

# Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2017 Kansas Legislature

**CHAIRPERSON:** Senator Greg Smith

**VICE-CHAIRPERSON:** Representative Ramon Gonzalez

**RANKING MINORITY LEADER:** Senator Pat Pettey

**OTHER MEMBERS:** Senators Molly Baumgardner, Steve Fitzgerald, Forrest Knox, Jacob LaTurner, and Carolyn McGinn; and Representatives Sydney Carlin, Pete DeGraaf, Amanda Grosserode, Jerry Henry, John Rubin, and Jim Ward

## **CHARGE**

KSA 2016 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. In addition, the Joint Committee is to study:

- The Sexual Predator Treatment Program (SPTP) at Larned State Hospital, as significant issues and concerns were identified in a 2015 audit of SPTP;
- Implementation of 2016 SB 367, concerning juvenile justice reform, including any necessary amendments and integrating the efforts of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention;
- Retention of corrections officers, including compensation, the various levels of corrections employees, and best practices used elsewhere to retain staff; and
- Consideration of 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance abuse disorders, and co-occurring conditions, including the Judicial Council's report on the bill, if available.

# Joint Committee on Corrections and Juvenile Justice Oversight

## ANNUAL REPORT

### Conclusions and Recommendations

The Committee recommended:

- The Legislature continue to monitor issues concerning adequate staffing at state correctional facilities and the prevalence of mental health issues among inmates;
- The appropriate standing committees carefully consider the Judicial Council's report on 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions; at the same time, these committees should continue to consider the testimony provided by a representative of Rainbow Services, Inc., which indicated their efforts resulted in cost savings of \$6.1 million in 2015, including \$3.9 million in state hospital bed days, \$2.1 million in emergency room diversions, and \$75,200 in jail diversions;
- The appropriate standing committees continue to receive information from the Kansas Department for Aging and Disability Services about its progress in implementing changes recommended by the Legislative Division of Post Audit in its audit of the Sexual Predator Treatment Program (SPTP) at Larned State Hospital; and
- The Legislative Post Audit Committee approve an additional audit of the SPTP in the next year.

*Proposed Legislation:* None.

### BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the Secretary of Corrections. Statewide, there are eight correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility,

Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs.

There currently are two operational juvenile correctional facilities (JCFs): Larned Juvenile Correctional Facility and Kansas Juvenile Correctional Complex (KJCC). The Larned facility is slated to close March 3, 2017, however.

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; 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 2016 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 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 four meeting days and was granted two. In addition to its statutory duties, the Joint Committee was charged to study the following topics:

- The Sexual Predator Treatment Program (SPTP) at Larned State Hospital, as significant issues and concerns were identified in a recent audit of SPTP;
- Implementation of 2016 SB 367, concerning juvenile justice reform, including any necessary amendments and integrating the efforts of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention;
- Retention of corrections officers, including compensation, the various levels of corrections employees, and best practices used elsewhere to retain staff; and
- Consideration of 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions, including the Judicial Council's report on the bill, if available.

The Committee met November 14 and 15, 2016.

### November 14

**KDOC operations.** The Committee began with an update regarding KDOC operations provided by the new Secretary of Corrections. The Secretary described the change in actual and projected inmate populations since enactment of 2016 HB 2447, which increased the maximum number of days an inmate's sentence can be shortened for earning program credits from 90 to 120 days. In summary, by fiscal year (FY) 2021, the change is projected to decrease the population by approximately 350 male inmates and 265 female inmates. Recidivism rates for inmates released early after earning program credits are not

yet available as recidivism typically is measured over a three-year time period. The Secretary explained the change in the law also has mitigated the need for immediate expansion.

Related to capacity, the Secretary provided an update on implementation of 2013 HB 2170, which allows for alternative sanctions for supervision violations. Use of each of these sanctions has increased since the bill's passage and has resulted in fewer prison admissions for technical violations and a 73.0 percent "success rate" in FY 2016. "Success" in these circumstances means supervision or probation was not revoked, which would require a person to return to prison. The Secretary also updated members on several programs that have been successful in reducing recidivism, including Mentoring 4 Success, Thinking for a Change, and substance use and sex offender treatment programs.

The Secretary addressed issues associated with the number of inmates suffering from mental illness and summarized steps taken to respond to their needs. Approximately 35.0 percent of inmates suffer from mental illness. Overall, 20.3 percent have a serious mental illness, 9.9 percent are severely persistently mentally ill (SPMI), and 4.9 percent have short-lived mental health issues. In FY 2015 and FY 2016, KDOC made numerous changes to address the needs of this population, including adding an additional 150 specialized mental health beds and 48 beds for stable offenders with SPMI at Lansing Correctional Facility; adding a 30-bed behavioral unit at El Dorado; opening a 6-bed crisis unit for patients who require continuous monitoring at Larned Correctional Mental Health Facility; expanding restrictive units to provide additional space for safe treatment; and hiring 40 full-time behavioral health and medical staff.

Finally, the Secretary noted KDOC continues to experience high levels of uniformed officer turnover. Overall, the turnover rate for FY 2016 is 33.2 percent, with some facilities seeing rates as high as 38.3 percent, which is an increase of 12.4 percent above the FY 2010 turnover rate. As of November 2016, roughly half of correctional officers had been with KDOC less than 2 years. Only 26.9 percent had been with the Department more than 5 years. He explained some states have

dealt with turnover by increasing salaries and included data showing neighboring states with higher starting salaries have lower turnover rates. For example, Colorado, which has a starting salary of \$40,688, has a turnover rate of 16.0 percent, and Iowa, which has a starting salary of \$39,291, has a turnover rate of 11.8 percent. In comparison, Kansas has a starting salary of \$29,016 and a turnover rate of 33.2 percent, and Oklahoma, which has a starting salary of \$27,081, has a 36.1 percent turnover rate.

Following the presentation, a member asked what areas of the budget the Secretary might look to if the budget was reduced in the next fiscal year. The Secretary responded that most costs, such as inmate medical care and food services, are fixed. The agency likely would have to make reductions in programs offered to inmates, which could increase recidivism.

**KDOC medical, nutrition, and educational services.** The Executive Director, Contract Programs and Finance, KDOC, provided a briefing on contracted services for medical, dental, and mental health services, as well as food and education services for inmates. In FY 2017, the agency has a \$63.5 million contract with Corizon Health, Inc., for comprehensive medical, dental, and mental health services. He emphasized the large population of inmates with mental health issues. Additionally, inmates older than 50 make up 19.1 percent of the population and have a variety of other medical issues, such as hepatitis, resulting in high medical expenses.

The Department contracts with Aramark for food service at the adult facilities at a cost of \$1.52 per meal. Trinity Services Inc. provides food services at KJCC at a cost of \$2.30 per meal; however, \$1.56 is covered by the national school lunch and school breakfast programs.

The Department also contracts for educational services, which are provided by the Greenbush Southeast Kansas Education Service Center and Barton Community College and include GED, special education, vocational education, and other programs. As of June 30, 2016, 3,421 inmates, or 35 percent of the population, lacked a high school diploma or GED. Of that group, 45 percent will be released within the next five years, and 66 percent

are under age 35. Vocational education is available to inmates who have a diploma or GED. He noted participation in education programs has been shown to reduce recidivism by 13.0 percent, and those who participate in vocational education have a 28.0 percent greater chance of finding employment upon release.

**Juvenile services.** The Deputy Secretary for Juvenile Services, KDOC, updated members on Juvenile Services and 2016 SB 367 implementation. She described trends within the juvenile justice system, including data on intake and assessment, the number of cases filed, and population figures, which are all decreasing. With fewer juveniles in JCFs, KDOC will close the Larned JCF in March.

The Deputy Secretary also described efforts to address the recommendations of the Council of State Governments to improve youth outcomes. The Leadership Team is conducting a systematic review and plan of action for each recommendation, which include allocation of services and resources based on the results of a validated risk and need assessment; adoption of programs and services demonstrated to reduce recidivism and improve other outcomes and use of data to evaluate the results and direct system improvements; coordination of service systems; and tailoring system policies, programs, and supervision to reflect adolescents' distinct developmental needs. Funding in 2015 and 2016 allowed for expansion of evidence-based programs, including Functional Family Therapy, which began as a pilot in seven southeast Kansas judicial districts, expanded into four additional judicial districts in Fall 2016, and was anticipated to be available statewide by February 2017.

The Deputy Secretary concluded by discussing the background of the Juvenile Justice Workgroup and the status of implementing 2016 SB 367. The final report of the Workgroup included 40 recommendations, which served as the basis for SB 367. Broadly, those recommendations are aimed at preventing deeper juvenile justice system involvement, protecting public safety by focusing system resources, and sustaining effective practices through oversight and reinvestment. The State is receiving technical assistance from the federal Office of Juvenile Justice and Delinquency Prevention in partnership with the Crime and

Justice Institute (CJI). Further, the bill established an oversight committee to assist with interagency implementation efforts. First steps toward implementation include statewide training, developing interagency committees, and increasing community-based programming with an emphasis on providing high-quality programs and tracking outcomes.

**Implementation of 2016 SB 367.** The Director of Trial Court Programs for the Office of Judicial Administration (OJA) and Chairperson of the SB 367 Judicial Branch Implementation Team (JBIT) discussed progress toward implementation. JBIT is composed of various judicial branch employees who meet monthly to discuss the various pieces of the law that pertain to the judicial branch. OJA also is collaborating with KDOC to draft proposals concerning earned discharge and graduated responses, immediate intervention, and cutoff scores. Additionally, OJA and KDOC are working with CJI for technical assistance and to discuss steps necessary for data collection and validation. Finally, JBIT created a subgroup to develop training protocols.

The Director of Community-Based Services for KDOC appeared on behalf of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (KAG) and provided an overview of KAG's membership, background, and responsibilities. KAG has between 15 and 33 members, who are appointed by the Governor, and it is charged with reviewing juvenile justice policy, advising policy makers on issues affecting the juvenile justice system, and helping to ensure compliance with the federal Juvenile Justice and Delinquency Prevention Act.

During Committee discussion about this issue, a member expressed concern that schools may be overusing expulsions and suspensions, which, in some cases, needlessly involves youths in the juvenile justice system. The member suggested the appropriate standing committees and the Juvenile Justice Oversight Committee look at this issue carefully as implementation efforts continue.

**Adult inmate prison population projections.** The Executive Director of the Kansas Sentencing Commission (KSC) provided a summary of current population characteristics and trends, as

well as its projections. Over the next ten years, KSC projected growth of 13.5 percent, with the largest increases among drug offenders and offenders convicted of low-level felonies. He continued by briefing the members on the progress of 2013 HB 2170 implementation. As the Secretary reported, use of sanctions has increased since enactment, while prison admissions for technical violations have declined. Finally, the Executive Director summarized legislation KSC will propose in the 2017 Session, including bills concerning penalties for tampering with electronic monitoring equipment, the felony loss threshold for miscellaneous property crimes, criminal history scoring of juvenile adjudications, the 2003 SB 123 drug treatment program, the Kansas Offender Registration Act, and postrelease supervision.

## November 15

### **Mental health treatment resources available to offenders at the state and local levels.**

Committee members received testimony from representatives of state and community mental health and substance use treatment providers, including Rainbow Services, Inc. (RSI), a collaborative effort of Wyandot, Inc., Johnson County Mental Health Center, Heartland Regional Alcohol and Drug Assessment Center, and the State of Kansas to offer alternative services at Rainbow Mental Health Facility. The RSI budget of approximately \$3.5 million is based on a grant from the Kansas Department for Aging and Disability Services (KDADS). The representative opined that rather than expanding services available through RSI, it would be better to restore beds at Osawatomie State Hospital until adequate community resources are in place.

A representative of OJA discussed resources available to people throughout the state through court services. Many have mental health issues and substance use issues; however, services are not always available at the local level. A representative of the Kansas Association of Addiction Professionals and Central Kansas Foundation provided information specific to substance use treatment and prevention and confirmed there is overlap between groups of people with mental illness and with substance use issues; however, it is often difficult to know which started first. Consequently, substance use providers must work closely with those in the

mental health community to work through those issues. A representative of the National Alliance on Mental Illness testified regarding steps to avoid incarceration of those with mental health issues, saying when community-based supports are not adequate, jail becomes the default solution.

**2016 HB 2639.** The Committee was charged with consideration of 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions, including the Judicial Council's report on the bill, if available. Staff from the Office of Revisor of Statutes reviewed the bill, and staff from the Legislative Research Department summarized the efforts of the Kansas Judicial Council thus far. The advisory committee studying the bill had not reached consensus as of the meeting date; however, the final Judicial Council report was expected to be available to the 2017 Legislature. A representative of KDADS discussed the agency's position on the bill, which would continue to provide safeguards to those with mental illness or substance use issues through use of licensed crisis recovery centers. A private citizen expressed concerns about due process and individual rights in the bill. A Committee member commented that unless KDADS provides funding for these centers in its upcoming budget, this will be an unfunded state mandate on communities.

**SPTP at Larned State Hospital.** Staff from the Legislative Division of Post Audit (LPA) reviewed its recent audit on SPTP operations. In conducting the audit, LPA contacted 12 states, but only 3 responded, possibly because of pending federal litigation in Minnesota concerning sexual predator treatment programs. In response to questions, LPA staff explained the disparity between the number of releases in Kansas and Wisconsin may be due to the Kansas program not having individualized treatment plans built into the program. Further, staff provided supplemental information regarding the criteria other states use for discharging residents from sexual predator treatment programs.

A representative of KDADS provided an update on the revised SPTP and some of the enhancements made over the past few years. The Kansas program now provides more individualized programs that take into account

each resident's risks and needs. After a lack of documentation was identified in the audits, a finding KDADS disputed, staff increased the amount of data it collects and monitors. Committee members expressed a desire to ensure continual monitoring of the program rather than wait another ten years before learning of a problem.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Committee recommended the Legislature continue to monitor issues concerning adequate staffing at state correctional facilities, including retention and pay, and the prevalence of mental health issues among inmates.

The Committee referred to the RSI representative's testimony, which indicated its efforts resulted in cost savings of \$6.1 million in 2015, including \$3.9 million in state hospital bed days, \$2.1 million in emergency room diversions, and \$75,200 in jail diversions. The Committee recommended the appropriate standing committees carefully consider testimony on cost savings from such diversions as well as the Judicial Council's report on 2016 HB 2639, concerning use of licensed crisis recovery centers.

Concerning the SPTP, the Committee recommended the appropriate standing committees continue to receive information from KDADS about its progress in implementing the changes LPA recommended in its audit of the program. Further, the Committee recommended the Legislative Post Audit Committee approve an additional audit of the SPTP in the next year.