possession without any distribution or sale should ever result in a prison sentence. i struggled with how to answer 5 though. This is because our DUI scheme is an absolute mess and it makes no sense to have that crime follow different rules for any other crime. In my estimation the idea of non-grid felonies is dumb and unnecessary. As such, I do not favor making anything like our DUI sentencing scheme because it is convoluted and nearly unworkable; ask three attorneys exactly how DUI post-imprisonment supervision works, and i would not be surprised to get three different answers. I would instead support simply decriminalizing possession all together. However, if we insist to continue making simple possession a crime, in no circumstance should it ever be a felony. Ever. So i support decriminalizing possession, but if they must remain crimes, they should become misdemeanors, and preferably Class C or B. Simply put, we are over incarcerating, both in length of sentence and number of acts criminalized.	8/31/2020 3:24 PM
106	I would need additional context for #5 to answer definitively. This list is a good start (esp. the drug offenses and KORA violations), and there are so many other proportionality concerns that the subcommittee could consider. The problems that sentencing in Kansas present go way beyond these offenses - in the words of Danielle Sered, we must reckon with how we treat "violent" offenders as well. And there are so many offenses with life sentences. That said, I understand the Commission already has a huge scope -- perhaps the Commission could work with the Sentencing Commission or the Criminal Justice Reform Commission (the former has decades of experience with trying to pass proportionality measures, building support for merging grids, etc. -- as for the latter, honestly, I don't hold out a lot of hope for them to change the sentencing provisions). I don't know if you are bringing non-Commission members onto your subcommittee, but I would highly suggest that you consult further with public defenders and appointed counsel - as far as felonies go, we handle 85% of the cases in this state so we have a lot of information about how it all plays out.	8/31/2020 3:21 PM
107	Mandatory minimums for nonviolent crimes that pose no potential for danger should be removed (keep and raise mandatory minimums for cruelty to animals and keep them for DUI/DWS). Drug possession should have a treatment emphasis - incarceration serves little purpose except to institutionalize addiction.	8/31/2020 3:16 PM
108	Mainly--ORV	8/31/2020 3:12 PM
109	Grid Boxes for Severity Level 1 and 2 at Criminal History A and B are not proportionate to off-grid homicides.	8/31/2020 3:11 PM
110	When the guidelines were first enacted in 1993, the longest sentence allowed was 204 months. Now it is 653 months. No science or expertise led the legislature to make such draconian changes. K DOC is going to one day have to reckon with a large population of geriatric individuals whom the State has chosen to lock in cages and forget. Guidelines, Hard 50, Hard 25, aggravated/persistent offenders, etc., are going to cost a lot of money, deprive a lot of people of their humanity, and do nothing to make communities safer and reform individuals. In no realm do our guidelines make LESS sense than in the context of offender registration penalties. I've represented people looking at 30+ years on offender registration cases even though there was absolutely no cognizable harm done by my client not registering. That has to change.	8/31/2020 3:08 PM



**Report of the  
Kansas Criminal Justice Reform Commission  
Race in the Criminal Justice Subcommittee  
to the 2022 Kansas Legislature**

## **I. Subcommittee Members**

Chair: Marc Bennett

Senator David Haley

Representative Gail Finney

Johnathan Oggletree (Kansas Prisoner Review Board);

Professor Jean Phillips (KU School of Law);

Professor John Francis (Washburn School of Law);

Curtis Barnes, Johnson County Corrections;

Chad Harmon, Substance Abuse Center of Kansas;

Shelly Williams, Riley County Community Corrections;

\* Todd Ackerman (former Police Chief, Marysville, Kansas).

Assisting agency: Counsel of State Governments (CSG);

Speakers: Dr. Tiffany Anderson (Superintendent USD 501) and Professor Shannon Portillo (University of Kansas)

## **II. Introduction**

The Commission is directed by K.S.A. 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, health care, 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.

During the 2021 legislative session, HB2077 extended the term of the Kansas Criminal Justice Reform Commission. Under the "other matters . . . appropriate and necessary" clause of the extension, The Reform Commission asked the Race in Criminal Justice System Sub-Committee to consider issues that could be brought to the Kansas Legislature to address the impact of race in the criminal justice system in Kansas.

In the limited time available, the Race in the Criminal Justice System Subcommittee sought to identify specific issues with tangible suggestions the Kansas Legislature could then address in meaningful ways through legislation and legislative oversight.

#### **Subcommittee Meetings:**

- July 15, 2021;
- August 19, 2021;
- September 23, 2021;
- October 21, 2021; and
- November 18, 2021.

Listed below are the Race in the Criminal Justice System Subcommittee's recommendations.

### **III. Recommendations**

#### **1. The Governor's Commission on Racial Equity and Justice**

On October 21, 2021, the subcommittee heard from Dr. Tiffany Anderson and Prof. Shannon Portillo, regarding the final report issued by the Governor's Commission on Racial Equity and Justice. The Commission issued a 62 page report on July 15, 2021 after months of research, public hearings and listening sessions.

The Governor's Commission focused on three primary themes: healthcare, education and economics.

While some of the work done by the Governor's commission focused on issues collateral to the work of this subcommittee -- ex: the expansion of Medicare, child care, tax policy, food sales tax -- there were many subjects with a great deal of overlap. For instance, co-responder programs (detailed below at #2) and training issues for law enforcement (detailed below at #3) were of primary concern for both this subcommittee and the Governor's Commission.

The members of the subcommittee recognize the exhaustive work of the Governor's Commission and draw particular attention to the work done and suggestions made by that body with respect to common areas of concern, as set forth below.

## 2. Co-Responder Programs

In nearly every meeting of the subcommittee, the subject of co-responder programs was discussed. The term "co-responder program" generally describes programs that send non-law enforcement, mental health clinicians with law enforcement personnel to calls where the subject of the call is (or is suspected to be) suffering a mental health crisis.

The subcommittee believes the expanded use of co-responder programs would be in the best interests of the State of Kansas, and would be of particular benefit to individuals without adequate access to mental health care--an issue that too often effects communities of color.

The subcommittee is not submitting a specific suggestion for legislation, because the subcommittee recognizes that following issues must first be addressed and resolved:

- (1) consistent funding sources for the implementation of co-responder programs and the hiring and retention of appropriately-trained mental-health professionals;
- (2) the deficit in Kansas of qualified mental-health professionals in both rural and urban areas of the state.

The subcommittee would further direct the Legislature to the report generated by The Council for State Governments entitled, "Kansas Justice Reinvestment Initiative Co-Responder Programs -- Focus Groups Summary." This report contains detailed suggestions regarding the implementation and expansion of co-responder programs. Unfortunately, the report was still being finalized at the time of our final meeting, so the subcommittee could not vote on the particular recommendation contained therein. While the subcommittee was not able to weigh in specifically on the report or the four "themes" discussed in the report, it is fair to say that the themes are consistent with the issues discussed in subcommittee meetings:

- (1) the magnitude and complexity of the needs at the intersection of the behavioral health and criminal justice systems in Kansas have not been adequately evaluated;
- (2) lack of resources has detrimentally impacted the mental health crisis taking place in Kansas;
- (3) co-responder programs need additional support to be able to hire and retain qualified mental health professionals and adequately train law enforcement agencies;
- (4) unintended consequences and ambiguity in certain statutes complicates the response in the field.

The subcommittee specifically suggests the Legislature create a statewide advisory board to monitor the development and implementation of co-responder programs across Kansas.

### 3. Training

From the first meeting this year, the issue of training was a recurring topic for the subcommittee. The expanded use of crisis intervention training (CIT) training, implicit-bias training, diversity training, de-escalation training, and guardian as opposed to warrior training, both through continuing education through CPOST for existing officers, and for new officers graduating from KLETC is recommended by the subcommittee. The subcommittee specifically acknowledges

the value of ongoing (CIT) training undertaken by law enforcement agencies across the state. The subcommittee recognizes that funding and adequate human resources must be addressed in order to expand the training set forth above.

Sub-committee members also recommend the Office of Judicial Administration (OJA) and the Kansas Department of Corrections (KDOC) expand similar training for their probation and parole officers. The subcommittee further recommends mental health training for those holding licensure through the Kansas Board of Healing Arts and other applicable boards.

Finally, the members of the subcommittee recommend the membership of CPOST board of directors be expanded to enhance the diversity of the board.

#### 4. "Criminal Street Gang" definition

The subcommittee discussed concerns with the current statutory definition of "Criminal Street Gang membership set forth at K.S.A. 21-6313; minimum bond requirements for criminal street gang members as set forth in K.S.A. 21-6316; and the application of the definition to the "R.I.C.O." statute, K.S.A. 21-6328(b)(1).

While strong concerns were raised regarding the fairly vague definition in the current statute, time limitations prevented the subcommittee from offering proposed amendments to clarify the language. The members of the subcommittee recommend that further attention be paid to the definition set forth in K.S.A. 21-6313.

In the interim, subcommittee members did agree that a statutory change to K.S.A. 21-6316 was appropriate. The following suggestion would go a long way toward addressing the concerns raised:

**21-6316. Criminal street gang member; bail; exceptions.** When a criminal street gang member is arrested for a person felony, bail shall be ~~at least \$50,000~~ *appropriately set* cash or surety, and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and

the defendant agrees to comply with the mandate of such pre-trial supervision. an amended The arguably vague definition and

The members of the subcommittee recognize the exhaustive work of the Pretrial Justice Task Force chaired by Judge Karen Arnold-Berger, whose report was issued November of 2020.

Again, members of the subcommittee strongly recommend the Kansas Legislature re-evaluate the definitional language found in K.S.A. 21-6313.

## 5. Collection of Evidence

The members of the subcommittee discussed the need to expand the collection of evidence detailing the race, gender, ethnicity and/or protected class of civilians "stopped" by law enforcement. One tangible suggestion is that Kansas Driver's licenses be expanded to include these identifying demographics, for instances when an officer can legally ask for said license. If that were done, then asking law enforcement agents to include said information in reports detailing the stop would be significantly more efficient.

In addition to the collection of demographic information, the subcommittee members believe the information should then be maintained in a centralized, accessible database. The details of this recommendation need more attention. For instance, would the Kansas Bureau of Investigation maintain the database, if so to what extent would the information be available to the public? Subcommittee members suggested the Legislature look to the example of Missouri statute, 590.650 regarding Racial Profiling.

Again, given the limited time available, the subcommittee did not have time to formulate a final recommendation. The committee was clear that more data needs to be collected at the time of police stops, and that data needs to be maintained in an accessible, statewide database.

#### **IV. Conclusion**

The suggestions contained herein are not meant to be exhaustive. Instead, the subcommittee urges the Kansas Legislature to continue to draw attention to issues related to the intersection of race and the criminal justice system in the future through additional research and legislation.

The Subcommittee would like to thank The Council of State Governments, Dr. Andersen and Professor Portillo, and former Chief Todd Ackerman.

# KANSAS JUSTICE REINVESTMENT INITIATIVE CO-RESPONDER PROGRAMS – FOCUS GROUPS SUMMARY

## BACKGROUND

The Council of State Governments (CSG) Justice Center began providing technical assistance (TA) to the Kansas Criminal Justice Reform Commission (Commission) in 2020 at the request of the state through their application as Justice Reinvestment Initiative state-level project funded by the Department of Justice’s Bureau of Justice Assistance (BJA). At the end of 2020, the Commission submitted a report to the Kansas legislature with numerous policy and administrative recommendations as well as a statement concerning the time constraint the Commission was under to give certain topic areas greater consideration. As a result, the legislature re-appointed the Commission through December 2021.

In 2021, the Commission developed six topics to explore in greater depth and formed subcommittees composed of stakeholders with interest and expertise in these areas. Two of these subcommittees, the Diversion Subcommittee and the Race and the Criminal Justice System Subcommittee, discussed the impact of not adequately responding to someone who is having a mental health crisis. CSG Justice Center staff held focus groups with existing co-responder programs in Kansas to understand experiences in the field and gather additional recommendations for the subcommittees to consider. The co-responder programs are local programs where mental health professionals are paired with law enforcement to respond to 911 calls that include a report of someone experiencing a mental health crisis.

## FOCUS GROUP OVERVIEW

CSG Justice Center staff coordinated with the Kansas Stepping Up Technical Assistance Center to assist with facilitating focus groups with the co-responder programs. The Stepping Up TA Center is a collaboration between the National Association of Counties, the American Psychiatric Association, the CSG Justice Center, and the Kansas Department of Aging and Disability Services (KDADS) and provides TA to Kansas regarding behavioral health issues facing the state. Three focus groups were conducted between August and September 2021 via videoconference. Participants who did not have videoconferencing capabilities were able to join via phone. All focus group sessions were scheduled to last 60 minutes, and participants were encouraged to contact the facilitators directly if additional feedback was warranted. Participants were assured that all comments and reporting would remain anonymous.

The following county-based co-responder programs participated in the focus groups:

- Sedgwick County
- Riley County
- Shawnee County
- Reno County
- Wyandotte County
- Douglas County

CSG Justice Center staff spoke with 7 members of law enforcement and community supervision officers and 10 representatives from behavioral health programs in Kansas.

## FINDINGS

Findings are grouped into four themes identified during the focus groups: (1) the magnitude and complexity of the needs at the intersection of the behavioral health and criminal justice systems in Kansas have not been adequately evaluated; (2) lack of resources has detrimentally impacted the mental health crisis taking place in Kansas; (3) co-responder programs need additional support to be able to hire and retain qualified mental health professionals and adequately train law enforcement agencies; (4) unintended consequences and ambiguity in certain statutes complicates the response in the field.

**1) *The magnitude and complexity of the needs at the intersection of the behavioral health and criminal justice systems in Kansas have not been adequately evaluated.***

- a. Participants expressed frustration that the lack of interagency cooperation and support from the state results in a lack of information sharing and inadequate funding.
- b. There is a sense that co-responder programs are not thought of as part of the continuum of care that is needed across the state and instead have been siloed as a county responsibility. Co-responder programs should be an intercept in the Sequential Intercept Model (SIM) mapping like crisis stabilization units and inpatient and outpatient care facilities.
- c. The ability of the state to understand the magnitude of the problem is directly related to its inability to collect statewide data efficiently from stakeholders such as jails, police departments, community mental health programs, etc.
- d. Co-responder programs have difficulty navigating siloed systems. Often, co-responder programs work with hospital systems, law enforcement, and community programs from jurisdictions across the state. Additionally, co-responder programs frequently work with people who are uninsured and trying to access services such as housing, vocational and educational programs, and a myriad of other social services.
- e. Due to a lack of adequate data, identifying the recidivism rates at the state level for people who have received acute care or experienced a stay at the state hospital is nearly impossible, limiting the ability to understand the scope of the issue.
- f. Participants would like to see greater involvement from adult protective services staff in the work of co-responder programs. Often, this group is not included in the planning and executions of programs even though their clients are frequently people who are either in crisis or are caring for an adult family member who is experiencing a mental health crisis.

**2) *Lack of resources has detrimentally impacted the mental health crisis taking place in Kansas.***

- a. Participants across the focus groups agreed that the state needs a better understanding of the resources to show the need for an additional state hospital, a rapid and large-scale expansion of crisis stabilization units, and inpatient treatment beds so that counties can begin to adequately meet the needs of their communities. However, there is concern that a statewide audit would use a substantial amount of funds that could be spent on expanding services.
- b. Co-responders are a small piece of a larger puzzle. When they are deployed for a mental health crisis but there are no resources for stabilization or hospitalization, law enforcement can be forced to take an individual to jail for their safety and the safety of the people around them. This can result in severe consequences for jails that are not equipped to house people in crisis.
- c. It was reported that, “Too many consumers are getting released from hospitals before they have sustained treatment and decompensate once back in the community and wind up back in a local hospital” or in the custody of law enforcement.

- d. Counties are responsible for the creation and maintenance of services for people experiencing a mental health crisis. A significant number of smaller and rural counties are unable to generate the resources needed, which has resulted in rural counties with co-responder programs partnering with surrounding counties to offer needed services.
- e. There was consensus among participants that there are problems getting access to updated information from the state hospital. This results in confusion and, at times, a scramble to find treatment for a person in crisis because there is no available information on when an evaluation at the state hospital could take place or when a bed will be available.

**3) *Co-responder programs need additional support to be able to hire and retain qualified mental health professionals and adequately train law enforcement agencies in Kansas.***

- a. Some counties in Kansas cannot afford to offer competitive pay rates, which results in co-responder programs with a limited workforce and hours of operation. This inability to offer competitive pay rates also impacts the diversity of co-responder programs.
- b. Law enforcement agencies across Kansas cannot identify resources that are available to them let alone know how to seek assistance from various community members and programs—rather than rely on one specific facility that is already operating at capacity—because they do not have any training on SIM mapping.
- c. The state would benefit from training at the Law Enforcement Academy regarding stigma and working with people experiencing mental health crises.

**4) *Unintended consequences and ambiguity in certain Kansas state statutes complicates the response in the field.***

- a. State law regarding involuntary holds for people who have been evaluated by a mental health professional is ambiguous, and application of the law is inconsistent across the state. There is a lack of guidance on how and when it is appropriate to apply the statute for an involuntary hold or to commit someone.
- b. There are concerns that the moratorium on placing people in the state hospital is having a negative impact on communities. This in combination with programs struggling to receive accurate up-to-date information from the state hospital adds to frustration and an overreliance on systems and programs that are not equipped to provide the level of care needed for people who could appropriately be placed in the state hospital.
- c. Due to the lack of crisis intervention centers, if a person experiencing a mental health crisis must be transported to a hospital for stabilization, current statute requires that—if requested by the hospital—law enforcement must provide 24-hour protection for that person. The impact on small law enforcement agencies is substantial, causing staffing shortages, slower response times, increased overtime, etc.
- d. Mandatory arrest statutes have complicated domestic violence calls that are the direct result of a person in a mental health crisis. In these cases, the person is required to be detained and taken to jail, even if they would be better served by receiving mental health treatment.

## RECOMMENDATIONS FOR CONSIDERATION WITH THE COMMISSION

- 1) **Improve data collection** across the state either through (a) a statewide assessment of co-responder programs to understand the data that are available and the most appropriate method for collection or (b) through a state-funded special research project that would ask stakeholders from across law enforcement, community mental health, and health care systems to collaborate on an examination of data pertaining to people who accessed services and had a law enforcement connection. Either option (a) or (b) would culminate in a final report that provides data on the number of people involved across systems, recidivism rates, and additional metrics as identified.
- 2) **Expand Medicaid** to assist communities with deferring costs.
- 3) **Seek clarification from the Attorney General's Office** regarding statutes that are applied inconsistently, including:
  - a. State hospitals' interpretation of statutes regarding treatment for consumers with developmental disabilities and organic diseases
  - b. What information under Kansas law, HIPPA, and 42 CFR can be shared among law enforcement, community supervision, community mental health providers, and health care providers.
- 4) **Integrate people with lived experience** in the behavioral health system into the development of any new legislation concerning behavioral health care and the intersection of the criminal justice system.
- 5) **Increase reimbursement** for current Medicaid holders.
- 6) **Create a statewide advisory board** that can review resource allocation, new legislation, and current barriers facing the system and complete a projection of needs over the next 3, 5, and 10 years.
- 7) **Create a working group** of mental health professionals, co-responder programs, and law enforcement experts to revisit the unintended consequences resulting from the mandatory arrest statute, Kan. Stat. Ann § 22-2307 (2012).

**Research Based Incentives Subcommittee**  
**Report to the Kansas Criminal Justice Reform Commission**  
**Marc Bennett, Chairperson**  
**Representative Stephen Owens, Vice-chairperson**

**I. Introduction**

The Research Based Incentives Subcommittee was appointed by the Kansas Criminal Justice Reform Commission (KCJRC) Chairman Marc Bennett to address HB 2077's addition of the charge in K.S.A. 21-6902(b)(5)(a), which directed the Kansas Criminal Justice Reform Commission "discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that; (A) Provide for incentives for compliant offenders to earn early discharge from supervision;" The subcommittee has held meetings on July 14, 2021; August 5, 2021; September 2, 2021; September 30, 2021; October 15, 2021; October 22, 2021; and October 29, 2021.

**II. Subcommittee Members**

Spence Koehn, Chair (Court Services Specialist, OJA)  
Jennifer Roth, (Public Defender, BIDS)  
Jean Phillips, (Director, Project for Innocence and Post-Conviction Remedies, KU School of Law)  
Representative Stephen Owens (Legislative Member)  
Shelly Williams, (Community Corrections Representative)  
Secretary Jeff Zmuda, (Kansas Department of Corrections, Agency Ex-Officio)  
Stephanie Duriez (Ad Hoc Member, Council of State Governments)  
Randy Regehr (Ad Hoc Member, KCCA President)  
Chris Esquibel (Ad Hoc Member, KACSO President)  
Hope Cooper (Ad Hoc Member, KDOC)  
Jonathan Ogletree (Ad Hoc Member, Kansas Prisoner Review Board Chair)

**III. Subcommittee Recommendations**

Research Based Incentives Subcommittee makes the following legislative recommendations to the Kansas Criminal Justice Reform Commission:

1. Incentives and early discharge from probation should include misdemeanor and felony cases.
2. The Committee on Corrections and Juvenile Justice should **not** move forward with certain amendments to K.S.A. 21-6608(d) as proposed in 2021 HB 2084, specifically:
  - a. On pages 2-3, amending K.S.A. 21-6608(d); "In addition to the provisions of subsections (a), a defendant *may be discharged* early from probation, assignment to a community correctional services program, suspension of

sentence or nonprison *sanction if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant will have served 50% of such defendant's term of supervision to determine if a defendant has been in substantial compliance with the defendant's conditions of supervision. The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.*"

- b. On Page 3, adding (e); *"A defendant shall earn credit to reduce such defendant's term of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction when the defendant has substantially complied with the conditions of such defendant's supervision. A defendant shall be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant's supervision."*
- c. On page 3, adding (f); *"The Kansas sentencing commission shall adopt procedures and forms to standardize the process for calculating earned discharge credit pursuant to this section."*
- d. On page 3, adding (g); *The following factors apply and may be considered in determining whether substantial compliance with supervision exists: (1)(A) History of compliance with terms and conditions of supervision; (B) payment of fines, costs and restitution; and (C) successful completion of any required treatment program. (2) Completion of all terms and conditions of supervision is not required. (3) Offenders subject to the provisions of K.S.A. 2020 Supp. 21-6824, and amendments thereto, shall not be eligible for early discharge.*

3. K.S.A. 21-6608(d) be modified by;

- a. Strike the following language;
  - i. a defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court.
- b. Keep the following language;
  - i. In addition to the provisions of subsection (a),

- c. Add the following language;
  - i. A defendant has a history of compliance with terms and conditions of supervision;
  - ii. Has successfully completed any required treatment or programming;
  - iii. Has completed 75% of their required supervision period except when prohibited by statute;
  - iv. After a review of all fines, costs, and restitution;
  - v. May be eligible for discharge from such period of supervision by the court.
  - vi. Early termination from probation shall be retroactive.

The intention is not to limit the power of the court to terminate probation at any point, but to provide supervision officers a path to recommend early termination of probation following these benchmarks.

- 4. The 4:1 Behavior Management System developed by Carey Group Publishing be implemented statewide to guide and track responses to defendant pro-social and violation behaviors.
  - a. The Office of Judicial Administration and the Kansas Department of Corrections will collaborate on a sanctions and incentives structure to be used within the system.

#### **IV. Subcommittee Discussion**

Since its creation, the Research Based Incentives Subcommittee worked closely with the Council of State Governments to review current practices and research surrounding early termination of probation. The group reviewed the work completed by the Supervision Subcommittee from 2020 regarding early termination of probation, current statutes surrounding probation termination, and pending legislation which discusses mechanisms for early discharge from probation.

Supervision lengths in Kansas are much shorter than the national average. According to a report from The Pew Charitable Trusts from December 3, 2020, *States Can Shorten Probation and Protect Public Safety*, “The national average probation term length in 2018 was 22.4 months. Analysis of 2018 average lengths show significant variations among states: Average probation lengths ranged from just nine months in Kansas to 59 months, or close to five years, in Hawaii.” Furthermore, according to data obtained from the Kansas Sentencing Commission for fiscal year 2020, the average length of felony probation was 12 months. Research does however point to early discharge being a motivator. According to Joan Petersilia, “Employ Behavioral Contracting for ‘Earned Discharge’ Parole,” *Criminology & Public Policy* 6, no. 4 (2007): 807–14, “Interviews with parolees confirm that the prospect of early discharge provides a strong incentive to comply with monitoring conditions or to participate in correctional programming.”

Knowing that research shows early termination of probation does affect motivation but keeping in mind more time is often needed to complete treatment and programming, much

discussion surrounded 2021 HB 2084. This group believed the fiscal impact, specifically in urban districts, made a hearing at 50% for all probation cases unmanageable and cost prohibitive. Furthermore, the recommendation for earned discharge credit, much like current juvenile earned discharge credit, was also unmanageable due to the time required to review and document each probationer's credit or denial of credit, specifically for supervision officers with higher caseloads.

Wanting to provide for a path to early discharge, the subcommittee felt that improving language in K.S.A. 21-6608(d) made the most sense for Kansas community supervision. By providing benchmarks in legislation, supervision officers will have the ability to incentivize probationers.

Looking to further improve outcomes, the subcommittee reviewed the Carey Group 4:1 Behavior Management System, which the Kansas Department of Corrections has partnered with and is working to implement state-wide. An article published March 16, 2011 in *Criminal Justice Behavior, Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections* states, "Administering rewards in proportionally higher numbers than sanctions produced the best results, especially when a ratio of four or more rewards for every sanction was achieved." This same strategy was used for juveniles in Kansas, with OJA and KDOC collaborating to create a sanctions and incentives grid in K.S.A. 38-2398.

## **V. Conclusions**

This report represents the recommendations of the Research Based Incentives Subcommittee. Kansas is ahead of the national average for probation sentences and integrating the recommendation in this report will continue to strengthen supervision in Kansas.

Respectfully Submitted this 1st day of November, 2021.

**Standardized Terms & Conditions of Supervision Subcommittee  
Report to the Kansas Criminal Justice Reform Commission  
Marc Bennett, Chairperson  
Representative Stephen Owens, Vice-chairperson**

**November 1, 2021**

**Members of the Criminal Justice Reform Commission,**

***Overview***

During the first meeting of the Kansas Criminal Justice Reform Commission in 2021, the Standardized Terms & Conditions of Supervision Subcommittee was established. HB 2077 was passed during the 2021 legislative session which narrowed the scope of the commission and created new tasks for the subcommittees. The Standardized Terms & Conditions of Supervision Subcommittee charged with creating “standardized terms and conditions for community supervision and providing for a method that courts may utilize use special terms as indicated through the introduction of compelling evidence.”

Since its creation, the Standardized Terms & Conditions of Supervision Subcommittee met six times (August 6, 2021; September 3, 2021; September 24, 2021; October 1, 2021; October 15, 2021; and October 29, 2021), and worked closely with the Council of State Governments (CSG) Justice Center. The Subcommittee reviewed meeting minutes, research and relevant findings from the 2020 Supervision Workgroup, standard conditions of supervision examples from across the Kansas, Minnesota, Ohio and Missouri, and Parole conditions of release from the Kansas Prisoner Review Board were also reviewed. The Standardized Terms & Conditions of Supervision Subcommittee examined what Kansas did and did not have in current statute (K.S.A. 21-6607) referencing best practice conditions.

Parallel to the Subcommittee’s work, the CSG Justice Center facilitated focus groups with the Chief Court Services Officers and Community Corrections Directors, and met with Judges, receiving overwhelming support for standardizing general conditions of supervision and having one state-wide form/document. There was consensus among the Chiefs and Directors that it would be easier for courtesy supervision and transfer of cases both for staff and clients if there were standardized general conditions of supervision in Kansas.

The Standardized Terms & Conditions of Supervision Subcommittee discovered there was no standardized format and no consistent general conditions of supervision across the state.

Additionally, CSG Justice Center staff noted, “Conditions of supervision in Kansas do not meet best practice guidelines and cause inconsistencies in how agencies approach supervision. Further, to promote success, conditions of supervision should encompass three broad considerations:

- Is it realistic? Realistic conditions allow someone on probation or parole to meet the condition thus avoiding unnecessary technical violations.
- Is it relevant? Conditions should be tailored to a person’s criminal behavior and identified criminogenic risk and needs.
- Is it research-supported? Conditions should help maintain protective factors and disrupt criminal patterns. Programs and services the person is provided should be evidence-based programs.”

The CSG Justice Center informed the subcommittee if a condition is not going to be enforced, is not related to re-offending or success on supervision, it should not be included. Too many conditions can serve as trip wires and barriers to offender success. Further, best practice research regarding conditions of supervision that promote public safety dictate the conditions should:

- be limited in number
- be used to address behaviors associated with risk
- be used to foster behavior change
- be used to support positive outcomes
- be based on supervision goals
- be research-supported or backed by evidence demonstrating that they promote individual success, and
- should have rehabilitative value.

### ***Recommendations for Action***

The Standardized Terms & Conditions of Supervision Subcommittee makes the following legislative recommendations to the Kansas Criminal Justice Reform Commission:

#### **Adopt the Following Standardized Terms & Conditions of Supervision:**

1. Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer.
2. Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision.

3. Report to your supervision officer as directed and be truthful in all matters.
4. Remain within the State of Kansas and other specified area as defined by your supervision officer.
5. Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information.
6. Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner.
7. Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test.
8. Participate in assessments, treatment, programming and other directives by the Court or your supervision officer.
9. Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer.
10. You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

### ***Continued Work***

In addition, the Standardized Terms & Conditions of Supervision Subcommittee presents the following identified issues that need further exploration for the submission to the Criminal Justice Reform Commission:

1. Encourage the Kansas Department of Corrections and the Kansas Prisoner Review Board to adopt common language where appropriate from the proposed standardized (general) conditions of supervision.
2. Encourage a reform oversight committee to consider including safety and liberty-restricting conditions that are not tied to risk/need assessments.
3. Encourage a reform oversight committee to create special conditions with consistent language and give guidance on how to apply special conditions in an evidence-based manner.

4. Encourage a reform oversight committee to develop a training around general and specialized conditions in Kansas to District/County Attorney's, defense attorneys and community supervision officers. Collaborate with the Robina Institute and the University of Cincinnati for state-wide training on specialized conditions.

### ***Conclusions***

This report represents the recommendations of the Standardized Terms & Conditions of Supervision Subcommittee. We support the continued work of the Kansas Criminal Justice Reform Commission. We support the continued assistance of the CSG Justice Center. We support the continued technical assistance by the CSG Justice Center on relevant areas. Further we believe there is opportunity for the development of specific administrative and/or legislative policies to strengthen community supervision in Kansas.

***Respectfully Submitted this 1<sup>st</sup> Day of November, 2021***

#### **Kansas Criminal Justice Reform Commission Members:**

Shelly Williams, Director, Subcommittee Chair  
Riley County Community Corrections

Spence Koehn, Court Services Specialist  
Office of Judicial Administration

Tabitha Owen, County Attorney  
Smith County

Representative Stephen Owens  
Legislative Member

Jeff Zmuda, Secretary of Corrections  
Kansas Department of Corrections

#### **Ad-Hoc Members:**

Pat Colloton, Member  
Kansas State Sentencing Commission  
Honorable Stacey Donovan, District Court Judge  
7<sup>th</sup> Judicial District

Jonathan Ogletree, Chair  
Kansas Prisoner Review Board

Stephanie Springer, Chief Court Services Officer  
27<sup>th</sup> Judicial District  
Kansas Association of Court Service Officers, President

Randy Regehr, Director  
Reno County Community Corrections  
Kansas Community Corrections Association, President

Jeannie Wark, Member  
Kansas Prisoner Review Board

## 2020 Kansas Statutes

**21-6607. Conditions of probation or suspended sentence; correctional supervision fee; correctional supervision fund; searches; drug testing; written reports.** (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any ~~general or specific~~ **special** conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any **special** conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any **special** conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such **special** conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section. (b) The court may impose any **special** conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant **to adhere to the following general conditions of supervision:**

***Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer.***

***Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision.***

***Report to your supervision officer as directed and be truthful in all matters.***

***Remain within the State of Kansas and other specified area as defined by your supervision officer.***

***Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information.***

***Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner.***

***Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test.***

***Participate in assessments, treatment, programming and other directives by the Court or your supervision officer.***

***Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer.***

***You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer***

**based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.**

- ~~(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;~~
- ~~(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;~~
- ~~(3) report to the court services officer or community correctional services officer as directed;~~
- ~~(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;~~
- ~~(5) work faithfully at suitable employment insofar as possible;~~
- ~~(6) remain within the state unless the court grants permission to leave;~~
- ~~(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;~~
- ~~(8) support the defendant's dependents;~~
- ~~(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;~~
- ~~(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;~~
- ~~(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;~~
- ~~(12) participate in a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto;~~
- ~~(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or~~
- ~~(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.~~

(c) In addition to any other conditions *special* of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of the following conditions:

- ~~(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;~~
- (2) make reparation or restitution to the aggrieved party for the damage or loss

caused by the defendant's crime in accordance with K.S.A. 2020 Supp. 21-6604(b), and amendments thereto;

~~(3) (A) pay a correctional supervision fee of \$60 if the person was convicted of a misdemeanor or a fee of \$120 if the person was convicted of a felony. In any case the amount of the correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;~~

(B) the correctional supervision fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from correctional supervision fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, a sum equal to 41.67% of such remittance, and to the correctional supervision fund, a sum equal to 58.33% of such remittance;

(C) this paragraph shall apply to persons placed on felony or misdemeanor probation or released on misdemeanor parole to reside in Kansas and supervised by Kansas court services officers under the interstate compact for offender supervision; and

(D) this paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision;

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less;

~~(5) be subject to searches of the defendant's person, effects, vehicle, residence and property by a court services officer, a community correctional services officer and any other law enforcement officer based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and~~

~~(6) be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.~~

(d) Any law enforcement officer conducting a search pursuant to subsection (c)(5) shall submit a written report to the appropriate court services officer or community correctional services officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(e) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for: (1) The implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as specified by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto; (2) the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument for juveniles adjudicated to be juvenile offenders; and (3) evidence-based adult and juvenile offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from the correctional supervision fund to support adult and juvenile offender supervision by court services officers. All expenditures from the correctional supervision fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.

**History:** L. 2010, ch. 136, § 247; L. 2011, ch. 30, § 64; L. 2012, ch. 70, § 1; L. 2014, ch. 126, § 4; L. 2020, ch. 9, § 2; June 11.

**KANSAS STANDARD CONDITIONS OF SUPERVISION**

Name:	Judicial District:	Sentencing Date:
County:	Court Case Number:	Sentencing Judge:

**Offense:**

**Offense:**

<b>Supervision Agency:</b>	Community Corrections	Court Services				
<b>Postrelease Supervision:</b>	12 Months	24 Months	36 Months	60 Months	Parole	
<b>Probation Term:</b>	12 Months	18 Months	24 Months	36 Months	60 Months	Other: ____ Months
<b>Sentence:</b>	Jail: ____ Months	KDOC: ____ Months				

1. Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer.
2. Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase or possess dangerous weapons, including firearms, while on supervision
3. Report to your supervision officer as directed and be truthful in all matters.
4. Remain within the State of Kansas and other specified area as defined by your supervision officer.
5. Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information.
6. Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner.
7. Submit to any form of alcohol/substance use testing at the direction of a supervision officer, and do not alter or tamper with the test.
8. Participate in assessments, treatment, programming and other directives by the Court or your supervision officer.
9. Pay restitution, court costs, supervision fees, and other costs as directed by the court or your supervision officer.
10. You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

**SPECIAL CONDITIONS OF PROBATION**

- 1.
- 2.
- 3.
- 4.
- 5.

**FINANCIAL OBLIGATIONS**

Court Costs (including surcharge)	\$
Total Restitution	\$
KBI or Other Lab Fees	\$
Attorney Fees	\$
DNA Database Fee	\$
Booking/Fingerprint Fee	\$
Children's Advocacy Center Assessment Fee	\$
BIDS Attorney Fee                      Waived	\$
BIDS Application Fee	\$
SB 123 Assessment Fee	\$
SB 123 Offender Reimbursement	\$
Correctional Supervision Fee	\$
Other Fees:	\$
Other (Specify):	\$
Other (Specify):	\$
Other (Specify):	\$

**Total Costs: \$**

Court costs/fines/fees/restitution to be paid at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_ for \_\_\_\_\_

Client Signature

Date

Supervision Officer Signature

Date