

Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2016 Kansas Legislature

CHAIRPERSON: Representative John Rubin

VICE-CHAIRPERSON: Senator Carolyn McGinn

RANKING MINORITY MEMBER: Representative Jim Ward

OTHER MEMBERS: Senators Molly Baumgardner, Steve Fitzgerald, Forrest Knox, Jacob LaTurner, Pat Pettey, and Greg Smith; Representatives Sydney Carlin, Pete DeGraaf, Ramon Gonzalez, Amanda Grosserode, and Jerry Henry

STUDY TOPIC

KSA 2014 Supp. 46-2801 directs the Joint Committee to monitor inmate and juvenile offender populations and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections (KDOC). As part of this charge, KDOC has requested study of juvenile justice reform; electronic monitoring as an alternative to prison; continuing implementation of the Justice Reinvestment Initiative (2013 HB 2170); and recruitment and retention of corrections staff. Additionally, the Joint Committee is authorized to study the following topics:

- Requiring body cameras for all law enforcement officers and, to fund this requirement, the feasibility of changing the civil asset forfeiture process to require all assets seized be sent to a centrally administered fund to disperse back to local law enforcement;
- Using the Problem Gambling and Addictions Fund, which, pursuant to KSA 2014 Supp. 79-4805, may be used for treatment of alcoholism, drug abuse, and other addictive behaviors, to fund juvenile substance abuse treatment, particularly as it relates to placements and Youth Residential Centers; and
- Treating offenders with mental health and substance abuse issues in a setting other than prison.

Joint Committee on Corrections and Juvenile Justice Oversight

ANNUAL REPORT

Conclusions and Recommendations

- The Committee recommends the House Appropriations and Senate Ways and Means Committees consider appropriating additional funds in fiscal year 2017 to the Kansas Department of Corrections (KDOC) to provide pay raises for uniformed staff working at correctional facilities to make salaries commensurate with those of federal and private correctional officers in Kansas.
- The Committee recommends legislative consideration of:
 - The work of the Juvenile Justice Workgroup, the recommendations in its final report, and any legislation it recommends;
 - The criteria KDOC uses to put current inmates on house arrest to allow additional flexibility; and
 - Emergency observation and treatment in communities with designated crisis receiving centers.

Proposed Legislation. The Committee recommends introduction of legislation in the House:

- Increasing from 90 to 120 days the amount of time an inmate can earn for successful completion of programs and have subtracted from the inmate's sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 through 5 crime; and
- Changing the severity level for the crime of unlawfully tampering with electronic monitoring equipment from severity level 6 to level 8.

BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the

Secretary of Corrections. KDOC operates eight correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs. There are two operational juvenile correctional facilities

(JCFs): Larned Juvenile Correctional Facility and Kansas Juvenile Correctional Complex. Individuals as young as 10 and as old as 17 years of age may be adjudicated as juvenile offenders (JOs) and remain in custody in a JCF to age 22.5 and in the community to age 23.

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

The Committee's duties, as outlined in KSA 2015 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under the Department's control and supervision. The Committee also is charged to review and study the adult correctional programs, activities and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

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

COMMITTEE ACTIVITIES

The Joint Committee requested six meeting days and was granted two. In addition to its statutory duties, the Joint Committee was charged to study:

- Treatment of offenders with mental health and substance abuse issues in a setting other than prison;
- Use of the Problem Gambling and Addictions Fund, which, pursuant to KSA 2015 Supp. 79-4805, may be used for treatment of alcoholism, drug abuse, and other addictive behaviors, to fund juvenile substance abuse treatment; and
- Required use of body cameras for all law enforcement officers and, to fund this requirement, the feasibility of changing the civil asset forfeiture process to require all assets seized be sent to a centrally administered fund to disperse back to local law enforcement.

The Committee met November 2 and 3, 2015.

November 2

The Secretary of Corrections gave an overview of KDOC operations, including adult inmate and JO populations; options for prison bed expansion; the work of the Prisoner Review Board; the status and effects of the Justice Reinvestment Initiative; the outcomes of statewide behavioral health interventions and substance abuse programs; and information on corrections officer turnover. Committee members asked about the challenges of available inmate bed space; the success of programs for the mentally ill prison population; and the Pew-MacArthur Results First Initiative in Kansas, a partnership with those organizations to establish a cost-benefit model customized to the Kansas criminal justice system.

By Fiscal Year (FY) 2018, the Kansas Sentencing Commission (KSC) projects the KDOC will be 609 over capacity on male beds. The Secretary described four options to address this shortage. The first would be increasing from

90 to 120 days the amount of time an inmate can earn for successful completion of programs and have subtracted from the inmate's sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 through 5 crime. This option is estimated to save 305 of the projected 609 beds. The KDOC also could increase contracts for beds at local jails at a cost of \$40 per day; however, this would not address the need for higher-custody-level beds. A third option would be to contract for private prison beds out of state at a cost of \$55 per day; however, those dollars would go to vendors in other states. The fourth option is to build 512 beds at the El Dorado Correctional Facility at a cost of \$55.37 per day, including the bond cost of \$2 million annually for 20 years. Construction costs would total \$27.0 million.

The KDOC Deputy Secretary for Facilities Management presented an overview of KDOC contracts for food and medical services, as well as information on the outcomes of programs in the facilities, including education and job training, substance abuse, and cognitive behavioral therapy programs.

The KDOC Deputy Secretary of Juvenile Services gave an overview of the Kansas Juvenile Justice System, including data trends for youth in state custody and updates on assessments, education, and substance abuse programming within the JCFs; the Council of State Governments' Justice Center recommendations and strategies to improve outcomes; and the Juvenile Justice Workgroup, which met several times during the 2015 interim, with technical assistance from The Pew Charitable Trusts' Public Safety Performance Project. A representative of The Pew Charitable Trusts provided additional information about the work of the Juvenile Justice Workgroup, including the Workgroup's research principles, key data findings, and key takeaways.

A representative of the Kansas County and District Attorneys Association shared concerns about recommendations of the Juvenile Justice Workgroup that suggest sweeping changes to the current Juvenile Justice Code.

Electronic Monitoring as an Alternative to Prison

The Secretary of Corrections testified he did not believe Kansas needed new law concerning electronic monitoring. He stated electronic monitoring and house arrest were useful for persons who would otherwise be in minimum custody but would not address the need for higher custody level beds.

A representative of the Kansas Alternative Corrections Association testified in support of alternative forms of corrections, including alcohol-related monitoring devices and GPS electronic monitoring technology.

The Director of the Johnson County Department of Corrections testified in support of revising the current offense of unlawfully tampering with electronic monitoring equipment, KSA 2015 Supp. 21-6322, to a series of offenses similar to the categories of offenses for escape and aggravated escape from custody, KSA 2015 Supp. 21-5911.

November 3

The Director of Reentry Services, KDOC, spoke to the Committee at the request of the Chairperson on the current Sex Offender Treatment Program.

The Executive Director of the KSC presented an overview of FY 2016 Adult Prison Population Projections, the Justice Reinvestment Initiative, and the 2003 SB 123 Program.

The SB 123 Program is an alternative sentencing policy for non-violent drug possession offenders. Funding for the SB 123 Program is projected to run out in FY 2017 or 2018, at which point treatment providers will no longer be paid for services and fewer offenders will have access to and receive substance abuse treatment. The KSC Director noted this is significant given the program's demonstrated success at reducing recidivism. A December 2014 study showed a 75 percent reduction in relative odds of a new conviction when the program is successfully completed. Further, SB 123 offenders are 25-30 percent less likely to recidivate and have a lower

rate of reconviction, 7.7 percent, compared to non-SB 123 offenders, 10.6 percent. Additionally, on average, the cost of the program is \$4,293 per offender per year, compared to \$25,000 per offender per year for incarceration. Without funding for the program, overall state expenditures are likely to increase due to increased prison populations.

Alternatives to Detention or Incarceration for Offenders with Mental Health and Substance Abuse Issues and Possible Utilization of the Problem Gambling and Addictions Fund for Treatment of Alcoholism, Drug Abuse, and Other Addictive Behaviors

Senator Steve Fitzgerald testified failure to properly address mental illness is costly. He stated mental health is a health problem not a corrections problem.

The Chief Strategic Management Officer of Wyandot, Inc.; a judge of the Wyandotte County District Court; an officer with the Overland Park Police Department; an officer with the Leawood Police Department; and the Executive Director of the Heartland Regional Alcohol and Drug Assessment Center testified together on behalf of a group working on Emergency Observation and Treatment (EOT) legislation. EOT applies only to patients who are deemed a danger to self or others.

A private citizen testified that this legislation gives a broad brush to law enforcement authority.

A representative of the Kansas Chapter of the National Association of Social Workers also testified in support of alternatives to incarceration and stated social workers stand ready to be part of the interdisciplinary services and alternatives to incarceration that would be necessary for positive change in the lives of these community members.

The Clinical Director of Four County Mental Health Center and President of the Kansas Association of Addiction Professionals testified there are gaps in the juvenile substance use disorder treatment array of services. He stated the Problem Gambling and Addictions Fund is a resource that has not yet been used to address these gaps.

Mandating Law Enforcement Officers Wear Body Cameras and Possible Funding Sources, Including Proceeds of Civil Asset Forfeiture

Representative Gail Finney and representatives of the American Civil Liberties Union of Kansas, Racial Profiling Advisory Board of Wichita, and Sunflower Community Action testified in support of 2015 SB 18, the Police and Citizens Protection Act, and the use of body cameras. More specifically, some proponents asked that body cameras not be required but regulated; that the subjects of the recordings be able to view the videos without hiring an attorney; and for minimal discretion when cameras are to be activated. Senator David Haley provided written testimony in support of body cameras.

A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified that, while the organizations he represents are not opposed to the use of body-worn cameras, they are ardently opposed to unfunded mandates requiring immediate implementation among all officers, statutory determination of what should be local decisions on policies such as retention periods, the "gotcha" clause in SB 18 providing the law enforcement officer is guilty of any accusation if there is no video, and use of local forfeiture funds to fund the cameras.

Representatives of the Johnson County Sheriff's Office, the Arkansas City Police Department, and the Lenexa Police Department also testified they support the use of body-worn cameras and video technology, but strongly oppose legislative mandates requiring law enforcement officers to wear body-worn cameras and the use of civil asset forfeiture funds to purchase body-worn cameras.

A representative of the League of Kansas Municipalities testified in opposition to SB 18, saying the primary objection to the original bill was the mandate that all law enforcement agencies would be required to use body-worn cameras with no funding provided for the mandate.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended introduction of legislation in the House:

- In response to bed-space demands, increasing from 90 to 120 days the amount of time an inmate can earn for successful completion of programs and have subtracted from the inmate's sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 through 5 crime; and
- Changing the severity level for the crime of unlawfully tampering with electronic monitoring equipment from severity level 6 to level 8.

Further, in light of the Secretary's testimony regarding the difficulty of recruiting and retraining uniformed staff and the potential impact on public safety, the Committee agreed to recommend that the House Appropriations and Senate Ways and Means Committees consider appropriating additional funds to KDOC in FY 2017 for the purpose of providing pay raises for uniformed staff working at correctional facilities to make salaries commensurate with those of federal and private correctional officers in Kansas.

Finally, the Committee recommended legislative consideration of the work of the Juvenile Justice Workgroup, the recommendations in its final report, and any legislation it recommends; the criteria KDOC uses to put current inmates on house arrest to allow additional flexibility; and emergency observation and treatment in communities with designated crisis receiving centers.