

# **Committee Reports to the 2021 Kansas Legislature**

# **KLRD**

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

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

**Kansas Legislative Research Department  
January 2021**

## **2020 Legislative Coordinating Council**

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

Special Committee on Economic Recovery  
Special Committee on Kansas Emergency Management Act  
Special Committee on Kansas Mental Health Modernization and Reform

Joint Committee on Corrections and Juvenile Justice Oversight  
Joint Committee on Kansas Security  
Joint Committee on Pensions, Investments and Benefits

Health Care Stabilization Fund Oversight Committee  
Kansas Criminal Justice Reform Commission  
Legislative Task Force on Dyslexia



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# Foreword

In the 2020 Interim, the Legislative Coordinating Council appointed four special committees to study four study topics. Legislation recommended by the committees will be available in the Documents Room early in the 2021 Session. Such legislation will also be available on the Kansas Legislature's website at: <http://kslegislature.org/li/>

Joint committees created by statute met in the 2020 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2021 Session. Such legislation will also be available on the Kansas Legislature's website at: <http://kslegislature.org/li/>

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

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

- Special Committee on Foster Care Oversight
- Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight
- Joint Committee on Information Technology
- Legislative Budget Committee
- Joint Committee on State Building Construction
- Capitol Preservation Committee

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

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## ***Summary of Conclusions and Recommendations***

### ***Special Committee on Economic Recovery***

The Committee considered and reviewed state policies concerning Kansas' economy recovery from the COVID-19 pandemic. It made recommendations concerning the government response to pandemics, unemployment compensation policy and administration, administrative regulatory policy, business recruitment and economic development, barriers to business entry and expansion, workforce development, banking and financial institutions policy, property tax, income tax, sales tax, education policy, and health policy.

### ***Special Committee on Kansas Emergency Management Act***

The Committee recommended ten items be further studied by the appropriate standing committees of the 2021 Legislature: changes made to the Kansas Emergency Management Act (KEMA) in 2020 Special Session HB 2016 (HB 2016) regarding the Governor's powers as enumerated in KSA 2019 Supp. 48-925(c); appropriate penalties and enforcement mechanisms for violations of KEMA; language of Section 6 of HB 2016 regarding the closure of businesses; immunity from liability for adult care homes; a constitutional amendment that would authorize the Legislature to take certain steps in dealing with an emergency; local authority to implement an order less restrictive than a statewide order during an emergency; extending the authority of the Chief Justice of the Kansas Supreme Court to modify deadlines and time limits after March 31, 2021, by eliminating the sunset provision in HB 2016 or decoupling the authority of the Chief Justice from an emergency declaration; a constitutional amendment that would change the requirements for calling a special legislative session; legislation that would enable first responders to share information with law enforcement regarding an individual's exposure to infectious disease; prohibition on executive orders to suspend any portion of the Kansas Criminal Code; and options for combating rampant unemployment insurance claim fraud.

The Committee also recommended the 2021 Legislature study 16 additional items raised by conferees, 12 of which were outside the scope of the Committee's charge.

### ***Special Committee on Mental Health Modernization and Reform***

The Committee made several recommendations and conclusions. The Committee:

- Recognized the opportunities for coordination and collaboration between other committees, including the Kansas Criminal Justice Reform Commission, the Special Committee on Foster Care Oversight, and the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight;

- Acknowledged the discussions of the Committee and its working groups occurred amidst the COVID-19 pandemic, and the Committee requests state agencies, members of the working groups, and the Kansas Legislature continue to assess, monitor, and report on these impacts;
- Recommended the Legislative Coordinating Council and the Legislature consider formation of a formal standing or joint committee to consider, address, and continue with the efforts to address the longer-term goals and strategies incorporated in both this Committee and the adopted working groups' report;
- Encouraged the use of clear, connected data systems and quality reporting to provide decision-makers across the system with measurable and easily tracked results;
- Recommended the Committee's report be distributed to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, House Committee on Children and Seniors, House Committee on Corrections and Juvenile Justice, House Committee on Health and Human Services, House Committee on K-12 Education Budget, House Committee on Social Services Budget, Senate Committee on Judiciary, Senate Committee on Public Health and Welfare, and Senate Committee on Ways and Means (agency subcommittees);
- Requested the staff of the Kansas Legislative Research Department compile a new crosswalk to reflect the adopted Committee working group recommendations and the recommendations of other interim groups issuing relevant considerations and recommendations during the 2020 Interim; and
- Recognized the unique structure and support needed to conduct its broad review of mental health modernization and reform in Kansas, including staff from the Kansas Legislative Research Department, the Office of the Revisor of Statutes, the working group facilitation support provided by the Kansas Health Institute, and the roundtable and working group participants who contributed information, direction, expertise, and passion to the review and formulation of recommendations.
- In addition, the Committee ratified the *Strategic Framework for Modernizing the Kansas Behavioral Health System: Working Groups Report to the Special Committee*. The Strategic Framework contains 45 high-priority recommendations over a variety of behavioral health topics, categorized for immediate action and strategic importance.

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

The Committee recognized the efforts of the Secretary of Corrections and the staff of the Kansas Department of Corrections (KDOC) in managing the COVID-19 pandemic in department facilities and extends its deepest gratitude to the staff working in those facilities who placed themselves in harm's way every day to protect the people of Kansas. To the families, friends, and co-workers of those staff members who died as a result of COVID-19 while in service to the state, the Committee extends its deepest sympathies.

The Committee requested the introduction of six bills in 2021 with contents that either passed the House or were recommended favorably by the House Committee on Corrections and Juvenile Justice in 2020. The Committee made recommendations to the 2021 Legislature related to limitations on the Evidence-Based Programs Account of the State General Fund; conditions of confinement at the Topeka Correctional Facility; improvements to the juvenile legal defense system; offender access to WorkKeys; study of repurposing of the Kansas Juvenile Correctional Complex and creation of three regional juvenile facilities; revisiting legislation related to suspended driver's license requirements and eligibility requirements for restricted driving privileges, as well as fees related to traffic citations; restoration of funding for creation of substance abuse treatment beds for inmates; expansion of evidence-based programs involving early intervention and early childhood; lack of progress on juvenile crisis intervention centers; exploration of expanded medical and compassionate release programs; consideration of removal of barriers to employment for those in or formerly in KDOC custody; and consideration of amnesty related to outstanding suspended driver's licenses and reinstatement fees.

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

The Committee noted the increasing importance of security for the information assets of the State and encourages cybersecurity training for all legislators and State employees. It suggested agencies be asked about their information security training protocols during budget hearings. It noted major problems exist with the age and efficiency of information security systems in State agencies and recommends legislative consideration of agency budget enhancements for updating and securing agency information systems. The Committee noted the increased role of Internet-based conferencing for legislative meetings and needed upgrades to the Statehouse in response and the continuing requirement to provide funding to maintain the added equipment.

The Committee commended agencies that quickly respond to identified information security weaknesses and the Legislative Division of Post Audit (LPA) for its work on evaluating agency information technology security. The Committee also commended the Department of Health and Environment for its information security training requirements for employees, the Kansas Bureau of Investigation (KBI) for its collaboration with the Department for Children and Families regarding protecting foster care youth, and the Department of Agriculture for its emphasis on education for food preparation and service businesses and its interactions with licensees using Internet-based conferencing under certain circumstances. It encouraged agencies to evaluate changes in business practices made as a result of the COVID-19 pandemic and to continue those found to have increased efficacy and efficiency.

The Committee recommended LPA recommend to the Legislative Post Audit Committee to schedule a follow-up cybersecurity audit of the Judicial Branch in calendar year 2021; the Kansas Highway Patrol develop and implement drills with regard to demonstrations within and near the Statehouse; and the 2021 Legislature review and update the Kansas Emergency Management Act to incorporate lessons learned during the COVID-19 pandemic, specifically regarding demobilization during an ongoing emergency. The Committee expressed its support for proposals of the KBI to mandate submission and testing of sexual assault kits and establishing child victim task forces.

### ***Joint Committee on Pensions, Investments and Benefits***

The Committee made recommendations and provided comment regarding the annual valuation report, the work of the Kansas Public Employees Retirement System (KPERS), and the total fund performance; the modernization of the KPERS pension administration system; the Deferred Retirement Option Program; working-after-retirement statutes and emergency management, participation in the Kansas Police and Firemen's (KP&F) Retirement System; and the Tier 3 formula design.

The Committee requested legislation to:

- Allow participants to extend their (currently) locked-in periods of participation (three years, four years, or five years chosen at sign-up for the program) [House bill];
- Bring the KPERS' Internal Revenue Code guidepost section into compliance with the relevant federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provisions and further recommends legislation to update the 457 plan's companion 401(a) plan language in KPERS statutes [Senate bill]; and
- Reintroduce provisions of 2020 HB 2452, pertaining to death and disability benefits and service-connected deaths [House bill].

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

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

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

The Commission made recommendations in multiple areas, including the following:

- Treatment, including funding for treatment within Kansas Department of Corrections (KDOC) facilities, pretrial substance abuse programs, access to local and regional mental health services, on-site behavioral treatment within jails, treatment for persons with co-occurring disorders, the creation of geriatric or cognitive-care prison beds, and creation of behavioral health and corrections liaison positions;

- Reentry and supervision, including work groups to create standardized conditions of supervision and to consolidate concurrent supervision cases, housing for persons entering supervision, reducing barriers to obtaining a driver's license, and occupational licensing.
- Diversion, including required diversion, pre-charging diversion, and methods to assist indigent diverttees;
- Crimes and sentences, including domestic violence qualifying conditions, the threshold for felony loss, drug grid penalties, expansion of compassionate release policies, and good-time credit for nonviolent drug offenders; and
- Other, including increasing availability of public defenders, interagency collaboration, data collection and data sharing among criminal justice agencies, consideration of cost-avoidance studies, services for victims of crimes, and administrative changes within KDOC to focus on programming and workforce development.

### ***Legislative Task Force on Dyslexia***

The Task Force restated its recommendation to the 2020 Legislature to create a statewide dyslexia coordinator position within the Kansas State Department of Education (KSDE). The Task Force also requested legislation to appropriate sufficient additional funds to KSDE to hire such statewide dyslexia coordinator.

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# **Report of the Special Committee on Economic Recovery to the 2021 Kansas Legislature**

**CHAIRPERSON:** Senator Julia Lynn

**VICE-CHAIRPERSON:** Representative Sean Tarwater

**OTHER MEMBERS:** Senators Anthony Hensley, Richard Hilderbrand, Gene Suellentrop, and Caryn Tyson; Representatives Tom Burroughs, Stephanie Clayton, Jim Gartner, Marty Long, Les Mason, Richard Proehl, and Kristey Williams

## **STUDY TOPIC**

The Committee is directed to review state policies and make recommendations to the Legislature concerning Kansas economic recovery from the COVID-19 pandemic in the areas of taxation, regulatory affairs, business financing, and programs at the Kansas Department of Labor and Kansas Department of Commerce.

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# Special Committee on Economic Recovery

## REPORT

### Conclusions and Recommendations

The Special Committee on Economic Recovery submits the following recommendations:

#### Government Response to Pandemics

- The Committee recommends the Legislature review all state and local policies that have been implemented throughout the pandemic to ensure the state is prepared for any future pandemics that may occur.
- The Committee recommends the Legislature review the Kansas Emergency Management Act and any related statutes to ensure appropriate uniformity while avoiding shutdowns and regulations that severely limit the ability of businesses to operate. The review of the Kansas Emergency Management Act should include consideration of provisions providing for the maximum possible legislative oversight of any restrictive orders.
- The Committee recommends the Legislature consider providing for a mechanism by which state and local governments compensate businesses that are restricted due to emergency management orders, for both loss of revenue due to any orders and for property taxes associated with any time during which businesses are closed by emergency management order.

#### Unemployment Compensation Issues

- The Committee recommends the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce evaluate the unemployment compensation reforms recommended by the Kansas State Council of the Society for Human Resource Management and the Kansas employer community.
- The Committee recommends the Legislature establish a special oversight committee to monitor and support the Kansas Department of Labor information technology (IT) modernization efforts and ensure the needs of the business and labor communities are met by the system upgrades. This oversight committee could be a continuation of the Special Committee on Economic Recovery.
- The Committee recommends the Legislature appropriate necessary funds for the Kansas Department of Labor IT modernization process and the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce provide input on the modernization process and system, as well as the amount of money appropriated. If necessary to expedite the appropriation process, funds should be appropriated with a provision that the special modernization oversight committee previously recommended must approve any modernization expenditures.

- The Committee recommends the Legislature and Governor provide for sufficient full-time-equivalent employees and employee salaries to employ appropriate staff for the maintenance of the modernized IT systems.
- The Committee recommends any available federal moneys provided by federal legislation enacted in response to the pandemic should be used to finance IT modernization and replenish the depleted unemployment trust fund to ensure benefits are available to out-of-work Kansans and that the economic recovery of the State will not be impeded by increased unemployment compensation taxes.
- The Committee recommends using any available funds, including the State General Fund, to replenish the unemployment trust fund to ensure the business community is not forced to bear the cost of unemployment benefits throughout the pandemic through solvency surcharges applied to employer rates.
- The Committee recommends the State immediately reinstate the requirements that recipients of unemployment benefits be actively seeking employment or be in training for a new skill to enable the employment community to fill the thousands of open Kansas jobs. The Committee further recommends that the Kansas Department of Labor provide matching services for individuals receiving unemployment benefits to allow for quick re-employment.
- The Committee recommends the creation of a process for employers to report job offers that would result in the cessation of unemployment compensation benefits to individuals who have received job offers. The Committee recommends this policy be accompanied by a policy providing for incentives for companies to retrain individuals currently receiving unemployment benefits and incentives for unemployed Kansans to gain new skills and remain in Kansas for work.
- The Committee recommends the Legislature consider requiring income tax withholding from unemployment compensation benefits.
- The Committee recommends the Kansas Department of Labor ensure that reimbursing employers will not be required to pay for fraudulent claims that have been reported as fraudulent.

### **Regulatory Recommendations**

- The Committee recommends the State generally lighten the burden of administrative regulations on businesses and individuals to increase economic growth. The Committee further recommends the Legislature review existing rules and regulations to ensure no regulations duplicate those of the federal or local governments and that regulations are not overburdensome.
- The Committee recommends the State permanently eliminate any regulations waived through the COVID-19 pandemic unless the Legislature finds the waiver caused public harm.
- The Committee recommends the State implement a sunset review board for all state regulations, agencies, boards, and commissions.

- The Committee recommends the State provide for universal recognition of occupational licensing to allow individuals licensed in other states to immediately work in Kansas through the passage of legislation substantively similar to 2020 HB 2506.
- The Committee recommends revising state and local permitting processes to function as “shall issue” processes to allow businesses to open and reopen following the COVID-19 pandemic without administrative delay caused by a backlog of applications or inspections associated with the pandemic.
- The Committee recommends the elimination of any state or local inspections required prior to reopening a business that was temporarily closed due to the COVID-19 pandemic or associated emergency or public health order.
- The Committee recommends the Kansas Department of Commerce create a concierge-style business opening or expansion service to manage the state and local permitting and administrative requirements associated with business entry and expansion.
- The Committee recommends local governments relax local zoning regulations and ordinances to make it easier for Kansans to operate businesses from their own homes, especially those businesses involving remote work or telework.

#### **Business Recruitment and Economic Development**

- The Committee recommends the State evaluate the effectiveness and cost-effectiveness of local and state-authorized subsidies to specific individual businesses or developments and consider eliminating these incentives and replacing them with more broad-based opportunities to attract new businesses.
- The Committee recommends the Legislature conduct a comprehensive review of all state and local economic development programs with an emphasis on encouraging the growth of start-ups to replace businesses that may be likely to fail.
- The Committee recommends the continued and expanded use of federal Coronavirus Relief Fund (CRF) moneys to expand broadband Internet availability to all Kansans, including rural and urban residents and students utilizing remote or virtual school options.
- The Committee recommends the State increase the availability of Kansas hunting and fishing, including, but not limited to allowing landowner permits for deer and otherwise expanding hunting and fishing options for both residents and non-residents.
- The Committee recommends the money available in the Economic Development Initiatives Fund be used according to statutory intent to enhance new and existing Kansas businesses and foster the growth of new industries, using the October 2019 report from the Legislative Division of Post Audit as a guide.

#### **Resolving Barriers to Business Entry or Expansion**

- The Committee recommends the House Committee on Energy, Utilities and Telecommunications and the Senate Committee on Utilities address the cost of energy in

Kansas, as the high cost of energy in Kansas is a deterrent to new businesses and the expansion of existing businesses.

- The Committee recommends the Legislature pass tax law that eliminates any unintentional state income tax increases on business and individuals as a result of 2017 federal income tax changes, specifically eliminating the new taxation of foreign income created by those changes and allowing individuals to itemize their state income tax deductions in light of the increase in the federal standard deduction.
- The Committee recommends House and Senate commerce and tax committees work together to explore incentivizing capital-intensive industries to invest in Kansas by providing for an alternative apportionment method using a single-factor sales formula that businesses may elect to use.

### **Workforce Development**

- The Committee recommends the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce consider legislation providing for tax credits for certain graduates of aerospace and aviation-related educational programs and employers of those graduates that is substantively similar to 2019 HB 2118, as amended by the House Committee of the Whole.
- The Committee recommends the Legislature review the aviation economic development programs of other states to ensure that Kansas retains graduates in this field and that multi-state corporations choose Kansas as their site for their operations. The Committee further recommends reviewing this model for potential use for computer science and other technology industries.
- The Committee recommends the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce encourage Kansans to explore opportunities in high-paying skilled-labor industries, including programs allowing students to learn on site. The Committee recommends using the provisions of 2020 HB 2354 as a starting point to resolve liability concerns regarding high school apprenticeships and on-the-job training programs.
- The Committee recommends closely aligning K-12 education and higher education with requirements of Kansas business and labor unions to provide for certificates for high-demand, high-paying, skilled-labor careers.
- The Committee recommends the Legislature pass the provisions of the Promise Scholarship Act (included in 2020 HB 2510, which was vetoed) to encourage high school students who might otherwise not attend college to attend two-year colleges or other certificate programs, while requiring those students to live and work in Kansas upon graduation by providing a scholarship that becomes a repayable loan if the requirements of the program are not met.

### **Banking and Financial Institutions Legislation**

- The Committee recommends the State enact the provisions of 2020 Senate Sub. for HB 2619 providing for a low-interest linked deposit loan program using up to \$60 million of state idle funds to “impact invest” back into Kansas communities and provide for a tax

exemption for agricultural real estate and rural housing loans, in addition to other financial institutions provisions.

### **Property Tax**

- The Committee recommends the Legislature eliminate the 1.5 mills of property tax currently used to finance the state building funds and replace this funding with State General Fund revenue as necessary through the appropriations process.
- The Committee recommends enactment of the following provisions of 2020 HB 2702, which was passed by the 2020 Legislature and vetoed by the Governor:
  - Notice and public hearing requirements for certain taxing subdivisions seeking to increase property tax revenues;
  - The Kansas Taxpayer Protection Act related to paid preparers of income tax returns;
  - A temporary waiver of interest on delinquent property taxes in response to the COVID-19 pandemic and associated emergency and public health orders;
  - Prohibit valuation increases solely as a result of normal maintenance of property improvements; and
  - Authorize county treasurers to accept partial payments and establish payment plans for all property taxes.
- The Committee recommends the Legislature waive a portion of the property taxes on commercial properties that are the locations of businesses that have been closed as a result of COVID-19 pandemic-related emergency or public health orders.
- The Committee recommends enactment of legislation allowing the State Board of Tax Appeals to serve orders and notices by electronic means upon request of any party to a case before it.
- The Committee recommends enactment of legislation prohibiting the increase of valuation of property upon appeal.

### **Income Tax**

- The Committee recommends the Legislature not add any extra burden to businesses that have received Paycheck Protection Program loans by ensuring the forgiveness of those loans is exempt from state income tax, while not allowing the deduction of expenditures from the proceeds of forgiven loans.
- The Committee recommends the Legislature pass legislation increasing the standard deduction for Kansas individuals in proportion to the 2017 increase in the federal standard deduction and allowing Kansans the option to itemize their deductions on their Kansas returns, even if they choose to take the standard deduction on their federal return.
- In the alternative to allowing full state-level itemization of deductions regardless of federal itemization, the Committee recommends the Legislature consider allowing charitable contributions to be deducted in addition to the standard deduction.

- The Committee recommends enactment of legislation providing for the expensing deduction for individual income taxpayers.
- The Committee recommends the Legislature extend the Kansas net operating loss carryforward period.
- The Committee recommends the Legislature consider expanding the rural opportunity zones program to additional counties and possibly statewide.
- The Committee recommends the Legislature pass any necessary legislation to ensure that 2020 federal pandemic relief legislation does not result in any unintended state income tax increases.
- The Committee recommends the Legislature pass legislation to ensure fraudulent unemployment compensation payments do not result in an income tax obligation for fraud victims.
- The Committee recommends the House Committee on Taxation and the Senate Committee on Assessment and Taxation evaluate the Child Care Assistance Credit for businesses and make appropriate changes.

### **Sales Tax**

- The Committee recommends the House Committee on Taxation and the Senate Committee on Assessment and Taxation, at the beginning of the 2021 Legislative Session, recommend passage of legislation requiring marketplace facilitators to collect and remit sales tax.

### **Education**

- The Committee recommends, in light of testimony related to the importance of in-person education to both the education of students and the ability of parents to participate in the workforce, combined with testimony related to the limited risk of COVID-19 to children and the reduced transmission rates and community spread associated with children, that schools make every effort and all necessary and appropriate accommodations to provide an in-person education to Kansas K-12 students. The Committee further recommends that the Legislature consider policies allowing state aid to follow a student to another school when in-person instruction is not offered at the local public school.
- The Committee recommends the use of federal CRF aid to expand broadband access to all Kansas students to provide access to online learning, including live instruction and interaction.

### **Health**

- The Committee recommends the cycle threshold of all laboratories providing COVID-19 testing for Kansans to be released within seven days of the announced test result.
- The Committee recommends the cycle threshold for all laboratories that have provided past COVID-19 testing be made public immediately.

## Other Recommendations

- The Committee recommends the penalties for criminal fraud and identity theft be reviewed and possibly increased.
- The Committee recommends amending state law to require state agencies to submit technology plans to the Joint Committee on Information Technology prior to state agency issuance of any technology-related request for proposals.
- The Committee recommends the Legislature review the statutory uses of the Kansas Universal Service Fund to consider the use of the fund for broadband expansion and access and ongoing support of broadband infrastructure.
- The Committee recommends the use of CRF moneys by the State and local governments to pay the salaries and benefits of public employees required to quarantine due to work-related exposure to COVID-19.

***Proposed Legislation:*** None

## BACKGROUND

The charge of the Legislative Coordinating Council to the Special Committee on Economic Recovery was to review state policies and make recommendations to the Legislature concerning Kansas economic recovery from the COVID-19 pandemic in the areas of taxation, regulatory affairs, business financing, and programs at the Kansas Department of Labor and Kansas Department of Commerce.

The Special Committee was initially authorized by the Legislative Coordinating Council to meet on six days and received subsequent authorization for an additional three meeting days. The topic was requested by the Speaker of the House of Representatives.

## COMMITTEE ACTIVITIES

The Committee held meetings on August 12 and 13, September 16 and 17, November 16 and 17, and December 7 and 8, 2020, at which it heard from representatives of a broad array of economic sectors and other stakeholders regarding the impact of the pandemic on the Kansas economy; the effects of the federal, state and local government efforts to contain the impact of the pandemic and assist in the recovery of the state's

economy; and recommendations for future policies to contribute to the state's economic recovery.

### August 12 – 13, 2020

The Committee received reports on the progression of the COVID-19 pandemic, the status of Kansas tax receipts and the state budget, the status of the Kansas labor economy and unemployment issues, the closing and reopening of the Kansas economy, the availability of capital for Kansas businesses, and the effect of economic development incentives in Kansas. The Committee also received overviews of the status of several economic sectors in Kansas.

### COVID-19 Pandemic

The State Epidemiologist, with the Kansas Department of Health and Environment (KDHE), provided information to the Committee on COVID-19 cases, hospitalizations, and deaths from March 9 through August 10, 2020. The conferee also provided an update on past and active case clusters and the strategy employed by the KDHE for testing and contact tracing.

In response to questions, the conferee provided information related to tracking active cases and deaths from COVID-19 and distinguished between COVID-19 and other infectious diseases.

## ***State Finances and Taxes***

Kansas Legislative Research Department (KLRD) staff provided an overview of the current State General Fund profile and current receipt estimates. KLRD staff also provided data comparing select state tax receipts for calendar year 2020 through July 2020 to those of calendar year 2019 and noted that, while the 2020 amounts for most tax sources were below the 2019 amounts, compensating use tax receipts, which includes receipts of taxes for many online transactions, exceeded the prior year amount.

KLRD staff also provided information outlining the range of tax rates for various taxes, comparing Kansas rates to those of the rest of the country.

## ***Labor Economy and Unemployment Compensation***

Representatives of the Kansas Department of Labor (KDOL) provided information concerning the new federal unemployment compensation programs and the challenges the addition of the new programs and the increased number of unemployment claimants had on the unemployment compensation system, particularly on KDOL's antiquated computer system and on the balance of the unemployment insurance trust fund.

KDOL representatives also notified the committee that the agency is identifying numerous high-level fraud schemes, especially within the new programs, and indicated several new fraud prevention and mitigation strategies were being implemented by KDOL.

## ***Reopening the Kansas Economy***

A representative of the Gwartney Institute presented information to the Committee on the results of a survey of Kansas businesses related to measures enacted in response to the COVID-19 pandemic, noting that many businesses owners thought the imposed business closures were too restrictive and that they were concerned about the potential for permanent closure of businesses within their industries in Kansas.

The conferee recommended that the highest-cost restrictions should be imposed by the

government that is least removed from those affected by the restrictions (such as city or county governments) and that broad, general restrictions should be as limited as possible.

## ***Capital Options for Kansas Businesses***

The Committee received testimony from a representative of the Kansas Department of Commerce (Commerce) concerning two initiatives from Commerce in response to the COVID-19 pandemic: \$5 million of short-term, zero-interest loans that were made available to businesses in the hospitality industry and a business grants program being implemented by Commerce.

The Committee also received testimony from a representative of the Kansas Bankers Association indicating that capital availability was not the greatest challenge for Kansas businesses; the greater challenge for Kansas business was the greatly diminished cash flow caused by the COVID-19 pandemic and associated shutdowns.

## ***Economic Development Incentives and Economic Growth***

A representative of the Kansas Policy Institute provided information indicating that, of the six metropolitan areas in the states of Kansas, Iowa, Missouri, Nebraska, and Oklahoma, Wichita was the only metropolitan area to not see its proportion of the combined population of those five states grow in the past decade.

The conferee also presented information indicating that economic development projects displaying local economic growth may not have actually yielded broader economic growth, but may have only moved existing business activity.

## ***Overview of Economic Sectors***

The Committee received a summary economic impact overview from representatives of the Kansas Chamber of Commerce and the National Federation of Independent Businesses-Kansas indicating that the COVID-19 pandemic and associated shutdowns have put substantial stress on Kansas businesses of all sizes, with the smallest businesses bearing the greatest share of the burden. The Committee also received information concerning the impact of the pandemic on several economic sectors.



## *Financial Services*

The Committee received testimony from representatives of the Kansas Bankers Association and Heartland Credit Union Association concerning the impact of the pandemic on the financial services sector. The conferees indicated the sector anticipates seeing increased loan delinquencies and charge-offs and diminished return on assets for the duration of the COVID-19 pandemic. The conferees noted the industry received fees for administering certain pandemic response programs, but the magnitude of those fees is less than the loss from other issues associated with the pandemic.

## *Insurance*

The Committee received testimony from representatives of the American Property and Casualty Insurance Association, America's Health Insurance Plans, State Farm Insurance Companies, Blue Cross and Blue Shield of Kansas, Inc., and the Kansas Association of Insurance Agents concerning the impact of the pandemic on the insurance industry. Property and casualty insurance conferees noted the insurance industry was able to refund premiums to customers due to the diminished risk of driving-related losses. However, the conferees also noted that the industry expects total property and casualty loss payments associated with the COVID-19 pandemic to approach or exceed the largest insured loss event in U.S. history. Conferees stated the ultimate insurance for business loss in the pandemic must come from the federal government.

Health insurance conferees noted the industry has taken several steps to help curb the impact of the pandemic on patients, such as the elimination of cost sharing for COVID-19 testing and treatment and waiving certain prior authorization requirements. In response to questions, a conferee noted hospitalization rates and the number of elective procedures performed for the current year had been lower than rates for the previous year.

## *Agriculture*

Representatives of Cargill, the Kansas Farm Bureau, and the Kansas Livestock Association reviewed the impact of the COVID-19 pandemic on the agriculture industry. Conferees stated the

industry had largely been excluded from shutdowns associated with the pandemic, but the pandemic had greatly altered the food supply landscape for consumers, resulting in necessary rapid changes to supply chain models. Conferees also noted that slowdowns at food-processing facilities associated with disease outbreaks had greatly affected the livestock supply chain. Conferees also noted that commodity price decreases associated with the pandemic had brought significant challenges to many producers.

## *Oil and Gas*

The Committee received testimony from a representative of the Kansas Independent Oil and Gas Association, who stated low commodity prices from diminished demand due to the COVID-19 pandemic created difficulties and uncertainty for the oil and gas industry, and the volatility of the low prices was especially challenging for the small businesses that make up much of the industry in Kansas.

## *Health Care*

The Committee received testimony from representatives of the Kansas Health Care Association, the Kansas Hospital Association, the Kansas Medical Society, and LeadingAge Kansas concerning the impact of the COVID-19 pandemic on the health care industry. Conferees all noted that the limited availability of personal protective equipment (PPE) made performing any health care through the pandemic a challenge. Conferees also noted that the reduction or elimination of elective procedures placed a large financial strain on the health care system at a time when the system needed to be strengthened to provide care for COVID-19 patients. Conferees also stated nursing homes were simultaneously facing challenges associated with declining occupancy rates and also a workforce shortage, on top of obstacles related to limited PPE.

## *Real Estate Development*

Representatives of Occidental Management provided testimony on the topic of retail and real estate development. The conferees noted that, in addition to the immediate strain of the COVID-19 pandemic and associated shutdowns, the response of governments to the pandemic made retailers

uncertain as to how to plan for and project future business.

#### *Accountancy*

A representative of the Kansas Society of Certified Public Accountants testified that the changes to tax law and various business rules and regulations had created some opportunity for accountants, but the industry's clients are facing substantial obstacles, and the clarity and consistency of the business and regulatory climate will be key for businesses as they emerge from the pandemic.

#### *Restaurants and Hospitality*

A representative of the Kansas Restaurant and Hospitality Association testified that the shutdown imposed by the state amounted to a taking of private property and that business owners should be compensated for their loss during that time. The conferee indicated the restaurant industry has been particularly hard hit due to ongoing limitations on indoor dining. The conferee further testified that the industry is not optimistic about a quick return to profitability, and it is likely that many businesses will close permanently.

#### *Utilities*

The Committee received testimony from representatives of Evergy; Kansas Electric Cooperatives, Inc.; Kansas Gas Service; and Kansas Municipal Utilities on the impact of the COVID-19 pandemic on the utilities industry. The conferees generally indicated the service providers are experiencing much larger numbers of customers with past-due balances than is typical and that indefinite shutoff moratoriums would be challenging for the industry. The conferees also all expressed support for relief efforts aimed at assisting individuals to pay their utility bills.

### **September 16 – 17, 2020**

On September 16 and 17, the Committee received reports on emergency management, human resources issues, unemployment compensation, and child care, education, and higher education. The Committee also received overviews of the status of several economic sectors in Kansas.

### ***Emergency Management***

The Committee received testimony from the Attorney General of Kansas concerning the Kansas Emergency Management Act. The Attorney General testified that a key to supporting economic activity is heightened certainty for businesses, consumers, and others making decisions throughout the emergency. He further testified that his office has provided legal guidance to state agencies and local officials since the beginning of the pandemic to ensure that orders issued conform to Kansas law. The Attorney General also provided several recommendations for amendments to the Kansas Emergency Management Act to support economic recovery.

### ***Human Resources Issues***

Representatives of the Kansas State Council of the Society for Human Resource Management testified that Kansas employers are struggling to find applicants for numerous job openings and that fraud issues are prevalent in the unemployment compensation system. The conferees further stated the state unemployment insurance trust fund is on track to be depleted in either late 2020 or some time during 2021, and the sharp decline in the balance in the unemployment trust fund will result in increased unemployment tax rates for employers beginning in 2022.

### ***Unemployment Compensation***

The Committee received testimony from the Acting Secretary of Labor and representatives of KDOL concerning the status of the unemployment insurance trust fund and the implementation of the Lost Wages Assistance Program, which provides \$300 of additional weekly benefits to recipients of unemployment compensation. The Acting Secretary also testified to the Committee concerning the fraud mitigation strategies KDOL had implemented and updated the Committee on the balance of the unemployment trust fund.

### ***Childcare, Education, and Higher Education***

Representatives of the Kansas Children's Cabinet and Trust Fund, the Kansas Children's Service League, and the YMCA of Greater Kansas City testified concerning the challenges of providing child care through the pandemic and the importance of providing high-quality child care for

both long- and short-term economic recovery. The conferees noted the ability of many parents to return to the workforce is largely dependent on the availability of child care and briefed the Committee on tax incentives available to employers for providing child care to employees.

The Committee received testimony from a pediatrician concerning the importance of in-person education for the health of students. The conferee noted that rates of disease transmission from and to students appear to be very low and indicated the best interest of most students would be for schools to be open for in-person instruction with appropriate precautions in place.

A member of the Legislative Task Force on Dyslexia provided information concerning the importance of reading instruction, even during a pandemic, especially for those students who struggle to read. The conferee stated the progress made for dyslexic education should not be allowed to be delayed by the pandemic as the students who are struggling to read will not get another chance in the current school year.

A representative of the Kansas Association of Community College Trustees testified to the work undertaken by community colleges to provide a safe, quality education through the pandemic. The conferee noted colleges had pandemic-related costs that exceeded the relief funding allotted to colleges.

A representative of the Kansas Board of Regents stated higher education is a necessary driver for economic recovery in Kansas. The conferee said the Board has undertaken strategic economic alignment initiatives to ensure that Kansas will have a qualified workforce for sustainable jobs. The conferee also testified regarding the effect of the pandemic on university campuses and estimated that enrollment declines systemwide were likely near 10 percent.

### ***Small Business Support Initiatives***

Representatives of NetWork Kansas testified concerning the implementation of Kansas Department of Commerce relief programs. The conferees said more than \$7 million of loans had been awarded to Kansas small businesses through these initiatives and that Commerce staff were

then processing applications for additional small business grants.

### ***Overview of Economic Sectors***

The Committee received testimony concerning the impact of the pandemic on several economic sectors.

#### ***Mental Health***

A representative of the Association of Community Mental Health Centers of Kansas testified concerning the effect of the pandemic on the Kansas mental health system and on the mental and behavioral health of Kansans. He stated the economic impact on community mental health centers in terms of lost revenue and unexpected costs is estimated to be nearly \$30.0 million since the Governor's state of disaster emergency order in March.

#### ***Community Banks***

Representatives of the Community Bankers Association indicated that it is too early to ascertain the full effect of the pandemic and shutdowns as federal stimulus efforts are currently supporting the economy and have been for several months.

#### ***Tourism and Conventions***

The Committee received testimony from a representative of the Kansas Department of Wildlife, Parks and Tourism concerning the effects of the pandemic on tourism. The conferee noted that, while travel has been sharply reduced during the pandemic, certain outdoor travel activities are faring better than the industry as a whole. A representative of the Travel Industry Association of Kansas testified that the hotel industry has been harmed as much or more than any other industry through the pandemic. The conferee noted that pandemic protocols had increased hotel costs while revenues had sharply decreased for most establishments.

#### ***Farm Wineries and Event Venues***

Two Kansas farm winery operators testified that the pandemic had harmed their business while shifting the same behavior to private locations where no safety protocols are being followed. The

conferees also noted that their businesses would benefit if they were allowed to deliver wine to their customers or sell wine in grocery stores.

The Committee also received testimony from an operator of several live event venues. The conferee indicated the live event industry has been essentially halted by the pandemic and that clarity of what businesses are allowed to do is necessary for the survival of establishments through the pandemic.

### *Diagnostic Testing*

The Committee received testimony from a representative of Quest Diagnostics who stated the company was attempting to supply COVID-19 testing to meet the large demand created by the pandemic. The conferee noted the company had been able to acquire staff, but had to review compensation as there is a nationwide shortage of medical technologists.

### *Medical Marijuana*

Representatives of the Kansas Cannabis Business Association and Farmers for Alternative Crop Expansion testified that medical cannabis reform could expand economic opportunities for numerous sectors of the Kansas economy.

## **November 16 – 17, 2020**

On November 16 and 17, the Committee received reports on Kansas finances and taxation, legislation vetoed during the 2020 Legislative Session, the performance of various state economies through the COVID-19 pandemic, the labor economy and unemployment compensation system, the aviation manufacturing sector, and policy recommendations from the Kansas business community.

### ***State Finances and Other State Information***

KLRD staff provided an update on the November 6, 2020, revision of the consensus revenue estimates, noting that the estimate for the current fiscal year was increased by \$477.2 million, largely due to an improved economic outlook. KLRD staff noted the previous estimate was made at the height of the shutdown and forecasts for many economic variables had improved since that time. KLRD staff also

provided an update on the State General Fund profile, testifying that the current forecast shows a deficit of \$119.4 million in fiscal year 2022. KLRD staff also provided information from other states indicating that many states have increased their revenue estimates in recent months if their previous estimates were made during the spring months. KLRD staff noted such comparisons are especially challenging for income taxes, as most states delayed filing and payment deadlines from April to July, but the effect of those delays is not yet fully understood.

### ***Economic Outcomes and State Restrictions***

A representative of the Kansas Policy Institute testified that states with more-limited restrictions on their economies in response to the COVID-19 pandemic had better economic outcomes and health outcomes. The conferee stated Kansas' longstanding subsidy-based economic development strategy had not been successful and was not likely to be successful prospectively, and he recommended Kansas focus on other competitive areas, such as taxes, education achievement, and regulatory climate. He also recommended Kansas adopt a concierge-style economic development strategy that provides services, rather than incentives, to new or expanding businesses.

### ***Property Tax***

KLRD staff provided an overview of the Kansas *ad valorem* property tax system, noting it is the single largest revenue source for state and local governments in Kansas, and described the process by which property is valued for tax purposes and tax rates are determined.

The Committee also received testimony from a representative of the Kansas Policy Institute concerning property tax transparency legislation in Kansas. The conferee noted that such legislation would provide more transparency for taxpayers in understanding why their tax bills change from year to year and who receives the revenue from those taxes.

### ***Sales Tax***

KLRD staff provided an overview of the Kansas retail sales tax, providing information on the determination of what constitutes a taxable

sale and how the sales tax rates are determined for a transaction.

The Committee also received testimony from the Secretary of Revenue, who testified concerning the impact on Kansas sales taxes of a 2018 U.S. Supreme Court decision concerning sales tax on remote transactions. He testified that while Kansas is currently collecting much of the possible revenue from this change in law, a statutory provision concerning third-party marketplace facilitators is necessary for Kansas to capture additional revenue from otherwise taxable remote transactions.

### ***Income Tax***

Staff provided an overview of the Kansas individual income tax, noting that this tax is the largest single source of revenue for the State General Fund. Staff indicated that while federal adjusted gross income is the starting point for the Kansas income tax calculation, the full determination of income tax liability involves several steps before the Kansas income tax rates are applied.

The Committee also received testimony from a representative of the Kansas Society of Certified Public Accountants concerning the income tax changes in the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the taxation of the various stimulus program benefits from that legislation. He noted there was a lack of clarity as to the tax treatment of business expenses from forgiven Paycheck Protection Program loans.

### ***Other Taxes***

KLRD staff provided an overview of other Kansas taxes, including the compensating use tax, the corporation income tax, the financial institutions privilege tax, the motor vehicle tax, the motor carrier property tax, motor fuels taxes, cigarette and tobacco taxes, liquor and beer taxes, severance taxes, transient guest taxes, and other minor taxes.

### ***2020 Vetoed Legislation***

Office of Revisor of Statutes staff provided an overview of two pieces of legislation from the 2020 Session that were vetoed. Senate Sub. for HB 2619 would have made several changes to law

related to financial institutions, and HB 2702 would have made several changes to property taxes.

### ***Business Community Policy Recommendations***

The Committee received testimony from representatives of the Kansas Bankers Association, the Kansas Chamber of Commerce, the Kansas Restaurant and Hospitality Association, and Renew Kansas Biofuels Association concerning policy recommendations for the Legislature to consider during the 2021 Session. The recommendations included reconsideration of legislation vetoed during the 2020 Session and other changes to Kansas tax law, legal reform, emergency management reform, targeted tax relief for businesses impacted by shutdowns, regulatory reform, and unemployment insurance modernization and reform.

### ***Labor Economy, Unemployment Compensation, Modernization, and Reform***

Representatives of KDOL provided an update on the state of the Kansas labor economy and the state unemployment compensation system. Committee members had numerous questions for the Department representatives related to unemployment fraud issues and feasibility of computer modernization during the pandemic.

The Committee also received testimony from a representative of the Kansas State Council of the Society for Human Resource Management concerning modernizing and reforming the Kansas unemployment compensation system. The conferee recommended expanding the merit-rating system to trust fund solvency adjustments to avoid penalizing employers who had not laid off employees and other changes to the unemployment compensation system.

### ***Aviation Manufacturing***

A representative of the Wichita Regional Chamber of Commerce described the challenges facing the aviation manufacturing industry. The conferee noted that aviation manufacturing jobs pay well and that states are very competitive to attract those jobs.

## **December 7 – 8, 2020**

At its meeting on December 7 and 8, the Committee received reports on unemployment compensation fraud mitigation and computer modernization issues, the State's utilization of federal Coronavirus Relief Fund moneys, broadband expansion, and the State's economic development outlook following the pandemic. The Committee concluded its work by discussing the information presented to it and making various recommendations.

### ***Unemployment Compensation Fraud and Modernization Issues***

The Acting Secretary of Labor provided information concerning the unemployment compensation system and fraud mitigation strategies in the unemployment compensation system. Portions of this presentation were provided in executive session; staff were not present. In open session, the Acting Secretary stated that all individual claimants who are entitled to benefits under any federal relief programs will receive those benefits, even if the program that authorized those programs has expired. The Acting Secretary also noted that all businesses are held harmless for claims that are properly reported as fraudulent and determined to be fraudulent.

### ***Federal Coronavirus Relief Fund Utilization***

The Committee received testimony from a representative of the Office of Recovery concerning the State's use of \$1.25 billion of federal Coronavirus Relief Fund moneys. The conferee outlined the process the State used to determine the use of the funds and also the actual use of the funds. The conferee indicated that \$400 million had been allocated to counties for local needs and the remaining funds had been used in several rounds to meet statewide needs. The conferee also provided information concerning additional steps involved in using the funds and the remaining time for using funds.

### ***Broadband Expansion***

Representatives of Commerce testified concerning broadband expansion initiatives in the state. The conferees noted previous broadband expansion efforts had focused on mapping broadband availability prior to building new

infrastructure, which prevented effective infrastructure from being built. The conferees indicated the current approach is to work to build infrastructure in any place where a deficiency is identified without requiring comprehensive advance mapping.

The Committee also received testimony from representatives of Cox Communications, the Kansas Cable Telecommunications Association, and RG Fiber on the topic of broadband expansion. The conferees highlighted efforts from industry stakeholders to expand broadband access and affordability throughout the state.

### ***Post-Pandemic Economic Development Outlook***

A representative of Commerce provided information on the State's economic development outlook following the COVID-19 pandemic. The conferee noted Kansas faced many challenges prior to and during the pandemic, but that Kansas also possessed numerous strengths prior to the pandemic, and the state was well positioned to have strengths after the pandemic. The conferee indicated that the outlook for economic development in Kansas included improved education and business alignment, retaining population and workforce within Kansas, the creation of a high-growth innovation sector, and further support for Kansas small businesses.

### ***Discussion and Recommendations***

The Committee discussed the need for policymakers to identify the best economic course for Kansas without seeking credit for successes or attempting to assign blame for past or current failures. The Committee made extensive and varied recommendations to the Legislature and other policymakers.

## **CONCLUSIONS AND RECOMMENDATIONS**

The Special Committee on Economic Recovery submits the following recommendations:

### **Government Response to Pandemics**

The Committee recommends the Legislature review all state and local policies that have been implemented throughout the COVID-19 pandemic

to ensure the State is prepared for any future pandemics that may occur.

The Committee recommends the Legislature review the Kansas Emergency Management Act and any related statutes to ensure appropriate uniformity while avoiding shutdowns and regulations that severely limit the ability of businesses to operate. The review of the Kansas Emergency Management Act should include consideration of provisions providing for the maximum possible legislative oversight of any restrictive orders.

The Committee recommends the Legislature consider providing for a mechanism by which state and local governments compensate businesses that are restricted due to emergency management orders, for both loss of revenue due to any orders and for property taxes associated with any time during which businesses are closed by emergency management order.

### **Unemployment Compensation Issues**

The Committee recommends the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce (House and Senate commerce committees) evaluate the unemployment compensation reforms recommended by the Kansas State Council of the Society for Human Resource Management and the Kansas employer community.

The Committee recommends the Legislature establish a special oversight committee to monitor and support the Kansas Department of Labor information technology (IT) modernization efforts and ensure the needs of the business and labor communities are met by the system upgrades. This oversight committee could be a continuation of the Special Committee on Economic Recovery.

The Committee recommends the Legislature appropriate necessary funds for the Kansas Department of Labor IT modernization process and the House and Senate commerce committees provide input on the modernization process and system, as well as the amount of money appropriated. If necessary to expedite the appropriation process, funds should be appropriated with a provision that the special

modernization oversight committee previously recommended must approve any modernization expenditures.

The Committee recommends the Legislature and Governor provide for sufficient full-time-equivalent employees and employee salaries to employ appropriate staff for the maintenance of the modernized IT systems.

The Committee recommends any available federal moneys provided by federal legislation enacted in response to the pandemic should be used to finance IT modernization and replenish the depleted unemployment trust fund to ensure benefits are available to out of work Kansans and that the economic recovery will not be impeded by increased unemployment compensation taxes.

The Committee recommends using any available funds, including the State General Fund, to replenish the unemployment trust fund, to ensure the business community is not forced to bear the cost of unemployment benefits throughout the pandemic through solvency surcharges applied to employer rates.

The Committee recommends the State immediately reinstate the requirements that recipients of unemployment benefits be actively seeking employment or be in training for a new skill to enable the employment community to fill the thousands of open Kansas jobs. The Committee further recommends the Kansas Department of Labor provide matching services for individuals receiving unemployment benefits to allow for quick re-employment.

The Committee recommends creation of a process for employers to report job offers that would result in the cessation of unemployment compensation benefits to individuals who have received job offers. The Committee recommends this policy be accompanied by a policy providing for incentives for companies to retrain individuals currently receiving unemployment benefits and incentives for unemployed Kansans to gain a new skill and remain in Kansas for work.

The Committee recommends the Legislature consider requiring income tax withholding from unemployment compensation benefits.

The Committee recommends the Kansas Department of Labor ensure that reimbursing employers will not be required to pay for fraudulent claims that have been reported as fraudulent.

### **Regulatory Recommendations**

The Committee recommends the State generally lighten the burden of administrative regulations on businesses and individuals to increase economic growth. The Committee further recommends the Legislature review existing rules and regulations to ensure no regulations duplicate those of the federal or local governments and that regulations are not overburdensome.

The Committee recommends the State permanently eliminate any regulations waived through the COVID-19 pandemic unless the Legislature finds the waiver caused public harm.

The Committee recommends the State implement a sunset review board for all state regulations, agencies, boards, and commissions.

The Committee recommends the State provide for universal recognition of occupational licensing to allow individuals licensed in other states to immediately work in Kansas through the passage of legislation substantively similar to 2020 HB 2506.

The Committee recommends revising state and local permitting processes to function as “shall issue” processes to allow for businesses to open and reopen following the COVID-19 pandemic without administrative delay caused by a backlog of applications or inspections associated with the pandemic.

The Committee recommends the elimination of any state or local inspections required prior to reopening a business that was temporarily closed due to the COVID-19 pandemic or associated emergency or public health order.

The Committee recommends the Kansas Department of Commerce create a concierge-style business opening or expansion service to manage state and local permitting and administrative

requirements associated with business entry and expansion.

The Committee recommends local governments relax local zoning regulations and ordinances to make it easier for Kansans to operate businesses from their own homes, especially those businesses involving remote work or telework.

### **Business Recruitment and Economic Development**

The Committee recommends the State evaluate the effectiveness and cost-effectiveness of local and state-authorized subsidies to specific individual businesses or developments and consider eliminating these incentives and replacing them with more broad-based opportunities to attract new businesses.

The Committee recommends the Legislature conduct a comprehensive review of all state and local economic development programs with an emphasis on encouraging the growth of start-ups to replace businesses that may be likely to fail.

The Committee recommends the continued and expanded use of federal Coronavirus Relief Fund moneys to expand broadband Internet availability to all Kansans, including rural and urban residents and students utilizing remote or virtual school options.

The Committee recommends the State increase the availability of Kansas hunting and fishing, including, but not limited to allowing landowner permits for deer and otherwise expanding hunting and fishing options for both residents and non-residents.

The Committee recommends the money available in the Economic Development Initiatives Fund be used according to statutory intent to enhance new and existing Kansas businesses and foster the growth of new industries, using the October 2019 report from the Legislative Division of Post Audit as a guide.

### **Resolving Barriers to Business Entry or Expansion**

The Committee recommends the House Committee on Energy, Utilities and



Telecommunications and the Senate Committee on Utilities address the cost of energy in Kansas as the high cost of energy in Kansas is a deterrent to new businesses and the expansion of existing businesses.

The Committee recommends the Legislature enact tax law that eliminates any unintentional state income tax increases on business and individuals as a result of 2017 federal income tax changes, specifically eliminating the new taxation of foreign income created by those changes and allowing individuals to itemize their state income tax deductions in light of the increase of the federal standard deduction.

The Committee recommends House and Senate commerce and tax committees work together to explore incentivizing capital-intensive industries to invest in Kansas by providing for an alternative apportionment method using a single-factor sales formula that businesses may elect to use.

### **Workforce Development**

The Committee recommends House and Senate commerce committees consider legislation providing for tax credits for certain graduates of aerospace and aviation-related educational programs and employers of those graduates that is substantively similar to 2019 HB 2118, as amended by the House Committee of the Whole.

The Committee recommends the Legislature review the aviation economic development programs of other states to ensure Kansas retains graduates in this field and multi-state corporations choose Kansas as their site for their operations. The Committee further recommends reviewing this model for potential use for computer science and other technology industries.

The Committee recommends House and Senate commerce committees encourage Kansans to explore opportunities in high-paying skilled-labor industries, including programs allowing students to learn on site. The Committee recommends using the provisions of 2020 HB 2354 as a starting point to resolve liability concerns regarding high school apprenticeships and on-the-job training programs.

The Committee recommends closely aligning K-12 education and higher education with Kansas business and labor unions to provide for certificates for high-demand, high-paying, skilled-labor careers.

The Committee recommends the Legislature pass the provisions of the Promise Scholarship Act (from 2020 HB 2510, which was vetoed) to encourage high school students who might otherwise not attend college to attend two-year colleges or other certificate programs, while requiring those students to live and work in Kansas upon graduation by providing a scholarship that becomes a repayable loan if the requirements of the program are not met.

### **Banking and Financial Institutions Legislation**

The Committee recommends the Legislature enact the provisions of 2020 Senate Sub. for HB 2619 providing for a low-interest linked deposit loan program using up to \$60 million of state idle funds to “impact invest” back into Kansas communities and provide for a tax exemption for agricultural real estate and rural housing loans in addition to other financial institutions provisions.

### **Property Tax**

The Committee recommends the Legislature eliminate the 1.5 mills of property tax currently used to finance the state building funds and replace this funding with State General Fund revenue as necessary through the appropriations process.

The Committee recommends the Legislature pass the following provisions of 2020 HB 2702:

- Notice and public hearing requirements for certain taxing subdivisions seeking to increase property tax revenues;
- The Kansas Taxpayer Protection Act related to paid preparers of income tax returns;
- A temporary waiver of interest on delinquent property taxes in response to the COVID-19 pandemic and associated emergency and public health orders;

- Prohibit valuation increases solely as a result of normal maintenance of property improvements; and
- Authorize county treasurers to accept partial payments and establish payment plans for all property taxes.

The Committee recommends the Legislature waive a portion of the property taxes on commercial properties that are the locations of businesses that have been closed as a result of COVID-19 pandemic-related emergency or public health orders.

The Committee recommends enactment of legislation allowing the State Board of Tax Appeals to serve orders and notices by electronic means upon request of any party to a case before it.

The Committee recommends enactment of legislation prohibiting the increase of valuation of property upon appeal.

### **Income Tax**

The Committee recommends the Legislature not add any extra burden to businesses that have received Paycheck Protection Program loans by ensuring the forgiveness of those loans is exempt from state income tax, while not allowing the deduction of expenditures from the proceeds of forgiven loans.

The Committee recommends enactment of legislation increasing the standard deduction for Kansas individuals in proportion to the 2017 increase in the federal standard deduction and allowing Kansans the option to itemize their deductions on their Kansas returns, even if they choose to take the standard deduction on their federal return.

In the alternative to allowing full state-level itemization of deductions regardless of federal itemization, the Committee recommends the Legislature consider allowing charitable contributions to be deducted in addition to the standard deduction.

The Committee recommends enactment of legislation providing for the expensing deduction for individual income taxpayers.

The Committee recommends the Legislature pass legislation extending the Kansas net operating loss carryforward period.

The Committee recommends the Legislature consider passing legislation expanding the rural opportunity zones program to additional counties, possibly statewide.

The Committee recommends the Legislature pass any necessary legislation to ensure that 2020 federal pandemic-relief legislation does not result in any unintended state income tax increases.

The Committee recommends the Legislature pass legislation to ensure fraudulent unemployment compensation payments do not result in an income tax obligation for fraud victims.

The Committee recommends the House Committee on Taxation and Senate Committee on Assessment and Taxation (tax committees) evaluate the Child Care Assistance Credit for businesses and make appropriate changes.

### **Sales Tax**

The Committee recommends the tax committees recommend, at the beginning of the 2021 Legislative Session, passage of legislation requiring marketplace facilitators to collect and remit sales tax.

### **Education**

The Committee recommends, in light of testimony related to the importance of in-person education to both the education of students and the ability of parents to participate in the workforce, combined with testimony related to the limited risk of COVID-19 to children and the reduced transmission rates and community spread associated with children, that schools make every effort and all necessary and appropriate accommodations to provide an in-person education to Kansas K-12 students. The Committee further recommends the Legislature consider policies allowing state aid to follow a

student to another school when in-person instruction is not offered at the local public school.

The Committee recommends the use of federal Coronavirus Relief Fund aid to expand broadband access to all Kansas students to provide access to online learning, including live instruction and interaction.

### **Health**

The Committee recommends the cycle threshold of all laboratories providing COVID-19 testing for Kansans to be released within seven days of the announced test result.

The Committee recommends the cycle threshold for all laboratories that have provided past COVID-19 testing be made public immediately.

### **Other Recommendations**

The Committee recommends the penalties for criminal fraud and identity theft be reviewed and possibly increased.

The Committee recommends amendments to state law to require state agencies to submit technology plans to the Joint Committee on Information Technology prior to state agency issuance of any technology-related request for proposals.

The Committee recommends the Legislature review the statutory uses of the Kansas Universal Service Fund to consider the use of the fund for broadband expansion and access and ongoing support of broadband infrastructure.

The Committee recommends the use of Coronavirus Relief Fund moneys by the State and local governments to pay the salaries and benefits of public employees required to quarantine due to work-related exposure to COVID-19.

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# **Report of the Special Committee on Kansas Emergency Management Act to the 2021 Kansas Legislature**

**CHAIRPERSON:** Representative Fred Patton

**VICE-CHAIRPERSON:** Senator Eric Rucker

**OTHER MEMBERS:** Senators Marci Francisco, Dennis Pyle, Mike Thompson, and Rick Wilborn; Representatives Mike Amyx, John Barker, Stephen Owens, Bradley Ralph, Eric Smith, Ponka-We Victors, and Valdenia Winn

## **STUDY TOPIC**

The Committee is directed to:

- Review the Kansas Emergency Management Act, the State's new COVID-19 response package (2020 Special Session HB 2016), and the oversight and emergency management approaches utilized in other states, and make recommendations to the Legislature on any improvements or changes that should be considered.

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# Special Committee on Kansas Emergency Management Act

## REPORT

### Conclusions and Recommendations

The Committee considers this report a summary of items of interest forwarded by a number of conferees, and it should not be used or construed as a guideline for the executive branch or any state agency. The Committee recommends the chairpersons of the appropriate standing committees of the Legislature consider working with the Office of Revisor of Statutes staff to research and respond to concerns brought by conferees in the form of proposed legislation during the 2021 Legislative Session. The report should not be construed as legislative intent, but merely a fact-finding exercise for standing committees of the 2021 Legislature. [Note: the Committee reached conclusions but did not make specific recommendations on a number of items discussed.]

**Items for further study by appropriate standing committees.** The Committee recommends the appropriate standing committees of the 2021 Legislature further study the following items:

- Changes made to the Kansas Emergency Management Act (KEMA) in 2020 Special Session HB 2016 (HB 2016) regarding the Governor's powers as enumerated in KSA 2019 Supp. 48-925(c);
- Appropriate penalties and enforcement mechanisms for violations of KEMA;
- Language of Section 6 of HB 2016 regarding the closure of businesses;
- Immunity from liability for adult care homes;
- A constitutional amendment that would authorize the Legislature to take certain steps in dealing with an emergency;
- Local authority to implement an order less restrictive than a statewide order during an emergency;
- Extending the authority of the Chief Justice of the Kansas Supreme Court to modify deadlines and time limits after March 31, 2021, by eliminating the sunset provision in HB 2016 or decoupling the authority of the Chief Justice from an emergency declaration;
- A constitutional amendment that would change the requirements for calling a special legislative session;
- Legislation that would enable first responders to share information with law enforcement regarding an individual's exposure to infectious disease;
- Prohibition on executive orders to suspend any portion of the Kansas Criminal Code; and
- Options for combating rampant unemployment insurance claim fraud.

**Items raised by conferees needing further study.** The Committee agreed the following items raised by conferees could be addressed either by amending KSA 48-923 (governing limitations on the effect of KEMA) or by making it easier for the full Legislature to convene during an emergency, but further study is needed:

- Review of the authority of the Legislature to revoke a governor’s use of the delegated emergency powers to determine whether such authority violates the separation of powers;
- Clarification that states of disaster emergency are to be “proclaimed,” and the exercise of powers delegated in KSA 48-925(c) during a proclaimed state of disaster emergency is to be by issuance of “orders.” KSA 48-925(b) states the powers in KSA 48-925(c) are to be exercised by “orders and proclamations,” while the text of KSA 48-924(b)(1) states a governor is to “proclaim” a state of disaster emergency;
- Clarification by the Legislature on how it intends a governor’s KSA 48-925-delegated emergency powers to interact with the constitutional and statutory powers of other entities, *e.g.*, the State Board of Education and local school boards; and
- Review of the text and operation of provisions in HB 2016 that allow counties to adopt orders less restrictive than a governor’s emergency order relating to public health.

**Items raised by conferees outside of the scope of the Committee.** The Committee agreed the following items, raised by conferees but outside the scope of this Committee’s charge, should be considered by the 2021 Legislature:

- The 2021 budget committees should study a prioritization penalty for agencies that do not spend money on cybersecurity;
- Whether Kansas public safety telecommunicators should be included in the definition of the term of “emergency responder” in disaster emergency relief efforts;
- Whether statutory speedy trial limits should be suspended or eliminated;
- Whether the content of the executive order allowing for nurse practitioners, nurse anesthetists, and physician assistants to practice in many facilities without physician supervision should be made permanent;
- Whether the provisions of the executive order allowing for health care professionals licensed in other states to practice in Kansas to deliver telehealth without a Kansas license should be made permanent;
- Whether a direct tax credit should be provided in emergency instances when the government issues orders prohibiting evictions and foreclosures;
- What information the Kansas Department of Health and Environment should be required to release during a pandemic, and what time limitations should be placed on the release of that information;
- What changes are necessary for the operation of the Legislature during an emergency (*e.g.*, meeting off-site and remote voting);
- Whether Article 15, § 13 provisions of the *Kansas Constitution* should be expanded to include disasters;



- Whether the closure of businesses during an emergency should require legislative oversight;
- What discretion, if any, should be given to keep businesses open at the local level during an emergency; and
- Whether the Governor should be allowed to close private schools during an emergency.

***Proposed Legislation:*** None

## BACKGROUND

The Special Committee on Kansas Emergency Management Act was created by the Legislative Coordinating Council (LCC) to review the Kansas Emergency Management Act (KEMA); 2020 Special Session HB 2016 (HB 2016), enacted to address the COVID-19 pandemic; and the oversight and emergency management approaches utilized in other states. The Committee was directed to make recommendations to the Legislature on any improvements or changes that should be considered.

The Committee was authorized by the LCC to meet for six days and met at the Statehouse on August 24, 25, and 26, 2020, and on September 22, 23, and 24, 2020.

## COMMITTEE ACTIVITIES

### August 24 – 26 Meetings

In accordance with its charge, the Committee met to hear informational presentations from legislative staff and testimony from stakeholders related to KEMA, HB 2016, and the oversight and emergency management approaches utilized in other states.

#### ***Staff Presentations***

**History and review of KEMA.** An Assistant Revisor of Statutes provided a brief history of the KEMA. She noted its origin in 1951 as a civil defense act. She traced its development through 1955, when worker insurance was addressed; to 1975, when emergency preparedness was placed under the Kansas Adjutant General's Department; and to 1994, when the Division of Emergency Management was established, and lead authority

in an emergency was established if the Governor was not available. Amendments to KEMA followed in 2001 and 2002, addressing animal and plant diseases, and in HB 2016. The Assistant Revisor outlined the various provisions of KEMA and noted recent changes to KEMA.

**Review of HB 2016.** The Assistant Revisor elaborated further on HB 2016 as it relates to specific emergency issues. She explained the provisions of the bill related to the use of disaster relief funds; the authority of the Governor and the State Finance Council in regard to closing businesses and establishing timelines; the authority of county commissioners and county and local boards of health; and the authority of the state school board regarding school closures.

The Assistant Revisor identified special provisions of the bill that address COVID-19 issues or entities affected by the pandemic, including the reopening of businesses closed by the Governor's declaration, privacy concerns raised by COVID-19 contact tracing, the pandemic's effect on employment security law, the increased needs for health care, the vulnerability of adult care homes, the curbside sale of liquor; and statutory adjustments to court and first responder functions.

**Emergency management in other states.** Staff from the National Conference of State Legislatures (NCSL) presented information regarding emergency and disaster management and legislative oversight of emergency executive powers in other states. NCSL staff reviewed the current constitutional and statutory landscape related to executive powers during an emergency or disaster. Staff stated all 50 states authorize their governors to declare a state of emergency, under which executive authority is expanded, and certain

statutes may be suspended. Staff delineated conditions under which a legislature may revoke a governor's orders and identified states that have enacted legislation to amend emergency management declarations by strengthening legislative oversight.

### ***Comments From Stakeholders***

**Wolf Creek Generating Station.** The Oversight Director of Wolf Creek Generating Station reviewed statistics regarding the station; he noted the station produces 1,200 megawatts of power, has been operational since 1985, and is licensed through year 2045. He outlined the function of a nuclear plant and the variety of safety systems that protect the public. He then described the plant's emergency preparedness: coordination with the Kansas Division of Emergency Management (KDEM), quarterly training meetings, mock disaster drills that include other agencies and 400 participants, and post-drill evaluations. Regarding cybersecurity, he said the plant has two separate systems (a business system and an operational system) that minimize cyber intrusions. He reported the pandemic has had no adverse impact on plant operations.

**Adjutant General.** The Adjutant General reviewed the history of KEMA. He stated the statutes began as a civil defense provision in the event of a nuclear attack, an emphasis that was broadened in 1974 to an all-hazards focus that has been periodically updated, most recently in response to the COVID-19 pandemic. He noted in 2013 KDEM received accreditation through the Emergency Management Accreditation Program, a recognition that enhances Kansas' ability to muster a variety of resources in response to any disaster at any time.

The Adjutant General explained the Governor's declaration of an emergency activates KDEM's resources to coordinate with local governments and responded to members' questions regarding potential statutory changes, supply storage, and assistance roles.

**Kansas Department of Health and Environment (KDHE).** The Secretary of Health and Environment reviewed the impact of HB 2016 on KDHE. He briefly listed historic disasters that KDHE has responded to and specifically how the

agency is dealing with the COVID-19 pandemic. He noted COVID-19 cases in August seemed to be trending down from July's 12,822 new-case peak. He detailed eight "lines of effort" including epidemiology/disease tracking; lab testing; media and community education and engagement; isolation management; policy guidelines; acting as a governmental entity liaison; best practices research; and management of materials, supplies, stockpile, and surge. The Secretary stated KDHE has a goal of conducting 60,000 COVID-19 tests per month through 2020.

**Representative Kristey Williams, Chairperson, House Committee on K-12 Education Budget.** Representative Williams discussed the effects the pandemic has had on students and outlined recommendations for amending the emergency management statutes. Referencing the normal "summer slide" of a student's proficiency loss, she stated the loss during the pandemic has increased.

Representative Williams then offered the following recommendations to help define roles and responsibilities for local school district boards related to executive orders and the number of school contact hours:

- Exclude private schools from Section 7 of HB 2016;
- Codify the Kansas State Board of Education guidance on meeting the statutory school-term requirements, especially as it relates to remote learning;
- Clarify local school boards have broad governing authority over the daily operation of public schools, especially as related to public health;
- Clarify the duties and obligations of the three branches of state government in relation to public education;
- Require school districts to offer additional opportunities for at-risk students to receive additional educational opportunities; and

- Provide education savings accounts for students when the school district does not provide in-person instruction.

Representative Williams also provided resources regarding funding remote learning and related opinions from the Kansas Attorney General.

**Kansas State Department of Education (KSDE).** The Commissioner of Education presented KSDE's response to HB 2016. He noted the educational vision of KSDE and referenced the 1,200-page document "Navigating Change: Kansas' Guide to Learning and School Safety Operations." After commenting KSDE has authority over educational standards, but not over the operations of any local school board, he said the goals of the plan are to assure a strong learning environment for students and keep students and staff safe. He outlined the key factors in instructional competence and identified the three learning environments: on-site, hybrid (schools operating at reduced capacity), and remote, all of which are governed by gating criteria.

**Kansas Association of Counties.** The Legislative Policy Director and General Counsel of the Kansas Association of Counties offered a county perspective on KEMA. He stated his belief that a disaster response should be tailored to the type of disaster. He further stated that because disaster legislation cannot anticipate details of future disasters, such legislation should provide a general framework that allocates authority to relevant individuals or local governing entities. He noted KEMA grants two types of authority, general and specific, and he offered observations to show how HB 2016 creates gaps in authority. He explained HB 2016 exempts KSA 65-201 and KSA 65-202 from county home rule authority, an action he described as inconsistent with local control. He stated school districts operate under different authority from counties, a fact that creates confusion for county officials. He further stated the current disaster declaration has an expiration date, after which it is not clear whether federal aid can be accessed. He recommended if amendments are made to HB 2016, the statute clarify the distribution of authority to provide a hierarchy for school boards, county commissioners, and KSDE.

**Kansas Chamber of Commerce and National Federation of Independent Businesses.** The Vice President of Government Affairs, Kansas Chamber of Commerce, and the State Director of the National Federation of Independent Businesses jointly addressed issues related to the Governor's executive orders and the orders' impact on the business community. The Vice President said he appreciated the Governor including the business community in the original executive order planning but stated his belief that as the pandemic has continued, the executive orders have had serious negative effects economically, as well as glaring inconsistencies in how the orders have been implemented. He recommended the distinctions between "essential businesses" and "non-essential businesses" be eliminated and an operational risk-management policy be established. He also stated, while HB 2016 provides checks and balances for due process at the local level, he believes it does not offer the same checks and balances at the state level, and check and balances should be adopted at the state level. He also stated his belief that some health officials have been too aggressive in enforcing the executive orders on the business community.

**Kansas Department of Agriculture (KDA).** The Chief Counsel of KDA reviewed the agency's responsibilities to provide security for the state's plants and animals during a disaster emergency. He reported the Secretary of Agriculture is authorized either independently or in cooperation with other government entities to control plant pests and to designate certain species of plants as noxious weeds. He stated the Secretary and the Animal Health Commissioner have broad authority to respond to contagious or infectious animal diseases by a stop-movement order or a quarantine. He explained a Governor's emergency declaration regarding animal disease in the state is rare unless a disease outbreak is national and the declaration is needed to access federal funds. He detailed the agency's comprehensive security and emergency exercises in conjunction with other agencies and its participation in the state's emergency management system. He noted KDA also offers a supporting role to other agencies during emergencies.

**League of Kansas Municipalities.** The General Counsel of the League of Kansas Municipalities testified regarding the role of cities

in dealing with the KEMA. She noted the differences between cities and counties, the latter functioning as an administrative arm of the State and the former existing solely to provide services to residents. She stated Kansas has three classes of cities based on population and range in size from 12 residents to almost 400,000, with a variety of administrative systems that function under the State's constitutional home rule statutes. She stated, under the current KEMA structure, a city's role is to participate in the county's comprehensive emergency management program. However, she reported the normal chain of command established for emergencies has not functioned effectively during the COVID-19 disaster primarily due to a lack of statewide oversight or a comprehensive information center. She stated her belief that the Governor's executive orders focused on counties, ignored the role of cities, and allowed discretionary and erratic enforcement that created confusion for local officials and citizens. The General Counsel recommended the statutes be amended to make clear the role of cities, and she suggested, for long-term emergencies such as the pandemic, an executive order should differentiate enforcement responsibilities among varying geographic areas of the state.

**State Fire Marshal.** The State Fire Marshal outlined the agency's involvement under KEMA. He explained the Fire Marshal is involved in the Kansas Response Plan, an all-hazards plan that provides a framework and assigns responsibilities to supporting agencies. He reported the agency is responsible for 3 of the 15 Emergency Support Function (ESF) Annexes (Fire, Search and Rescue, and Hazardous Materials). He provided details for each of these functions. He noted the pandemic falls outside the agency's ESF responsibilities, but cited specific ways the agency has assisted in addressing needs of groups and governmental entities. The State Fire Marshal commented he saw no areas where KEMA needs adjusting, but he relayed a message from the Kansas Firefighters' Association requesting a review of KEMA to identify areas of efficiency and consolidation, specifically mission overlap among Kansas Search and Rescue, the Kansas Forest Service, and KDEM.

**Office of the Attorney General.** The Attorney General reviewed the provisions of KEMA, specifically KSA 48-920 *et seq.* He noted the

unprecedented use of KEMA in responding to the COVID-19 pandemic and executive orders have presented many complex legal questions. He further noted HB 2016 addresses some of these legal issues by clarifying the language of KSA 48-925(b) that the Governor's delegated powers found in KSA 48-925(c) are comprehensive, not merely illustrative, and that violations are considered civil, not criminal.

The Attorney General then listed further concerns and recommended changes in nine topic areas:

- A distinction should be made between delegated powers that are administrative and those that are clearly legislative;
- Two Kansas Supreme Court decisions make the KEMA mechanism for a legislative check on a Governor's use of delegated emergency powers possibly constitutionally flawed;
- The Governor is delegated extraordinary power to suspend state statutes, but the text specifies only "regulatory" powers may be suspended; the term "regulatory" does not clearly mark a boundary or indicate a definitive application;
- To further clarify the issue, it would be helpful for the Legislature to require a Governor to specify which statutes are to be suspended;
- KSA 48-925(b) states the powers of KSA 48-925(c) are to be exercised by "orders and proclamations." An earlier statute uses only the word "proclaim." A commingling of the terms "orders" and "proclamations" injects ambiguity into the statutes;
- KSA 48-925 does not mention schools, but the statute has been used to regulate the operation of schools and may be in violation of Article 6, § 5 of the *Kansas Constitution*;
- The Home Rule clause of the *Kansas Constitution* grants an authority to cities

that can be limited only by legislative action, introducing an ambiguity as to whether a Governor's executive order is a legislative action;

- HB 2016 establishes a mechanism whereby county commissioners may adopt orders that are less restrictive than the Governor's emergency orders; what is not clear is whether the county's orders can replace the Governor's executive order; and
- One interpretation of KEMA allows a Governor to circumvent legislative actions by declaring sequential states of emergency.

The Attorney General then raised broader policy issues that KEMA presents when what has been declared as an emergency extends for an indeterminate amount of time. He posed seven questions to be considered in formulating changes to KEMA. He followed up these questions by encouraging members to review Article 15, § 13 of the *Kansas Constitution* and to consider an amendment to ensure the Legislature is included in emergency decision-making when dealing with long-term emergencies like the current pandemic.

## September 22 – 24 Meeting

The Committee again met to hear presentations from staff, testimony from interested parties on KEMA and HB 2016, and to make recommendations to the 2021 Legislature based on testimony heard and discussion by the Committee.

### *Staff Presentations*

**Timeline of COVID-19 pandemic public health emergency events.** An Assistant Revisor of Statutes briefly noted a memorandum providing a timeline of events related to the COVID-19 public health emergency.

**Relevant statutory authority for the Secretary of Health and Environment, county commissioners, and local health officers.** The Assistant Revisor reviewed a memorandum summarizing the statutory authority given to the Secretary of Health and Environment, boards of

county commissions, and local health officers during a public health emergency.

**Application of statewide public health orders to Native American reservations.** The Assistant Revisor reviewed a memorandum explaining the application of state and tribal council public health orders to residents and businesses located on Native American reservation land in Kansas.

**Emergency and disaster declarations in Kansas.** A Senior Research Analyst of the Kansas Legislative Research Department reviewed emergency and disaster declarations in Kansas. He explained the difference between a federal disaster declaration (*i.e.*, issued only by the President) and a state declaration (*i.e.*, issued by a Governor or a Tribal Chief Executive) and outlined the types of assistance available through emergency declarations, major disaster declarations, and fire management assistance declarations.

**Recent information technology security audits.** The Information Technology (IT) Audit Manager, Legislative Division of Post Audit (LPA), briefed the Committee on recent IT security audits. She reported more than 50 percent of the agencies audited between 2017 and 2019 did not substantially comply with IT security standards and best practices. She noted two causes for these lapses: Top management failed to make IT security a priority, and staff resources were inadequate to maintain security. She listed the most common security weaknesses in the audited agencies; items included failure to patch vulnerabilities, insufficient training of staff, inadequate protection of data, and absence of account security control. She stated Kansas' 2018 Cybersecurity Act has strengthened the State's IT security, but she warned of significant consequences if present vulnerabilities are used by hackers to gain access to state data and networks. She recommended creating a stronger security posture across state agencies.

### *Comments from Stakeholders*

**Office of the Governor.** The Chief of Staff, Office of the Governor, outlined concerns of the Governor in relation to KEMA. He noted KEMA is a blending of legislative and executive emergency authority and, citing the *Kansas*

*Constitution* statement that the Governor has “supreme executive power,” he said KEMA should not be made so cumbersome as to restrict the Governor’s power to protect and provide for Kansas citizens. He further cited the State’s 2005 adoption of the National Incident Management System, which provides a framework for emergency responses. He also commented the home rule provisions in state law should not hinder the State’s action under KEMA, and local or regional approaches to emergency management often create a patchwork of confusing restrictions. The Chief of Staff said he cautions against changes to KEMA that would jeopardize federal assistance and warned outside legal review or publication requirements for executive orders will needlessly delay state action and assistance.

**Judicial Branch.** The Special Counsel to the Kansas Chief Justice said the Kansas courts were grateful for HB 2016 and 2020 House Sub. for SB 102, which addressed continuity of operations for Kansas courts during an emergency. He reviewed the authority of the Chief Justice during an emergency to modify a deadline or time limit established by statute, modify speedy trial requirements, and adjust time limits under civil statutes. In considering changes to KEMA and providing continuity for the court system, he recommended the following:

- Eliminate the provision contained in HB 2016 that sunsets the Chief Justice’s authority to modify deadlines and time limits after March 31, 2021;
- Grant the Chief Justice authority to modify deadlines and time limits outside of a statewide emergency declaration;
- Codify the provision that permits the Chief Justice to regulate time limits for the courts; and
- Make permanent the use of two-way audio-visual communication in court proceedings.

**Kriegshauser Law, LLC.** The principal of Kriegshauser Law, LLC, reviewed what he stated he considers limitations in KEMA when dealing

with health events such as the current COVID-19 pandemic. He noted three principles in dealing with emergencies such as the current pandemic: A three-branch form of government is a system of checks and balances; in a pandemic, a government needs to act decisively and efficiently; and the previous two principles create conflicts and inefficiencies that must be bridged by due process.

The principal of Kriegshauser Law offered eight recommendations:

- Continue the changes made by HB 2016;
- Broaden the language of Section 6 in HB 2016 to allow legislative collaboration;
- Remove “private schools” from Section 7 of HB 2016;
- Increase due process for long-term disasters;
- Clarify that local units of government do not have authority to add regulations to an executive order;
- Make executive orders subject to a hearing within 72 hours (KSA 65-129c);
- Require KDHE to maintain a central repository for all executive orders and health information; and
- Define the term “commandeered or otherwise used in coping with a disaster” in KSA 48-933(c).

**City Manager, Dodge City.** The City Manager of Dodge City reviewed a typical disaster response process and emphasized preparation is key in addressing any disaster. He reviewed the steps for emergency management outlined by the Federal Emergency Management Agency (FEMA)—prevention, mitigation, preparedness, response, and recovery—and the emotional stages of those surviving a disaster. He stated KSA 65-5722 outlines the power and duties of the Commission on Emergency Planning and Response and noted the Emergency Support Function (ESF)

mechanisms that offer coordinated responses to a disaster. The City Manager said the cities and counties that followed these protocols handled the emergency orders better than those that did not. Responding to a question, he stated counties that developed their own emergency preparedness plans were more effective than those that approved a plan without adapting it to their county.

**Kansas County and District Attorneys Association.** The District Attorney of the 18th Judicial District appeared on behalf of the Kansas County and District Attorneys Association. He focused on the impact of HB 2016 and House Sub. for SB 102 on the Kansas courts. He stated when the COVID-19 emergency order was extended, a serious backlog in the court system was created, which is a delay that violates a defendant's constitutional and statutory rights to a speedy trial. He stated the stay-at-home order and the social-distancing requirement made it "almost impossible" to select jurors for a jury trial. The District Attorney recommended amending KSA 2020 Supp. 20-172 (provisions of House Sub. for SB 102) to allow the Chief Justice to modify deadlines and time limits "when the Chief Justice determines such action is necessary to secure the health and safety of court users, staff, and judicial officers" rather than making that authority conditional on a Governor's emergency declaration. He also made the suggestion to eliminate or sunset the statutory right to a speedy trial and allow the constitutional right to a speedy trial to take precedence. He stated the current court dockets are overwhelmed with pending cases.

**Kansas Hospital Association (KHA).** The Vice President of Government Relations of KHA reviewed the effects KEMA has had on Kansas hospitals. She noted the COVID-19 pandemic occurring first on the East Coast allowed advanced preparations for Kansas hospitals, and she outlined procedures initiated to protect both staff and patients. The Vice President said early difficulties involved communication among the hospitals, an issue that was improved by the KHA introducing daily calls statewide. She expressed gratitude for the assistance of the Kansas National Guard and the central warehouse for personal protective equipment (PPE).

**Americans for Prosperity-Kansas.** The Director of Americans for Prosperity-Kansas

reviewed the effects of the pandemic on the business community and suggested what provisions should be retained or eliminated from KEMA. She urged members to make permanent HB 2016 Sections 20 to 24, which waive scope of practice restrictions for certain health care professionals and allow expansion of telemedicine. The Director stated parts of the Governor's executive orders created barriers for businesses and restrictions that limited business owners' freedoms, such as the designation of essential and nonessential businesses. She also recommended limited liability protection for businesses negatively impacted by the executive orders.

**Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association.** The Legislative Liaison for the law enforcement organizations offered specific recommendations to improve KEMA and indicated KEMA has worked well for short-lived natural disasters, but has been too limiting for the COVID-19 pandemic. He reviewed the challenges faced by law enforcement officers in enforcing the various executive orders and interpreting the parameters established by KEMA. The Legislative Liaison affirmed the provisions in HB 2016 that changed violations of health-related orders from criminal to civil penalties, but he said the bill failed to address other types of violations having varying severity levels. He recommended creation of a central repository for executive orders so law enforcement entities can coordinate enforcement and a violation grid similar to that of a sentencing grid to distinguish between health care infractions and more serious violations. After commenting on the difficulty for jails to appropriately deal with infected individuals, he recommended amending provisions in Section 18 of HB 2016 to address sharing information with first responders and to replace the term "COVID-19" with "infectious disease."

**Johnson County Sheriff's Office.** A Special Deputy Sheriff reviewed the history of the COVID-19 pandemic and related federal emergency declarations, the Governor's executive emergency orders, and complementary orders restricting certain public activities issued by local health officials. He indicated these orders and interpretations created confusion as to what constituted a lawful order and which statutes or regulations were suspended under emergency

orders. The Special Deputy Sheriff made three recommendations to assist law enforcement personnel in being more effective during a pandemic:

- Define which statutes are “regulatory in nature” that may be suspended under KEMA;
- Make the civil penalties enacted under HB 2016 permanent; and
- Make the speedy trial issue a priority for the 2021 Legislative Session.

**Kansas Emergency Management Association (Association).** The President of the Association explained the Association is dedicated to providing excellence in emergency management that offers comprehensive preparation, planning, and collaboration. In addressing the relationship between a county and cities within that county, he stated county-led emergency planning will provide more continuity than having cities create their own emergency plans.

**Kansas Advocates for Better Care.** The Executive Director of Kansas Advocates for Better Care addressed the effects of KEMA and the COVID-19 pandemic-related executive orders on long-term care facilities. She gave three anecdotal examples to illustrate issues related to long-term care facilities, assisted living facilities, and home health care individuals and emphasized it was important to provide timely information that includes the location of COVID-19 outbreaks. The Executive Director explained individuals over 65 years old are especially vulnerable to the harmful effects of COVID-19. She shared a table showing that Kansas seniors represented 44 percent of hospitalizations and 80 percent of COVID-19 deaths in the state. Members requested follow-up information that would identify deaths caused directly by COVID-19, which deaths had the disease as a contributing factor, and what percentage of COVID-19 cases occurred in people of color.

**Kansas Health Care Association (KHCA).** The President and Chief Executive Officer (CEO) of KHCA reviewed the contributions to

communities and the state by long-term-care and assisted living facilities. She noted her members must interact with KDHE, the Kansas Department for Aging and Disability Services, KDEM, local health care coalitions, and county health departments. She noted difficulties for providers, including hiring and retaining staff during the pandemic, delays in obtaining COVID-19 test results, testing costs, and the delicate balance between keeping residents safe and allowing interaction with families. The President and CEO recommended two changes in regulations: allow those working as medical staff under executive orders to be given professional accreditation when the order expires, and address liability issues related to caring for residents during an emergency.

## CONCLUSIONS AND RECOMMENDATIONS

On September 24, the Chairperson reviewed the previous five days of testimony heard by the Committee and presented a list of 37 items for Committee discussion and recommendation. The Committee considers this report a summary of items of interest forwarded by a number of conferees, and states it should not be used or construed as a guideline for the executive branch or any state agency. The Committee may recommend that the chairpersons of the appropriate standing committees of the Legislature consider working with the Office of Revisor of Statutes staff to research and respond to concerns brought by conferees in the form of proposed legislation during the 2021 Legislative Session. The report should not be construed as legislative intent, but merely a fact-finding exercise for standing committees of the 2021 Legislature.

**HB 2016 provisions that should be made permanent.** The Committee agreed the enumerated powers found in KSA 48-925 should be considered an exhaustive list and not merely examples of the kinds of powers granted to the Governor pursuant to an emergency declaration, and each emergency order issued by the Governor should be required to list which enumerated power in KSA 2020 Supp. 48-925(c) the order is based upon.

**Discretion of local health officers to make sanitation inspections of school buildings.** The



Committee agreed county officials should be given discretion in applying executive orders.

**Penalties and enforcement for violations of KEMA.** The Chairperson referenced a follow-up document from a representative of law enforcement organizations that recommends sanctions for violations and inclusion of a new subsection of KSA 48-939. Extensive discussion followed, but the Committee agreed it is not the task of this Committee to decide the appropriate penalties, and the issue should be sent to the Judiciary committees of each body in the 2021 Legislative Session.

**Separate category for human pandemic disasters in KEMA.** The Committee agreed that no conferees requested the Committee break KEMA into specific sections.

**Designation of when legislative oversight should be increased.** The Committee agreed any time-period regulation should first distinguish between a local disaster and a statewide disaster. The Committee agreed a legislative voice is needed, whether that be an expansion of the State Finance Council or reconvening the entire Legislature. The Committee noted the need to make it easier for the Legislature to conduct business remotely to anticipate future emergencies that make it dangerous or impractical to meet at the Statehouse.

**How legislative oversight should be provided and mechanisms for revoking executive orders.** The Committee discussed the following possibilities:

- Leave the statute as it is with the State Finance Council representing the Legislature but, after a certain time period, add further legislative input;
- Expand the State Finance Council, with consideration to the geographic areas represented;
- Call the Legislature into a special session;
- The Legislature should review the Governor's veto power in KSA 75-3711(b); and

- If the Legislature opposes the executive order, allow the expanded State Finance Council to override the executive order with a two-thirds vote.

**Authority of the Legislature to extend a disaster declaration.** The Committee agreed the Governor should have exclusive authority to declare or extend disaster declarations and generally manage the disaster response.

**Authority of a legislative oversight body to modify or extend a disaster declaration by 30 days.** The Committee agreed the State Finance Council or other oversight body should have the authority to decide such time limits and there is a need to recognize the difference between emergency declarations and emergency orders. The Committee agreed it is more concerned about emergency orders than emergency declarations.

**Legal review of emergency orders.** The Committee agreed, if the State Finance Council were to be expanded, its review and ability to override any order with a two-thirds vote would be sufficient. In addition, advice and counsel by the Attorney General might be appropriate prior to issuance of orders.

**Effective dates of executive orders.** The Committee agreed some sort of clarifying language might be appropriate, such as "effective when publicly announced" and not necessarily an effective date only upon publication in the *Kansas Register*.

**Mechanism to establish a state of emergency in order to qualify for federal disaster assistance.** The Committee agreed no action should be taken regarding this issue.

**Central repository for data related to the COVID-19 pandemic, including case rates, death rates, hospitalizations, emergency orders, statutory reports, and other information, maintained by KDHE.** A member stated there may be a need for a central repository, but without a clear implementation strategy, these issues are too complex to make a statutory change effective. Another member stated Chapter 65 of the *Kansas Statutes Annotated* requires reports, and the public

needs to be able to see those reports, so having a venue to review those orders seems to be of value. Another member stated expansion of broadband service should be a priority if the Legislature requires KDHE to maintain a central repository.

**Clarification of language in KSA 48-933(c) (i.e., “commandeered or otherwise used in coping with a disaster”).** A member noted a need to define what “commandeer” means. Another member stated this issue should not be addressed by statute and that there is concern over a process where liability is created on the part of the State through statute. Another member stated officials need to retain the authority to use property during an emergency without opening themselves to liability.

**Restriction on counties opting out of statewide orders.** The Committee agreed this issue need not be addressed.

**Discretion of cities in following multiple county orders.** In the case of a city that is located in two or more counties, KSA 48-929(g) provides that a city may petition the boards of county commissioners to determine which county has authority; if this process does not occur, then it may be appropriate for the Governor to decide which county is in charge until the counties and city come to an agreement.

**Authority of the Governor to declare sequential states of disaster.** The Committee agreed sequential states of disaster should be declared only when there is legislative oversight.

**Requirement of the Governor to state which statutes are intended to be suspended when using powers delegated by KSA 48-925(c)(1).** A member noted the the Governor has already indicated such parameters during the current emergency orders. Another member stated, as suggested by the Attorney General, the Governor should include each statute that he or she intends to be suspended in each executive order going forward.

**Homeland Security Regions for local emergency orders.** The Committee agreed counties should continue to issue emergency orders rather than have orders issued for the seven

regions designated in Kansas by the U.S. Department of Homeland Security.

**Discretion in local enforcement of executive orders.** The Committee agreed clarification may be needed to say a city is acting on behalf of the State when an executive order gives a city discretion in enforcing said order.

**Law enforcement powers of the Adjutant General.** The Committee made no recommendation related to this issue.

**Items raised by conferees needing further study.** The Committee agreed the following items raised by conferees during testimony could be addressed either by amending KSA 48-923 (governing limitations on the effect of KEMA) or by making it easier for the full Legislature to convene during an emergency:

- Review of the authority of the Legislature to revoke a governor’s use of the delegated emergency powers to determine whether such authority violates the separation of powers;
- Clarification that states of disaster emergency are to be “proclaimed,” and the exercise of powers delegated in KSA 48-925(c) during a proclaimed state of disaster emergency is to be by issuance of “orders.” KSA 48-925(b) states the powers in KSA 48-925(c) are to be exercised by “orders and proclamations,” while the text of KSA 48-924(b)(1) states a governor is to “proclaim” a state of disaster emergency;
- Clarification by the Legislature on how it intends a governor’s delegated emergency powers in KS 48-925 to interact with the constitutional and statutory powers of other entities, e.g., the State Board of Education and local school boards; and
- Review of the text and operation of provisions in HB 2016 that allow counties to adopt orders less restrictive than a governor’s emergency order relating to public health.

**Items raised by conferees outside of scope of the Committee.** The Committee agreed the following items raised by conferees were outside the scope of this Committee's charge, and the items should be considered by the 2021 Legislature:

- The 2021 budget committees should study a prioritization penalty for agencies that do not spend money on cybersecurity;
- Whether Kansas public safety telecommunicators should be included in the term of "emergency responder" in disaster emergency relief efforts;
- Whether statutory speedy trial limits should be suspended or eliminated;
- Whether the provisions of the executive order allowing nurse practitioners, nurse anesthetists, and physician assistants to practice in many facilities without physician supervision should be made permanent;
- Whether the content of the executive order allowing health care professionals licensed in other states to deliver telehealth in Kansas without a Kansas license should be made permanent;
- Whether a direct tax credit should be provided in emergency instances when the government issues orders prohibiting evictions and foreclosures;
- What information KDHE should be required to release during a pandemic, and what time limitations should be placed on the release of that information;
- What changes are necessary for the operation of the Legislature during an emergency (e.g., meeting off-site and remote voting);
- Whether Article 15, § 13 of the *Kansas Constitution* should be expanded to include disasters;

- Whether the closure of or restrictions on businesses during an emergency should require legislative oversight;
- What discretion, if any, should be given to keep businesses open at the local level during an emergency; and
- Whether the Governor should be allowed to close private schools during an emergency.

**Items for further study by appropriate standing committees.** The Committee recommends the appropriate standing committees of the 2021 Legislature further study the following items:

- Changes made to KEMA in HB 2016 regarding the Governor's powers enumerated in KS A 48-925(c);
- Appropriate penalties and enforcement mechanisms for violations of KEMA;
- Language of Section 6 of HB 2016 regarding the closure of businesses;
- Immunity from liability for adult care homes;
- A constitutional amendment that would authorize the Legislature by statute to take certain steps in dealing with an emergency;
- Local authority to implement an order less restrictive than the statewide order;
- Extending the authority of the Chief Justice of the Kansas Supreme Court to include the power to modify deadlines and time limits after March 31, 2021, by eliminating the sunset provision in HB 2016 or decoupling the authority of the Chief Justice from an emergency declaration;

- A constitutional amendment that would change the requirements for calling a special legislative session;
- Legislation that would enable first responders to share information with law enforcement regarding an individual's exposure to infectious disease;
- A prohibition on executive orders to suspend any portion of the Kansas Criminal Code; and
- Options for combating rampant unemployment insurance claim fraud.

# **Report of the Special Committee on Kansas Mental Health Modernization and Reform to the 2021 Kansas Legislature**

**CHAIRPERSON:** Representative Brenda Landwehr

**VICE-CHAIRPERSON:** Senator Carolyn McGinn

**OTHER MEMBERS:** Senators Larry Alley, Dan Kerschen, Pat Pettey, and Mary Jo Taylor; Representatives Tory Marie Arnberger, Barbara Ballard, Elizabeth Bishop, Will Carpenter, Megan Lynn, Adam Smith, and Rui Xu

## **STUDY TOPIC**

The Committee is directed to analyze the state's behavioral health system to ensure that both inpatient and outpatient services are accessible in communities, review the capacity of current behavioral health workforce, study the availability and capacity of crisis centers and substance abuse facilities, assess the impact of recent changes to state policies on the treatment of individuals with behavioral health needs; and make recommendations on steps needed to make Kansas a nationwide leader on behavioral health delivery, specifically focusing on how Kansas should modernize its behavioral health delivery system. The Committee shall solicit input from the following:

- A Judicial Branch Court Services Officer recommended by the Chief Justice of the Supreme Court of Kansas;
- A representative recommended by the Commissioner of Education;
- A Kansas Department for Health and Environment cabinet official recommended by the Governor;
- One sheriff and one chief of police recommended by the Attorney General;

- A Children’s Alliance of Kansas representative;
- A Kansas Association of Addiction Professionals drug and alcohol addiction treatment provider;
- An Association of Community Mental Health Centers of Kansas representative with clinical or medical expertise;
- A Kansas Hospital Association representative with clinical or medical expertise;
- A person with lived experience with mental illness or who has provided assistance to an individual living with a mental illness recommended by the Speaker of the House of Representatives;
- A parent of a child with a mental illness recommended by the President of the Senate;
- A former or current superintendent of a Kansas state mental health hospital;
- A current executive director of a community mental health center recommended by the Association of Community Mental Health Centers of Kansas;
- A health insurance company representative recommended by the Commissioner of Insurance;
- A Kansas County and District Attorneys Association representative;
- A Kansas Health Information Network representative;
- The Medicaid Director for the State of Kansas; and
- The Chairperson of the Governor’s Behavioral Health Services Planning Council.

# Special Committee on Kansas Mental Health Modernization and Reform

## REPORT

### Conclusions and Recommendations

The Special Committee on Kansas Mental Health Modernization and Reforms responded to its charge, meeting at both the committee level and with its members participating in a unique charter relationship with three working groups, a subcommittee, and facilitation support. The Committee submits its own comments and recommendations and includes the report of the working groups and subcommittee, as ratified by the Committee, for consideration by the 2021 Legislature.

### Opportunities for Coordination and Collaboration

The Committee recognizes the important recent and ongoing work of commissions, committees, councils, groups, and task forces focused on issues, ideas, and improvements that impact the behavioral health system, its capacity and workforce, and its financing and sustainability. The Committee acknowledges the connections and opportunities to collaborate on common goals and interests associated with the interim work of the Kansas Criminal Justice Reform Commission (KCJRC), the Special Committee on Foster Care Oversight, and the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. The Committee highlights two areas where coordination and meaningful collaboration occurs – in specialty courts (with the KCJRC) and integrated care (with the Bethell Joint Committee).

- The Committee submits for the record the crosswalk of recommendations serving as the foundation for the review of its three working groups that detailed the relevant recommendations and study considerations submitted by the Child Welfare System Task Force (2017 preliminary, 2018 final reports); the Crossover Youth Working Group (2019 report); the Governor’s Behavioral Health Planning Council and its subcommittees (2018, 2019 reports); the Governor’s Substance Use Disorder Task Force (2018 report); and the Kansas Mental Health Task Force (2018, 2019 reports) (Appendix pages 6-21).

### Contemporary Issues - COVID-19 and Behavioral Health

The discussions of this Committee and its working groups occurred amidst the COVID-19 pandemic. While it is too soon to draw conclusions about the lasting impacts on the behavioral health system in Kansas, the Committee requests state agencies, members of the working group, and the Kansas Legislature continue to assess, monitor, and report on these impacts. The Committee notes early indicators of impressions on the system include suicide rates and prevention efforts, temporarily enhanced reimbursement rates, and significant changes in the accessibility and use of telehealth.

## **Data as a Decision-Making Tool for Modernization and Reform**

The Committee notes the identification of a variety of data sources in the working group report and its committee process and strongly encourages clear, connected data systems and quality reporting to provide decision-makers across the system with measurable and easily tracked results. This will prove essential for the next steps toward implementation and provide measurable outcomes to drive decision-making, particularly for the evaluation of the data reported and financing of system goals and programming.

## **Distribution of Committee Report**

Given the breadth and complexity of the topics associated with mental health and transformation of the system, its capacity and workforce, the policy and treatments options and outcomes for individual's with behavioral health needs, and the sustainability and finance for the delivery of behavioral health services and resources, the Committee requests its complete report be transmitted to the following standing and joint committees of the Kansas Legislature: Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, House Committee on Children and Seniors, House Committee on Corrections and Juvenile Justice, House Committee on Health and Human Services, House Committee on K-12 Education Budget, House Committee on Social Services Budget, Senate Committee on Judiciary, Senate Committee on Public Health and Welfare, and Senate Committee on Ways and Means (agency subcommittees).

- The Committee requests the staff of the Kansas Legislative Research Department compile a new crosswalk to reflect the adopted Committee working group recommendations and the recommendations of other interim groups issuing relevant considerations and recommendations during the 2020 Interim.

## **Recognition of Participants and Expert Information**

The Committee acknowledges and appreciates the unique structure and support needed to conduct its broad review of mental health modernization and reform in Kansas and meet and exceed the charge issued by the Legislative Coordinating Council (LCC). The Committee especially recognizes the support of its Committee staff from the Kansas Legislative Research Department and the Office of the Revisor of Statutes and the working group facilitation support provided by the Kansas Health Institute.

- The Committee commends the work of the roundtable participants and their contributions not only to the work of the Committee, but also to the information, direction, expertise, and passion to the review and formulation of recommendations of the individual working groups.
- The Committee further recognizes meetings occurred under COVID-19 conditions; the public was asked to access its meetings and those of the working groups through audio or video stream.

The Committee encourages all the above entities to continue this spirit of collaboration and welcomes participation and information on these important topics and issues.



## Request to Legislative Leaders

The Committee requests the LCC and the Legislature consider formation of a formal standing or joint committee to consider, address, and continue with the effort to address the longer-term goals and strategies incorporated in both this Committee and the adopted working groups' reports. The Committee recognizes that additional time is needed to continue not only this significant discussion but to work towards implementation strategies and longer-term system direction and transformation. The Committee also recommends leadership from each of the identified committees receiving the report commit to planning and discussion on this report and more formal assignment of topics and individual recommendations and priorities for review and consideration by the individual committees.

### ***Strategic Framework for Modernizing the Kansas Behavioral Health System: Working Groups Report to the Special Committee (Appendix pages 24-115)***

At its December 11, 2020, meeting, the Committee ratified the Strategic Framework for Modernizing the Kansas Behavioral Health System document, as amended by the Committee, that was created by the working groups and facilitated by the Kansas Health Institute. The Strategic Framework contains 45 high-priority recommendations over a variety of behavioral health topics, categorized for immediate action and strategic importance. Additionally, one separate topic was separately identified as a high-priority item for Committee discussion.

The recommendations were organized by working group and assigned topics within each working group. [Note: Immediate action refers to those recommendations that the working groups believe can be completed in the next two years. Strategic importance refers to those recommendations that should be initiated in the near term but will be completed in the longer term.]

***Proposed Legislation:*** None.

## BACKGROUND

The Special Committee on Kansas Mental Health Modernization and Reform (Committee) was created by the Legislative Coordinating Council (LCC) to study the state's behavioral health system and focus on how Kansas can modernize its behavioral health system.

The LCC directed the Committee to study the following topics:

- Analyze the state's behavioral health system to ensure that both inpatient and outpatient services are accessible in communities;
- Review the capacity of current behavioral health workforce;

- Study the availability and capacity of crisis centers and substance abuse facilities;
- Assess the impact of recent changes to state policies on the treatment of individuals with behavioral health needs; and
- Make recommendations on steps needed to make Kansas a nationwide leader on behavioral health delivery, specifically focusing on how Kansas should modernize its behavioral health delivery system.

In addition to the appointed legislative members, the LCC established the following roundtable members and appointing authorities for the Committee to solicit information from:

- A Judicial Branch Court Services Officer recommended by the Chief Justice of the Supreme Court;
  - A representative recommended by the Commissioner of Education;
  - A Kansas Department for Health and Environment cabinet official recommended by the Governor;
  - One sheriff and one chief of police recommended by the Attorney General;
  - A Children's Alliance of Kansas representative;
  - A Kansas Association of Addiction Professionals drug and alcohol addiction treatment provider;
  - An Association of Community Mental Health Centers of Kansas representative with clinical or medical expertise;
  - A Kansas Hospital Association representative with clinical or medical expertise;
  - A person with lived experience with mental illness or who has provided assistance to an individual living with a mental illness recommended by the Speaker of the House of Representatives;
  - A parent of a child with a mental illness recommended by the President of the Senate;
  - A former or current superintendent of a Kansas state mental health hospital;
  - A current Executive Director of a community mental health center recommended by the Association of Community Mental Health Centers of Kansas;
  - A health insurance company representative recommended by the Commissioner of Insurance;
  - A Kansas County and District Attorneys Association representative;
  - A Kansas Health Information Network representative;
  - The Medicaid Director for the State of Kansas; and
  - The Chairperson of the Governor's Behavioral Health Services Planning Council.
- A list of appointed roundtable members can be found on Appendix pages 108-109.
- At the initial meeting of the Committee, it was determined that working groups, consisting of roundtable members and other subject matter experts, would be essential to accomplish the directives for the Committee from the LCC.

## STRUCTURE AND ORGANIZATION

**Crosswalk.** The Kansas Legislative Research Department (KLRD) provided a crosswalk of behavioral health recommendations from five groups, task forces, and committees: the Child Welfare System Task Force, the Governor's Behavioral Health Services Planning Council, the Governor's Substance Use Disorder Task Force, the Mental Health Task Force, and the Crossover Youth Working Group. Recommendations were separated into nine topic areas, with three topic areas assigned to each working group (Appendix pages 6-21).

The crosswalk served as the baseline for the Committee and working groups to assess prior recommendations and to discuss updating, amending, or creating recommendations based on actions taken to prioritize strategies and implementation of the recommendations.

## Working Group Charter

At its August 28, 2020, meeting, the Committee approved the Working Group Charter (Charter), as developed by the Kansas Health Institute (KHI) in consultation with KLRD and the Office of the Revisor of Statutes (Appendix pages 22-23). The Charter included the establishment of three working groups, which were created to “achieve the directive by the LCC to the Committee.” Pursuant to the Charter, the Committee is to determine what information from the working groups is to be included in the final product (committee report) and provide leadership to the working groups through the development of guiding vision statements for the final product, identification of key performance indicators to be included in the final product, and input on any criteria that should inform the priorities put forward by the working groups. The Charter outlined the operational process for the working groups and the membership roles of the working groups. All membership in the working groups was voluntary.

## Working Group Organization

As the Committee began its planning and organization for meetings, legislators requested the KHI to assist with Committee discussion and recommendations and to facilitate working groups made up of relevant stakeholders and subject matter experts. These working groups reviewed prior recommendations from the groups listed in the KLRD crosswalk.

The primary areas of focus for each of the working groups were:

- **Finance and Sustainability working group (WG1):** The focus of this group was the picture of resources available both monetarily and human. The group examined models and forms of resources that can affect behavioral resources. The related topic areas were workforce, funding and accessibility, and community engagement.
- **Policy and Treatment working group (WG2):** This group looked at how the system can be more effective and what changes might be made. The related topic

areas were prevention and education, treatment and recovery, and special populations.

- **System Capacity and Transformation working group (WG3):** This group considered what the system could look like in the future. The related topic areas were data systems, interactions with the legal system and law enforcement, and system transformation.

Due to social distancing requirements and for public safety during the COVID-19 pandemic, KHI facilitated all working group meetings *via* Zoom. The working groups met twice during the months of September, October, and November and once each during the month of December. Working group members consisted of Committee members, roundtable members, and other relevant subject matter experts that were requested to provide input on individual topics. The working groups selected chairpersons and vice-chairpersons and designated reporters to discuss their work at Committee meetings.

Based on Committee discussion, the Committee decided to create a Telehealth subgroup at its October 30, 2020, meeting that met twice during November. A list of working group members can be found on Appendix pages 108-111.

The working groups reviewed previous recommendations by the Governor’s Substance Use Disorder Task Force, the Governor’s Behavioral Health Services Planning Council, the Crossover Youth Working Group, the Mental Health Task Force, and the Child Welfare System Task Force, utilizing the KLRD crosswalk as its baseline. KHI staff assisted working group members with reviewing and determining whether these previous recommendations should be altered, amended, or removed from consideration. Working group members also proposed new recommendations based on relevant discussion and areas of need that were missing in the previous reports. The working groups then prioritized each recommendation based on ease of implementation and potential for high impact. Based on these measurements, the working groups finalized recommendations by designating

recommendations either for immediate action, those that the working groups believe could be completed in the next two years, or for strategic importance, those that should be initiated in the near term but will be completed in the long term. All recommendations were based on a consensus-based system to allow for the creation of strong recommendations. Below are representative illustrations of two working group recommendations (the former identified as a recommendation for immediate action and the latter is a recommendation of strategic importance):

- **Recommendation 1.3: Provider MAT Training.** Increase capacity and access to medication-assisted treatment (MAT) in Kansas through provider training on MAT. [WG1: Workforce]
- **Recommendation 5.2: Service Array.** Explore options to expand the behavioral health service array, including the expansion of MAT in block grant services. Make the expanded service array available to individuals across the state, such as KanCare enrollees, those with private insurance and the uninsured. [WG2: Treatment and Recovery]

The final working group report also includes rationale for the recommendations based on working group discussion. Additionally, each recommendation includes the scoring by the working groups passed on ease of implementation and potential for high impact. Metrics for measuring impact of the recommendation, action leads, and key collaborators are listed for each recommendation. Working group meetings prior to October 12, 2020, may be watched *via* the KHI Youtube channel: <https://www.youtube.com/user/KSHealthInstitute/f>  
[eatured](https://www.youtube.com/user/KSHealthInstitute/f). All working group meetings after October 12, 2020, are archived on the Legislature's YouTube channel: <https://www.youtube.com/c/KSLegislatureLIVE/vi>  
[deos](https://www.youtube.com/c/KSLegislatureLIVE/vi).

## Strategic Framework for Modernizing the Kansas Behavioral Health System (Appendix pages 24-115)

KHI facilitated the creation of the Strategic Framework for Modernizing the Kansas Behavioral Health System (Strategic Framework), the final work product developed by the working groups. Based on the overall work of all three working groups, KHI compiled a draft report that each working group was able to review and make additions or edits to in the December working group meetings.

At the December 10, 2020, Committee meeting, KHI staff presented the Strategic Framework to the Committee. The Committee reviewed the Strategic Framework and recommended additional edits after discussion. At the December 11, 2020, Committee meeting, edits were formalized, and the Strategic Framework was approved, as amended, by the Committee, and staff was directed to attach the Strategic Framework to the Committee report. A list of the edits that were made and approved by the Committee can be found in Appendix pages 116-124.

**Definitions.** The Strategic Framework adopted the following definition of “Behavioral health system” from the federal Substance Abuse and Mental Health Services Administration (SAMHSA): refers to the system of care that includes the promotion of mental health, resilience and well-being; the prevention, referral, diagnosis, and treatment of mental and substance use disorders; and the support of persons with lived experience in recovery from these conditions, along with their families and communities. See Appendix pages 2-5 for more definitions and an acronym key of common terms in the behavioral health field and in the KLRD crosswalk.

## COMMITTEE ACTIVITIES

The LCC approved six meeting days for the Committee. The Committee met on August 27-28,

October 5, October 30, and December 10-11, 2020. The Committee members met in-person with the option for Zoom attendance due to social distancing measures and public safety during the COVID-19 pandemic.

Additional details regarding each of the Committee meetings, minutes, audio recordings, Committee handouts, and written testimony submitted by conferees may be accessed on the Legislature's website on the Committee webpage: [http://kslegislature.org/li/b2019\\_20/committees/ctte\\_spc\\_2020\\_ks\\_mental\\_health\\_modern\\_1/](http://kslegislature.org/li/b2019_20/committees/ctte_spc_2020_ks_mental_health_modern_1/).

## **August 27-28, 2020, Meeting**

### **August 27**

#### ***Informational Briefings on Previous Committees and Task Forces***

Representatives from the previous task forces and committees designated in the KLRD crosswalk provided testimony regarding the action and implementation process of their group's previous recommendations.

#### ***Governor's Substance Use Disorder Task Force***

A representative from the Governor's Substance Use Disorder Task Force (SUD Task Force) provided testimony on the group, established under Governor Colyer's Executive Order 18-09. The SUD Task Force met monthly from April to August 2018. The group focused on five primary topics: provider education, prevention, treatment and recovery; law enforcement; and neonatal abstinence syndrome. An overview was provided on the 34 priority recommendations spanning these topics.

#### ***Governor's Behavioral Health Services Planning Council***

The Chairperson of the Governor's Behavioral Health Services Planning Council (Council), provided an overview of the Council's focus: to ensure the integration of behavioral health services and meeting the needs of Kansas children and adults who experience mental health, addiction, and co-occurring disorders, as well as supporting their families. The Chairperson stated there are eight active subcommittees, made up of individuals from across the state, that advise the

Council on a variety of issues. He stated the Council was primarily focused on the integration of substance abuse and mental health.

In response to Committee discussion related to frontier and rural access to mental health facilities, the Commissioner of the Behavioral Health Services Commission, Kansas Department for Aging and Disability Services (KDADS), explained the 2019 Legislature appropriated funds to KDADS for a facility in Hays for mental health facilities for children in western Kansas. The Commissioner explained the historical actions regarding mental health facilities in western Kansas and stated that with the closing of the psychiatric residential treatment facility (PRTF) in western Kansas, children in need of services in the area were being directed to Wichita.

#### ***Crossover Youth Working Group***

A representative from the Crossover Youth Working Group (CY Working Group) provided an overview regarding the second CY Working Group that met from July 2019 to January 2020. The CY Working Group was formed by the Department for Children and Families (DCF) in response to a 2019 budget bill proviso mandating the agency to study the impact of SB 367 (2016) and to study the 16 data elements requested in the proviso. The CY Working Group studied and identified 691 crossover youth that had been placed in the child welfare system and had some involvement with law enforcement or the juvenile justice system as of July 31, 2019. Results from national studies had shown crossover youth are associated with higher risks of mental health challenges, higher rates of recidivism, poor placement stability, and lower permanency outcomes. In addition, 23 percent of crossover youth screened indicated higher levels of anxiety or depression, and nearly 2 in 10 indicated a warning of suicidal ideation.

A point of discussion for the Committee was whether or not Medicaid should be able to cover "parent-only" therapy sessions, even though the Medicaid-covered child is not present during the session. The Committee continued to discuss the importance of accurate and usable data to help inform outcomes to the Legislature and relevant agencies.

### *Mental Health Task Force (2018 and 2019)*

A representative from the Mental Health Task Force (MH Task Force) provided an overview of the MH Task Force reports that were presented to the 2018 and 2019 Legislatures. The first MH Task Force was created by the 2017 Legislature in a proviso in 2017 Senate Sub. for HB 2002 and directed the MH Task Force to study certain mental health topics and submit its findings to the 2018 Legislature. The 2018 Legislature included a similar proviso in 2018 House Sub. for SB 109 to reauthorize the MH Task Force to create a strategic plan to address its previous recommendations, ascertain the total number of psychiatric beds needed to deliver mental health services, and identified where these services would be provided. The report to the 2019 Legislature included a strategic plan detailing 23 recommendations that built on the 2018 Report. A review of the “continuum of care” was provided to explain how the MH Task Force identified and addressed the gaps in the existing system.

### *Child Welfare System Task Force*

A KLRD staff member provided information regarding the Child Welfare System Task Force (CWS Task Force). The CWS Task Force was established as a result of the enactment of 2017 House Sub. for SB 126. The law directed the Secretary for Children and Families to study the child welfare system in Kansas. An overview of the CWS Task Force and the three working groups that assisted the CWS Task Force in studying relevant topics was provided. Staff presented an overview of the recommendations, focusing on those that specifically referenced mental health issues.

### ***Measures Implemented in Response to Recommendations by Agencies***

Representatives from KDADS, the Kansas Department for Health and Environment (KDHE), and DCF provided overviews to the Committee on actions taken by the agencies in regard to behavioral health and the relevant recommendations from the previous task forces and committees.

### *KDADS*

The Commissioner of the Behavioral Health Services Commission provided an overview of KDADS’ actions regarding recommendations from the previous task forces and committees. The Commissioner stated KDADS has initiated the following actions:

- KDADS submitted 18 budget enhancements totaling \$74.5 million for fiscal year (FY) 2021, with 15 of those related to fulfilling recommendations within the 2019 MH Task Force report and the Council report. For FY 2021, KDADS received funding associated with lifting the moratorium on admissions at Osawatomie State Hospital (OSH) and with opening a children’s acute care psychiatric hospital in Hays. At the time of the meeting, KDADS was waiting for the request for proposal to process;
- The Commissioner provided the KDADS 2019 Strategic Plan, focusing on eight long-term goals for KDADS during Governor Kelly’s administration, and 50 short-term goals were also listed;
- The Commissioner noted a section in the MH Task Force report provided to the 2019 Legislature regarding seven topic areas and a crosswalk of MH Task Force recommendations with the SUD Task Force recommendations and the CWS Task Force recommendations; and
- The Commissioner described KDADS’s progress in various areas, including system transformation, maximizing federal funding, children’s continuum of care, nursing facilities for mental health, workforce, suicide prevention, and learning across systems.

The Commissioner also reviewed the CWS Task Force Report and stated KDADS was working with the KDHE on offering Serious Emotional Disturbance (SED) waiver services through KanCare. The managed care organization waitlist for PRTF admissions had 21 foster care youth on it at the time of the meeting, and he

stated KDADS was working to reduce that number.

The Commissioner testified that KDADS was able to increase the community mental health center (CMHC) base funding agreements last year to replace funding lost in the previous decade. He noted KDADS and KDHE vastly expanded the role of telemedicine in behavioral health services in light of the COVID-19 pandemic.

The Commissioner also reviewed the CY Working Group Report and summarized the top finding and stated KDADS continues to work on improving PRTF waiting lists and services. Regarding neonatal abstinence syndrome, the Commissioner stated KDADS has provided support to KDHE utilizing grants from the federal SAMHSA.

In response to Committee discussion about a suicide prevention coordinator, the Commissioner explained the Youth Suicide Prevention Coordinator in the Attorney General's Office is a part-time employee whose focus is on youth suicide. Mr. Brown stated the KDADS recommendation would encourage creation of a suicide coordinator position with expanded focus, including adults and veterans. In response to whether or not this would be a duplication of positions, the Commissioner stated he did not believe this would be a duplication and the coordinators could work together with a lead coordinator in place.

#### *KDHE*

The Behavioral Health Consultant, KDHE, provided an overview on KDHE's role within the behavioral health continuum and the programs KDHE has implemented in regard to relevant recommendations from the previous task forces and committees. She noted the importance of data collection with a list of the various reports and systems being monitored. The Behavioral Health Consultant stated prevention is vital to KDHE's efforts, and suicides in Kansas are of great concern. She provided information on the societal and fiscal impact of Adverse Childhood Experiences (ACEs) on the population. She testified strategies had been developed that addressed the needs of children and their families. She also provided information on perinatal

conditions, especially maternal depression, and stated a focus has been universal screening.

The Behavioral Health Consultant also testified the reduction of substance use disorders had shown improvement. She testified drug overdoses, dispensed morphine equivalents, and over abuse of narcotics had seen reductions over the past years and various campaigns had been initiated to assist in these efforts. The SUD Task Force had partnered with organizations to provide training to health care providers to assist with these efforts, and she provided a list of organizations.

The Behavioral Health Consultant provided an overview of the KSKidsMAP Pediatric Mental Health program. She said an important piece of the program is the establishment of a Pediatric Mental Health Care Team that provides a provider consultant line and a TeleECHO Clinic. She provided a map with the locations of enrolled providers, as well as a breakdown of the consultant line calls.

The Committee discussed training for parents and suicide and depression outreach in schools. The Behavioral Health Consultant noted that parent training programs were available for parents with toddlers and young children and resources like social and emotional cards are available. Perinatal screening is also a focus of KDHE. She also explained KDHE was working on grants with the Kansas Department of Agriculture and Kansas Division of Emergency Management to help address suicide and other mental health issues due to the increase of mental illness because of the COVID-19 pandemic.

#### *DCF*

The Secretary for Children and Families provided an overview of DCF's responses to the behavioral health recommendations. Regarding delivering crisis and prevention services for children and youth in natural settings, the Secretary noted DCF had issued a bid request to create a mobile response process for crisis intervention. The federal Family First Prevention Services Act (Family First) places an emphasis on in-home parent skill-based programs to keep families intact, and new mental health supports were being provided through this program.

The Secretary stated three Family First grants had been issued to substance abuse disorder treatment providers to assist in sustaining funding sources for prevention associated with drug misuse. She testified DCF had begun to implement the Kansas Parent Management Training Oregon Model to support, encourage, and increase the direct training and support of parents caring for their children. The Secretary noted a high priority within DCF was access to high-quality and consistent health care for Medicaid-eligible high-risk youth and listed the action steps.

The Secretary stated an additional area of focus was creating and expanding safety net and early childhood programs through public services. She noted the Child Care and Development Fund Federal Childhood Grant increased rates from the 45th percentile to the 85th percentile on April 1, 2020. This helped cover costs for the State and children in foster care. DCF was working on increased access to safety net programs such as the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and child care assistance to at-risk families. She said placement stability was also important and an internal DCF placement stability team had been formed to lead efforts to increase stability for youth.

### ***Overview of Mental Health Intervention Team Program***

The Deputy Commissioner of Education, Kansas State Department of Education, provided information on the Mental Health Intervention Program (Program), which has been in existence for two years and approved through provisos each year. The program authorizes school districts to enter into agreements with CMHCs to increase access to mental health services, and the program provides funding for a database for students referred to the program to track progress and outcomes.

The Deputy Commissioner provided a summary of the Program with district breakdowns for school years 2018-2019 through 2020-2021, noting substantial increases in school participation each year. The goal of the Program is to provide greater access to behavioral health services for school-aged students and establish a coherent structure between school districts and mental

health providers to optimize scarce behavioral health resources and workforce. The Deputy Commissioner described the three providers in the program and their duties. He also described the payment structure, with the school district receiving 25 percent of the grant payments.

The Deputy Commissioner described the reporting requirements for the Program, submitted at the end of each semester. School districts are required to complete a Memorandum of Understanding (MOU) each year to participate. He provided a list of all 56 districts that are participating during the 2020-2021 school year.

### **August 28**

#### ***Roundtable Discussion: Reflection on Day One and Overview of Working Group Process***

KHI staff facilitated a discussion with roundtable members and Committee members. Each participant provided an introduction and commented on their individual background in behavioral health and interests in the topics before the Committee.

Committee members discussed issues that either were not included in the initial first meeting day's discussion or should receive focus at the working group level, including: suicide prevention, telemedicine as a tool to assist people in rural and frontier areas, providing wrap-around services, assisting law enforcement in dealing with people who are experiencing behavioral health issues, and solid data to better manage outcomes.

A KHI Senior Analyst provided an overview of how the working groups would operate and the intent of the working groups. The Committee Chairperson provided an overview of the final product, stating the goal should be the development of a multi-year strategic plan. The Chairperson discussed the importance of collaboration and cooperation between the mental health system and the State and the need to be flexible in expectations.

Committee members provided individual comments on the legislative needs that should be addressed and the associated costs, including: promoting the certified community behavioral health clinic (CCBHC) model; helping children in



schools with early diagnosis in issues; law enforcement interaction with the behavioral health system; and reviewing what data is available and how this data is usable.

The Senior Analyst explained the prioritization criteria for recommendations and how the working groups would use this criteria to focus recommendations for the Committee. She provided various criteria for the Committee to consider: ease of implementation, impact level, consensus level, vulnerability category, existing pilot program, achievability, and category classification.

KHI staff continued the discussion, reviewing the KLRD crosswalk. KHI staff explained the intention for the working groups was to look at these recommendations broadly, to see what details should be updated or changed for the Committee. The Senior Analyst then explained the working group charter and the expectations agreed upon by roundtable members and Committee members. She also explained how the working groups would update the Committee. The Senior Analyst then facilitated assigning roundtable members and Committee members to working groups based on topic interest.

## **October 5, 2020, Meeting**

### ***Follow-up Information***

KLRD staff provided information requested from the previous meeting:

- Information regarding KDHE's Sexual Violence Prevention and Education program and the Committee for Children's Second Step, Social and Emotional Learning curriculum;
- Information on the Rural and Frontier Subcommittee Reports;
- ACE information and funding from KDADS; and
- Kansas Department of Agriculture information on mental health supports.

### ***Updates from Working Groups and Roundtable Discussion***

The chairpersons and vice-chairpersons of each working group provided updates. Each working group had met twice since the August 27-28, 2020, meeting. The first working group meeting was focused on setting up the process and meeting expectations for each working group and assigning chairpersons and vice-chairpersons to present updates to the Committee.

The working groups' second individual meetings focused on the first assigned topics: WG1 focused on workforce, WG2 focused on prevention and education, and WG3 focused on data systems. The working groups reviewed recommendations as assigned from the crosswalk to the group and determined if certain recommendations should be removed based on agency and task force responses from the previous meetings and discussion during the working group meetings. Working groups also discussed barriers to implementation for past recommendations.

Committee discussion focused on ensuring any recommendations focus on measurable outcomes on whether or not the recommendations are successful and collecting data that is usable for future use by agencies, the Legislature, and the public. Major topics of discussion for the working groups are below:

- **WG1:** Potential reduction in clinical hours for certain professions, and telemedicine and how to utilize this practice for accessing the behavioral health system;
- **WG2:** Suicide prevention, data sharing, and access to telemedicine; and
- **WG3:** information sharing between agencies, law enforcement, and local governments and organizations; and opt-in process for data surveys regarding behavioral health.

### ***The Crossover Youth Practice Model***

The Founder and Director Emeritus, Center for Juvenile Justice Reform (CJJR), McCourt School of Public Policy, Georgetown University,

presented on the Crossover Youth Practice Model (Practice Model).

The conferee defined a “crossover youth” as someone who has been abused and neglected and has been involved in delinquent behavior. The individual may or may not have had involvement in the child welfare system and/or the juvenile justice system. He noted the increased likelihood of a crossover youth being female and Black and that a high proportion are individuals who are LGBT/GNCT (lesbian, gay, bisexual, transgender/gender nonconforming and transgender). The conferee reviewed the higher likelihood of suicide, psychosocial issues, and illegal substance use among crossover youth and their higher likelihood of familial history of mental illness. The conferee reviewed the system challenges in improving outcomes for these youth and how the Practice Model recommends three phases of practice to produce systemic change. A list of the states and jurisdictions that have implemented the Practice Model was provided, which included Sedgwick County, Kansas.

Committee discussion focused on different challenges for crossover youth, including medication and potentially over-medicating children. The effect of the changing of placement for crossover youth also was discussed. The conferee stated the data shows that disruptions in placements may cause negative behavior in crossover youth and the fatigue factor for younger people. Foster youth and their overlap with crossover youth was discussed and he noted that foster care youth have a greater risk of entering the juvenile justice system.

The Secretary for Aging and Disability Services commented KDADS has been working with Kansas State Department of Education in creating virtual school for youths to help with access to school for foster care youth and other children who move to different placements.

### ***Kansas Citizen Experience in Kansas Behavioral Health System***

A private citizen testified about her experience with trying to assist a child with psychiatric issues in the Kansas behavioral health system. She explained that lack of capacity and coordination contributed to the child waiting a considerable

amount of time for a psychiatric residential treatment facility (PRTF). While the child was sent to several different facilities, the facilities themselves did not communicate with each other regarding the child’s situation.

A KDADS representative testified in regard to the individual’s situation and the difficulty of the current system and the strain on capacity. The representative stated KDADS has been working on a State Institute Alternative Plan to work with private psychiatric hospitals in regions throughout the state that would provide services for patients that had been screened. It was noted the number of acute beds changes daily, but that there are almost 300 psychiatric beds for children licensed in Kansas with a daily census running around 280.

### ***Information Briefings on Remote Mental Health Services***

The Executive Director of the Association of Community Mental Health Centers of Kansas testified regarding the success telemedicine has had in rural and frontier areas in Kansas in the past two decades. He explained the gaps in broadband Internet service and technology have been barriers to expansion; however, the use of telephonic services has been a significant addition. The Executive Director also noted the COVID-19 pandemic forced CMHCs to go almost entirely to telehealth services to protect staff and patients.

The Chief Executive Officer for innovaTel Telepsychiatry presented an overview of the services his company provides nationwide. He explained the COVID-19 pandemic’s impact on the increased need for behavioral health services and that one in three individuals could have a behavioral health need in 2021. The conferee explained that due to the pandemic, now 90 percent of patient encounters are occurring in patient homes through telehealth.

The Executive Director for the Central Kansas Mental Health Center (CKMHC) continued the discussion by noting how telehealth has affected her organization. She said initially patients were reluctant to come to the physical facility location, but televisits help assist with this issue with many patients. She also noted that telehealth has also made it easier on the administrative side, working

with managed care organizations, DCF staff, parents in different locations, and case workers.

The Executive Director of the High Plains Mental Health Center (HPMHC) testified on telehealth in northwest Kansas. He stated that HPMHC has used telehealth since 1997, due to the remote locations of many individuals. All HPMHC branch offices are connected, including electronic health records. Barriers include variability in broadband and payer restrictions. This conferee noted 96 percent of patients received remote service in April 2020, but the amount of patients receiving remote services has reduced to 50 percent since then.

The Committee discussed privacy considerations that arise due to telehealth visits. Conferees stated privacy is always a consideration and that patients and staff have to be adaptable. The Committee also discussed discrepancies in staff salaries compared to other states, noting that many states get a higher reimbursement rate due to federal dollars from CCBHC grants.

## **October 30, 2020, Meeting**

### ***Follow-up Information from Previous Meeting***

KLRD staff provided follow-up information that was requested at the October 5, 2020, Committee meeting. The information included:

- A breakdown of the number of clinical hours required for licensed clinical social workers in Kansas, Colorado, Missouri, Nebraska, and Oklahoma;
- Web links and a brochure from DCF regarding tracking outcomes for foster care youth and updates on the Family First Prevention Services Act implementation programming in Kansas; and
- A copy of testimony from a member of the Governor's Mental Health Task Force, to the 2019 Senate Subcommittee on Social Services regarding his experiences navigating the Kansas behavioral health system.

## ***Updates from Working Groups***

A second Senior Analyst with KHI (KHI analyst) provided a review of the working group process since the last meeting, noting the working groups had met twice and finished reviewing their assigned topics. For each topic, KHI staff led the Committee in a visioning exercise, asking the Committee to discuss whether these issues presented by the working groups should be incorporated into the larger work product due to their importance for a modernized Kansas behavioral health system.

The co-chairperson of WG1 provided an update on WG1 meetings. The working group reviewed the topic of funding and accessibility. Recommendations revolved around reimbursement rates, the CCBHC model, and possible funding streams for different services. A barrier to implement these recommendations included workforce shortages and the level of Medicaid reimbursement rates.

The KHI analyst led the Committee in a visioning exercise, asking the Committee to discuss whether these recommendations should be incorporated for a modernized mental health system in Kansas. The Committee discussed the CMHC model and how it is incorporated between the different levels of government.

The co-chairperson continued his presentation on the topic of community engagement. This topic included recommendations around the Individual Placement and Support employment services, expanding stakeholder engagement in terms of suicide prevention, and a community-based mental health liaison position.

During the visioning exercise, the Committee discussed the need for close collaboration between law enforcement and the community. Another discussion revolved around the collaboration between different organizations in the community to ensure resources were maximized and to lessen duplication of services.

The co-chairperson of WG2 provided an update on WG2 activities. Treatment and recovery was the first topic discussed. Discussion of this topic revolved around recommendations involving expanding the behavioral health service array in

Kansas statewide and ensuring access to PRTFs and supportive housing. Increased access to Medication Assisted Treatment (MAT), particularly in jail settings, was also discussed. The working group determined increased investment in service providers for individuals with intellectual disabilities (I/DD) was crucial.

Discussion during the visioning exercise revolved around gathering data to understand services gaps and to help target the most acute areas.

The co-chairperson reviewed the last topic, special populations. Recommendations centered on neonatal abstinence syndrome supports and services, evidence-based services for non-abuse/neglect situations, and educating women and families on postpartum anxiety and mood disorders. Crossover youth, individuals in the criminal justice system, and the I/DD population were all discussed.

Committee discussion during the visioning exercise revolved around defining special populations versus access to service providers, case management services, and rural and frontier communities.

The WG3 co-chairperson provided an update on WG3 activities. The first topic was interaction with the legal system and law enforcement. Recommendations revolved around benefits reinstatement and suspension of Medicaid, training for correctional employees on substance use, mental health, and trauma-informed response.

The Committee discussed the need for law enforcement training, the possibility and funding for specialty courts, and parole supervision during the visioning exercise.

The co-chairperson discussed the last topic, system transformation. Recommendations considered included integration of behavioral health and primary care, utilizing the Screening, Brief Intervention and Referral to Treatment (SBIRT) service model, and conducting a statewide needs assessment of SUD treatment providers in Kansas.

Committee discussion during the visioning exercise revolved around supportive housing, housing in rural areas, and the importance of accurate and usable data outcomes in the behavioral health area.

### ***Historical Overview of Kansas Mental Health System***

KLRD staff provided a historical overview of the Kansas mental health system.

The overview described the transition from institution-based services in Kansas to community-based services. An overview was provided of the state hospitals and the shift to community-based services with the opening of new state agencies and the passage of The Kansas Community Mental Health Centers Assistance Act (1987) and the Mental Health Reform Act (1990). A review of nursing facilities for mental health and the challenges these facilities face and the creation of PRTFs to help fill gaps in the system was provided.

Mental health parity law, a timeline of the system, an explanation of Medicaid waivers related to behavioral health, and an overview of the funding for CMHCs were provided.

### ***Mental Health Collaboration to Improve Outcomes for Youth in the Juvenile Justice System***

The Chairperson of the Juvenile Justice Oversight Committee (JJOC) provided testimony regarding the need for collaboration when discussing youth in the juvenile justice system. She gave an overview of the JJOC, its functions, and stated the JJOC is committed to addressing mental health in youth involved in the justice system and working with legislative partners on this issue.

The JJOC chairperson explained some of the challenges youth face in regard to mental health. She also provided an overview of different programs related to mental health that the JJOC was investing in. Committee discussion revolved around the measurable outcomes of these funded programs, the funding stream of the JJOC, and the measurable data being collected from these programs.

### ***Role of CMHCs During Moratorium of Osawatomie State Hospital***

The Executive Director for the Labette Center for Mental Health Services, Inc. (Labette Center), provided testimony regarding the impact of the moratorium and changes to admission at the Osawatomie State Hospital (OSH) on CMHCs.

The Labette Center representative stated that mental health reform has brought about needed changes and improvements; however, the moratorium on OSH has changed how mental health reform is understood and implemented. He stated CMHCs have now become a referral source for the state mental health hospitals instead of the single point of admission. He noted the decision to admit patients to a state hospital rests solely with the hospital, with no formal appeals process should the CMHC disagree. For counties like Labette, timely admission to OSH remains a frustration for law enforcement, and at times, involuntary admissions take more than five days.

Committee discussion revolved around discrepancies in the number of people on the waiting list for OSH. A representative from KDADS stated the agency has presented a plan for the lifting the moratorium at OSH and a regional hospital model plan. The representative stated the COVID-19 pandemic had changed some of the capacity at OSH due to following infectious disease protocols.

### ***Role of Law Enforcement in Assisting Individuals with Mental Illness in Rural Areas***

The sheriff for Cherokee County testified regarding the frustrations individuals in law enforcement have when dealing with individuals with severe behavioral health issues. The sheriff described a situation his department handled recently, with a woman with no prior mental health issues going into crisis and his department being the only entity capable of dealing with the situation. Involuntary admission to a state hospital was likely necessary; however, space was not available at the time, and the nearest CMHC was still significant miles away.

The Committee discussed the training that police departments receive regarding handling individuals in a mental health crisis and what

would be helpful additions to the system to assist law enforcement. Increased capacity at state hospitals was discussed.

### ***Integrated Care Panel Discussion***

The Regional Administrator for the federal Substance Abuse and Mental Health Services Administration (SAMHSA) provided testimony on the need for integrated care for people with mental illness or substance abuse disorders. The Regional Administrator outlined the certified community behavioral health clinic (CCBHC) model under Medicaid. She noted the CCBHC model is possible through enhancing Medicaid reimbursement rates. The Regional Administrator explained how other states had implemented the system, including Missouri, and noted Four County Mental Health Center in Kansas was awarded an expansion grant for the CCBHC model.

The chief executive officer (CEO) for the Four County Mental Health Center provided testimony on the CCBHC expansion grant his company received. He explained the benefits of the integrated system and how dealing with both the medical and behavioral health aspects of individuals in one setting helps meet patient needs and reduce stigma.

A representative of HealthCore Clinic, Inc., provided testimony about the federally qualified health center (FQHC) model. She described how integrating medical, dental, behavioral health, and pharmacy in one location was beneficial to her patients.

Committee discussion revolved around how the state of Missouri implemented their CCBHC model and if SAMHSA would continue to expand this program in the future.

### ***History of Funding and State Grants related to CMHCs***

The Executive Director of The Guidance Center provided a history of mental health center funding in Kansas. He explained the history of the Community Mental Health Act of 1963, which established funding for CMHCs. The Executive Director explained the finance structure of CMHCs and the licensing structure to operate

under KDADS. He also addressed the emergence of managed care organizations in Kansas and the work between these entities and CMHCs. The Executive Director continued with an explanation of state funding and the majority of funding received from Medicaid.

### ***Texas Community Behavioral Health Clinic Initiative***

The CEO for the Texas Council of Community Centers provided testimony on the efforts Texas has made to make the CCBHC model a reality in that state. She provided an overview of the CMHC network in Texas, noting the high uninsured rate of the state and the lack of ability for mental health and substance abuse patients to receive primary care. The CEO explained the Section 1115 Delivery System Reform Incentive Payment waiver the state pursued under Medicaid to create their new system. She explained the timeline of implementation of the CCBHC initiative and how the state worked with legislative members and agencies to bring everyone on board with the new system.

## **December 10-11, 2020, Meeting**

### **December 10**

#### ***Follow-up Information from October 30, 2020, Meeting***

KLRD staff provided an update on requested information for the following topics from the October 30, 2020, meeting:

- The number of licensed psychiatrists in Kansas, and of those licensed psychiatrists, how many are currently practicing;
- Information DCF tracks in regard to foster care youth and educational outcomes; and
- A funding overview of the Juvenile Justice Oversight Committee.

The Committee discussed whether there was a more-comprehensive report of DCF information to review, whether DCF tracks foster care students who have not completed the twelfth grade, and more insight into different programs funded by the

JJOC and changes in requested funds for certain programs.

### ***Review of the Strategic Framework for Modernizing the Kansas Behavioral Health System***

KHI staff provided the Committee a review of the process of the working groups and the compilation of work done by each entity, culminating in the Strategic Framework for Modernizing the Kansas Behavioral Health System (Strategic Framework) (Appendix pages 24-115).

KHI staff noted the working definition of behavioral health and the importance of agreed-upon definitions of different programs moving forward. KHI staff presented the Committee the vision statements that were developed for each of the topic areas and how these vision statements summarize the key points of the working group discussion.

The format of the recommendations of the Strategic Framework were discussed and how recommendations were sorted into high-priority for the Committee, based on the discussion of the working groups and the prioritization process. Within these high-priority recommendations, the working groups sorted each recommendation into an “immediate action” category and “strategic importance” category. Immediate action meant recommendations the working groups believed can be completed in the next two years. Strategic importance meant those recommendations the working groups believed should be initiated in the near term but would be completed in the longer term. Notable parts of the Strategic Framework that were discussed by KHI were:

- A summary of the high-priority recommendations (Appendix pages 31-39);
- Recommendations that were not deemed high priority but were still maintained in the Strategic Framework (Appendix pages 96-102);
- A copy of the recommendation rubric that the working groups used to finalize their

recommendations (Appendix pages 104-105);

- Tables for the high-priority recommendations by topic, which could be used as checklists for implementation (Appendix pages 106-107); and
- Working groups membership list (Appendix pages 108-111).

KHI staff reviewed the Data Profile section of the Strategic Framework (Appendix pages 43-45). KHI staff noted that data points were filled in with assistance from state agency staff, including: KDADS, KDHE, DCF, the Kansas Department of Corrections, the Kansas State Department of Education, and the Office of the Attorney General.

The section included a review of the Mental Health in America rankings of the 50 states by report year and different outcomes reported. The Committee discussed these data points, noting the difference in the point “adults with mental illness who report unmet needs,” where Kansas was ranked last in the nation. The Committee requested the links to the reports and a summary of these reports, the data used, and the different metrics used to develop the rankings.

Certain data boxes were left blank, due to more time needed for agencies to gather or collect this information. The Committee requested this information be compiled once the information becomes available.

Committee members discussed the importance of terminology and acceptance of common terms. One term included the definition for crisis intervention center and the difference between this term and crisis stabilization units. The Committee requested more information on the distinction between these two terms.

The Committee discussed adding language to the rationale section of Recommendation 10.2 Reimbursement Codes. This language was submitted by a representative from Blue Cross Blue Shield of Kansas. The language and Committee discussion centered on ensuring the recommendation did not propose to incentivize

providers at a higher rate to provide telehealth services than in-person services. During discussion, additional clarifying language was added by a representative from the Association of Community Mental Health Centers.

KHI staff facilitated the rest of the discussion by introducing the co-chairs of each working group. These individuals reviewed each of the high-priority recommendations by the working groups and explained the rationale for each of the recommendations. Following these presentations for each recommendation, the Committee had the opportunity to discuss these recommendations, pose questions to relevant working group members and subject matter experts, and propose any additional edits for the Strategic Framework.

Related to the discussion on reimbursement rates, the Medicaid Director provided data on the top 6 behavioral health codes utilized in KanCare by claim count and amount (Appendix pages 125-126).

## **December 11**

### ***Follow-up Questions on Strategic Framework and Review of Special Committee Edits***

KLRD staff facilitated a Committee discussion on any follow-up information from the December 10, 2020, meeting and any information the Committee would like researched and provided in the upcoming legislative session.

KLRD staff presented a handout to the Committee that showed the edits and changes to the Strategic Framework the Committee discussed at the December 11, 2020, meeting (Appendix pages 116-124). This included minor changes to certain recommendations and additional language added to the rationale section of Recommendation 10.2 Reimbursement Codes.

After this information was presented and discussed, the Committee approved the Strategic Framework report, as edited by the Committee, and KLRD staff were directed to advance the Strategic Framework as an attachment to the Special Committee report.

KLRD staff reviewed additional recommendations. The Committee approved the

additional recommendations and considerations: opportunities for coordination and collaboration, COVID-19 and behavioral health contemporary issues, data as a decision-making tool for modernization and reform, distribution of the Special Committee Report, recognition of participants and expert information, and request to legislative leaders for a joint standing committee.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Special Committee Recommendations**

At its December 11, 2020, meeting, the Committee discussed and approved the following recommendations based on Committee and working groups discussion.

#### ***Opportunities for Coordination and Collaboration***

The Committee recognizes the important recent and ongoing work of commissions, committees, councils, groups, and task forces focused on issues, ideas, and improvements that impact the behavioral health system, its capacity and workforce, and its financing and sustainability. The Committee acknowledges the connections and opportunities to collaborate on common goals and interests associated with the interim work of the Kansas Criminal Justice Reform Commission (the KCJRC), the Special Committee on Foster Care Oversight, and the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. The Committee highlights two areas where coordination and meaningful collaboration occurs – in specialty courts (with the KCJRC) and integrated care (with the Bethell Joint Committee).

- The Committee submits for the record the crosswalk of recommendations serving as the foundation for the review of its three working groups that detailed the relevant recommendations and study considerations submitted by the Child Welfare System Task Force (2017 preliminary, 2018 final reports), the Crossover Youth Working Group (2019 report), the Governor’s Behavioral Health Planning Council and its subcommittees (2018, 2019 reports), the Governor’s Substance Use Disorder Task Force (2018

report), and the Kansas Mental Health Task Force (2018, 2019 reports).

#### ***Contemporary Issues - COVID-19 Pandemic and Behavioral Health***

The discussions of this Committee and its working groups occurred amidst the COVID-19 pandemic. While it is too soon to draw conclusions about the lasting impacts on the behavioral health system in Kansas, the Committee requests state agencies, members of the working group, and the Kansas Legislature continue to assess, monitor, and report on these impacts. The Committee notes early indicators of impressions on the system including suicide rates and prevention efforts, temporarily enhanced reimbursement rates, and significant changes in the accessibility and use of telehealth.

#### ***Data as a Decision-Making Tool for Modernization and Reform***

The Committee notes the identification of a variety of data sources in the working group report and its committee process and strongly encourages clear, connected data systems and quality reporting to provide decision-makers across the system with measurable and easily tracked results. This will prove essential for the next steps toward implementation and provide measurable outcomes to drive decision-making, particularly for the evaluation of the data reported and financing of system goals and programming.

#### ***Distribution of Committee Report***

Given the breadth and complexity of the topics associated with mental health and transformation of the system, its capacity and workforce, the policy and treatments options and outcomes for individuals with behavioral health needs, and the sustainability and finance for the delivery of behavioral health services and resources, the Committee requests its complete report be transmitted to the following standing and joint committees of the Kansas Legislature: Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, House Committee on Children and Seniors, House Committee on Corrections and Juvenile Justice, House Committee on Health and Human Services, House Committee on K-12



Education Budget, House Committee on Social Services Budget, Senate Committee on Judiciary, Senate Committee on Public Health and Welfare, and Senate Committee on Ways and Means (agency subcommittees).

- The Committee requests KLRD staff compile a new crosswalk to reflect the adopted Committee working group recommendations and recommendations of the other interim groups issuing relevant considerations and recommendations during the 2020 Interim.

### ***Recognition of Participants and Expert Information***

The Committee acknowledges and appreciates the unique structure and support needed to conduct its broad review of mental health modernization and reform in Kansas and meet and exceed the charge issued by the Legislative Coordinating Council (LCC). The Committee especially recognizes the support of its Committee staff from KLRD and the Office of the Revisor of Statutes and the working group facilitation support provided by the Kansas Health Institute.

- The Committee commends the work of the roundtable participants and their contributions, not only to the work of the Committee, but also to the information, direction, expertise, and passion to the review and formulation of recommendations of the individual working groups.
- The Committee further recognizes meetings occurred under COVID-19 pandemic conditions; the public was asked to access its meetings and those of the working groups through audio or video stream.

The Committee encourages all the above entities to continue this spirit of collaboration and welcomes participation and information on these important topics and issues.

### ***Request to Legislative Leaders***

The Committee requests the LCC and the Legislature consider formation of a formal standing or joint committee to consider, address, and continue with the effort to address the longer-term goals and strategies incorporated in both this Committee and the adopted working groups' reports. The Committee recognizes that additional time is needed to continue not only this significant discussion but to work towards implementation strategies and longer-term system direction and transformation. The Committee also recommends leadership from each of the identified committees receiving the report commit to planning and discussion on this report and more formal assignment of topics and individual recommendations and priorities for review and consideration by the individual committees.

### ***Strategic Framework for Modernizing the Behavioral Health System; Working Groups Recommendations***

At its December 10, 2020, meeting, the Committee adopted the recommendations of the Strategic Framework developed by the working groups. The Strategic Framework (Appendix Pages 24-115) lists the rationale behind each recommendation and other measures for implementation.

[*Note:* The notation “IA” denotes an immediate action recommendation, and “SI” denotes a strategic importance recommendation.]

#### ***Workforce Recommendations (Appendix pages 46-50)***

- **1.1 Clinical Supervision Hours (IA):** Where applicable, reduce the number of clinical supervision hours required of master’s-level behavioral health clinicians to obtain clinical licensure from 4,000 to 3,000, similar to the reduction in clinical hours of social workers.
- **1.2 Access to Psychiatry Services (IA):** Require a study to be conducted by KDHE with an educational institution, to explore strategies to increase the number of psychiatrists, child and adolescent psychiatrists, and psychiatric nurses.  
[*Note:* The Committee requests

consideration be given to education institutions, regardless of size, that can provide this expertise and assistance.]

- **1.3 Provider MAT Training (IA):** Increase capacity and access to medication assisted treatment (MAT) in Kansas through provider training on MAT.
- **1.4 Workforce Investment Plan (SI):** The State of Kansas should make a long-term investment plan for the behavioral health system workforce by increasing funding for training, recruitment, retention, and support to effectively attract and retain high-quality staff. Specific steps include: develop a career ladder for clinicians, such as through the development of an associate's-level practitioner role; and take action to increase workforce diversity, including diversity related to race/ethnicity and LGBTQ identity, and the ability to work with those with limited English proficiency.
- **1.5 Family Engagement Practices (SI):** Provide adequate workforce compensation and reimbursement rates for time spent planning and implementing family engagement practices. Such support should be based on local needs, priorities, and goals determined at the program and school levels, in partnerships with families.

#### ***Funding and Accessibility Recommendations (Appendix pages 50-55)***

- **2.1 Certified Community Behavioral Health Clinic Model (IA):** Support expansion of the federal Excellence in Mental Health Act and then pursue participation. If participation in the Excellence in Mental Health Act is not possible, pursue a state plan amendment or change to the 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinical (CCBHC) model.
- **2.2 Addressing Inpatient Capacity (IA):** Implement and fund a comprehensive plan

to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.

- **2.3 Reimbursement Rate Increase and Review (IA):** Implement an immediate increase of 10-15 percent for reimbursement rates for behavioral health services. After increasing reimbursement rates, establish a working group to regularly review the reimbursement structures for behavioral health services for both the uninsured and the Medicaid population.
- **2.4 Suicide Prevention (IA):** Allocate resources to prioritized areas of need through data-driven decision-making. Assist local suicide prevention efforts and promote local support groups in fundraising efforts, building capacity, and increasing availability for survivors of suicide loss. Dedicate resources and funding for suicide prevention.
- **2.5 Problem Gambling and Other Addictions Fund (IA):** Recommend the State continue to incrementally increase the proportion of money in the Problem Gambling and Other Addictions Grant Fund (PGOAF) that is applied to treatment over the next several years until the full funding is being applied as intended.

#### ***Community Engagement Recommendations (Appendix pages 56-60)***

- **3.1 Crisis Intervention Centers (IA):** Utilize state funds to support the expansion of Crisis Intervention Centers, as defined by state statute, around the state.
- **3.2 IPS Community Engagement (IA):** Increase engagement of stakeholders, consumers, families, and employers through KDHE or KDADS by requiring agencies implementing the Individual Placement and Support (IPS) program, an evidence-based supported employment program, to create opportunities for

assertive outreach and engagement for consumers and families.

- **3.3 Foster Homes (SI):** The State of Kansas should invest in foster home recruitment and retention by increasing funding for supplemental training on behavioral health needs and providing additional financial incentives to support youth experiencing serious emotional disturbance (SED).
- **3.4 Community-Based Liaison (SI):** Fund and improve resources for a community-based liaison to facilitate connection to treatment and support services (e.g., community mental health services) upon reentry as a component of pre-release planning and services for justice system-involved adults and youth with substance use disorder (SUD) and co-occurring conditions.

#### ***Prevention and Education Recommendations (Appendix pages 60-65)***

- **4.1 988 Suicide Prevention Lifeline Funding (IA):** Once the 988 National Suicide Prevention Lifeline (NSPL) phone number is implemented, Kansas should collect fees *via* phone bills to support increasing the in-state answer rate and ensure that callers are connected to in-state resources.
- **4.2 Early Intervention (IA):** Increase access to early childhood mental health services by including additional language in the Medicaid state plan to explicitly cover the cost of early childhood mental health screening, assessment, and treatment.
- **4.3 Centralized Authority (IA):** Centralize coordination of behavioral health, including substance use disorder and mental health, policy, and provider coordination in a cabinet-level position.
- **4.4 Behavioral Health Prevention (SI):** Increase state funds for behavioral health

prevention efforts (e.g., substance use disorder prevention and suicide prevention).

#### ***Treatment and Recovery Recommendations (Appendix Pages 65-69)***

- **5.1 Psychiatric Residential Treatment Facilities (IA):** Monitor ongoing work to improve care delivery and expand capacity at psychiatric residential treatment facilities (PRTFs) to meet the needs of youth for whom a PRTF is medically appropriate, such as through reductions in the PRTF waitlist and a focus on reintegration and discharge planning, including with schools.
- **5.2 Service Array (SI):** Explore options to expand the behavioral health service array, including the expansion of MAT in block grant services. Make the expanded service array available to individuals across the state, such as KanCare enrollees, those with private insurance, and the uninsured.
- **5.3 Frontline Capacity (SI):** Increase capacity of frontline healthcare providers (e.g., pediatricians, family physicians and OB-GYNs) to identify and provide services to those with behavioral health needs.
- **5.4 Housing (SI):** Expand and advance the Supported Housing program and the SSI/SSDI Outreach, Access, and Recovery (SOAR) program, including additional training regarding youth benefits.

#### ***Special Populations Recommendations (Appendix pages 69-74)***

- **6.1 Domestic Violence Survivors (IA):** Build awareness of and responsiveness to the behavioral health needs and risks of domestic violence survivors of all ages through data analysis, information sharing, workforce training, and targeted interventions between domestic violence providers, state agencies, and community providers serving individuals impacted by domestic violence.

- **6.2 Parent Peer Support (IA):** Increase access to parent peer support for caregivers and families of youth in the behavioral health system, including ensuring appropriate supports for fathers of dependent children.
- **6.3 Crossover Youth (SI):** Continue to develop linkages between the behavioral health system, juvenile justice system, and the child welfare system to increase understanding of treatment options to youth externalizing traumas in the crossover youth population as current treatment options are not meeting the needs of this population. Then develop specialty services to meet the needs of this population.
- **6.4 I/DD Waiver Expansion (SI):** Fully fund the intellectual and developmental disabilities (I/DD) waiver and expand I/DD waiver services. Increase reimbursement rates for I/DD services to support workforce expansion.
- **6.5 Family Treatment Centers (SI):** Increase the number and capacity of designated family SUD treatment centers, as well as outpatient treatment programs across the state.

***Data Systems Recommendations (Appendix pages 74-79)***

- **7.1 State Hospital EHR (IA):** The new state hospital electronic health record (EHR) system should be interoperable with other data systems in the state. Interoperability should include the ability to automate the current process to reinstate Medicaid benefits following discharge.
- **7.2 Data and Survey Informed Opt-Out (IA):** Collect, analyze, use, and disseminate surveillance data to inform prevention. Change legislation regarding public health and behavioral health state surveys, including changing the Kansas Communities That Care (KCTC) and Youth Risk Behavior Surveillance System

(YRBS) surveys from an opt-in consent to an informed opt-out consent, to allow for meaningful data collection.

- **7.3 Information Sharing (IA):** Utilize Medicaid funds to incentivize participation in health information exchanges (e.g., Kansas Health Information Network [KHIN] or Lewis and Clark Information Exchange [LACIE]). Explore health information exchanges as an information source on demographic characteristics, such as primary language and geography for crossover youth and other high-priority populations.
- **7.4 Needs Assessment (IA):** Conduct a statewide needs assessment to identify gaps in funding, access to substance use disorder (SUD) treatment providers, and specific policies to effectively utilize, integrate, and expand SUD treatment resources.
- **7.5 Cross-Agency Data (SI):** Encourage state agencies to develop policies that improve their ability to access and review cross-agency data for making service and program decisions based on a thorough, shared needs assessment.

***Interactions with Legal System and Law Enforcement Recommendations (Appendix pages 79-83)***

- **8.1 Correctional Employees (IA):** Expand training provided in correctional facilities to allow employees to better recognize those with substance use disorders, use a trauma-informed approach to identify other mental health needs, and connect those with needs to available services.
- **8.2 Criminal Justice Reform Commission Recommendations (IA):** Implement recommendations developed by the Kansas Criminal Justice Reform Commission (KCJRC) related to specialty courts (e.g., drug courts) and develop a

process for regular reporting on implementation status and outcomes.

- **8.3 Law Enforcement Referrals (IA):** Increase utilization and development of evidence-based SUD referral as well as treatment and recovery services among persons with law enforcement contact, which could include securing funding to increase access to services for this population.
- **8.4 Defining Crossover Youth Population (SI):** Future efforts should include behavioral health within an operationalized definition for youth with offender behaviors at risk of entering foster care, as well as including diverted youth in the definition of the broader juvenile offender population.

#### ***System Transformation Recommendations (Appendix pages 83-88)***

- **9.1 Regional Model (IA):** Develop a regional model that would supplement the traditional state hospital setting with regionalized facilities accepting both voluntary and involuntary admissions for persons in acute services as well as longer-term/tertiary specialized care. Currently, there is a particular gap in capacity in south central Kansas.
- **9.2 Long-Term Care Access and Reform (IA):** Reform nursing facilities for mental health (NFMHs) to allow for the provision of active treatment and necessary rehabilitative services and crisis services in NFMHs and inclusion within the continuum of care. Increase access to long-term care (LTC) facilities, particularly for individuals with past involvement with the criminal justice system or those with a history of sexual violence.
- **9.3 Integration (IA):** Increase integration, linkage, and collaboration and identify care transition best practices among mental health, substance abuse, primary care, and emergency departments across

the state. Adopt coding practices that allow for the integration of services across the continuum of care domains (including, but not limited to, primary care, substance use disorder, and mental health) to provide more integrated services to clients with co-occurring conditions.

- **9.4 Evidence-Based Practices (SI):** Kansas should continue and expand support for use of evidence-based practices (EBP) in the state, including for housing and supported employment. Coordinate EBP utilization across systems (e.g., law enforcement, SUD, mental health care) with a goal of implementing programs with fidelity, when possible.
- **9.5 Family Psychotherapy (SI):** Enable utilization of procedure code 90846 in Medicaid as a tool to support youth in foster care, as well as any child accessing care in a Psychiatric Residential Treatment Facility.

#### ***Telehealth Recommendations (Appendix pages 88-94)***

- **10.1 Quality Assurance (IA):** Develop standards to ensure high-quality telehealth services are provided, including: establishing consistent guidelines and measures for telehealth in collaboration with licensing and regulatory agencies, implementing standard provider education and training, ensuring patient privacy, educating patients on privacy-related issues, allowing telehealth supervision hours to be consistently counted toward licensure requirements, and allowing services to be provided flexibly when broadband access is limited.
- **10.2 Reimbursement Codes (IA):** Maintain reimbursement codes added during the public health emergency for tele-behavioral health services and consider options to prevent loss of facility fees so that providers are not losing revenue by delivering telehealth services.

- **10.3 Telehealth for Crisis Services (IA):** Establish coverage of telehealth for crisis services to allow for the use of telehealth with law enforcement and mobile crisis services. Explore virtual co-responder models for law enforcement to aid police departments and other law enforcement agencies as they respond to mental health crisis in rural and frontier communities.
- **10.4 Originating and Distant Sites (SI):** The following items should be addressed to ensure that individuals receive - and providers offer - telehealth in the most appropriate locations: adopt a broad definition of originating site, consistent with the Kansas Telemedicine Act; allow

staff to provide services from homes or other non-clinical sites, if patient privacy and safety standards can be met; and examine issues related to providers practicing, and patients receiving, services across state lines, such as by exploring participation in interstate licensure compacts.

- **10.5 Child Welfare System and Telehealth (SI):** Utilize telehealth to maintain service and provider continuity as children, particularly foster children, move around the state. Consider how the unique needs of parents of children in the child welfare system can be met *via* telehealth.

## Appendix

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## **Working Definitions for Mental Health Modernization and Reform**

**Behavioral health system:** Refers to the system of care that includes the promotion of mental health, resilience and well-being; the prevention, referral, diagnosis, and treatment of mental and substance use disorder; and the support of persons with lived experience in recovery from these conditions, along with their families and communities. (Adopted from the “Strategic Framework for Modernizing the Kansas Behavioral Health System: Working Groups Report to the Special Committee on Kansas Mental Health Modernization and Reform,” December 2020)

**Certified Community Behavioral Health Clinic (CCBHC):** Under Section 223 of the Protecting Access to Medicare Act of 2014, Congress required the U.S. Department of Health and Human Services (HHS) to establish a process for certification of CCBHCs as part of a two-year demonstration project under Medicaid. Per statute, entities under the CCBHC Medicaid Demonstration must provide a comprehensive set of services that respond to local needs by using integrated care. The demonstration project allows CCBHCs to have a reimbursement model that enhances the coverage of provider costs and allows for a full set of statutorily required services to be offered. In October 2015, HHS awarded planning grants to 24 states to help prepare to participate in the two-year demonstration project. The demonstration phase began in July 2017. Additional expansion grants (CCBHC-E) were awarded beginning in May 2018.

**Crisis Intervention Center:** Any entity licensed by the Kansas Department for Aging and Disability Services (KDADS) that is open 24 hours a day, 365 days a year, equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse or a co-occurring condition, and that uses certified peer specialists. [KSA 59-29c02(e)]

**Integrated Care:** A systematic coordination of general and behavioral health care. (See Recommendation 9.3 Integration in the Strategic Framework for Modernizing the Kansas Behavioral Health System).

**Psychiatric Residential Treatment Facility:** Any non-hospital facility with a provider agreement with the licensing agency to provide inpatient services for individuals under the age of 21 who will receive highly structured, intensive treatment for which the licensee meets the requirements as set forth by regulations created and adopted by the Secretary for Aging and Disability Services. [KSA 39-2002(m)]

**Telemedicine:** Including “telehealth”, means the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine shall be provided by means of real-time two-way interactive audio, visual, or audio-technology to provide or support healthcare delivery, that facilitate the assessment, diagnosis, consultation, treatment, education and care management of a patient’s healthcare. “Telemedicine” does not include communication between healthcare providers that consist solely of a telephone voice-only conversation, email or facsimile transmission; or a physician and a patient that consists solely of a telephone voice-only conversation, email or facsimile transmission. [KSA 40-2,211(5)]



<b>Acronym Key</b>	
ACE	Adverse Childhood Experiences
ACM	Administrative Case Management
ADA	Americans with Disabilities Act
CARES	Coronavirus Aid, Relief, and Economic Security Act
CCBHC	Certified Community Behavioral Health Clinic
CMA	Certified Medication Aide
CMHC	Community Mental Health Center
CMS	Centers for Medicare and Medicaid Services
CNA	Certified Nurse Aide
DCF	Kansas Department for Children and Families
CIC	Crisis Intervention Center
CSU	Crisis Stabilization Unit
EBP	Evidence Based Practices
EMHA	Excellence in Mental Health Act
EO	Executive Order
FEMA	Federal Emergency Management Agency
FMAP	Federal Medical Assistance Program
FMS	Financial Management Services
FPL	Federal Poverty Level
HCBS	Home and Community Based Services (Waivers Listed Below)
	AU Autism
	BI Brain Injury
	FE Frail Elderly
	I/DD Intellectual and Developmental Disability
	PD Physical Disability
	SED Serious Emotional Disturbance
	TA Technology Assisted
HHS	U.S. Department of Health and Human Services
HRSA	Health Resources and Services Administration (HHS agency)
ICF	Intermediate Care Facility
IPS	Individual Placement and Support
ISP	Individual Service Plan
JJOC	Juvenile Justice Oversight Committee
KAR	Kansas Administrative Regulations
KCJRC	Kansas Criminal Justice Reform Commission
KCTC	Kansas Communities That Care
KDADS	Kansas Department for Aging and Disability Services
KDHE	Kansas Department of Health and Environment
KHA	Kansas Hospital Association
KHI	Kansas Health Institute
KHIN	Kansas Health Information Network
KLRD	Kansas Legislative Research Department
KMAP	Kansas Medical Assistance Program

KNI	Kansas Neurological Institute
KSDE	Kansas State Department of Education
LSH	Larned State Hospital
LACIE	Lewis and Clark Information Exchange
LTC	Long-Term Care
LTSS	Long-Term Services and Supports
MAT	Medication Assisted Treatment
MCO	Managed Care Organization
MDS	Minimum Data Set
MFP	Money Follows the Person
OSH	Osawatomie State Hospital
NF	Nursing Facility
NSPL	National Suicide Prevention Lifeline
PIL	Protected Income Level
PPE	Personal Protective Equipment
PRF	Provider Relief Fund
PRTF	Psychiatric Residential Treatment Facility
PSHTC	Parsons State Hospital and Training Center
RN	Registered Nurse
SAMHSA	Substance Abuse and Mental Health Services Administration
SGF	State General Fund
SMC	Specialized Medical Care
SNF	Skilled Nursing Facility
SPARK	Strengthening People and Revitalizing Kansas Taskforce
SSI	Supplemental Security Income
SUD	Substance Use Disorder
TBI	Traumatic Brain Injury
TCM	Targeted Case Management
YRBSS	Youth Risk Behavior Surveillance System

<b>KLRD Crosswalk Acronym Key</b>	
CAODA	Committee on Alcohol and Other Drug Abuse
CASA	Court Appointed Special Advocates
CWSTF	Child Welfare System Task Force
CYWG	Crossover Youth Working Group
GBHSPC	Governor's Behavioral Health Services Planning Council
HAHS	Housing and Homelessness Subcommittee
JIYAS	Justice Involved Youth and Adult Subcommittee
SUDTF	Governor's Substance Use Disorders TF
MHTF	Mental Health Task Force
PS	Prevention Subcommittee
RFS	Rural and Frontier Subcommittee

SPW	Suicide Prevention Workgroup
VOS	Vocational Subcommittee
VS	Veterans Subcommittee

*Kansas Legislative Research Department*

Special Committee on Mental Health Modernization and Reform, August 2020 Recent Behavioral Health and Mental Health Committees and Task Forces' Recommendations - KLRD Crosswalk				
Work Group 1: Finance and Sustainability				
Topic 1. Workforce				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier One Recommendation: Workforce.</b> The State of Kansas should invest in the child welfare system workforce by increasing funding for recruitment, retention, and support to effectively attract and retain high-quality staff.</p> <p><b>Tier Three Recommendation: Front-End Staffing.</b> The Department for Children and Families (DCF) should employ highly skilled and experienced front-end child welfare staff.</p>	<p><b>Committee on Alcohol and Other Drug Abuse (CAODA) Counseling Recommendations.</b> Support initiatives that provide tuition reimbursement for addiction counselors equal to those provided to other behavioral health professionals. Support better funding for agencies so the agencies may provide compensation and benefits sufficient to encourage prospective professionals to seek training and licensure.</p>	<p><b>TR19. Workforce Development.</b> Implement workforce development programs to increase capacity of addiction professions.</p>	<p><b>Recommendation 5.1 Workforce Study (2019).</b> Initiate a comprehensive workforce study statewide to examine challenges experienced by employers in reaching optimal staffing levels to provide services.</p> <p><b>Recommendation 5.2 Peer Support (2019).</b> Encourage integration of peer support services and Kansas-certified peer mentoring services (substance use disorder [SUD]) into multiple levels of service, including employment services at community mental health centers (CMHCs), hospitalization, discharge, and transition back to the community.</p> <p><b>Recommendation 5.3 State Loan Repayment Program (2019).</b> Require a report on increasing the number of psychiatrists and psychiatric nurses.</p>	<p>No relevant considerations.</p>

Topic 2. Funding and Accessibility				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier One Recommendation:</b>  <b>Access to Care.</b> The State of Kansas should require access to high-quality and consistent medical and behavioral health care for Medicaid-eligible high-risk youth through the state Medicaid state plan or other appropriate sources of funding.</p> <p><b>Tier Two Recommendation:</b>  <b>Service Setting.</b> The State of Kansas should prioritize delivering services for children and youth in natural settings, such as, but not limited to, homes, schools, and primary care offices, in the child's community when possible. The needs of the child and family should be the most important factor when determining the settings where services are delivered.</p>	<p><b>Suicide Prevention Workgroup (SPW) Recommendation.</b> Assist local suicide prevention efforts and promote local support groups in fund-raising efforts, building capacity, and increasing availability for survivors of suicide loss.</p> <p><b>Prevention Subcommittee (PS) Recommendations:</b> Allocate resources to prioritized areas of need through data-driven decision-making. Increase access and availability of behavioral health services by restoring funding for CMHCs and supporting efforts to recruit students to enter the behavioral health services community. Dedicate resources and funding for suicide prevention.</p> <p><b>Vocational Subcommittee (VOS) Recommendations.</b> Actively seek out and provide grants to CMHCs from the State General Fund to offset costs initiating and implementing Individual Placement and Support (IPS) Supported Employment model.</p>	<p><b>TR3. Prior Authorizations.</b> Remove prior authorization requirements for MAT (medication-assisted treatment).</p> <p><b>TR5. Opioid Addiction Project ECHO.</b> Identify funding for Opioid Addiction Project ECHO telementoring.</p> <p><b>TR10. Mental Health Parity.</b> Review procedures for mental health parity laws to ensure compliance.</p> <p><b>TR11. IMD Waiver.</b> Explore waiver of Medicaid Institutions for Mental Diseases (IMD) exclusion for mental health and substance use disorder treatment and support current IMD exclusion waiver for residential services for substance use treatment.</p>	<p><b>Recommendation 1.1 Addressing Capacity (2019).</b> Implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.</p> <p><b>Recommendation 1.2 Regional Community Crisis Center Locations (2019).</b> Develop regional community crisis centers across the state including co-located or integrated SUD services.</p> <p><b>Recommendation 2.4 IMD Waiver (2019):</b> Seek revocation or waiver of the federal IMD exclusion rule to allow federal Medicaid funds for both SUD and psychiatric inpatient treatment.</p>	<p>No relevant considerations.</p>

<p><b>Tier Three Recommendation:</b></p> <p><b>Maximizing Federal Funding.</b> The State of Kansas should conduct an audit of potential funding streams by program area to ensure the State is maximizing federal benefits.</p> <p><b>Tier Three Recommendation:</b></p> <p><b>Resources and Accountability.</b> The State of Kansas and DCF should provide services that are in the best interest of children in their care by supporting a system that is accountable and resourced well enough to provide the needed services. Considerations should include, but not be limited to, the awarding of funds based upon qualifications and not financial factors, improving workforce morale and tenure, and providing technology to improve efficiencies.</p>	<p><b>CAODA Recommendation.</b> Facilitate a pursuit of grant funding. Recommend creating a new state-level grant-support position to work directly with agencies to help secure and maintain these opioid-related funds as well as other addiction prevention and treatment opportunities. A state-level coordinator could provide the grant-specific expertise. Recommend the State continue to incrementally increase the proportion of money to the Problem Gambling and Other Addictions [Grant] Fund.</p>	<p><b>TR13. KanCare.</b> Recommend a full expansion of Medicaid in order to increase access to healthcare for uninsured, low-income Kansans.</p> <p><b>TR15. Senate Bill 123.</b> Assure adequate funding for SB 123 (2003) [provides certified SUD treatment for offenders convicted of drug possession who are nonviolent with no prior convictions] to allow appropriate provision of medically necessary treatment services and allow for an expanded list of qualifying offenses.</p> <p><b>TR17. Addiction Treatment.</b> Create additional services for the treatment of addiction as well as any co-occurring mental health diagnoses.</p> <p><b>TR18. Sober Housing.</b> Study the efficacy of sober housing and strategies for success from other states including funding mechanisms.</p>	<p><b>Recommendation 2.3 Excellence in Mental Health (2019).</b> Support expansion of the federal Excellence in Mental Health Act and then pursue participation.</p> <p><b>Recommendation 2.5 Medicaid Expansion (2019).</b> Adopt Medicaid expansion to cover adults under the age of 65 with income up to 138 percent of the federal poverty level (FPL) to pursue solutions for serving the uninsured and underinsured, which will improve access to behavioral health services.</p>	
		<p><b>PE6. K-TRACS Funding.</b> K-TRACS should be sustainably funded by the State General Fund after any available grant funding is exhausted.</p>	<p><b>Recommendation 2.4 Funding for Crisis Stabilization Centers (2018).</b> If Crisis Stabilization Centers are to be part of the state safety net system, the State must provide ongoing base funding for these services. The structure of Medicaid should be robust enough to sustain these services. Make sure that services are available to the uninsured and underinsured.</p>	

			<b>Recommendation 3.2 Number of Beds.</b> Develop a plan to add more than 300 additional hospital beds, or create and expand alternatives that would reduce the number of new beds needed. The Kansas Department for Aging and Disability Services (KDADS) should execute a study to determine a Kansas-specific estimate of beds needed, while simultaneously moving forward with implementing other recommendations included in this report to provide a functioning safety net to eliminate the waiting list at Osawatomie State Hospital.	
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Topic 3. Community Engagement				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier Two Recommendation: Reintegration Support.</b> The State of Kansas should provide consistent, individualized, evidence-based support throughout reintegration for children in need of care and caregivers, including, but not limited to, parents and foster parents.</p> <p><b>Tier Two Recommendation: Foster Homes.</b> The State of Kansas should invest in foster home recruitment and retention by increasing funding for supplemental training and providing additional financial incentives that support older youth, high-needs children, and birth families, as well as modifying licensing requirements.</p>	<p><b>Veterans Subcommittee (VS) Recommendation.</b> Increase engagement of stakeholders, consumers, families, and employers through the Kansas Department of Health and Environment (KDHE) or KDADS by requiring agencies implementing IPS to create opportunities for assertive outreach and engagement for consumers and families.</p> <p><b>Justice Involved Youth and Adult Subcommittee (JIYAS) Recommendations.</b> Engage community partners using three pilot communities that the workgroup identified, which would involve a coordinated effort between the Kansas Department of Corrections (KDOC), CMHCs, and SUD providers.</p> <p><b>SPW Recommendations.</b> Encourage the development of new local coalitions and enrichment of collaborating existing local coalitions each bringing unique perspectives and resources for effective suicide prevention initiatives. Support and increase availability of support groups for survivors of suicide loss.</p>	<p><b>Prev4. Community Collaboration.</b> Increase collaboration with community partners to enhance their capacity to develop and implement local-level prevention efforts for prescription drug, illicit opioid, methamphetamine, and other drug misuse and overdose.</p> <p><b>TR12. Treatment Navigator.</b> Develop a statewide treatment navigator.</p> <p><b>LE1. Community-Based Liaison.</b> Fund and improve resources for community-based liaison to facilitate connection to treatment and support services (e.g., community mental health services) upon re-entry as a component of pre-release planning and services for those [justice-involved individuals] with SUD and co-occurring conditions .</p>	No relevant recommendations.	No relevant considerations.



<b>Tier Three Recommendation:</b> <b>Court Appointed Special Advocates (CASAs).</b> The Legislature shall fund CASAs to ensure the availability of CASA volunteers in all jurisdictions, without disrupting the current funding CASAs receive from the State of Kansas.				
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Work Group 2: Policy and Treatment				
Topic 4. Prevention and Education				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier Two Recommendation: Safety Net, Early Childhood Programs, and Early Intervention.</b> The State of Kansas should fully fund, strengthen, and expand safety net and early childhood programs through public services (DCF, mental health, substance abuse, and education) and community-based partner programs, and reduce barriers for families needing to access concrete supports. The State of Kansas should ensure availability and adequate access to early childhood behavioral health services statewide. the Task Force recommends consideration of related Mental Health Task Force recommendations 1.2 (Medicaid Expansion Models), 1.3 (Housing), 3.1 (Regional Model), and 6.4 (Early Intervention).</p>	<p><b>SPW Recommendations.</b> Write, distribute, and promote op-eds, and disseminate information about safe messaging covering suicide, and urge the development of effective materials including through local media outlets. Increase number of trainings and workshops to promote and support application of best practices and evidence-based approaches in the field of suicidology among Behavioral Sciences Regulatory Board (BSRB) licensed behavioral health practitioners and community gatekeepers when working to prevent suicides.</p> <p><b>PS Recommendations.</b> Form an evidence-based practices workgroup (EBW) for behavioral health promotion. An EBW could promote more use of evidence-based strategies to better integrate promotion, prevention, treatment, and recovery services. Priority areas for initial EBW focus include marijuana, opioids, and strategies to help 18-25 year olds.</p> <p><b>CAODA Recommendation.</b> Work to publicize the availability of prevention tools that may be used by community groups, schools, and families at <a href="http://www.kansaspreventioncollaborative.org">www.kansaspreventioncollaborative.org</a>.</p>	<p><b>PE 1. Centralized Authority.</b> Centralize coordination of substance use disorder policy and provider education.</p> <p><b>PE2. Provider Training.</b> Provide training and continuing education programs for healthcare professionals. Healthcare programs should include in curricula additional education on opioid prescribing, addictions, MAT, pain management and risk identification.</p> <p><b>PE3. K-TRACS Education.</b> Develop and disseminate materials on K-TRACS and U.S. Centers for Disease Control and Prevention (CDC) guidelines to healthcare providers and students.</p>	<p><b>Recommendation 6.4 Early Intervention (2018).</b> Increase access to early childhood mental health services by including language in state Medicaid behavioral health plans to explicitly cover early childhood mental health screening, assessment, and treatment. Ensure children and caregivers are screened and assessed at regular intervals in early childhood programs. Based on the screening results, work in collaboration with partners to address adverse childhood experiences (ACEs) and sources of toxic stress.</p> <p><b>Recommendation 2.2 Care Management Program (2019).</b> Take steps to ensure that all Kansas youth and adults with a behavioral health diagnosis or chronic physical health condition are eligible to opt into a health home to have access to activities that help coordinate care.</p>	<p>No relevant considerations.</p>

		<p><b>PE 10. Coroner Letters.</b> Explore the feasibility of and consider a pilot program for coroners or medical examiners sending educational letters to prescribing providers upon their own patient's death from prescription drug or other illicit substance overdose.</p> <p><b>PE12. Provider MAT Training.</b> Increase capacity and access to MAT in Kansas through provider training on MAT.</p> <p><b>Prev1. Promote Safety.</b> Promote safe use, storage, and disposal of prescription medications, including opioids, to prevent misuse and illicit acquisition and distribution.</p>		
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		<p><b>Prev2. Disposal Sites.</b> Expand medication disposal sites in gap areas to ensure that there is a minimum of one medication disposal site in each Kansas county.</p> <p><b>Prev3. Awareness.</b> Develop and disseminate educational materials for both professional and non-professional audiences on the issues of prescription drug, opioid, methamphetamines, and other drugs misuse, abuse, overdose, and mitigation strategies.</p> <p><b>Prev4. Fund Prevention.</b> Establish and sustain permanent funding sources for primary, secondary, and tertiary prevention associated with prescription drugs, opioids, alcohol, methamphetamines, and other drug misuse for all ages.</p>		
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Topic 5. Treatment and Recovery				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier Two Recommendation: Foster Care Re-entry and Transitional Services.</b> The State of Kansas should provide young adults age 18-21 with the option to seamlessly re-enter the child welfare system, and ensure continuity in medical, behavioral health, and support services for youth who have exited the custody of DCF.</p> <p><b>Tier Three Recommendation: Immediate Response.</b> The State of Kansas should provide immediate response 24/7 to hotline calls and dedicated immediate response investigators to be dispatched and warranted.</p>	<p><b>Housing and Homelessness Subcommittee (HAHS) Recommendation.</b> Expand and advance SSI/SSDI Outreach, Access, and Recovery (SOAR) program, which is a federal program designed to help states and communities increase access to Social Security disability benefits for people who are homeless or at risk of homelessness and have a mental illness or other co-occurring disorders.</p>	<p><b>TR1. Expand MAT.</b> Expand Access and utilization of MAT.</p> <p><b>TR2. Buprenorphine Prescribers.</b> Increase the number of buprenorphine-waivered prescribers practicing in Kansas and incentivize buprenorphine training for providers.</p>	<p><b>Recommendation 1.3 Warm Hand-Off (2019).</b> Establish a 24-hour uniform hotline and implement a warm hand-off based on the 911 model.</p> <p><b>Recommendation 3.2 Intensive Outpatient Services (2019).</b> Expand community-based options such as intensive outpatient services.</p> <p><b>Recommendation 3.3 Psychiatric Residential Treatment Facility (PRTF) (2019).</b> Re-establish the purpose of PRTFs.</p> <p><b>Recommendation 6.3 Quality of Care (2018).</b> Managed care organizations (MCOs) contracts should incentivize PRTF readmissions instead of reduced lengths of stay.</p>	<p><b>Services for Crossover Youth.</b> The Working Group's limited scope of review could not speak to the cost per crossover youth and any claims denied for reimbursement for a child's behavior problems. The Working Group further suggests researching the effect of therapeutic environment on care of youth with higher levels of aggression in a PRTF and the impact of such youth on other youth in care settings.</p>
			<p><b>Recommendation 4.2 Presumptive Approval of Medicaid (2019).</b> Coordinate with KDHE and determine if a policy could be developed or revised that facilitates presumptive approval upon discharge for anyone leaving an IMD environment, including NFMHs.</p> <p><b>Recommendation 6.1 Suicide Prevention (2019).</b> Place a focus on reversing negative suicide trends for youth and adults.</p>	

Topic 6. Special Populations				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier Two Recommendation: Non-Abuse Neglect.</b> The State of Kansas should provide differential responses for newborns and refer them to evidence-based services.</p> <p><b>Tier Three Recommendation: Serious Injury Review.</b> The State of Kansas, in accordance with federal and state confidentiality laws, should formalize a Serious Injury Review Team to establish and conduct a review process both internally and externally for an immediate and necessary response when a child dies or suffers serious bodily injury after having previous contacts with DCF Protection and Prevention Services concerning prior abuse and neglect.</p>	<p><b>Rural and Frontier Subcommittee (RFS) Recommendation.</b> Increase funding for crisis beds for the non-insured and underinsured to fill the gap in rural and frontier areas of the state.</p> <p><b>VS Recommendation.</b> Expand the three-day crisis intervention training across the state for police and first responders concerning veterans in a mental health crisis.</p>	<p><b>NAS1. Educate and Intervene. (Neonatal Abstinence Syndrome [NAS]).</b> Provide education, screening, intervention, and support to substance-using women to reduce the number of infants born substance-exposed, while expanding coverage for family planning services, preconception services, and a variety of contraceptives, including long-acting reversible contraceptives.</p> <p><b>NAS2. Standardize Care.</b> Provide education on best practices to reduce stigma and promote standardized care regarding NAS cases, develop a standardized reporting process for NAS cases across the state, and offer universal training and continuing education through the Vermont Oxford Network NAS Universal Training Program to Kansas birthing centers.</p> <p><b>NAS3. Women and Family Treatment Centers.</b> Increase the number and capacity of designated women and family treatment centers across the state.</p> <p><b>NAS4. MAT in Pregnancy.</b> Increase access to MAT for pregnant women.</p>	<p><b>Recommendation 3.1 Access to Effective Practices and Support (2019).</b> Deliver crisis, clinical, and prevention services for children and youth and families in natural settings (e.g., homes, schools, primary care offices) in the community.</p> <p><b>Recommendation 3.5 Transition Age Youth (2019).</b> Request a formal joint report to Legislature by corrections, education, and health and human services agencies on programs, coordinated efforts, and any collective recommendations for populations identified in 2016 SB 367.</p>	<p><b>Child Welfare Placements.</b> The working group suggests exploring what supports/services are lacking and prevent permanency from being achieved regarding placement stability of crossover youth placed in foster care.</p>

### Work Group 3: System Capacity and Transformation

#### Topic 7. Data Systems

Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier One Recommendation:</b>  <b>Data Infrastructure.</b> The State of Kansas should create a single, cross-system, web-based, integrated case management and data reporting system that can be used by DCF and all relevant agencies and stakeholders to efficiently and effectively share information (e.g., education, dental, medical, behavioral).</p> <p><b>Tier Two Recommendation:</b>  <b>Information Sharing.</b> The State of Kansas should establish a multi-disciplinary approach and share information across and among stakeholders, irrespective of state borders, in accordance with federal and state laws.</p>	<p><b>PS Recommendations.</b> Encourage state agencies to develop policies that improve their ability to access and review cross-agency data for making service and program decisions based on a thorough, shared needs assessment. Integrate and utilize the guidance of a state epidemiological workgroup. Enhance data collection procedures— change legislation regarding public behavioral/health youth surveys (e.g., the Kansas Communities That Care (KCTC) Student Survey and the Youth Risk Behavior Surveillance System (YRBSS) from an opt-in consent, to an informed opt-out consent to allow for meaningful data collection and availability of data decision making.</p> <p><b>AODA Recommendations.</b> Reverse the active consent policy that currently requires active parent consent on the KCTC. Explore options to report county data about substance use, treatment access, and outcomes to agencies in order to aid in strategizing local and state response to addiction.</p>	<p><b>Prev5. Data.</b> Collect, analyze, use, and disseminate surveillance data to inform prevention efforts and monitor trends in at-risk populations.</p> <p><b>Prev6. Survey Opt-Out.</b> Change legislation regarding public health and behavioral health state surveys (KCTC and YRBSS) from an opt-in consent, to an informed opt-out consent to allow for meaningful data collection).</p> <p><b>TR4. Needs Assessment.</b> Conduct a statewide needs assessment to identify gaps in funding, access to SUD treatment providers and identify specific policies to effectively utilize and integrate existing SUD treatment resources.</p>	<p><b>Recommendation 2.1 Reimbursement Rates (2019).</b> Facilitate a detailed review of the costs and reimbursement rates for behavioral health services, including mental health and substance use disorder treatment, and update rates accordingly.</p>	<p><b>Demographics:</b> Potential future topics to study regarding demographic characteristics were to include primary language and geographic distribution amongst crossover youth across Kansas.</p> <p><b>Child Welfare Placements:</b> Based upon findings by the working group, the working group proposes future efforts to study strategies for engaging relatives to care for crossover youth, collecting data on outcomes for youth placed in group residential homes, and understanding whether youth who might have been detained prior to SB 367 are now being placed in the child welfare system.</p>

Topic 8. Interaction with the Legal System and Law Enforcement				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier Two Recommendation: Code of Care of Children.</b> The Judicial Council should review the Code for Care of Children (CINC Code), especially with regard to: a) the way DCF's definition of "non abuse neglect" relates to cases under the CINC Code, and b) modifications to meet the child's ongoing best interests for permanency.</p>	<p><b>JIYAS Recommendations:</b> Endorse and focus on the issue of high behavioral health acuity releases from KDOC and any other jail entity. Primary issues include integration of services from incarcerated status to community; focus on high acuity need individuals who may be difficult to house with sexual offenders and offenders with poor impulse control; offenders who have been screened for civil commitment and alternatives commitment; and substance use treatment upon release.</p>	<p><b>LE2. Benefits Reinstatement.</b> Develop reinstatement policies or procedures to increase the ability of offenders to access Medicaid benefits upon release, such as suspending benefits rather than termination upon incarceration.</p> <p><b>LE3. Diversion Sobriety and Treatment.</b> Expand pre-charge and post-charge diversion sobriety and treatment options for first time, non-violent simple drug possession charges.</p> <p><b>LE4. Naloxone.</b> Promote Naloxone education and use for first responders and pursue all available funding.</p>	<p><b>Recommendation 1.5 Suspension of Medicaid (2019).</b> Implement policies that allow for the suspension of Medicaid benefits when persons enter an institution rather than terminating their coverage entirely, to improve transition planning and access to care.</p>	<p><b>Demographics:</b> Future efforts should focus on operationalizing a definition for youth with offender behaviors at risk of entering foster care, as well as including diverted youth in the definition of the broader juvenile offender population.</p> <p><b>Law Enforcement Agency Administrative Survey:</b> A future study consideration stated the survey that the Working Group administered did not assess individual behaviors by law enforcement officers responding to juvenile incidents. In addition, potential future topics to study include age at first arrest, number of arrests while in the custody of the state, and differences in criminal charges in arrest records compared to final criminal charges stated in adjudication.</p>



		<p><b>LE5. Law Enforcement Referrals.</b> Increase utilization and development of evidence-based SUD referral as well as treatment and recovery services among persons with law enforcement contact (this includes securing funding to increase access to services for this population).</p> <p><b>LE6. Good Samaritan.</b> Enact a 911 Good Samaritan Law. This law must be crafted to avoid unintentionally allowing persons to avoid persecution for serious felony charges, especially when their actions directly involved providing illicit substance to the ill individual.</p>		<p><b>Law Enforcement Agency Administrative Survey:</b> The analysis for numbers and nature of alleged offender behaviors of crossover youth taken into custody by law enforcement pursuant to KSA 38-2330(d)(1) and amendments thereto could not be conducted. If data are consistently and reliably collected in the future, topics of interest may include relationship between crime classification and age of youth, additional law enforcement outcomes beyond arrests stemming from juvenile law enforcement contact, and geographic distribution of particular offense, including anecdotal "hot spots" for juvenile law enforcement calls.</p>
		<p><b>LE7. Correctional Employees.</b> Provide training in correctional facilities to allow employees to better recognize those with substance use disorders and other mental health needs and connect those with needs available to services.</p>		

Topic 9. System Transformations				
Child Welfare System Task Force	Governor's Behavioral Health Services Planning Council Subcommittees	Governor's Substance Use Disorders Task Force	Mental Health Task Force	Crossover Youth Working Group
<p><b>Tier Two Recommendation: Analysis of Service Delivery.</b> The State of Kansas should establish a work group or task force to conduct an analysis to: 1) determine what it costs to adequately fund high-quality child welfare services; 2) by 2021, evaluate the benefits of privatizing child welfare services; and 3) determine the best public/private collaboration to deliver child welfare services. DCF shall determine appropriate outcomes measures and periodic evaluations shall be conducted to ensure contractors are achieving set outcomes and provide opportunities for ongoing collaboration and review. Summary reports should be provided to the Legislature annually.</p>	<p><b>PS Recommendations.</b> Increase healthcare linkages and identify care transition best practices for mental health, substance abuse, and emergency departments across the state. Periods following discharge from these settings are times of particularly high risk for suicide. A model for follow-up with clients during this period should be implemented in Kansas. Modify the KDADS requirements to become approved to provide Screening, Brief Intervention, and Referral to Treatment (SBIRT) services to Medicaid-eligible clients.</p> <p><b>VS Recommendation.</b> The State of Kansas should apply for a demonstration waiver to provide employment supports and other services for individuals with behavioral health issues on Medicaid.</p>	<p><b>TR6. Service Integration.</b> Adopt coding practices that allow for the integration of services across the continuum of care domains (e.g., primary care, substance use disorder, and mental health) to provide more integrative services to clients with co-occurring conditions.</p> <p><b>TR7. SBIRT.</b> Increase access to and utilization of SBIRT across health care provider disciplines by reimbursing appropriately trained and licensed professionals to provide this service across locations.</p> <p><b>TR8. Payment Reform.</b> Support substance use disorder payment reform targeted to improve population health.</p> <p><b>TR14. Kansas Placement Criteria Program (KCPC).</b> Replace KCPC with modern technology and data collection mentors consistent with current and future electronic health recodes to prevent major systematic failure.</p>	<p><b>Recommendation 1.4 Comprehensive Housing (2019).</b> Expand an array of housing that would include a range of options from residential care facilities, long-term and transitional supported housing, and independent housing units following evidence-based practices and principles, such as permanent supportive housing and home ownership. Include state contracts and Medicaid funding and ensure that housing serves people with disabilities, mental illness, and/or substance use disorders.</p> <p><b>Recommendation 4.1 Licensing Structure (2019).</b> Reform nursing facilities for mental health (NFMHs) to allow for the provision of active treatment and necessary rehabilitative services and crisis services in NFMHs and inclusion within continuum of care.</p>	<p><b>Juvenile Intake and Assessment:</b> The review of Juvenile Intake and Assessment Services was limited in scope to only FY 2019. Data from intake and assessments completed throughout a youth's lifetime should be reviewed. Robust analysis from completed the Kansas Detention Assessment Instrument (KDAI) could be conducted when integrated into the data system.</p>

			<p><b>Recommendation 7.1 Learning Across Systems (2019).</b> Create a position/entity to track information about adverse outcomes that occur and identify strategies for addressing them in a timely manner.</p> <p><b>Recommendation 4.2 Regional Model (2018).</b> In lieu of a single request for proposal, the Task Force recommends a regional model that would supplement the traditional state hospital setting with regionalized facilities accepting both voluntary and involuntary admissions for persons in acute services as well as longer-term/tertiary specialized care.</p>	
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## **Mental Health Modernization and Reform Committee – Working Group Charter**

### **Purpose**

The Special Committee on Mental Health Modernization and Reform (the Committee) was tasked to analyze the state's behavioral health system to ensure that both inpatient and outpatient services are accessible in communities, review the capacity of current behavioral health workforce, study the availability and capacity of crisis centers and substance abuse facilities, assess the impact of recent changes to state policies on the treatment of individuals with behavioral health needs; and make recommendations on steps needed to make Kansas a nationwide leader on behavioral health delivery, specifically focusing on how Kansas should modernize its behavioral health delivery system.

To achieve this directive, the Committee established three working groups related to Finance and Sustainability; Policy and Treatment; and System Capacity and Transformation. The three working groups will work in between each of the Committee meetings and report back on progress as requested. The Committee will determine what information from the working groups is included in a final product to the legislature. In addition to this determination on final products, the Committee will also provide leadership to the working groups through the development of a guiding vision statement for the final product, the identification of key performance indicators to be included in a final product and input on any criteria that should inform the priorities put forward by the working groups.

### **Scope**

- Finance and Sustainability – workforce, funding and accessibility, community engagement
- Policy and Treatment – prevention and education, treatment and recovery, special populations
- System Capacity and Transformation – data systems, interaction with the legal system and law enforcement, system transformation

*Note: Topics as designated in crosswalk of behavioral health and mental health recommendations. Any additional topics identified by the Committee should be assigned to a work group.*

Related to each of these topics the working groups will review and update past recommendations, additionally the working groups may identify new recommendations as needed. All recommendations will seek to include the following:

- Identified policy mechanism through which the recommendation could be made actionable
- Available notes related to net costs that may affect the feasibility of implementation
- Identify collaborating partners to ensure effective implementation
- Available notes related to equity or sustainability that should inform how recommendation implementation is prioritized
- Address any known barriers related to the implementation of the recommendation

Working groups will seek to make recommendations to promote health, equity and sustainability, support cross-sector collaboration, define mutually beneficial goals, engage stakeholders and create structural change.

## **Product**

The working groups will share a summary of their work for consideration by the Committee in their final product. It is expected that the final product from the Committee will provide long-term strategic direction for the modernization and reform of the mental health system in Kansas. This final product is also anticipated to have immediate, near term action steps to support the implementation of this plan.

## **Membership**

Membership in working groups will be voluntary. Working group membership may be considered in the following categories.

- **Chair and Vice Chair:** The Chair and the Vice Chair of the group should be identified from among the content experts included in the working group. Working group staff may consult with the Chair and Vice Chair when timely decisions must be made about agenda and other meeting logistics. The Chair and Vice Chair should be ready to volunteer to present to the Committee on the product and process of their working group.
- **Content Experts:** Content experts on the working group should aim to participate with the goal of sharing information related to their expertise and using that expertise to ask questions of others in the group. Content experts may be asked to present information shared in the working groups with the full Committee.
- **Legislature:** Members of the special committee could volunteer to participate in the meetings of the working groups as consultants with the goal of gathering information that may inform the final prioritization provided by the committee. Legislative expertise will be especially valuable to the working groups in identifying policy levers by which the aims identified by content experts may be achieved.

Individuals with supplemental expertise (e.g., state agency staff) may be invited to attend the working group to provide information as appropriate.

## **Operating Process**

Each working group will be guided by the following operational processes.

- Active virtual engagement
- Consensus-based decision making
- Virtual meetings up to two-times per month
- Review relevant reports and materials ahead of meetings
- Come ready to discuss and compromise
- Working groups will be live streamed to allow for public viewing and relevant materials to the meeting will be shared with members and stakeholders
- Working group may set other ground rules as needed to support their effective collaboration

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# **Strategic Framework for Modernizing the Kansas Behavioral Health System**

*Working Groups Report to the Special Committee  
on Mental Health Modernization and Reform*

December 18, 2020

## Acknowledgments

The Working Groups (*Appendix D*, [page D-1](#)) would like to thank the following individuals who provided topic-specific expertise: Barbara Andres, Becky Gernon, Chris Schneweis, Chris Swartz, Christopher Lund, Courtnie Cain, David Anderson, David Jordan, Debbie Willsie, Eve-Lynn Nelson, Jane Adams, Keith Rickard, Krista Postai, Laura McCrary, Leslie Bissell, Lindsey Query, Lori Alvarado, Nanette Perrin, Robyn Chadwick, Sandra Dixon, Sarah Hokinson, Shana Burgess, Shane Hudson and Shawna Wright.

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# Report Overview

The Special Committee on Mental Health Modernization and Reform (Special Committee) was tasked with analyzing the state’s behavioral health system and developing a strategic effort to modernize the system.

To achieve this directive, the Special Committee established three Working Groups to review and update recommendations from five previous collaborative efforts to improve components of the behavioral health system.

The Working Groups established by the Special Committee included those on Finance and Sustainability (WG1), Policy and Treatment (WG2) and System Capacity and Transformation (WG3). This report summarizes the work of those groups. This effort was made possible by the previous work of the Child Welfare

System Task Force, the Governor’s Behavioral Health Services Planning Council, the Governor’s Substance Use Disorder (SUD) Task Force, the Mental Health Task Force and the Crossover Youth Working Group. Recommendations from these past efforts provided the foundation for this report.

The behavioral health system refers to the system of care that includes the promotion of mental health, resilience and well-being; the prevention, referral, diagnosis, and treatment of mental and substance use disorders; and the support of persons with lived experience in recovery from these conditions, along with their families and communities.

*Adapted from the Substance Abuse and Mental Health Services Administration (SAMHSA)*

**Navigating this Report:** High-priority recommendations are included in Figure 1 (page vi) and are designated as either:

- **Immediate Action** are those that the Working Groups believe can be completed in the next two years.
- **Strategic Importance** are those that should be initiated in the near term but will be completed in the longer term.

In addition to high-priority recommendations, the group also offered one high-priority discussion item to urge the Special Committee to consider the potential contribution of Medicaid expansion to a modernized behavioral health system. Recommendations not considered a high-priority are available in *Appendix A*, page A-1.

This report summarizes the efforts of the three Working Groups to put forward recommendations to the Special Committee. High-priority recommendations are sorted by topic, either for immediate action or for strategic importance. Topics around which the Working Groups were asked to make recommendations include workforce, funding and accessibility, community engagement, prevention and education, treatment and recovery, special populations, data systems, interactions with the legal systems and law enforcement, system transformation and telehealth.

Recommendations in this report collectively form a strategic framework that can be considered a ‘living document’ to support ongoing collaboration between the many contributing partners in the behavioral health system, government agencies and state Legislature.

## ***Vision for Modernization***

At meetings of the Special Committee between August and October 2020, Working Group, roundtable and Special Committee members discussed each of the ten identified topics to articulate a vision for modernization. The following key points summarize those discussions. More detail related to the vision discussion is included in the section of the report corresponding to each topic.

- **Workforce.** A modernized workforce is one where behavioral health staffing is adequate to meet needs across rural, frontier and urban areas of the state. Telehealth will play a role in meeting needs, but local staffing will remain important. Modernization will require both growing the workforce and retaining staff. (See [page 7](#)).
- **Funding and Accessibility.** A modernized approach to funding behavioral health will require continuous and timely pursuit of new funding mechanisms to ensure that reimbursement rates are competitive. Accurate and appropriate funding of care for Kansans is a key element of a sustainably funded, modern behavioral health system. A modern system will identify the right populations to serve, make services meaningfully accessible and rely on measurable outcomes to drive decisions. (See [page 11](#)).
- **Community Engagement.** Effective community engagement in a modernized behavioral health system will include a collaboration of individuals in recovery and behavioral health providers to support key efforts. Key efforts include those to support employment, re-entry planning for incarcerated individuals, behavioral health supports and education for foster homes. (See [page 17](#)).

- **Prevention and Education.** Modernized prevention efforts will seek to meet the behavioral health needs of populations at increased risk for poor outcomes, requiring a collaborative, trauma-informed approach and appropriate funding. (See [page 22](#)).
- **Treatment and Recovery.** A modernized behavioral health system will deliver an expanded array of early, affordable, accessible, evidence-informed behavioral health services for all, with an emphasis in serving consumers in the settings that are most likely to support effective engagement with treatment, and with meaningful coordination and collaboration across disciplines and settings. (See [page 26](#)).
- **Special Populations.** To serve special populations in a modernized behavioral health system, data, consumers and families will drive the system. Building on existing strengths, a modernized approach will be integrated, proactive and responsive whenever there is a need or a self-identified crisis, and data will be used to understand disparities. (See [page 30](#)).
- **Data Systems.** A modernized system will require a seamless, real-time data system with multi-directional data sharing among behavioral health providers, other health care providers and systems, community organizations, social service providers and payers. A collaborative data system will support reporting of measurable outcomes while maintaining privacy protections. (See [page 35](#)).
- **Interactions with the Legal System and Law Enforcement.** Through collaboration, a modernized behavioral health system will have the ability to make timely connections for individuals in crisis to services in the least restrictive setting appropriate to ensure safety. (See [page 40](#)).
- **System Transformation.** A modernized system will work in both evidence-based treatment and prevention with focus on the patients to address a continuum of needs. Transformation will result in a mission-driven, rationally funded and outcome-oriented system that uses data to identify problems and develop solutions. (See [page 44](#)).
- **Telehealth.** A modernized behavioral health system will deliver technologically current telehealth services as a strategy to provide meaningful access to care across rural, frontier and urban areas. These services will be high-quality, integrated with other modes of care delivery and ensure consumer choice and privacy, in addition to supporting the full spectrum of behavioral health care. (See [page 49](#)).

# High-Priority Items for Special Committee Consideration

Figure 1. Working Group High-Priority Recommendations by Topic

WORKFORCE
Immediate Action
<b><u>Recommendation 1.1 Clinical Supervision Hours</u></b> . Where applicable, reduce the number of clinical supervision hours required of master's-level behavioral health clinicians to obtain clinical licensure from 4,000 to 3,000, similar to the reduction in clinical hours of social workers.
<b><u>Recommendation 1.2 Access to Psychiatry Services</u></b> . Require a study be conducted by KDHE with an educational institution, to explore strategies to increase the number of psychiatrists, child and adolescent psychiatrists, and psychiatric nurses. [Note: The Committee requests consideration be given to educational institutions, regardless of size, that can provide this expertise and assistance.]
<b><u>Recommendation 1.3 Provider MAT Training</u></b> . Increase capacity and access to medication-assisted treatment (MAT) in Kansas through provider training on MAT.
Strategic Importance
<b><u>Recommendation 1.4 Workforce Investment Plan</u></b> . The State of Kansas should make a long-term investment plan for the behavioral health system workforce by increasing funding for training, recruitment, retention, and support to effectively attract and retain high-quality staff. Specific steps include: <ul style="list-style-type: none"> <li>• Develop a career ladder for clinicians, such as through the development of an associate's-level practitioner role; and</li> <li>• Take action to increase workforce diversity, including diversity related to race/ethnicity, LGBTQ and the ability to work with those with limited English proficiency.</li> </ul>
<b><u>Recommendation 1.5 Family Engagement Practices</u></b> . Provide adequate workforce compensation and reimbursement rates for time spent planning and implementing family engagement practices. Such support should be based on local needs, priorities, and goals determined at the program and school levels, in partnership with families.

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

FUNDING AND ACCESSIBILITY
Immediate Action
<p><b><u>Recommendation 2.1 Certified Community Behavioral Health Clinic Model.</u></b> Support expansion of the federal Excellence in Mental Health Act and then pursue participation. If participation in the Excellence in Mental Health Act is not possible, pursue a state plan amendment or change to the 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinic (CCBHC) model.</p>
<p><b><u>Recommendation 2.2 Addressing Inpatient Capacity.</u></b> Implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.</p>
<p><b><u>Recommendation 2.3 Reimbursement Rate Increase and Review.</u></b> Implement an immediate increase of 10-15 percent for reimbursement rates for behavioral health services. After increasing reimbursement rates, establish a Working Group to regularly review the reimbursement rates available for behavioral health services, including mental health and substance use disorder treatment.</p>
<p><b><u>Recommendation 2.4 Suicide Prevention.</u></b> Allocate resources to prioritized areas of need through data driven decision-making. Assist local suicide prevention efforts and promote local support groups in fund-raising efforts, building capacity, and increasing availability for survivors of suicide loss. Dedicate resources and funding for suicide prevention.</p>
<p><b><u>Recommendation 2.5 Problem Gambling and Other Addictions Fund.</u></b> Recommend the State continue to incrementally increase the proportion of money in the Problem Gambling and Other Addictions [Grant] Fund that is applied to treatment over the next several years until the full fund is being applied as intended.</p>
High-Priority Discussion
<p>In addition to these recommendations for immediate action and of strategic importance, the Finance and Sustainability Working Group also puts forward the issue of Medicaid expansion as a high-priority discussion item for the Special Committee. The recommendation discussed by the Working Group related to Medicaid Expansion read, “Recommend a full expansion of Medicaid in order to increase access to healthcare for uninsured, low-income Kansans.” More information on this item is available in the Funding and Accessibility section beginning on <a href="#">page 16</a>.</p>

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

COMMUNITY ENGAGEMENT	
Immediate Action	
<b><u>Recommendation 3.1: Crisis Intervention Centers</u></b> . Utilize state funds to support the expansion of crisis centers around the state.	
<b><u>Recommendation 3.2 IPS Community Engagement</u></b> . Increase engagement of stakeholders, consumers, families, and employers through the Kansas Department of Health and Environment (KDHE) or Kansas Department for Aging and Disability Services (KDADS) by requiring agencies implementing the Individual Placement and Support (IPS) program to create opportunities for assertive outreach and engagement for consumers and families.	
Strategic Importance	
<b><u>Recommendation 3.3 Foster Homes</u></b> . The State of Kansas should invest in foster home recruitment and retention by increasing funding for supplemental training on behavioral health needs and providing additional financial incentives to support serious emotional disturbance (SED) youth.	
<b><u>Recommendation 3.4 Community-Based Liaison</u></b> . Fund and improve resources for community-based liaison to facilitate connection to treatment and support services (e.g., community mental health services) upon re-entry as a component of pre-release planning and services for justice-involved adults and youth with substance use disorder (SUD) and co-occurring conditions.	
PREVENTION AND EDUCATION	
Immediate Action	
<b><u>Recommendation 4.1 988 Suicide Prevention Line Funding</u></b> . Once the 988 National Suicide Prevention Lifeline (NSPL) phone number is implemented, Kansas should collect fees via phone bills to support increasing the in-state answer rate and ensure that callers are connected to in-state resources.	
<b><u>Recommendation 4.2 Early Intervention</u></b> . Increase access to early childhood mental health services by including additional language in the Medicaid state plan to explicitly cover the cost of early childhood mental health screening, assessment, and treatment.	
<b><u>Recommendation 4.3 Centralized Authority</u></b> . Centralize coordination of behavioral health – including substance use disorder and mental health – policy and provider coordination in a cabinet-level position.	
Strategic Importance	
<b><u>Recommendation 4.4 Behavioral Health Prevention</u></b> . Increase state funds for behavioral health prevention efforts (e.g., SUD prevention, suicide prevention).	



Figure 1 (continued). Working Group High-Priority Recommendations by Topic

TREATMENT AND RECOVERY	
Immediate Action	
<p><b><u>Recommendation 5.1 Psychiatric Residential Treatment Facilities.</u></b> Monitor ongoing work to improve care delivery and expand capacity at Psychiatric Residential Treatment Facilities (PRTF) to meet the needs of youth for whom a PRTF is medically appropriate, such as through reductions in the PRTF waitlist and a focus on reintegration and discharge planning, including with schools.</p>	
Strategic Importance	
<p><b><u>Recommendation 5.2 Service Array.</u></b> Explore options to expand the behavioral health service array, including the expansion of MAT in block grant services. Make the expanded service array available to individuals across the state, such as KanCare enrollees, those with private insurance and the uninsured.</p>	
<p><b><u>Recommendation 5.3 Frontline Capacity.</u></b> Increase capacity of frontline healthcare providers (e.g., pediatricians, family physicians and OB-GYNs) to identify and provide services to those with behavioral health needs.</p>	
<p><b><u>Recommendation 5.4 Housing.</u></b> Expand and advance the SSI/SSDI Outreach, Access, and Recovery (SOAR) program (including additional training regarding youth benefits) and the Supported Housing program.</p>	

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

SPECIAL POPULATIONS	
Immediate Action	
<b><u>Recommendation 6.1 Domestic Violence Survivors.</u></b>	Build awareness of and responsiveness to the behavioral health needs and risks of domestic violence survivors of all ages through data analysis, information sharing, workforce training, and targeted interventions between domestic violence providers, state agencies and community providers serving individuals impacted by domestic violence.
<b><u>Recommendation 6.2 Parent Peer Support.</u></b>	Increase access to parent peer support for caregivers and families of youth in the behavioral health system, including ensuring appropriate supports for fathers of dependent children.
Strategic Importance	
<b><u>Recommendation 6.3 Crossover Youth.</u></b>	Continue to develop linkages between the behavioral health system, juvenile justice system and the child welfare system to increase understanding of treatment options available to youth externalizing trauma in the crossover youth population as current treatment options are not meeting the needs of this population. Then, develop specialty services to meet the needs of this population.
<b><u>Recommendation 6.4 I/DD Waiver Expansion.</u></b>	Fully fund the I/DD waiver and expand I/DD waiver services. Increase reimbursement rates for I/DD services to support workforce expansion.
<b><u>Recommendation 6.5 Family Treatment Centers.</u></b>	Increase the number and capacity of designated family SUD treatment centers as well as outpatient treatment programs across the state.

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

DATA SYSTEMS
Immediate Action
<b><u>Recommendation 7.1 State Hospital EHR.</u></b> The new state hospital electronic health record (EHR) system should be interoperable with other data systems in the state. Interoperability should include the ability to automate the current process to reinstate Medicaid benefits following discharge.
<b><u>Recommendation 7.2 Data and Survey Informed Opt-Out.</u></b> Collect, analyze, use, and disseminate surveillance data to inform prevention. Change legislation regarding public health and behavioral health state surveys, including changing the Kansas Communities That Care (KCTC) and Youth Risk Behavior Surveillance System (YRBSS) surveys from an opt-in consent to an informed opt-out consent, to allow for meaningful data collection.
<b><u>Recommendation 7.3 Information Sharing.</u></b> Utilize Medicaid funds to incentivize participation in health information exchanges (e.g., LACIE/KHIN). Explore health information exchanges as information source on demographic characteristics, such as primary language and geography for crossover youth and other high priority populations.
<b><u>Recommendation 7.4 Needs Assessment.</u></b> Conduct a statewide needs assessment to identify gaps in funding, access to SUD treatment providers and identify specific policies to effectively utilize, integrate and expand SUD treatment resources.
Strategic Importance
<b><u>Recommendation 7.5 Cross-Agency Data.</u></b> Encourage state agencies to develop policies that improve their ability to access and review cross-agency data for making service and program decisions based on a thorough, shared needs assessment.

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

LEGAL SYSTEM AND LAW ENFORCEMENT	
Immediate Action	
<b><u>Recommendation 8.1 Correctional Employees.</u></b>	Expand training provided in correctional facilities to allow employees to better recognize those with substance use disorders, use a trauma-informed approach to identify other mental health needs, and connect those with needs to available services.
<b><u>Recommendation 8.2 Criminal Justice Reform Commission Recommendations.</u></b>	Implement recommendations developed by the Criminal Justice Reform Commission (CJRC) related to specialty courts (e.g., drug courts) and develop a process for regular reporting on implementation status and outcomes.
<b><u>Recommendation 8.3 Law Enforcement Referrals.</u></b>	Increase utilization and development of evidence-based SUD referral as well as treatment and recovery services among persons with law enforcement contact (this includes securing funding to increase access to services for this population).
Strategic Importance	
<b><u>Recommendation 8.4 Defining Crossover Youth Population.</u></b>	Future efforts should include behavioral health within an operationalized definition for youth with offender behaviors at risk of entering foster care, as well as including diverted youth in the definition of the broader juvenile offender population.

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

SYSTEM TRANSFORMATION	
Immediate Action	
<p><b><u>Recommendation 9.1 Regional Model.</u></b> Develop a regional model that would supplement the traditional state hospital setting with regionalized facilities accepting both voluntary and involuntary admissions for persons in acute services as well as longer-term/tertiary specialized care. Currently, there is a particular gap in capacity in south central Kansas.</p>	
<p><b><u>Recommendation 9.2 Long-Term Care Access and Reform.</u></b> Reform nursing facilities for mental health (NFMHs) to allow for the provision of active treatment and necessary rehabilitative services and crisis services in NFMHs and inclusion within continuum of care. Increase access to long-term care (LTC) facilities, particularly for individuals with past involvement with the criminal justice system or those with a history of sexual violence.</p>	
<p><b><u>Recommendation 9.3 Integration.</u></b> Increase integration, linkage, collaboration and identify care transition best practices among mental health, substance abuse, primary care and emergency departments across the state. Adopt coding practices that allow for the integration of services across the continuum of care domains (including, but not limited to, primary care, substance use disorder, and mental health) to provide more integrated services to clients with co-occurring conditions.</p>	
Strategic Importance	
<p><b><u>Recommendation 9.4 Evidence Based Practices.</u></b> Kansas should continue and expand support for use of evidence based practices (EBP) in the state, including for housing and supported employment. Coordinate EBP utilization across systems (e.g., law enforcement, SUD, mental health care) with a goal of implementing programs with fidelity, when possible.</p>	
<p><b><u>Recommendation 9.5 Family Psychotherapy.</u></b> Enable utilization of procedure code 90846 in Medicaid as a tool to support youth in foster care, as well as any child accessing care in a Psychiatric Residential Treatment Facility.</p>	

Figure 1 (continued). Working Group High-Priority Recommendations by Topic

TELEHEALTH	
Immediate Action	
<p><b><u>Recommendation 10.1 Quality Assurance.</u></b> Develop standards to ensure high-quality telehealth services are provided. This includes:</p> <ul style="list-style-type: none"> <li>• Establishing consistent guidelines and measures for telehealth in collaboration with licensing and regulatory agencies.</li> <li>• Requiring standard provider education and training.</li> <li>• Ensuring patient privacy.</li> <li>• Educating patients on privacy-related issues.</li> <li>• Allowing telehealth supervision hours to be consistently counted toward licensure requirements.</li> <li>• Allowing services to be provided flexibly when broadband access is limited.</li> </ul>	
<p><b><u>Recommendation 10.2 Reimbursement Codes.</u></b> Maintain reimbursement codes added during the public health emergency for tele-behavioral health services and consider options to prevent loss of facility fees so that providers are not losing revenue by delivering telehealth services.</p>	
<p><b><u>Recommendation 10.3 Telehealth for Crisis Services.</u></b> Establish coverage of telehealth for crisis services to allow for the use of telehealth with law enforcement and mobile crisis services. Explore virtual co-responder models for law enforcement to aid police departments and other law enforcement agencies as they respond to mental health crisis in rural and frontier communities.</p>	
Strategic Importance	
<p><b><u>Recommendation 10.4 Originating and Distant Sites.</u></b> The following items should be addressed to ensure that individuals receive — and providers offer — telehealth in the most appropriate locations:</p> <ul style="list-style-type: none"> <li>• Adopt a broad definition of originating site, consistent with the Kansas Telemedicine Act.</li> <li>• Allow staff to provide services from homes or other non-clinical sites, if patient privacy and safety standards can be met.</li> <li>• Examine issues related to providers practicing, and patients receiving, services across state lines, such as by exploring participation in interstate licensure compacts.</li> </ul>	
<p><b><u>Recommendation 10.5 Child Welfare System and Telehealth.</u></b> Utilize telehealth to maintain service and provider continuity as children, particularly foster children, move around the state. Consider how the unique needs of parents of children in the child welfare system can be met via telehealth.</p>	

# Introduction

The 2020 Special Committee on Mental Health Modernization and Reform (Special Committee) was directed as follows:

*“Analyze the Kansas behavioral health system to ensure that both inpatient and outpatient services are accessible in communities, review the capacity of the current behavioral health workforce, study the availability and capacity of crisis centers and substance use disorder treatment facilities, assess the impact of recent changes to State policies on the treatment of individuals with behavioral health needs, and make recommendations on steps needed to make Kansas a nationwide leader on behavioral health delivery, specifically focusing on how Kansas should modernize its behavioral health delivery system.” Legislative Coordinating Council, June 18, 2020*

To achieve this directive, the Special Committee utilized a roundtable format and established three Working Groups. The roundtable format engaged a wide range of experts in the discussion at each meeting of the Special Committee. From a combined pool of Special Committee members, roundtable members and state agency staff, three Working Groups were established to review and update recommendations from five previous collaborative efforts to improve components of the behavioral health system. The Working Groups established included those on Finance and Sustainability (WG1), Policy and Treatment (WG2) and System Capacity and Transformation (WG3). Additionally, volunteers from each of the three Working Groups came together in a subgroup to discuss the topic of telehealth. This report summarizes the work of those groups. This effort was made possible by the previous work of the Child Welfare System Task Force, the Governor’s Behavioral Health Services Planning Council, the Governor’s SUD Task Force, the 2017 and 2018 Mental Health Task Force and the Crossover Youth Working Group. Recommendations from these past efforts provided the foundation upon which this report has been built.

The Working Groups made recommendations based on the following topics: workforce, funding and accessibility, community engagement, prevention and education, treatment and recovery, special populations, data systems, interactions with the legal systems and law enforcement, system transformation and telehealth. Throughout this report, high priority recommendations have been designated for immediate action or of strategic importance.

- Recommendations for immediate action are those that can be completed in the next two years.
- Recommendations of strategic importance are those that should be initiated in the near-term but will be completed in the longer term.

Collectively these high priority recommendations form a strategic framework that should be considered a 'living document' to support ongoing collaboration between the many contributing partners in the behavioral health system, government agencies and state Legislature. This document is further intended to provide long-term strategic direction for the modernization and reform of the behavioral health system in Kansas.

## ***Working Group Process***

The Special Committee established the Working Groups on Finance and Sustainability, Policy and Treatment and System Capacity and Transformation. The three Working Groups reviewed, updated and prioritized recommendations related to each of the topics assigned to them and reported back to the Special Committee on progress. Membership in all Working Groups was voluntary and fall in the categories of content experts and legislative members. Additionally, individuals with supplemental expertise were invited to attend Working Group meetings to provide information on specific topics. From among content expert members of each Working Group, co-chairs were selected.

The Working Groups structured their discussions around the ten topic areas defined by the Special Committee. The Finance and Sustainability workgroup examined workforce, funding and accessibility, and community engagement. The Policy and Treatment addressed prevention and education, treatment and recovery, and special populations. The System Capacity and Transformation Working Group discussed data systems, interaction with the legal system and law enforcement, and system transformation. Lastly, members from each of the three Working Groups participated in the telehealth subgroup. Related to the assigned topics, the Working Groups reviewed and updated past recommendations, and proposed new recommendations as needed based on identified barriers. *Figure 2* (page 3) illustrates the structure of the Working Group process, including a list of meetings held by each group, as well as the topics addressed.

All Working Group decisions were reached based upon consensus. Each of the Working Groups adopted the following meeting commitments: to come ready to discuss and compromise, keep remarks succinct and on topic, not to hesitate to ask clarifying questions, and



to start and end meetings on time. As members discussed each topic and recommendations, decisions were made based on proposals offered by Working Group members and adopted by verbal agreement or absence of objections.

In order to guide discussion and ensure consistency across Working Groups, each of the three Working Groups adopted the Recommendations Rubric (*Appendix B, [page B-1](#)*) as a tool to assist in ranking and modifying existing recommendations or when writing new recommendations. Using the rubric, Working Groups were able to assign numeric values to recommendations based on a 1-10 scale for both ease of implementation and potential for high impact. Working Groups utilized these scores as they prioritized recommendations. Recommendations that were not scored during Working Group meetings were scored by a Qualtrics survey. Average scores and discussion items were reviewed at the next meeting. After review of the scored recommendations, Working Groups determined up to five high-priority recommendations for each topic.

**Figure 2.** Working Group Process Diagram

Special Committee on Mental Health Modernization and Reform		
Working Group on Finance and Sustainability (WG1)	Working Group on Policy and Treatment (WG2)	Working Group on System Capacity and Transformation (WG3)
<ul style="list-style-type: none"> <li>• <b>Meeting #1, 9/16/2020,</b> Establish Group and Brainstorm Barriers</li> <li>• <b>Meeting #2, 10/01/2020,</b> Discuss Workforce</li> <li>• <b>Meeting #3, 10/14/2020,</b> Discuss Funding and Accessibility</li> <li>• <b>Meeting #4, 10/28/2020,</b> Discuss Community Engagement</li> <li>• <b>Meeting #5, 11/02/2020,</b> Prioritization Meeting</li> <li>• <b>Meeting #6, 11/19/2020,</b> Prioritization Meeting</li> <li>• <b>Meeting #7, 12/04/2020,</b> Finalize Report</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Meeting #1, 9/15/2020,</b> Establish Group and Brainstorm Barriers</li> <li>• <b>Meeting #2, 9/29/2020,</b> Discuss Prevention and Education</li> <li>• <b>Meeting #3, 10/13/2020,</b> Discuss Treatment and Recovery</li> <li>• <b>Meeting #4, 10/23/2020,</b> Discuss Special Populations</li> <li>• <b>Meeting #5, 11/04/2020,</b> Prioritization Meeting</li> <li>• <b>Meeting #6, 11/19/2020,</b> Prioritization Meeting</li> <li>• <b>Meeting #7, 12/08/2020,</b> Finalize Report</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Meeting #1, 9/18/2020,</b> Establish Group and Brainstorm Barriers</li> <li>• <b>Meeting #2, 9/30/2020,</b> Discuss Data Systems</li> <li>• <b>Meeting #3, 10/09/2020,</b> Discuss Interactions with the Legal System and Law Enforcement</li> <li>• <b>Meeting #4, 10/22/2020,</b> Discuss System Transformation</li> <li>• <b>Meeting #5, 11/06/2020,</b> Prioritization Meeting</li> <li>• <b>Meeting #6, 11/17/2020,</b> Prioritization Meeting</li> <li>• <b>Meeting #7, 12/08/2020,</b> Finalize Report</li> </ul>
Telehealth Subgroup		
<ul style="list-style-type: none"> <li>• <b>Meeting #1, 11/10/2020, Identify Recommendations</b></li> <li>• <b>Meeting #2, 11/13/2020, Prioritize Recommendations</b></li> </ul>		

## Data Profile

Across meetings the Special Committee discussed the value of using data to closely monitor outcomes related to the behavioral health system. In addition, these data could provide the information needed to ensure that Kansas is on track to achieve a high-quality, modernized behavioral health system and that funds expended toward this end have appropriate impact.

KHI convened two meetings with state agency staff from Kansas Department for Aging and Disability Services (KDADS), Kansas Department of Health and Environment (KDHE), Kansas Department for Children and Families (DCF), Kansas Department of Corrections (KDOC), Kansas State Department of Education (KSDE) and the Kansas Attorney General's office to identify measures for two purposes: (1) to prepare a high-level data profile that would provide a systemic assessment of the state's behavioral health system (see *Figure 3*, page 5); and (2) to provide a list of process and outcomes measures that could measure the impact of many of the high priority recommendations identified by the Working Groups if implemented (see recommendation summary tables starting on [page 8](#)). Please note that the impact of COVID-19 on the behavioral health system is likely not yet reflected in the data or proposed measures included in this report, but specific measures could be added in subsequent years.

The following process measures are identified to monitor the progress on the work completed by this committee and its convened Working Groups:

- Number of recommendations implemented and
- Number of recommendations implemented with identified key collaborators.

In addition, the high-level data profile presented in *Figure 3* (page 5) would provide a systemic assessment of the state's behavioral health system, and includes only a subset of the wide range of data that are available about the Kansas behavioral health system.

**Figure 3. Select Measures to Assess the Kansas Behavioral Health System**

PROCESS MEASURE				
Measure:	Number		Percent	
Kansas counties recognized as a <a href="#">Mental Health Professional Shortage Area</a> . <i>Lower number/percentage of counties is better.</i>	99 (2019)		94.3% (2019)	
Counties served by Mobile Response and Stabilization Services. <i>Higher number/percentage of counties is better.</i>	*		*	
Counties served by Crisis Intervention Centers. <i>Higher number/percentage of counties is better.</i>	*		*	
OUTCOME MEASURES				
Measure:	Kansas current (year)	Kansas previous (year)	U.S. current (year)	U.S. previous (year)
Uninsured rate (adults age 19-64). <i>Lower rates are better.</i>	13.1% (2019)	12.6% (2018)	12.9% (2019)	12.5% (2018)
Uninsured rate (children age 0-18). <i>Lower rates are better.</i>	5.8% (2019)	5.1% (2018)	5.7% (2019)	5.2% (2018)
Statewide age-adjusted mortality rate for suicide per 100,000 population. <i>Lower rates are better.</i>	19.9% (2017)	19.2% (2016)	15.2% (2017)	14.7% (2016)
Percent of high school students who report feeling sad or hopeless almost every day for two weeks or more in a row so that they stopped doing some usual activities (i.e., criteria for and predictors of clinical depression). <i>Lower percentage is better.</i>	32.5% (2019)	24.8% (2017)	36.7% (2019)	31.5% (2017)
Percent of children, ages 3 through 17, with a mental/behavioral condition who receive treatment or counseling. <i>Higher percentage is better.</i>	55.9% (2018-2019)	52.7% (2017-2018)	53.2% (2018-2019)	52.7% (2017-2018)
Individuals with SPMI that have been enrolled in supportive housing and have not had an ER or Psychiatric Hospital admission in the last 12 months. <i>Higher percentage is better.</i>	*	*	NA	NA

**Figure 3 (continued). Select Measures to Assess the Kansas Behavioral Health System**

OUTCOME MEASURES (continued)							
Measure:	Kansas current (year)	Kansas previous (year)	U.S. current (year)	U.S. previous (year)			
Individuals with SPMI that have been enrolled in supportive employment and have not had an ER or Psychiatric Hospital admission in the last 12 months. <i>Higher percentage is better.</i>	*	*	NA	NA			
Percent of individuals with an inpatient psychiatric stay in the previous year, that have returned to and remain in the community without additional hospitalizations. <i>Higher percentage is better.</i>	**	**	NA	NA			
MENTAL HEALTH in AMERICA RANKINGS of 50 states and Washington D.C. by report year							
Select Measure: <i>States with positive outcomes are ranked higher (closer to 1) than states with poorer outcomes.</i>	2021	2020	2019	2018	2017	2016	2015
Kansas rankings: overall.	#29	#42	#24	#19	#21	#15	#19
Kansas ranking: Adult (prevalence and access to care).	#38	#43	#28	#22	#23	#16	#23
Kansas ranking: Youth (prevalence and access to care).	#26	#37	#21	#19	#18	#15	#8
Kansas ranking: Adults with mental illness who report unmet needs.	#51	#46	#29	#39	#38	#28	#51
Kansas ranking: Youth with at least one major depressive episode who did not receive mental health services.	#18	#47	#40	#29	#12	#12	NA

Note: The asterisk (\*) indicates that data are reportable by a state agency. The double-asterisk (\*\*) means that the measure could be reported in the future, assuming implementation of certain recommendations related to data interoperability and higher rates of participation in health information exchanges. NA stands for not available.

The Mental Health in America overall ranking uses national data from surveys including the National Survey on Drug Use and Health (NSDUH) and the Behavioral Risk Factor Surveillance System (BRFSS). The overall ranking is comprised of 15 measures for adults and youth around mental health issues, substance use issues, access to insurance, access to adequate insurance, as well as access to and barriers to accessing mental health care. A rank of 1-13 indicates lower prevalence of mental illness and higher rates of access to care, and an overall ranking 39-51 indicates higher prevalence of mental illness and lower rates of access to care. Data in each reporting year come from previous reporting periods. For example, in the 2021 report, most indicators reflect data from 2017-2018, while the 2020 report includes data from 2016-2017 and so forth. The baseline report year is 2015. For more information, go to <https://www.mhanational.org/issues/2021/ranking-guidelines>.

Report Links: [2015](#); [2016](#); [2017](#); [2018](#); [2019](#); [2020](#).

Source: Data as reported by the Kansas Department for Aging and Disability Services (KDADS), Kansas Department of Health and Environment (KDHE), Kansas Department of Corrections (KDOC), Kansas State Department of Education (KSDE) and KHI analysis of data from the U.S. Census Bureau 2018-2019 American Community Survey Public Use Microdata Sample files for uninsured rates and 2015-2021 Mental Health in America Rankings.

[Note: In above fields where data is absent and denoted with an asterisk (\* or \*\*), the Committee requests the reporting agency or entity submit data as it becomes available or upon program changes.]

## **Finance and Sustainability Working Group (WG1)**

The Finance and Sustainability Working Group made recommendations related to the topics of workforce, funding and accessibility and community engagement.

### ***Workforce***

A modernized workforce is one where behavioral health staffing is adequate to meet needs across rural, frontier and urban areas of the state. Telehealth (discussed beginning on [page 49](#)) will play a role in meeting needs, but local staffing remains important. Modernization will require both growing and retaining the workforce.

The Finance and Sustainability Working Group discussed and made recommendations recognizing the ongoing importance of studying and investing in the behavioral health workforce in the state. Steps to modernize the State’s behavioral health workforce include: addressing regional provider shortages, particularly in underserved areas; expanding inpatient psychiatric emergency services by recruiting more staff; prioritizing care in the community and developing mobile crisis teams; and expanding recruiting and “grow-your-own” programs. Further, the group repeatedly discussed the importance of establishing measures to track the success of any new efforts.

### ***Recommendations***

The Working Group advanced five recommendations as highest priority, with three highlighted for immediate action, and two for strategic importance. Items highlighted for immediate action are recommendations that should be completed within the first two years of the strategic plan. Items of strategic importance are recommendations for which work should begin in the near-term, but will take longer to implement.

### Workforce Recommendation 1.1: Clinical Supervision Hours [Immediate Action]

<b>Recommendation:</b> Where applicable, reduce the number of clinical supervision hours required of master's-level behavioral health clinicians to obtain clinical licensure from 4,000 to 3,000, similar to the reduction in clinical hours of social workers.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Committee on Alcohol and Other Drug Abuse of the Governor's Behavioral Health Services Planning Council. <sup>1</sup> A similar change was made for social workers in 2019 and has made recruitment of social workers easier in some parts of the state. BSRB intends to support legislation that would enact this change in the 2021 Legislative Session. This change would bring Kansas licensing requirements in alignment with neighboring states.	
<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Would require a program change and change in legislation.</li><li>• Cost is not a barrier to implementation.</li></ul>	<ul style="list-style-type: none"><li>• Would impact the entire state.</li><li>• Could lead to a reduction in workforce inequities by geography, particularly in rural and frontier counties.</li></ul>
<b>Measuring Impact:</b> Percent or number of master's-level behavioral health clinicians practicing in Kansas.	
<b>Action Lead:</b> BSRB	<b>Key Collaborators:</b> Legislature, KDADS

Return to [Figure 1](#) or [Figure C-1](#).

### Workforce Recommendation 1.2: Access to Psychiatry Services [Immediate Action]

<b>Recommendation:</b> Require a study be conducted by KDHE with an educational institution, to explore strategies to increase the number of psychiatrists, child and adolescent psychiatrists, and psychiatric nurses. [Note: The Committee requests consideration be given to educational institutions, regardless of size, that can provide this expertise and assistance.]	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force. <sup>2</sup> Multiple areas in the state are struggling to recruit and retain psychiatrists and psychiatric nurses, with an additional 54 psychiatrists needed to eliminate the Mental Health Care Health Professional Shortage Areas (HPSAs) in Kansas. <sup>3</sup> An important next step once the study is completed would be exploring implementation of the strategies outlined in the report.	
<b>Ease of Implementation (Score 1-10): 9</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Would be relatively easy to implement once funding is available.</li></ul>	<ul style="list-style-type: none"><li>• Implementing strategies from the report could impact frontier and rural communities that struggle to recruit psychiatric providers.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Percent or number of mental health care professionals participating in the Kansas State Loan Repayment Program.</li><li>• Number of Kansas counties recognized as a Mental Health Professional Shortage Area.</li><li>• Number of adult and child/adolescent psychiatry residents in Kansas.</li></ul>	
<b>Action Lead:</b> KDHE	<b>Key Collaborators:</b> Educational institution

Return to [Figure 1](#) or [Figure C-1](#).

**Workforce Recommendation 1.3: Provider MAT Training [Immediate Action]**

<b>Recommendation:</b> Increase capacity and access to medication-assisted treatment (MAT) in Kansas through provider training on MAT.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force. <sup>4</sup> MAT, in conjunction with therapy, can help treat and sustain recovery for SUD. <sup>5</sup> MAT was added to KanCare billable services in October 2020, and expanded treatment options will be important for Kansas as the opioid epidemic continues. Additional steps should be taken to recruit and train providers, including capacity of primary care providers, to offer this treatment. Providers may currently be reluctant to serve MAT patients — who may be viewed as high-risk — and may not understand the benefits or evidence base associated with MAT, which could be mitigated via training.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 6</b>
<ul style="list-style-type: none"> <li>• Could require expansion of existing programs.</li> <li>• Funds may be needed for training and to cover medications.</li> </ul>	<ul style="list-style-type: none"> <li>• High impact for a smaller population, including increased survival, retention in treatment and ability to gain and maintain employment.</li> <li>• Could result in cost savings, including reducing inpatient services.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of providers who have completed MAT prescriber training.</li> <li>• Number of caseload carriers who have completed MAT prescriber training.</li> <li>• Number of age-adjusted non-fatal drug overdose emergency department admissions per 100,000 population.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE, KDOC

Return to [Figure 1](#) or [Figure C-1](#).

#### Workforce Recommendation 1.4: Workforce Investment Plan [Strategic Importance]

<p><b>Recommendation:</b> The State of Kansas should make a long-term investment plan for the behavioral health system workforce by increasing funding for training, recruitment, retention, and support to effectively attract and retain high-quality staff. Specific steps include:</p> <ul style="list-style-type: none"> <li>• Develop a career ladder for clinicians, such as through the development of an associate’s-level practitioner role and</li> <li>• Take action to increase workforce diversity, including diversity related to race/ethnicity, LGBTQ and the ability to work with those with limited English proficiency.</li> </ul>	
<p><b>Rationale:</b> A version of this recommendation was originally developed by the Child Welfare System Task Force.<sup>6</sup> Kansas is struggling to maintain an adequate behavioral health workforce across the state, particularly as surrounding states recruit Kansas clinicians. Working Group members discussed the importance of utilizing a “grow-your-own” approach, increasing reimbursement and salaries, financing provider education and training, and promoting entry to the behavioral health workforce in young students. Additionally, a modernized workforce should include a diverse group of practitioners to better serve an increasingly diverse Kansas population. An adequate workforce is key to ensuring access to services within the behavioral health system.</p>	
<p><b>Ease of Implementation (Score 1-10): 1</b></p> <ul style="list-style-type: none"> <li>• Could include program changes and pilot programs.</li> <li>• Cost will be a barrier to implementation.</li> <li>• Could changes in a legislative session, federal approval process, agency budget development and grant cycles.</li> </ul>	<p><b>Potential for High Impact (Score 1-10): 9</b></p> <ul style="list-style-type: none"> <li>• Would impact a large population.</li> <li>• Would impact multiple special populations, including those in foster care, those with limited English proficiency, children and those with low-income.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>• Number of behavioral health providers practicing in Kansas by age, race/ethnicity, language and sexual orientation.</li> <li>• Number of students enrolling in post-secondary behavioral health education/training programs in Kansas schools.</li> <li>• Number of community colleges offering a behavioral health track associates degree.</li> </ul>	
<p><b>Action Lead:</b> KDADS</p>	<p><b>Key Collaborators:</b> KDHE, BSRB, Legislature, providers, clinics, educational institutions</p>

Return to [Figure 1](#) or [Figure C-2](#).



### **Workforce Recommendation 1.5: Family Engagement Practices [Strategic Importance]**

<b>Recommendation:</b> Provide adequate workforce compensation and reimbursement rates for time spent planning and implementing family engagement practices. Such support should be based on local needs, priorities, and goals determined at the program and school levels, in partnership with families.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Children’s Subcommittee of the Governor’s Behavioral Health Services Planning Council. <sup>7</sup> Parent and family engagement practices can create shared responsibility between providers and families, such as by involving families in decision making. It can lead to improved clinical outcomes, as well as improved educational outcomes and health behaviors when parents and families are engaged by schools.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Cost could be a barrier to implementation.</li><li>• Could require changes in a legislative session and agency budget development.</li></ul>	<ul style="list-style-type: none"><li>• High impact for pediatric behavioral health population.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of families served.</li><li>• Percent of children and parents whose functionality scores improved (over set time period).</li><li>• Rate of provider turnover.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE, Legislature

Return to [Figure 1](#) or [Figure C-2](#).

## ***Funding and Accessibility***

In a modernized behavioral health system, the State will need to proactively pursue new funding mechanisms, including alternative models such as the Certified Community Behavioral Health Clinic (CCBHC) model, to ensure that reimbursement rates are competitive. The State has the expertise, research and recommendations in place to support changes to how behavioral health is funded in Kansas, and implementation should be pursued across administrations.

The Working Group asserted that accurate and appropriate funding for all Kansans is a key element of a sustainably funded, modern behavioral health system, and a modernized system will successfully identify the right populations to serve and make services meaningfully accessible. Likewise, a modernized system should rely on measurable outcomes to drive decisions. Key challenges related to funding and accessibility requirements for budget neutrality on the 1115 Medicaid Waiver, limited availability of SUD block grant dollars, and low reimbursement rates at community mental health centers and for SUD providers.

## Recommendations

The Working Group advanced five high priority recommendations for funding and accessibility, all highlighted for immediate action, as well as one high-priority discussion item regarding Medicaid expansion.

### **Funding and Accessibility Recommendation 2.1: Certified Community Behavioral Health Clinic Model [Immediate Action]**

**Recommendation:** Support expansion of the federal Excellence in Mental Health Act and then pursue participation. If participation in the Excellence in Mental Health Act is not possible, pursue a state plan amendment or change to the 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinic (CCBHC) model.

**Rationale:** A version of this recommendation was originally developed by the Mental Health Task Force (MHTF).<sup>8</sup> Passed in 2014, the Excellence in Mental Health Act was a demonstration project that provided funding to establish CCBHCs, which receive cost-based reimbursement for providing: 1) crisis mental health services, including 24-hour mobile crisis teams, emergency crisis intervention services and crisis stabilization; 2) screening, assessment and diagnosis, including risk assessment; 3) patient-centered treatment planning or similar processes, including risk assessment and crisis planning; 4) outpatient mental health and substance use services; 5) outpatient clinic primary care screening and monitoring of key health indicators and health risk; 6) targeted case management; 7) psychiatric rehabilitation services; 8) peer support and counselor services and family supports; and 9) intensive, community-based mental health care for members of the armed forces and veterans.

Working Group members expressed interest in Kansas pursuing a CCBHC model, which would provide a modern payment system to support the behavioral health system in the state. Ideally, this would be done under an expansion of the Excellence in Mental Health Act, so that additional federal funds could be used to support its implementation. If the Act is not expanded, Working Group members recommended pursuing the CCBHC model through a state plan amendment or change to the Section 1115 Waiver, similar to an approach taken by Texas.

Ease of Implementation (Score 1-10): 5	Potential for High Impact (Score 1-10): 8
<ul style="list-style-type: none"><li>• Would be a new program.</li><li>• Cost could be a barrier to implementation, assuming no federal funds are available.</li><li>• Would require a legislative session, federal approval process, regulatory process and agency budget development to implement.</li></ul>	<ul style="list-style-type: none"><li>• Would impact a large population.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of CCBHCs</li></ul>	
<b>Action Lead:</b> KDHE	<b>Key Collaborators:</b> KDADS, Providers

Return to [Figure 1](#) or [Figure C-1](#).

**Funding and Accessibility Recommendation 2.2: Addressing Inpatient Capacity [Immediate Action]**

<b>Recommendation:</b> Implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force. <sup>9</sup> A related recommendation was prioritized by the System Capacity and Transformation Working Group under the topic of System Transformation. That recommendation (9.1) is related to a regional model for the provision of inpatient mental health services. This may be one strategy within a comprehensive plan to address voluntary and involuntary hospital inpatient capacity. Working Group members highlighted the need to address inpatient capacity as a high priority for the behavioral health system long term. Of particular importance was ensuring that facilities have the capacity to care for individuals who are both a danger to themselves and a danger to others, with Working Group members indicating that the latter can be difficult for smaller facilities. Working Group members acknowledged and expressed support for the work that the Kansas Department for Aging and Disability Services (KDADS) has done to develop a plan to lift the moratorium at Osawatomie State Hospital (OSH), the implementation of which could begin to address the recommendation.	
<b>Ease of Implementation (Score 1-10): 4</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Cost will be a barrier to implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• Would impact a large population.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of private hospitals enrolled in KanCare as State Institution Alternatives.</li> <li>• Number of new private psychiatric hospital (PPH) beds licensed in Kansas.</li> <li>• Number of new state mental health hospital (SMHH) beds added at state hospitals.</li> <li>• Increases in community-based treatment service delivery or utilization like supported employment and supported housing.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> Legislature

Return to [Figure 1](#) or [Figure C-1](#).

**Funding and Accessibility Recommendation 2.3: Reimbursement Rate Increase and Review [Immediate Action]**

<b>Recommendation:</b> Implement an immediate increase of 10-15 percent for reimbursement rates for behavioral health services. After increasing reimbursement rates, establish a Working Group to regularly review the reimbursement structures for behavioral health services for both the uninsured and the Medicaid population.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force (MHTF). <sup>10</sup> The MHTF recommendation included a detailed review of reimbursement rates and recommended rates be updated accordingly. Working Group members, however, felt that a pressing need was an overall increase to reimbursement rates for behavioral health services in order to maintain the Community Mental Health Center (CMHC) system in the state. In discussion, Working Group members highlighted that few changes to reimbursement rates had occurred in the last 20 years and were overdue. Once reimbursement rates are increased, Working Group members recommend having a task force review the behavioral health reimbursement structure of both the uninsured and Medicaid populations to ensure long-term sustainability. In the 2020 Legislative Session, the final budget bill included a proviso requiring KDHE to complete a detailed review of costs and reimbursement rates for behavioral health services in the state. <sup>11</sup> This review is due in January 2021 and may include information to be reviewed by a Working Group or task force.	
<b>Ease of Implementation (Score 1-10): 6</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Cost will be a barrier to implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• Would impact a large population.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Frequency of reimbursement rate updates</li> </ul>	
<b>Action Lead:</b> Legislature	<b>Key Collaborators:</b> KDADS, KDHE, CMHCs

Return to [Figure 1](#) or [Figure C-1](#).

#### *Funding and Accessibility Recommendation 2.4: Suicide Prevention [Immediate Action]*

<b>Recommendation:</b> Allocate resources to prioritized areas of need through data driven decision-making. Assist local suicide prevention efforts and promote local support groups in fund-raising efforts, building capacity, and increasing availability for survivors of suicide loss. Dedicate resources and funding for suicide prevention.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Prevention Subcommittee of the Governor’s Behavioral Health Services Planning Council. <sup>12</sup> The rate of suicides in Kansas has increased in recent years, particularly among veterans and children and adolescents. <sup>13</sup> Working Group members highlighted the importance of supporting suicide prevention activities, and acknowledged that the Kansas Department for Aging and Disability Services (KDADS) has multiple efforts happening around the state related to suicide prevention but that ongoing funding is needed to support and expand these efforts. Further, Working Group members and members of the Special Committee repeatedly highlighted the importance of data to drive ongoing decisions related to policy and prevention efforts in a modernized behavioral health system.	
<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Would require a program change.</li> <li>• Would require a legislative session, contracts and agency budget development to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would impact special populations, including those in foster care, children frontier communities, rural communities—particularly those in the agricultural sector—and veterans.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Percent change in the age-adjusted mortality rate for suicide per 100,000 population.               <ul style="list-style-type: none"> <li>• Subsets of data: suicide rate by gender, age group, socio-demographics (marital status, veteran, and education), occupational classification, cause of death (firearm, suffocation, etc.), and circumstances (mental health, substance use, and interpersonal problems).</li> </ul> </li> <li>• Percent of high school students who report feeling sad or hopeless almost every day for two weeks or more in a row so that they stopped doing some usual activities.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> Legislature, local efforts

Return to [Figure 1](#) or [Figure C-1](#).

*Funding and Accessibility Recommendation 2.5: Problem Gambling and Other Addictions Fund [Immediate Action]*

<b>Recommendation:</b> Recommend the State continue to incrementally increase the proportion of money in the Problem Gambling and Other Addictions Grant Fund (PGOAF) that is applied to treatment over the next several years until the full funding is being applied as intended.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Committee on Alcohol and Other Drug Abuse of the Governor’s Behavioral Health Services Planning Council. <sup>14</sup> Currently, two percent of lottery gaming facility revenues are to be allocated to the PGOAF to support addiction services. Working Group members indicated that in practice, however, the funds are often used to support other service areas beyond addiction. To bring the use of funding in line with the original intent, Working Group members recommended that the full two percent be used to support the services for which it was originally intended. This could include additional clarification of which services are eligible for money from the PGOAF.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 5</b>
<ul style="list-style-type: none"> <li>• Would require a legislative session to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would have a high impact on a small population.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of calls to problem gambling hotline.</li> <li>• Of the two percent lottery gaming facility revenues, funds appropriated (\$) to problem gambling and addiction treatment.</li> </ul>	
<b>Action Lead:</b> Legislature	<b>Key Collaborators:</b> Providers, KDADS

Return to [Figure 1](#) or [Figure C-1](#).

*Funding and Accessibility High Priority Discussion Item: Medicaid Expansion*

<b>Rationale:</b> Medicaid expansion has been recommended by previous task forces, including the Mental Health Task Force, the Governor’s Substance Use Disorders Task Force and the Child Welfare System Task Force. Medicaid Expansion was flagged by the Working Group as a high priority discussion when considering opportunities to modernize the behavioral health system due to the opportunity that it represents to improve access to behavioral health services at all levels of care and allow investment in workforce and system capacity. Expanding Medicaid under the terms of the Affordable Care Act would provide insurance coverage to an estimated 130,000 to 150,000 Kansans. Working Group members noted that many of these individuals may already be utilizing services within the behavioral health system, but in many cases those services are uncompensated or subsidized by state grants. Ninety percent of Medicaid expansion costs would be covered by the federal government. Other Kansans with behavioral health needs may be foregoing care completely until they reach a crisis. The Working Group considered Medicaid expansion as a high priority discussion item for the Special Committee, as the Kansas Legislature is the body to determine whether expansion will move forward.	
<b>Action Lead:</b> Legislature	<b>Key Collaborators:</b> Working Group members

Return to [Figure 1](#) or [Figure C-3](#).

## ***Community Engagement***

Effective community engagement in a modernized behavioral health system will include collaboration between individuals in recovery and behavioral health providers to support key efforts. Key efforts include those to support employment, re-entry planning for incarcerated individuals, behavioral health supports and education for foster homes. Another important activity for a modernized behavioral health system will include making strategic connections between the criminal justice system and behavioral health resources. Effective community engagement will require greater collaboration to involve and utilize the resources of cities, counties, health departments, community advisory boards, law enforcement, and the criminal justice system. Additionally, work will be needed to promote understanding among consumers, behavioral health providers and community partners. This understanding will ensure that behavioral health consumers are able to effectively navigate the system, and the professionals working in that system are able to engage consumers productively to meet their needs and continuously improve care delivery. The Working Group also discussed the need to make services available to those in crisis, as well as supports for foster parents. foster parents.

### ***Recommendations***

The Working Group advanced four high-priority recommendations for community engagement, with two highlighted for immediate action and two for strategic importance.

**Community Engagement Recommendation 3.1: Crisis Intervention Centers [Immediate Action]**

<b>Recommendation:</b> Utilize state funds to support the expansion of Crisis Intervention Centers, as defined by state statute, around the state.	
<b>Rationale:</b> This is a new recommendation developed by the Finance and Sustainability Working Group. Expanding the reach of Crisis Intervention Centers would allow more behavioral health needs to be met locally, by providing consumers with access to critical services closer to home. Increasing access to crisis services can reduce wait times for emergency room treatment and decrease inpatient psychiatric admissions. <sup>15</sup> Existing crisis stabilization services in Kansas rely on multiple, varied funding streams, including Medicaid, county and city funding, and funds generated by lottery ticket vending machines in the state. The current funds available to Kansas Department for Aging and Disability Services (KDADS) for crisis stabilization centers from the lottery ticket vending machines are fully allocated to current crisis centers, requiring additional state investment to expand or develop new Crisis Intervention Centers in the state, particularly in rural and frontier areas.	
<b>Ease of Implementation (Score 1-10): 7</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"> <li>• Cost could be a barrier to implementation.</li> <li>• Could likely require a legislative session and agency budget development to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Could impact a large population.</li> <li>• Could produce cost savings by reducing need for stays at state hospitals or psychiatric beds in community hospitals.</li> </ul>
<b>Measuring impact:</b> <ul style="list-style-type: none"> <li>• Percent or number of counties served by Crisis Intervention Centers.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE, Legislature

Return to [Figure 1](#) or [Figure C-1](#).



**Community Engagement Recommendation 3.2: IPS Community Engagement [Immediate Action]**

<p><b>Recommendation:</b> Increase engagement of stakeholders, consumers, families, and employers through the Kansas Department of Health and Environment (KDHE) or Kansas Department for Aging and Disability Services (KDADS) by requiring agencies implementing the Individual Placement and Support (IPS) program, an evidence-based supported employment program, to create opportunities for assertive outreach and engagement for consumers and families.</p>	
<p><b>Rationale:</b> A version of this recommendation was originally developed by the Vocational Subcommittee of the Governor's Behavioral Health Services Planning Council.<sup>16</sup> An important predictor of positive outcomes in recovery is employment, and the IPS program is an evidence-based supported employment program that can help individuals with behavioral health conditions find employment. Working Group members indicated that a modernized behavioral health system is one that should consider the impact of the social determinants of health, including employment.</p>	
<p><b>Ease of Implementation (Score 1-10): 5</b></p>	<p><b>Potential for High Impact (Score 1-10): 8</b></p>
<ul style="list-style-type: none"> <li>• Could require a program overhaul to improve supported employment statewide.</li> <li>• Could require a legislative session, federal approval process, regulatory process and agency budget development to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would impact a large population, given the size of the veteran population in Kansas.</li> <li>• Could produce savings by preventing a need for crisis services or hospitalizations.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>• Number of individuals participating in an IPS program.</li> <li>• Percent of individuals with SPMI that have been enrolled in supportive employment and have not had an ER or Psychiatric Hospital admission in the last 12 months.</li> <li>• Number of counties served by an IPS program.</li> </ul>	
<p><b>Action Lead:</b> KDHE &amp; KDADS</p>	<p><b>Key Collaborators:</b> Legislature</p>

Return to [Figure 1](#) or [Figure C-1](#).

### Community Engagement Recommendation 3.3: Foster Homes [Strategic Importance]

<b>Recommendation:</b> The State of Kansas should invest in foster home recruitment and retention by increasing funding for supplemental training on behavioral health needs and providing additional financial incentives to support serious emotional disturbance (SED) youth.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Child Welfare System Task Force. <sup>17</sup> Providing additional training and support to foster homes caring for youth with behavioral health needs, particularly SED youth, could improve retention of foster homes as well as incentivize placement of youth who may be more difficult to place otherwise.	
<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"><li>• Would require a program change.</li><li>• Could require a legislative session, regulatory process and contracts to implement.</li></ul>	<ul style="list-style-type: none"><li>• Would have a high impact on a small population (foster care youth).</li><li>• Could produce savings through reductions in hospitalizations and residential care.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Placement stability rate for children entering care.</li><li>• Percent or number of foster youth on the SED waiver.</li></ul>	
<b>Action Lead:</b> DCF	<b>Key Collaborators:</b> KDADS

Return to [Figure 1](#) or [Figure C-2](#).

### Community Engagement Recommendation 3.4: Community-Based Liaison [Strategic Importance]

<b>Recommendation:</b> Fund and improve resources for community-based liaison to facilitate connection to treatment and support services (e.g., community mental health services) upon re-entry as a component of pre-release planning and services for justice-involved adults and youth with substance use disorder (SUD) and co-occurring conditions.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force. <sup>18</sup> A community-based liaison position has been added to community mental health center (CMHC) participating agreements to support pre-release services, but additional funding was not provided to support the position. KDADS is currently using the Substance Abuse and Mental Health Services Administration (SAMHSA) Mental Health Block Grant technical assistance (TA) funds to support the creation of a Kansas Stepping Up Initiative TA Center, which is focused on reducing the number of individuals in jails with mental illnesses through local government policy change and training efforts.	
<b>Ease of Implementation (Score 1-10): 6</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"> <li>• Would require a program change.</li> <li>• Funding could be a barrier to implementation, although recent SAMHSA guidance indicates that block grant funds can now be used to provide services to individuals in jail settings.</li> <li>• Could be impacted by a legislative session and agency development.</li> </ul>	<ul style="list-style-type: none"> <li>• Would have a high impact on a relatively small population. (incarcerated individuals).</li> <li>• Could produce savings through a reduction in recidivism.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of contacts with the CMHC liaison prior to release.</li> <li>• Number of patients that continue services upon release.</li> <li>• Reduced recidivism for SPMI patients/offenders.</li> <li>• Number of CMHCs with a community-based liaison.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDOC, CMHCs, Legislature

Return to [Figure 1](#) or [Figure C-2](#).

## Policy and Treatment Working Group (WG2)

The Policy and Treatment Working Group made recommendations related to the topics of prevention and education, treatment and recovery, and special populations.

## ***Prevention and Education***

Modernized prevention efforts will seek to meet the needs of special populations at increased risk for poor outcomes. This will require a collaborative, trauma-informed approach to prevention with appropriate reimbursement and other funding. Modernized prevention and education will entail improving suicide prevention outreach and engagement; examining points of entry and access within the system; taking a population-based approach which can operate developmentally across a lifetime and deliver trauma informed services; and bolstering employment supports including skills identification. The Policy and Treatment Working Group identified and discussed additional barriers, including the need to fund prevention services, improve information sharing between providers, and expand early intervention.

### ***Recommendations***

The Working Group advanced four high-priority recommendations for prevention and education, with three highlighted for immediate action and one for strategic importance.

**Prevention and Education Recommendation 4.1: 988 Suicide Prevention Lifeline Funding [Immediate Action]**

<p><b>Recommendation:</b> Once the 988 National Suicide Prevention Lifeline (NSPL) phone number is implemented, Kansas should collect fees via phone bills to support increasing the in-state answer rate and ensure that callers are connected to in-state resources.</p>	
<p><b>Rationale:</b> This is a new recommendation developed by the Policy and Treatment Working Group. The NSPL is a national network of local crisis centers that provides support to people in suicidal crisis or emotional distress. The NSPL will transition from a 10-digit phone number to 988 by July of 2022, making it easier for individuals to know what number to call when in crisis; some phone providers have already begun making this transition.<sup>19</sup> The change is expected to contribute to an increase in the number of individuals using the NSPL, which currently attempts to match callers to in-state crisis centers when possible. Between October 1, 2019, and December 31, 2019, 60 percent of NSPL calls initiated in Kansas were answered by Kansas providers.<sup>20</sup> Increasing the in-state answer rate will ensure that Kansans in crisis are connected to providers who can direct them to local resources.</p>	
<p><b>Ease of Implementation (Score 1-10): 5</b></p>	<p><b>Potential for High Impact (Score 1-10): 8</b></p>
<ul style="list-style-type: none"> <li>• Would likely involve a program overhaul, involving additional staff and training.</li> <li>• Sustainability is considered in the recommendation via fee collection. The recommendation does not include funding for a crisis text line.</li> <li>• Could require a legislative session, contracts, grant cycles and systems to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Will benefit a large population.</li> <li>• Could produce savings in other areas.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>• National Suicide Prevention Lifeline Answer Rate</li> <li>• Percent change in the statewide age-adjusted mortality rate for suicide per 100,000 population.</li> </ul>	
<p><b>Action Lead:</b> KDADS</p>	<p><b>Key Collaborators:</b> Crisis centers, CMHCs, Legislature</p>

Return to [Figure 1](#) or [Figure C-1](#).

**Prevention and Education Recommendation 4.2: Early Intervention [Immediate Action]**

<b>Recommendation:</b> Increase access to early childhood mental health services by including additional language in the Medicaid state plan to explicitly cover the cost of early childhood mental health screening, assessment and treatment.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force, and action steps that could support this recommendation can be found in Recommendation 3.4 of the Mental Health Task Force Report to the Kansas Legislature, January 14, 2019. <sup>21</sup> <p>Early identification of behavioral health symptoms can allow for earlier intervention, leading to better outcomes for youth. Additional funds would be needed to continue and expand this work statewide, which was partially piloted via the Substance Abuse and Mental Health Administration (SAMHSA) Systems of Care grant.</p>	
<b>Ease of Implementation (Score 1-10): 3</b>	<b>Potential for High Impact (Score 1-10): 10</b>
<ul style="list-style-type: none"> <li>• Would require a program change and potentially new services if additional diagnosis codes are approved.</li> <li>• Cost could be a barrier to implementation.</li> <li>• Could require a federal approval process, agency budget development and systems to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Would impact individuals in foster care, low-income individuals, children and those with limited English proficiency.</li> <li>• Could produce cost savings via reductions in ER visits, pediatrics visits, and use of the criminal justice system and state hospitals.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Percent of Medicaid-eligible children age 0-5 receiving initial trauma and mental health screen within 90 days of entering coverage.</li> <li>• Utilization of early childhood mental health screening, assessment, and treatment Medicaid codes.</li> </ul>	
<b>Action Lead:</b> KDHE & KDADS	<b>Key Collaborators:</b> DCF, MCOs

Return to [Figure 1](#) or [Figure C-1](#).

*Prevention and Education Recommendation 4.3: Centralized Authority [Immediate Action]*

<b>Recommendation:</b> Centralize coordination of behavioral health – including substance use disorder and mental health – policy and provider coordination in a cabinet-level position.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force. <sup>22</sup> Creating a centralized authority for behavioral health would help ensure that behavioral health efforts in the state are consistently prioritized, coordinated and reported on to the Governor. Responsibilities of this position would be to ensure collaboration across the state agencies (e.g., KDHE, KDADS, DCF, KDOC) and other partners involved in the behavioral health system (e.g., community mental health centers, federally qualified health centers, managed care organizations, private insurers and behavioral health consumers). This could allow for coordinated efforts to modernize the behavioral health system, as well as additional coordination of the various behavioral health funding streams spread across entities.	
<b>Ease of Implementation</b> (Score 1-10): 2	<b>Potential for High Impact</b> (Score 1-10): 7
<ul style="list-style-type: none"><li>• Could require a new program.</li><li>• Could require a regulatory process, agency budget development and systems to implement.</li></ul>	<ul style="list-style-type: none"><li>• Would benefit a large population.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li></ul>	
<b>Action Lead:</b> Office of the Governor	<b>Key Collaborators:</b> KDADS, KDHE, KSDE

Return to [Figure 1](#) or [Figure C-1](#).

**Prevention and Education Recommendation 4.4: Behavioral Health Prevention [Strategic Importance]**

<b>Recommendation:</b> Increase state funds for behavioral health prevention efforts (e.g., substance use disorder [SUD] prevention, suicide prevention).	
<b>Rationale:</b> This is a new recommendation developed by the Policy and Treatment Working Group. Working Group members highlighted the importance of a balance between prevention and treatment in a modernized behavioral health system in Kansas. Prioritizing prevention efforts is needed in the behavioral health system broadly, and it was highlighted that currently only the minimum amount of funds within the SUD block grant are allocated toward prevention activities, and the state has not allocated any money from the state general fund for SUD prevention efforts. Other steps toward prioritizing prevention could include expanding the number of Certified Prevention Specialists in the state and allocating funding for a state suicide prevention coordinator, a position for which the Kansas Department for Aging and Disability Services (KDADS) has already created a job description.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"> <li>• Could require a program overhaul.</li> <li>• Cost could be a barrier to implementation.</li> <li>• Sustainability is contingent on ongoing funding.</li> <li>• Could require a legislative session and agency budget development to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Would benefit multiple special populations, including foster care, rural communities, frontier communities, urban communities, and children.</li> <li>• Could produce cost savings in the child welfare and corrections systems.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of age-adjusted non-fatal drug overdose emergency department admissions per 100,000 population.</li> <li>• Select indicators from the Kansas Behavioral Health Indicators Dashboard (KBHID.org)</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE, Legislature, providers

Return to [Figure 1](#) or [Figure C-2](#).

## ***Treatment and Recovery***

A modernized behavioral health system will deliver an expanded array of early, affordable, accessible, evidence-informed behavioral health services for all, with an emphasis in serving consumers in the settings that are most likely to support effective engagement with treatment. Modernized treatment and recovery will include a data-driven, person-centered approach that improves health outcomes for persons served through access to evidence-based treatment and other promising practices, regardless of income or ability to pay. This system will include timely information exchange to support meaningful coordination across settings (e.g., schools, primary care providers, law enforcement and the judicial system). Additionally, entry into and navigation of the behavioral health system should be clear and consistent. The Working Group also



discussed the need to offer additional crisis services, including: intensive outpatient programs (IOP), partial hospitalization, day programs, substance use disorder (SUD) family residential treatment, respite and crisis beds. The system should have the flexibility to be adaptive to changing trends and needs in behavioral health indicators and service needs such as suicide rates, substance use trends or pandemic impacts.

### Recommendations

The Working Group advanced four high-priority recommendations for treatment and recovery, with one highlighted for immediate action and three for strategic importance.

#### **Treatment and Recovery Recommendation 5.1: Psychiatric Residential Treatment Facilities [Immediate Action]**

<b>Recommendation:</b> Monitor ongoing work to improve care delivery and expand capacity at Psychiatric Residential Treatment Facilities (PRTF) to meet the needs of youth for whom a PRTF is medically appropriate, such as through reductions in the PRTF waitlist and a focus on reintegration and discharge planning, including with schools.	
<b>Rationale:</b> This is a new recommendation developed by the Treatment and Recovery Working Group that updates language originally included in Recommendation 3.3 from the Mental Health Task Force Report to the Legislature, January 14, 2019. <sup>23</sup> Working Group members highlighted the progress made by the KDADS in recent years to bring down the waitlist to enter PRTFs. Ongoing effort is still needed, however, to ensure that youth who require PRTF-level care can access it when needed. Focusing on reintegration and discharge planning, in partnership with community partners, like schools, could help reduce the need for additional PRTF stays in the future. Additionally, the implementation of other recommendations — such as <i>Recommendation 5.2 Service Array</i> , below — could help youth receive needed services earlier and prevent potentially unnecessary PRTF stays.	
<b>Ease of Implementation (Score 1-10): 7</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Would require a program overhaul.</li> <li>• Cost may be a barrier to implementation.</li> <li>• Would require agency budget development and systems to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would have a large impact on a small population (youth requiring PRTF-level care).</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Average length of stay in a PRTF.</li> <li>• Number of individuals served by a PRTF.</li> <li>• Average number of individuals on the three MCO PRTF waitlist per month.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KSDE, KDHE, CMHCs, managed care organizations

Return to [Figure 1](#) or [Figure C-1](#).

## *Treatment and Recovery Recommendation 5.2: Service Array [Strategic Importance]*

<p><b>Recommendation:</b> Explore options to expand the behavioral health service array, including the expansion of medication-assisted treatment (MAT) in block grant services. Make the expanded service array available to individuals across the state, such as KanCare enrollees, those with private insurance and the uninsured.</p>	
<p><b>Rationale:</b> This is a new recommendation developed by the Treatment and Recovery Working Group that builds on language originally included in Recommendation 3.2 from the from the Mental Health Task Force Report to the Legislature, January 14, 2019.<sup>24</sup> Increasing the service array within the behavioral health system could help ensure that Kansans can access the appropriate level of care when needed. For example, the expansion of crisis stabilization services, intensive outpatient services and other community-based options may reduce the need for stays in institutional settings. Expanding the service array could include an expansion of MAT, which has been shown to lead to better outcomes. Additional MAT could include a focus on specific populations and settings, such as pregnant women or jails. Additionally, when expanding the service array, the group discussed the value of providing services in natural settings (e.g., homes, schools, primary care offices) in the community.</p>	
<p><b>Ease of Implementation (Score 1-10): 5</b></p> <ul style="list-style-type: none"> <li>• Could require program overhauls or new programs.</li> <li>• Cost could be a barrier to implementation, as could workforce shortages.</li> <li>• Could require regulatory processes or agency budget development to implement.</li> </ul>	<p><b>Potential for High Impact (Score 1-10): 9</b></p> <ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Could produce costs savings by reducing need for inpatient or PRTF stays.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>• Average number of expanded services provided to an individual.</li> <li>• Number of counties offering services by type.</li> </ul>	
<p><b>Action Lead:</b> KDADS</p>	<p><b>Key Collaborators:</b> KDHE, DCF, providers, private insurers.</p>

Return to [Figure 1](#) or [Figure C-1](#).

### *Treatment and Recovery Recommendation 5.3: Frontline Capacity [Strategic Importance]*

<b>Recommendation:</b> Increase capacity of frontline healthcare providers (e.g., pediatricians, family physicians and OB-GYNs) to identify and provide services to those with behavioral health needs.	
<b>Rationale:</b> This is a new recommendation developed by the Treatment and Recovery Working Group. Kansas Department of Health and Environment (KDHE) currently has two federal grants focused on this issue, one focused on providers who work with pregnant and postpartum individuals, and another focused on pediatric primary care providers. These grant programs are modeled after two psychiatric access programs developed in Massachusetts, where they proved to be effective. <sup>25,26</sup> While federal grants have covered initial implementation activities (e.g., provider-to-provider consultation), these funds will expire in 2023. North Carolina has added provider-to-provider consultations as a reimbursable service under Medicaid, which could be one path forward for sustainability. Private insurers may also be interested in this service and could be collaborated with to move this recommendation forward. Additionally, see <i>Appendix A (page A-1)</i> for a recommendation related to Screening, Brief Intervention and Referral to Treatment (SBIRT).	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Could require an expansion of an existing program.</li> <li>• Existing programs are currently grant funded, making long-term sustainability contingent upon additional funding streams, such as Medicaid reimbursement.</li> <li>• Could require federal approval processes and agency budget development to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Could produce cost savings through early intervention and a reduction in need for crisis services.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of pediatric primary care providers who enroll in a pediatric mental health care access program.</li> <li>• Number of perinatal providers who enroll in a perinatal psychiatric access program.</li> <li>• Utilization of Maternal Depression Screening Medicaid codes.</li> </ul>	
<b>Action Lead:</b> KDHE	<b>Key Collaborators:</b> Private insurers, providers, KDADS

Return to [Figure 1](#) or [Figure C-2](#).

#### *Treatment and Recovery Recommendation 5.4: Housing [Strategic Importance]*

<b>Recommendation:</b> Expand and advance the Supported Housing program and the SSI/SSDI Outreach, Access, and Recovery (SOAR) program, including additional training regarding youth benefits.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Housing and Homelessness Subcommittee of the Governor's Behavioral Health Services Planning Council. <sup>27</sup> The Supported Housing program provides affordable housing linked to services for low-income, homeless, or potentially homeless individuals with a severe mental illness. SOAR is a federal program designed to help states and communities increase access to Social Security disability benefits for people who are homeless or at risk of homelessness and have a mental illness or other co-occurring disorders. Preventing or mitigating homelessness can support recovery and result in improved outcomes. The expansion of support housing could include allowing non-waiver individuals to participate in programs. While making funding available to support expansion of these program is an important step, funding alone does not mitigate other barriers to housing in some parts of the state, including a lack of available housing in western Kansas.	
<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Would require a program change or overhaul.</li><li>• Could require federal approval processes, regulatory processes, and agency budget development to implement.</li></ul>	<ul style="list-style-type: none"><li>• Would have a high impact on those involved in the programs, including low-income individuals, transition-age youth children, veterans and justice-involved individuals.</li><li>• Could produce cost savings via a reduction in uninsured services.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of individuals served by the SSI/SSDI Outreach, Access, and Recovery (SOAR) program.</li><li>• Percent of individuals with SPMI that have been enrolled in supportive housing, and have not had an ER or Psychiatric Hospital admission in the last 12 months.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> Homelessness Subcommittee of Governor's Behavioral Health Services Planning Council, ACMHC, Association of Addiction Professionals, KDHE

Return to [Figure 1](#) or [Figure C-2](#).

## ***Special Populations***

To serve special populations in a modernized behavioral health system, data, consumers and families will drive the system. Building on existing strengths, a modernized approach will be integrated, proactive and responsive whenever there is a need or a self-identified crisis. Additionally, data will be utilized to understand where there are disparities that should be

addressed. Changes may be needed to education, training, and agency requirements to enable service providers to serve people in a more comprehensive manner. Ultimately, a modernized system will provide wraparound services which meet all the behavioral health needs of an individual such as treating co-occurring disorders and providing housing. The Policy and Treatment Working Group discussed that some special populations to consider include, but are not be limited to, victims of domestic violence, children of incarcerated parents, individuals with limited English proficiency, pregnant women experiencing perinatal mood and anxiety disorders, and others listed on the Recommendation Rubric (*Appendix B, [page B-1](#)*).

### *Recommendations*

The Working Group advanced 5 high priority recommendations for special populations, with 2 highlighted for immediate action and 3 for strategic importance.

#### ***Special Populations Recommendation 6.1: Domestic Violence Survivors [Immediate Action]***

<b>Recommendation:</b> Build awareness of and responsiveness to the behavioral health needs and risks of domestic violence survivors of all ages through data analysis, information sharing, workforce training, and targeted interventions between domestic violence providers, state agencies and community providers serving individuals impacted by domestic violence.	
<b>Rationale:</b> This is a new recommendation developed by the Policy and Treatment Working Group. According to the CDC, one in four women and one in 10 men have experienced some form of intimate partner violence, also known as domestic violence. <sup>28</sup> Domestic violence has multigenerational impacts as well, impacting children and youth live in homes where domestic violence occurs. Given its prevalence and multigenerational impact, Working Group members expressed a desire to better support the behavioral health needs of domestic violence survivors. Working Group members highlighted that multiple community resources are currently available to support domestic violence survivors, but these resources could be better coordinated across agencies and entities to ensure individuals receive the care they need.	
<b>Ease of Implementation (Score 1-10): 6</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Would require a pilot program or program overhaul to connect existing systems.</li> <li>• Would require contracts, agency budget development and systems to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population, including multiple special populations.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li> </ul>	
<b>Action Lead:</b> DCF	<b>Key Collaborators:</b> KDADS, KDHE, community- based organizations, providers

Return to [Figure 1](#) or [Figure C-1](#).

### *Special Populations Recommendation 6.2: Parent Peer Support [Immediate Action]*

<b>Recommendation:</b> Increase access to parent peer support for caregivers and families of youth in the behavioral health system, including ensuring appropriate supports for fathers of dependent children.	
<b>Rationale:</b> This is a new recommendation developed by the Policy and Treatment Working Group. Peer support would connect parents with lived experience to parents or other caregivers currently navigating the behavioral health system on behalf of their child. Supporting parents is an integral component of behavioral health treatment, and parent peer support for parents with substance use disorders have proven to be effective in other states. Exploring opportunities to expand peer support could provide a cost-effective strategy to improving care outcomes, in addition to providing an outlet through which parents can receive additional support when navigating the behavioral health system. Further, increasing access to peer support services also creates additional job opportunities for those with lived experiences.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"><li>• Would require a program change.</li><li>• Cost could be a barrier to implementation, as well as workforce capacity.</li></ul>	<ul style="list-style-type: none"><li>• Would impact a large population.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of children entering care of the Secretary of DCF.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> DCF, KDHE

Return to [Figure 1](#) or [Figure C-1](#).

### Special Populations Recommendation 6.3: Crossover Youth [Strategic Importance]

<b>Recommendation:</b> Continue to develop linkages between the behavioral health system, juvenile justice system and the child welfare system to increase understanding of treatment options available to youth externalizing trauma in the crossover youth population as current treatment options are not meeting the needs of this population. Then, develop specialty services to meet the needs of this population.	
<b>Rationale:</b> This is a new recommendation developed by the Policy and Treatment Working Group. Although not a large population, the Working Group highlighted the large amount of resources invested by multiple state agencies currently to support this population. While recent efforts have begun to improve communication and information sharing between agencies regarding this population, gaps in services still exist. Providing additional services to meet the unique needs of this population, including preventive services, could assist crossover youth in working through unresolved trauma and potentially reduce juvenile justice system involvement.	
<b>Ease of Implementation (Score 1-10): 4</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Would require a new program.</li> <li>• Cost would be a barrier to implementation.</li> <li>• Could require a federal approval process, regulatory process, contracts and grant cycles to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• High impact to a small, resource-intensive population.</li> <li>• Could create cost savings within the juvenile justice system.</li> <li>• Could produce cost savings in other areas, including within the justice system.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number of crossover youth</li> <li>• Number of EBP programs available for crossover youth</li> <li>• Percent of crossover youth with a mental/behavioral condition who receive a referral to services</li> </ul>	
<b>Action Lead:</b> DCF	<b>Key Collaborators:</b> KDADS, KDOC, KDHE

Return to [Figure 1](#) or [Figure C-2](#).

#### ***Special Populations Recommendation 6.4: I/DD Waiver Expansion [Strategic Importance]***

<b>Recommendation:</b> Fully fund the Intellectual and Developmental Disabilities (I/DD) waiver and expand I/DD waiver services. Increase reimbursement rates for I/DD services to support workforce expansion.	
<b>Rationale:</b> This is a new recommendation developed by the Policy and Treatment Working Group. Working Group members highlighted that individuals with I/DD who have co-occurring disorders are not adequately served within the behavioral health system currently. This is partially due to challenges with finding providers who can address both behavioral health issues and I/DD, but also underfunding of the I/DD waiver. Working Group members highlighted a current lack of services to support individuals with I/DD within the behavioral health system, which can cause parents and families to seek out services provided under other waivers as a last resort. Further, this lack of services has led to some children entering the foster care system, because they are unable to receive the level of supports needed to remain at home, and this lack of services is often not resolved by entering foster care. These issues are exacerbated by workforce issues within the I/DD system, which could partially be addressed through increase reimbursement rates.	
<b>Ease of Implementation (Score 1-10): 4</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"><li>• Would require a program change and potentially the addition of new programs.</li><li>• Would require a federal approval process, regulatory process and agency budget development to implement.</li></ul>	<ul style="list-style-type: none"><li>• High impact for the targeted population, which includes families of those with I/DD.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of individuals on the waiting list for the I/DD waiver and average length of wait time.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> DCF, KDHE

Return to [Figure 1](#) or [Figure C-2](#).



### *Special Populations Recommendation 6.5: Family Treatment Centers [Strategic Importance]*

<b>Recommendation:</b> Increase the number and capacity of designated family SUD treatment centers, as well as outpatient treatment programs across the state.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force. <sup>29</sup> Expanding access to family SUD treatment centers would allow more individuals to receive treatment, by not requiring parents to choose between caring for their family and receiving treatment. Treating individuals in a family setting can also benefit the entire family, by allowing family members to participate in the treatment process and therapy sessions.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 5</b>
<ul style="list-style-type: none"><li>• Would require an expansion of an existing program.</li><li>• Would require systems changes to implement, including information sharing between agencies.</li></ul>	<ul style="list-style-type: none"><li>• Would impact special populations, including foster care, low-income individuals and children.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of family SUD treatment centers in Kansas.</li><li>• Number of family outpatient treatment programs in Kansas.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> DCF, KDHE

Return to [Figure 1](#) or [Figure C-2](#).

## **System Capacity and Transformation (WG3)**

The System Capacity and Transformation Working Group made recommendations related to the topics of data systems, interactions with the legal system and law enforcement and system transformation.

### ***Data Systems***

A modernized system requires a seamless, real-time data system with multi-directional data sharing among behavioral health providers, other health care providers and systems, community organizations, social service providers, law enforcement and payers. The highest priorities for modernizing data systems within the Kansas behavioral health system are to promote information sharing across the system, particularly between state agencies by incentivizing providers to use electronic health records (EHR) and to participate in health information exchanges. Additionally, modernized data systems will require that prevention data surveys be collected with an informed opt-out consent process rather than opt-in consent. A modernized data system will support the ability to assess and aggregate data between service

providers to ensure the individual is getting appropriate and coordinated care and to ensure that health care providers are notified when patients are hospitalized. Modernized data systems should make all appropriate considerations for privacy protection and support measurement of key outcomes. The System Capacity and Transformation Working Group additionally discussed the need for data systems at the state hospitals to support automation of key functions and interoperability with other systems, when appropriate.

### *Recommendations*

The Working Group advanced five high-priority recommendations for data systems, with four highlighted for immediate action and one for strategic importance.

#### *Data Systems Recommendation 7.1: State Hospital EHR [Immediate Action]*

<b>Recommendation:</b> The new state hospital electronic health record (EHR) system should be interoperable with other data systems in the state. Interoperability should include the ability to automate the current process to reinstate Medicaid benefits following discharge.	
<b>Rationale:</b> This is a new recommendation developed by the System Capacity and Transformation Working Group. Kansas Department for Aging and Disability Services (KDADS) has already issued a request for proposals (RFP) to implement a new state hospital EHR, with the RFP indicating that the selected EHR should be interoperable with other data systems in the state. Initial funding has been authorized to support the adoption of a new EHR, but ongoing funding may be needed to sustain it, and challenges may occur during implementation.	
<b>Ease of Implementation (Score 1-10): 9</b>	<b>Potential for High Impact (Score 1-10): 9</b>
<ul style="list-style-type: none"> <li>Initial funding has been authorized to implement, but ongoing funding will be necessary for long-term sustainability.</li> <li>Could require agency budget development to implement.</li> </ul>	<ul style="list-style-type: none"> <li>Would impact the state hospital populations and support continuity of care in other settings.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>Percent or number of hospitals that have adopted the new state hospital EHR.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> EHR vendor, KDHE

Return to [Figure 1](#) or [Figure C-1](#).

**Data Systems Recommendation 7.2: Data and Survey Informed Opt-Out [Immediate Action]**

**Recommendation:** Collect, analyze, use, and disseminate surveillance data to inform prevention. Change legislation regarding public health and behavioral health state surveys, including changing the Kansas Communities That Care (KCTC) and Youth Risk Behavior Surveillance System (YRBS) surveys from an opt-in consent to an informed opt-out consent, to allow for meaningful data collection.

**Rationale:** Previous versions of this recommendation were originally developed by the Prevention Subcommittee of the Governor's Behavioral Health Services Planning Council and the Governor's Substance Use Disorders Task Force.<sup>30,31</sup> Due to the current protocol of opt-in consent, the amount of data collected via surveys like the KCTC is too limited to reliably inform policymaking. Collecting better surveillance data can inform which types of prevention activities are necessary to mitigate behavioral health issues, including work on suicide prevention and ongoing improvement of mental health programs in schools. The lack of reliable data also makes it difficult for state agencies to complete required activities for federal block grants. Relative to other recommendations, this would not require a high financial investment by the state to implement.

**Ease of Implementation (Score 1-10): 8**

- Cost would not be a barrier to implementation.
- Would require a legislative session to implement.

**Potential for High Impact (Score 1-10): 9**

- Would impact a large portion of school-aged youth.

**Measuring Impact:**

- Percent or number of school districts participating in survey administration.
- Survey response rate.

**Action Lead:** Legislature

**Key Collaborators:** KDADS, KSDE

Return to [Figure 1](#) or [Figure C-1](#).

### Data Systems Recommendation 7.3: Information Sharing [Immediate Action]

<b>Recommendation:</b> Utilize Medicaid funds to incentivize participation in health information exchanges (e.g., Kansas Health Information Network [KHIN] or Lewis and Clark Information Exchange [LACIE]). Explore health information exchanges as an information source on demographic characteristics, such as primary language and geography for crossover youth and other high priority populations.	
<b>Rationale:</b> Previous versions of this recommendation were originally developed by the Child Welfare System Task Force and the Crossover Youth Working Group. <sup>32,33</sup> Health information exchanges (HIE) can lead to better coordinated care, by allowing providers to access the most recent health records of their patients. Participating in an HIE requires investment in an electronic health record (EHR) system and interfaces to connect the EHR and HIE, which can be cost prohibitive for some providers. Working Group members did not want to mandate participation in either KHIN or LACIE, suggesting that incentives were a more effective way to encourage participation in an HIE. The working group noted that funding streams to incentivize EHR adoption were not available to all behavioral health providers, and federal funding to support incentives may be limited as earlier incentive programs have concluded. This recommendation encourages the state to pursue the most feasible option (e.g., waiver amendments, federal innovation models) to incentivize participation in an HIE.	
<b>Ease of Implementation (Score 1-10): 8</b> <ul style="list-style-type: none"> <li>• Would require a program change.</li> <li>• Cost could be a barrier to implementation.</li> <li>• Incentives should be ongoing and could be offset by reductions in the Medicaid program.</li> <li>• Could require agency budget development to implement.</li> </ul>	<b>Potential for High Impact (Score 1-10): 9</b> <ul style="list-style-type: none"> <li>• Could impact a large population, including special populations such as those in foster care, rural, frontier and urban communities, children, veterans, individuals with low-income and individuals with limited English proficiency.</li> <li>• Could potentially produce cost savings.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li> </ul>	
<b>Action Lead:</b> KDHE	<b>Key Collaborators:</b> KHIN, Providers

Return to [Figure 1](#) or [Figure C-1](#).

**Data Systems Recommendation 7.4: Needs Assessment [Immediate Action]**

**Recommendation:** Conduct a statewide needs assessment to identify gaps in funding, access to substance use disorder (SUD) treatment providers and specific policies to effectively utilize, integrate and expand SUD treatment resources.

**Rationale:** A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force.<sup>34</sup> Working Group members highlighted a need to expand resources for SUD treatment, which could also lead to an increase in the number of providers offering SUD treatment in the state. Conducting a statewide needs assessment could help identify where to specifically target SUD treatment expansions. A needs assessment should be conducted soon, and on a rolling basis thereafter.

<b>Ease of Implementation (Score 1-10): 7</b>	<b>Potential for High Impact (Score 1-10): 7</b>
<ul style="list-style-type: none"><li>• Cost could be a barrier to implementation.</li><li>• Could require a state plan amendment of agency budget development to implement recommendations from a needs assessment.</li></ul>	<ul style="list-style-type: none"><li>• High impact to a small population.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE

Return to [Figure 1](#) or [Figure C-1](#).

### **Data Systems Recommendation 7.5: Cross-Agency Data [Strategic Importance]**

<b>Recommendation:</b> Encourage state agencies to develop policies that improve their ability to access and review cross-agency data for making service and program decisions based on a thorough, shared needs assessment.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Prevention Subcommittee of the Governor's Behavioral Health Services Planning Council. Improved processes and policies on sharing data across agencies could lead to improved prevention efforts across the state, help establish common goals across agencies and increase efficiency. Additionally, it could highlight gaps in care for some vulnerable populations that are served by multiple agencies.	
<b>Ease of Implementation (Score 1-10): 6</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Could require systems and agency memoranda of understanding to implement.</li></ul>	<ul style="list-style-type: none"><li>• Could impact a large population.</li><li>• Could lead to increased efficiencies and improve decision making by highlighting needs across systems.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE, DCF, KDOC, KSDE

Return to [Figure 1](#) or [Figure C-2](#).

## ***Interactions with Legal System and Law Enforcement***

Through collaboration among the legal system, law enforcement and others in an interdisciplinary behavioral health team, a modernized behavioral health system has the ability to make timely connections for individuals in crisis to services in the least restrictive setting appropriate to ensure safety. A modernized approach will increase treatment options for justice-involved adults and youth. Training will be made available to law enforcement officers, the courts and others in the legal system to increase awareness of mental health issues and to support timely connection to treatment opportunities. Treatment opportunities will include those for a full spectrum of behavioral health issues include mental health and substance use disorder (SUD). More collaboration between the criminal justice system and behavioral health professionals will be needed to ensure this. Sufficient community support services, such as housing, will also be necessary to maintain clients in least restrictive setting possible while maintaining safety. Key strategies may include expanding crisis intervention teams (CIT) and crisis centers so that first responders have robust and efficient options for responding to mental

health crises, expanding specialty courts, utilizing robust data system to help communities identify high utilizers of crisis services so that those individuals can be connected to services.

### *Recommendations*

The Working Group advanced four high priority recommendations for interactions with the legal system and law enforcement, with three highlighted for immediate action and one for strategic importance.

#### *Interactions with Legal System and Law Enforcement Recommendation 8.1: Correctional Employees [Immediate Action]*

<b>Recommendation:</b> Expand training provided in correctional facilities to allow employees to better recognize those with substance use disorders, use a trauma-informed approach to identify other mental health needs, and connect those with needs to available services.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force. <sup>35</sup> The Kansas Department for Aging and Disability Services (KDADS) has existing training for employees of correctional facilities, and implementation of this recommendation would expand the current reach and breadth of those trainings for employees throughout the justice system. While the current training largely focuses on mental health, the Working Group spoke to the importance of educating employees on substance use disorders and incorporating a trauma-informed approach to identification of mental health needs. Expanding these trainings will require additional financial resources, and they should be offered on a consistent and ongoing basis.	
<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 9</b>
<ul style="list-style-type: none"> <li>• Would require an expansion of existing training efforts.</li> <li>• Would be a low-cost recommendation.</li> <li>• Could require changes to grant cycles, state agency contracts and agency budget development.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Would benefit urban, rural and frontier communities.</li> <li>• Could generate cost savings by reducing recidivism, if individuals are connected to treatment.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number and percent of unit team counselors working in a correctional facility that received training on substance abuse programs and services</li> <li>• Number and percent of staff working in a correctional facility that received trauma informed training</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDOC, local law enforcement agencies.

Return to [Figure 1](#) or [Figure C-1](#).

*Interactions with Legal System and Law Enforcement Recommendation 8.2: Criminal Justice Reform Commission Recommendations [Immediate Action]*

<b>Recommendation:</b> Implement recommendations developed by the Criminal Justice Reform Commission (CJRC) related to specialty courts (e.g., drug courts) and develop a process for regular reporting on implementation status and outcomes.	
<b>Rationale:</b> This recommendation was newly developed by the System Capacity and Transformation Working Group. This recommendation was developed to recognize the value of aligning efforts to modernize the behavioral health system with parallel efforts related to criminal justice reform in the CJRC. The Working Group was particularly supportive of the CJRC recommendation to expand pre- and post-charge diversion sobriety and treatment options for first time, non-violent, simple drug possession charges.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Cost could be a barrier to implementation.</li> <li>• Would require training of courts and judicial staff.</li> </ul>	<ul style="list-style-type: none"> <li>• Recommendation could produce cost savings through reducing KDOC population and connecting individuals to treatment services in a more timely manner.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Number and percent of judicial districts with one or more specialty courts (by type)</li> <li>• Consider tracking goals and outcomes using KDOC's soon to be ATHENA system</li> </ul>	
<b>Action Lead:</b> Legislature	<b>Key Collaborators:</b> KDADS, KDOC

Return to [Figure 1](#) or [Figure C-1](#).



*Interactions with Legal System and Law Enforcement Recommendation 8.3: Law Enforcement Referrals [Immediate Action]*

<b>Recommendation:</b> Increase utilization and development of evidence-based SUD referral as well as treatment and recovery services among persons with law enforcement contact, which could include securing funding to increase access to services for this population.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Governor's Substance Use Disorders Task Force. <sup>36</sup> Additionally, this recommendation is in alignment with recommendations from the Kansas Pre-Trial Justice Task Force that focus on behavioral health issues. <sup>37</sup> The Working Group discussed the value of this recommendation in highlighting the particular need for substance use disorder (SUD) treatment among those individuals with law enforcement contact. This recommendation could be co-implemented with Recommendation 2.3 toward the goal of installing the Certified Community Behavioral Health clinics (CCBHC) model in Kansas as a requirement of the CCBHC model is the development of partnerships between behavioral health providers and law enforcement.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 6</b>
<ul style="list-style-type: none"> <li>• Would require a program change and implementation of new programs.</li> <li>• Cost would be a barrier to implementation but would be needed to support new programs.</li> </ul>	<ul style="list-style-type: none"> <li>• Would have a high impact for those individuals who would benefit.</li> <li>• Would address disparities, as this recommendation would provide the opportunity for individuals to be connected to services who are missing that opportunity in the current system.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li> </ul>	
<b>Action Lead:</b> KDOC	<b>Key Collaborators:</b> KDADS, providers

Return to [Figure 1](#) or [Figure C-1](#).

*Interactions with Legal System and Law Enforcement Recommendation 8.4: Defining Crossover Youth Population. [Strategic Importance]*

<b>Recommendation:</b> Future efforts should include behavioral health within an operationalized definition for youth with offender behaviors at risk of entering foster care, as well as including diverted youth in the definition of the broader juvenile offender population.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Crossover Youth Working Group. <sup>38</sup> Building upon the work of that group, this recommendation highlights the importance of having a clear definition for which individuals fit within the crossover youth population and incorporating behavioral health within the definition. Understanding the behavioral health needs of individuals dually involved with the juvenile justice and child welfare systems will be critical to serving that population.	
<b>Ease of Implementation</b> (Score 1-10): 7	<b>Potential for High Impact</b> (Score 1-10): 6
<ul style="list-style-type: none"><li>• Cost would not be a barrier to implementation.</li></ul>	<ul style="list-style-type: none"><li>• Understanding the needs of the crossover youth population will be important to have a high impact on those individuals.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of crossover youth</li></ul>	
<b>Action Lead:</b> KDOC, KDADS	<b>Key Collaborators:</b> DCF

Return to [Figure 1](#) or [Figure C-2](#).

## ***System Transformation***

A modernized system will work both in evidence-based treatment and prevention with focus on the patients to address a continuum of needs. Transformation will result in a mission driven, rationally funded and outcome-oriented system of providers that uses data as an asset to identify problems and develop solutions. An important strategy for system transformation will be addressing the continuum of care to ensure an integrated and coordinated approach to care delivery. The System Capacity and Transformation Working Group also discussed barriers related to cross system collaboration, infrastructure changes, and Medicaid payment for services to families.

### ***Recommendations***

The Working Group advanced five high priority recommendations for system transformation, with three highlighted for immediate action and two for strategic importance.

### System Transformation Recommendation 9.1: Regional Model [Immediate Action]

<p><b>Recommendation:</b> Develop a regional model that would supplement the traditional state hospital setting with regionalized facilities accepting both voluntary and involuntary admissions for persons in acute services as well as longer-term/tertiary specialized care. Currently, there is a particular gap in capacity in south central Kansas.</p>	
<p><b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force (MHTF).<sup>39</sup> It was a standalone recommendation in the 2018 MHTF report and then consolidated into Recommendation 1.1 and 1.2 in the 2019 MHTF report. The Working Group discussed that while cost is a primary barrier to implementation, there are opportunities for cost savings by reducing the high cost of transporting individuals to Osawatomie State Hospital (OSH) or Larned State Hospital. Both institutions are a significant distance from key population centers, particularly in the south-central region of the state. This recommendation could be implemented by a combined approach of state institution alternatives (SIAs) and smaller, regional state facilities.</p> <p>Cost savings accrued via the recommendation could be redirected to the provision of evidence-based services. In addition to cost savings, a reduction in travel would increase safety of the individuals in need of care as well as those in the behavioral health workforce currently providing transportation services, as well as allow individuals to remain closer to local support systems. This recommendation is also seen as a key component to lifting the ongoing moratorium at OSH and is included in the current plan to do so.</p>	
<p><b>Ease of Implementation (Score 1-10): 8</b></p>	<p><b>Potential for High Impact (Score 1-10): 9</b></p>
<ul style="list-style-type: none"> <li>Cost would be a barrier to implementation based on the need for appropriation.</li> </ul>	<ul style="list-style-type: none"> <li>Would benefit a large population.</li> <li>Could produce cost savings via reduction in transportation costs.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>More work is needed to identify measures appropriate to capture the impact of this recommendation.</li> </ul>	
<p><b>Action Lead:</b> KDADS</p>	<p><b>Key Collaborators:</b> Providers, Local Units of Government, Law Enforcement</p>

Return to [Figure 1](#) or [Figure C-1](#).

**System Transformation Recommendation 9.2: Long-Term Care Access and Reform**  
**[Immediate Action]**

<p><b>Recommendation:</b> Reform nursing facilities for mental health (NFMHs) to allow for the provision of active treatment and necessary rehabilitative services and crisis services in NFMHs and inclusion within the continuum of care. Increase access to long-term care (LTC) facilities, particularly for individuals with past involvement with the criminal justice system or those with a history of sexual violence.</p>	
<p><b>Rationale:</b> This is a new recommendation developed by the System Capacity and Transformation Working Group that updates language originally included in Recommendation 4.1 from the Mental Health Task Force Report to the Legislature, January 14, 2019.<sup>40</sup> The Working Group adapted this recommendation on NFMH reform to include new information on the need to increase access to LTC facilities, particularly for individuals with a history of involvement with the criminal justice system. The Working Group described the status quo as one where individuals are often required to stay in acute hospitals because there is not a nursing facility with the capacity to care for them. At times, these individuals may be discharged from acute hospitals into homelessness, so the Working Group discussed the importance of supportive housing. For more information on supportive housing see <i>Recommendation 5.4 Housing</i>. Increasing access to LTC facilities could include discharging individuals currently in LTC back to their communities, if appropriate discharge planning occurs to connect individuals with supports available within the community. Further, reformation of NFMHs could improve quality of care and discharge planning. This recommendation is a high priority to the Working Group due to the importance of protecting the rights of citizens by providing individuals with disabilities the opportunity to live and receive care in the least restrictive environment possible.</p>	
<p><b>Ease of Implementation (Score 1-10): 8</b></p> <ul style="list-style-type: none"> <li>Reforming the NFMH licensing structure may require a federal approval process.</li> </ul>	<p><b>Potential for High Impact (Score 1-10): 8</b></p> <ul style="list-style-type: none"> <li>Would have a high impact for those who receive care at NFMHs or require access to LTC.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>Percent of individuals who transition back to the community.</li> <li>Percent of individuals with stability/tenure in the community.</li> <li>Average length of stay in NFMH.</li> <li>Rate of discharge back to community/supported housing placements.</li> </ul>	
<p><b>Action Lead:</b> KDADS</p>	<p><b>Key Collaborators:</b> KDHE</p>

Return to [Figure 1](#) or [Figure C-1](#).

### System Transformation Recommendation 9.3: Integration [Immediate Action]

<p><b>Recommendation:</b> Increase integration, linkage, collaboration and identify care transition best practices among mental health, substance abuse, primary care and emergency departments across the state. Adopt coding practices that allow for the integration of services across the continuum of care domains (including, but not limited to, primary care, substance use disorder, and mental health) to provide more integrated services to clients with co-occurring conditions.</p>	
<p><b>Rationale:</b> Multiple previous collaborative efforts developed recommendations highlighting the importance of integration (e.g., Governor’s Substance Use Disorders Task force, Governor’s Behavioral Health Services Planning Council), and the System Capacity and Transformation Working Group built this recommendation from that work. SAMHSA describes integration as, “The care that results from a practice team of primary care and behavioral health clinicians and other staff working with patients and families, using a systematic and cost-effective approach to provide patient-centered care for a defined population.”<sup>41</sup> Integrated care can lead to better outcomes for patients, as well as more streamlined care delivery. Adopting coding practices in support of integration is seen as critical to the goal of providing best practice, whole-person care.</p>	
<p><b>Ease of Implementation (Score 1-10): 6</b></p> <ul style="list-style-type: none"> <li>• Would require legislation.</li> <li>• Would require a Federal approval process.</li> <li>• Also would require work related to agency budget development, grant cycles and system changes (e.g., IT).</li> </ul>	<p><b>Potential for High Impact (Score 1-10): 9</b></p> <ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Special populations who would benefit include: foster care, urban, rural and frontier communities, those with limited English proficiency, low-income individuals, children.</li> <li>• Could potentially produce cost savings by reducing duplicative care.</li> </ul>
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>• Percent or number of certified CCBHCs in the state of Kansas.</li> <li>• Percent or number of Counties served by Mobile Response and Stabilization Services.</li> </ul>	
<p><b>Action Lead:</b> KDADS/KDHE</p>	<p><b>Key Collaborators:</b> Legislature, CMHCS, FQHCs, other safety net providers</p>

Return to [Figure 1](#) or [Figure C-1](#).

**System Transformation Recommendation 9.4: Evidence Based Practices [Strategic Importance]**

<b>Recommendation:</b> Kansas should continue and expand support for use of evidence based practices (EBP) in the state, including for housing and supported employment. Coordinate EBP utilization across systems (e.g., law enforcement, SUD, mental health care) with a goal of implementing programs with fidelity, when possible.	
<b>Rationale:</b> This is a new recommendation developed by the System Capacity and Transformation Working Group. The Working Group discussed the delivery of evidence based models of service as a key part of a modernized behavioral health system. With that in mind, the group also discussed that fidelity to these programs, as originally designed, can be challenging due to the variety of standards that exist between different EBPs. Regardless, the Working Group noted the importance of delivering evidence-based services throughout the behavioral health system and, in particular, for those in long-term care settings.	
<b>Ease of Implementation (Score 1-10): 6</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Would require changes to existing programs.</li> <li>• Cost would be a barrier to implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Percent of EBPs adopted by providers.</li> <li>• Number of EBP programs funded and appropriations.</li> <li>• Percent of individuals with SPMI that have been enrolled in supportive employment, and have not had an ER or Psychiatric Hospital admission in the last 12 months.</li> <li>• Percent of individuals with SPMI that have been enrolled in supportive housing, and have not had an ER or Psychiatric Hospital admission in the last 12 months.</li> <li>• EBP utilization across systems.</li> </ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> DCF

Return to [Figure 1](#) or [Figure C-2](#).

### System Transformation Recommendation 9.5: Family Psychotherapy [Strategic Importance]

<b>Recommendation:</b> Enable utilization of procedure code 90846 in Medicaid as a tool to support youth in foster care, as well as any child accessing care in a Psychiatric Residential Treatment Facility.	
<b>Rationale:</b> This is a new recommendation developed by the System Capacity and Transformation Working Group, related to recommendations from the 2018 and 2019 Mental Health Task Force Reports to the Kansas Legislature. <sup>42</sup> This recommendation would allow for the provision of family therapy services without the child present. This was highlighted as important given that discussing the behavioral health needs of a child with a parent or guardian is an important part of care provision and, at times, inappropriate in the presence of the child. The group also noted how the code could support the implementation of an evidence-based program called Generation Parent Management Training – Oregon (PMTO). PMTO is an evidence-based structured intervention program designed to help strengthen families that has demonstrated positive outcomes throughout a nine-year follow-up period, including reductions in delinquency, depression and police arrests, among others. <sup>43</sup> This is a program of high interest to those in the state working to implement the Federal Families First Act and requires a significant amount of the services to be delivered to parent(s) or guardian(s), without the child present.  The Working Group also noted that the Centers for Medicare and Medicaid Services (CMS) has flagged this code as one with a high potential for fraud or abuse in some states. Working Group members were not overly concerned about the potential for fraud in Kansas, however, because the code was previously allowed under the Children’s Health Insurance Program (CHIP). When allowed in Kansas under CHIP, the code was not highly utilized, but utilization may be higher if allowed again due to implementation of the PMTO program.	
<b>Ease of Implementation (Score 1-10): 10</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Would require changes in the regulatory process.</li> <li>• Cost would not be a barrier to implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• Could potentially generate cost savings.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Percent of families served by the Generation Parent Management Training – Oregon (PMTO) program.</li> </ul>	
<b>Action Lead:</b> KDHE, Division of Healthcare Finance	<b>Key Collaborators:</b> DCF

Return to [Figure 1](#) or [Figure C-2](#).

## Telehealth

The Special Committee on Mental Health Modernization and Reform recognized that telehealth was a topic of high importance that cut across the three Working Groups that had been created. As this was considered to be a topic of interest to each Working Group, members of each group volunteered to contribute to a telehealth subgroup. The topic was of high interest across

Working Groups due, in part, to the ongoing COVID-19 pandemic. The COVID-19 pandemic has created a unique situation due to the increased number of services provided via telehealth to ensure patient safety and to the temporary changes to reimbursement practices and other policies related to telehealth to support the change in service delivery. Subgroup members developed recommendations for modernizing the telehealth system based on experiences delivering telehealth during and prior to the COVID-19 pandemic.

The following recommendations are part of the strategic work that will be required to modernize the approach to delivering behavioral health services via telehealth in Kansas. In a modernized system, the delivery of sophisticated telehealth services will be a strategy to provide meaningful access to care across rural, frontier and urban areas of the state. While a key strategy to improving access, the delivery of behavioral health services via telehealth does not preclude the need for behavioral health clinicians to provide services in person across the state. A modernized behavioral health system will offer a balance between service delivery via telehealth and in person. Telehealth services provided will be high-quality, integrated with other modes of care delivery and allow for consumer choice, in addition to supporting the full spectrum of behavioral health care. The telehealth subgroup discussed the need to address telephonic access to services when needed, broadband access, long-term changes to reimbursement strategies, crisis services and issues related to care delivery across state lines.

### *Recommendations*

The Working Group advanced five high-priority recommendations for telehealth, with three highlighted for immediate action and two for strategic importance.

The Working Group did not have previous task force recommendations to consider regarding telehealth, so all recommendations in this section were created by the task force with support from supplemental experts. Because these are new recommendations, additional rationale has been provided when available and the recommendation rubric was not used for these recommendations. As a result, information on ease of implementation and potential for high impact are limited and may need to be assessed in later discussion of these recommendations.



### Telehealth Recommendation 10.1: Quality Assurance [Immediate Action]

<p><b>Recommendation:</b> Develop standards to ensure high-quality telehealth services are provided, including:</p> <ul style="list-style-type: none"><li>• Establishing consistent guidelines and measures for telehealth in collaboration with licensing and regulatory agencies.</li><li>• Implementing standard provider education and training.</li><li>• Ensuring patient privacy.</li><li>• Educating patients on privacy-related issues.</li><li>• Allowing telehealth supervision hours to be consistently counted toward licensure requirements.</li><li>• Allowing services to be provided flexibly when broadband access is limited.</li></ul>	
<p><b>Rationale:</b> This is a new recommendation developed by the Telehealth subgroup in consultation with supplemental experts.</p> <p>Due to the rapid expansion of telehealth services during the COVID-19 pandemic, Working Group members highlighted a variety of needs to address to ensure that high-quality telehealth services are provided in Kansas beyond the pandemic.</p> <p>Relevant regulatory agencies and providers should develop guidelines for the provision of telehealth services that align with established best practices. Guidelines should recognize the value of consumer choice and provision of in-person services when needed or desired. Measures should be identified to assess the impact of telehealth on access, quality and equity within behavioral health care.</p> <p>Providers should be trained on issues related to telehealth by existing professional organizations, telehealth resource centers and other providers of continuing education curriculum. This could include: completing a basic telehealth training with a focus on the clinical delivery of services; education about the basic parameters of telehealth billing, record keeping, and criteria for reimbursement; and training and support to mitigate the increased cognitive, physical, and emotional demands associated with a significant increase in productivity and use of technology to provide care.</p> <p>The privacy of patients should be protected when telehealth is provided. This includes payers requiring utilization of platforms and other secure technologies that are compliant with all relevant State and Federal statute and regulations (e.g., HIPAA, 42 CFR Part 2), in addition to providers educating patients on privacy-related issues. Privacy issues extend beyond technology, however, and include ensuring that services are provided and received in locations that meet safety and privacy requirements.</p> <p>Some behavioral health providers can use supervision hours conducted via telehealth to qualify for licensure, but this is not consistent across provider types licensed by the Kansas Behavioral Sciences Regulatory Board (BSRB). Consistently allowing telehealth supervision to meet licensure requirements could increase the number of high-quality providers in the state.</p> <p>Working Group members indicated that video services are the preferred, and highest-quality, option for providing telehealth services. Given current broadband deficiencies in the state, however, telephonic behavioral health services should be allowed by payers when needed to address access issues, and guidelines for audio-only telehealth visits should be established.</p> <p>Finally, it was noted that electronic health record (EHR) utilization is critical to support effective, high-quality delivery of telehealth, particularly to ensure care coordination across providers. Implementation of <b>Recommendation 7.3 Information Sharing</b> could support this recommendation.</p>	
<p><b>Measuring Impact:</b> More work is needed to identify measures appropriate to capture the impact of this recommendation.</p>	
<p><b>Action Lead:</b> Various</p>	<p><b>Key Collaborators:</b> KDHE, KDADS, Providers, BSRB, Private insurers, regulatory agencies</p>

Return to [Figure 1](#) or [Figure C-1](#).

### Telehealth Recommendation 10.2: Reimbursement Codes [Immediate Action]

**Recommendation:** Maintain reimbursement codes added during the public health emergency for tele-behavioral health services and consider options to prevent loss of facility fees so that providers are not losing revenue by delivering telehealth services.

**Rationale:** This is a new recommendation developed by the Telehealth subgroup in consultation with supplemental experts. While many behavioral health services could be provided via telehealth prior to the COVID-19 pandemic, additional codes (e.g., for the SED waiver, crisis intervention, tobacco cessation) have become eligible for reimbursement during the public health emergency (PHE).<sup>44,45,46</sup> Working Group members indicated that some of these services should be maintained after the PHE ends, though the changes were initially intended to be temporary. Additionally, the PHE has led to an expansion of the types of sites where patients can receive care, including at home. Services provided to patients in their homes are not eligible for a facility fee payment for the originating site. In situations where support (e.g., IT support, patient education and preparation) is provided to patients receiving telehealth services in their home, commensurate compensation should be made available to service providers.

Services provided to patients in their homes do not receive a facility fee payment for the originating site, which can contribute to lost revenue for providers, many of whom are having to do additional work (e.g., IT support, patient education and preparation) to provide high-quality services to patients in their home. Consideration should be given to the feasibility of providing additional reimbursement for providers who furnish technical support for patients who receive telehealth services in their homes.

However, further study and consideration should be given to the unintended consequences of mandating payments to providers in excess of in-person mental health visits. The committee would not want to encourage telemedicine in a manner that would incentivize providers to leave their community practices, especially in rural and underserved areas or otherwise reduce their availability for the delivery of in-person care. In addition, if this proposal for additional telemedicine provider payments is applicable beyond the Medicaid program, it likely qualifies as a “provider or benefit” mandate requiring the production of a cost benefit analysis and the “test tracking” of the proposed new charges on the state employees health plan as required by K.S.A. 40-2248 through 40-2249a. Considerations for commercial insurance plans may include different applicable provisions.

**Measuring Impact:**

- Number of telehealth codes open for Medicaid reimbursement pre- and post-pandemic
- Utilization of these telehealth codes

**Action Lead:** KDHE Division of Healthcare Finance

**Key Collaborators:** KDADS, managed care organizations, community mental health centers

Return to [Figure 1](#) or [Figure C-1](#).

### *Telehealth Recommendation 10.3: Telehealth for Crisis Services [Immediate Action]*

<b>Recommendation:</b> Establish coverage of telehealth for crisis services to allow for the use of telehealth with law enforcement and mobile crisis services. Explore virtual co-responder models for law enforcement to aid police departments and other law enforcement agencies as they respond to mental health crisis in rural and frontier communities.	
<b>Rationale:</b> This is a new recommendation developed by the Telehealth subgroup in consultation with supplemental experts. Telehealth can create immediate access to services in an area where providers are not physically located. Working Group members highlighted a specific need for crisis services to be provided via telehealth, particularly in rural or frontier areas where these services are less likely to be available currently. Covering telehealth for crisis services could also support police departments or law enforcement agencies who frequently respond to behavioral health crises, such as through co-responder models that pair local law enforcement with remote clinicians. Some neighboring states have already implemented co-responder models, which have the potential to generate savings by reducing arrests, jail admissions and hospital stays. <sup>47</sup> Related to the measures indicated in the “Measuring Impact” field below, the group noted that many individuals in crisis will not be Medicaid beneficiaries, so additional measures should be developed to better capture the impact of this recommendation.	
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of telehealth crisis codes open for Medicaid reimbursement</li><li>• Utilization of these telehealth crisis codes</li></ul>	
<b>Action Lead:</b> KDHE	<b>Key Collaborators:</b> KDADS, KDOC, DCF, local law enforcement, providers

Return to [Figure 1](#) or [Figure C-1](#).

#### Telehealth Recommendation 10.4: Originating and Distant Sites [Strategic Importance]

<p><b>Recommendation:</b> The following items should be addressed to ensure that individuals receive — and providers offer — telehealth in the most appropriate locations:</p> <ul style="list-style-type: none"><li>• Adopt a broad definition of originating site, consistent with the Kansas Telemedicine Act.</li><li>• Allow staff to provide services from homes or other non-clinical sites, if patient privacy and safety standards can be met and</li><li>• Examine issues related to providers practicing, and patients receiving, services across state lines, such as by exploring participation in interstate licensure compacts.</li></ul>	
<p><b>Rationale:</b> This is a new recommendation developed by the Telehealth subgroup in consultation with supplemental experts. Issues related to where providers can offer care and where patients can receive care will need to be addressed in order for high-quality telehealth care to be provided flexibly to patients.</p> <p>The definition of originating sites included in the Kansas Telemedicine Act is: “a site at which a patient is located at the time healthcare services are provided by means of telemedicine.”<sup>48</sup> Prior to the COVID-19 pandemic, allowed originating sites were limited by some insurers, preventing patients from receiving care in places like their homes. Adopting a broad definition of “originating site” would ensure that patients can receive care in a wider variety of settings, if those settings meet patient privacy and safety standards.</p> <p>Distant sites — the location from which a provider offers care — could also be expanded to allow providers to offer services from their home or other non-clinical sites, if patient privacy and safety standards can be met. Allowing providers to offer services in flexible locations could help address workforce issues by increasing access to providers in areas of the state with shortages.</p> <p>The location of patients when telehealth is provided can be complicated by state lines. This could include scenarios in which a patient needs care while traveling or residing outside of their home state (e.g., if a Kansan goes to college in another state). The state in which the patient is located typically determines the criteria for licensure, and Kansas providers who want to continue offering services to their patients outside of the state must contact the licensing body in the state where their patient is located. Often, licensing bodies will want to ensure that providers can connect patients to local service or crisis resources, if needed, and other states may have options for temporary licensure. Exploring Kansas participation in interstate licensure compacts could address some of these issues.</p> <p>Additionally, since the onset of COVID-19, multiple out-of-state providers have expressed interest in providing virtual-only services to Kansas residents. While these providers could potentially address access issues, they could result in reduced care coordination with in-state providers. Issues related to practicing and receiving services across state lines will need to be addressed as telehealth continues to evolve and grow.</p>	
<p><b>Measuring Impact:</b></p> <p>More work is needed to identify measures appropriate to capture the impact of this recommendation.</p>	
<p><b>Action Lead:</b> Legislature</p>	<p><b>Key Collaborators:</b> KDHE, KDADS, Providers</p>

Return to [Figure 1](#) or [Figure C-2](#).

**Telehealth Recommendation 10.5: Child Welfare System and Telehealth [Strategic Importance]**

<p><b>Recommendation:</b> Utilize telehealth to maintain service and provider continuity as children, particularly foster children, move around the state. Consider how the unique needs of parents of children in the child welfare system can be met via telehealth.</p>	
<p><b>Rationale:</b> This is a new recommendation developed by the Telehealth subgroup in consultation with supplemental experts. It is exploratory in nature and will require further development to assess how telehealth can be used as a tool to provide consistent, high quality behavioral health services for individuals who interact with the child welfare system. In situations where placements are unstable, foster youth may move frequently, resulting in a disruption of services as youth move from one behavioral health catchment area to another. Allowing telehealth to be an option for foster youth to continue receiving services from providers they have established relationships with could lead to better outcomes, as changing care providers can delay access to behavioral health care, impedes the benefit of the therapeutic relationship, and delays positive outcomes for child well-being. Additionally, parents of children in the child welfare system may have behavioral health treatment needs – substance use, mental health, or both - that need to be resolved in order to support reunification of the child back into the home. Consistent access and availability of telebehavioral health services for parents could significantly increase case plan compliance and support timely reunification for children.</p>	
<p><b>Measuring Impact:</b></p> <ul style="list-style-type: none"> <li>• Utilization of telehealth across foster children eligibility groups.</li> <li>• When child comes into care or goes to a new placement the CMHC will provide therapy within 72 hours of receiving the request.</li> <li>• Percentage of CINC children/adolescents, age 17 or younger, that received crisis intervention services 30 calendar days prior to a screen resulting in inpatient psychiatric admission, excluding PRTF (i.e., CINC crisis intervention rate).</li> <li>• The percentage of CINC children/adolescents that received therapeutic intervention services (includes more than initial assessment and diagnosis such as Peer Support, Psychosocial individual/group, Community Psychiatric Support and Treatment, Therapy and/or Intake) within 30 calendar days prior to a screen resulting in an inpatient psychiatric admission, excluding PRTF (i.e., CINC Therapeutic Intervention Rate).</li> </ul>	
<p><b>Action Lead:</b> KDHE</p>	<p><b>Key Collaborators:</b> KDADS, DCF</p>

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## Appendix A: Other Recommendations

Included below are other recommendations related to each of the ten topics. These recommendations were maintained by the Working Groups for future work but were not considered a high priority at this time.

Figure A-1. **Other Recommendations**

Source	Recommendation
<b>WORKFORCE</b>	
New Recommendation	<b>Tuition Reimbursement.</b> Establish tuition reimbursement for master's level behavioral health providers, including addiction counselors, that agree to practice for a set period of time in a rural and frontier area. This could be tested as a pilot program in order to assess impact on workforce shortages.
New Recommendation	<b>Workforce Promotion.</b> Establish programs for those 12-18 years of age to promote familiarity with and interest in careers in behavioral health.
Governor's Substance Use Disorder Task Force	<b>Workforce Development.</b> Implement workforce development programs to increase capacity of addiction professions.
<b>FUNDING AND ACCESSIBILITY</b>	
Governor's Substance Use Disorder Task Force	<b>K-TRACS Funding.</b> K-TRACS should be sustainably funded by the State General Fund after any available grant funding is exhausted.
Governor's Substance Use Disorder Task Force	<b>Senate Bill 123.</b> Assure adequate funding for SB 123 (2003) (provides certified SUD treatment for offenders convicted of drug possession who are nonviolent with no prior convictions) to allow appropriate provision of medically necessary treatment services and allow for an expanded list of qualifying offenses.
Child Welfare System Task Force	<b>Maximizing Federal Funding.</b> The State of Kansas should conduct an audit of potential funding streams by program area to ensure the State is maximizing federal benefits.
Governor's Substance Use Disorder Task Force	<b>Opioid Addiction Project ECHO.</b> Identify funding for Opioid Addiction Project ECHO telementoring.

Figure A-1 (continued). **Other Recommendations**

Source	Recommendation
<b>FUNDING AND ACCESSIBILITY (CONTINUED)</b>	
Child Welfare System Task Force	<b>Access to Care.</b> The State of Kansas should require access to high-quality and consistent medical and behavioral healthcare for Medicaid-eligible high-risk youth through the state Medicaid state plan or other appropriate sources of funding.
Child Welfare System Task Force	<b>Service Setting.</b> The State of Kansas should prioritize delivering services for children and youth in natural settings, such as, but not limited to, homes, schools, and primary care offices, in the child's community when possible. The needs of the child and family should be the most important factor when determining the settings where services are delivered.
Governor's Substance Use Disorder Task Force	<b>Sober Housing.</b> Study the efficacy of sober housing and strategies for success from other states including funding mechanisms.
Mental Health Task Force, 2019	<b>Regional Community Crisis Center Locations.</b> Develop regional community crisis centers across the state including co-located or integrated SUD services.
Governor's Behavioral Health Services Planning Council	<b>Vocational Subcommittee (VOS) Recommendations.</b> Actively seek out and provide grants to CMHCs from the State General Fund to offset costs initiating and implementing Individual Placement and Support (IPS) Supported Employment model.
Governor's Substance Use Disorder Task Force	<b>Mental Health Parity.</b> Review procedures for mental health parity laws to ensure compliance.
New Recommendation	<b>Maintenance of Effort.</b> Increase the state's Maintenance of Effort in the SUD Block grant for providers in the Beacon Network. Medicaid expansion may be one mechanism for additional funding.
Governor's Substance Use Disorder Task Force	<b>IMD Waiver.</b> Explore waiver of Medicaid Institutions for Mental Diseases (IMD) exclusion for mental health and substance use disorder treatment and support current IMD exclusion waiver for residential services for substance use treatment.
Governor's Substance Use Disorder Task Force	<b>Addiction Treatment.</b> Create additional services for the treatment of addiction as well as any co-occurring mental health diagnoses.
Governor's Behavioral Health Services Planning Council	<b>CAODA Recommendation.</b> Facilitate a pursuit of grant funding. Recommend creating a new state-level grant-support position to work directly with agencies to help secure and maintain these opioid related funds as well as other addiction prevention and treatment opportunities. A state-level coordinator could provide the grant-specific expertise.



Figure A-1 (continued). **Other Recommendations**

Source	Recommendation
<b>FUNDING AND ACCESSIBILITY (CONTINUED)</b>	
Child Welfare System Task Force	<b>Resources and Accountability.</b> The State of Kansas and DCF should provide services that are in the best interest of children in their care by supporting a system that is accountable and resourced well enough to provide the needed services. Considerations should include, but not be limited to, the awarding of funds based upon qualifications and not financial factors, improving workforce morale and tenure, and providing technology to improve efficiencies.
Governor's Behavioral Health Services Planning Council	<b>CAODA Recommendation.</b> Allow addiction counseling agencies to become approved providers for co-occurring issues providing they have the appropriate resources to do so. This expansion of services should only apply to addiction counseling clients with co-occurring issues, not to general mental health clientele.
Governor's Behavioral Health Services Planning Council	<b>CAODA Recommendation.</b> Adopt coding practices that allow for the integration of CMHC, primary care, and behavioral health services to reduce the waste and gaps in service.
Governor's Substance Use Disorder Task Force	<b>Prior Authorizations.</b> Remove prior authorization requirements for MAT (medication-assisted treatment).
<b>Community Engagement</b>	
Governor's Behavioral Health Services Planning Council	<b>Justice Involved Youth and Adult Subcommittee (JIYAS) Recommendations.</b> Engage community partners using three pilot communities that the workgroup identified, which would involve a coordinated effort between the Kansas Department of Corrections (KDOC), CMHCs, and SUD providers.
<b>PREVENTION AND EDUCATION</b>	
Governor's Behavioral Health Services Planning Council	<b>Children Subcommittee.</b> Support, encourage, and provide resources to early childhood programs in implementing and sustaining the Kansas Family Engagement and Partnership Standards for Early Childhood.

Figure A-1 (continued). **Other Recommendations**

Source	Recommendation
<b>PREVENTION AND EDUCATION (CONTINUED)</b>	
Governor's Substance Use Disorder Task Force	<b>Coroner Letters.</b> Explore the feasibility of and consider a pilot program for coroners or medical examiners sending educational letters to prescribing providers upon their own patient's death from prescription drug or other illicit substance overdose.
Governor's Behavioral Health Services Planning Council	<b>Suicide Prevention Workgroup.</b> Write, distribute, and promote op-eds, and disseminate information about safe messaging covering suicide, and urge the development of effective materials including through local media outlets. Increase number of trainings and workshops to promote and support application of best practices and evidence-based approaches in the field of suicidology among Behavioral Sciences Regulatory Board (BSRB) licensed behavioral health practitioners and community gatekeepers when working to prevent suicides.
<b>TREATMENT AND RECOVERY</b>	
Mental Health Task Force, 2019	<b>Care Management Program.</b> Take steps to ensure that all Kansas youth and adults with a behavioral health diagnosis or chronic physical health condition are eligible to opt into a health home to have access to activities that help coordinate care.
Governor's Substance Use Disorder Task Force	<b>Expand MAT.</b> Expand Access and utilization of medication assisted Treatment (MAT), including increasing access to MAT in jail settings and an expansion of MAT in block grant services
Governor's Behavioral Health Services Planning Council	<b>Housing and Homelessness Subcommittee.</b> Continue and expand Housing First in collaboration with KDADS, including an expansion of technical assistance and education to promote utilization.
Governor's Behavioral Health Services Planning Council	<b>Supported Housing.</b> Expand the Supported Housing Program, a program that provides affordable housing linked to services for low-income, homeless, or potential homeless people with severe mental illness.
Governor's Behavioral Health Services Planning Council	<b>Children Subcommittee.</b> Increase the availability of flexible treatment options (residential and outpatient) that allow children to stay with and participate in treatment with their parents, which also embrace a holistic and trauma-informed approach to treatment.
New Recommendation	<b>Co-Occurring Disorders:</b> Invest in community-based intellectual and developmental disability (I/DD) services and training around behavioral health.

Figure A-1 (continued). **Other Recommendations**

Source	Recommendation
<b>TREATMENT AND RECOVERY (CONTINUED)</b>	
New Recommendation	<b>Supported Employment.</b> Expand the Supported Employment Program, a program that provides employment services to individuals suffering from a severe mental illness, including those with a mental illness and co-occurring substance disorder.
Governor's Behavioral Health Services Planning Council	<b>Housing and Homelessness Subcommittee.</b> Create a housing specialist certification and ongoing education training curriculum.
<b>SPECIAL POPULATIONS</b>	
Governor's Substance Use Disorder Task Force	<b>Neonatal Abstinence Syndrome (NAS).</b> Provide education, screening, intervention, and support to substance using women to reduce the number of infants born substance-exposed, while expanding coverage for family planning services, preconception services, and a variety of contraceptives, including long acting reversible contraceptives. Provide education on best practices to reduce stigma and promote standardized care regarding NAS cases, develop a standardized reporting process for NAS cases across the state.
Governor's Behavioral Health Services Planning Council	<b>Rural and Frontier Subcommittee (RFS) Recommendation.</b> Increase funding for crisis services and beds (youth respite, mobile crisis) statewide, being sure to address existing gaps in rural and frontier areas.
Mental Health Task Force, 2019	<b>Access to Effective Practices and Support.</b> Deliver crisis, clinical, and prevention services for children and youth and families in natural settings (e.g., homes, schools, primary care offices) in the community.
Crossover Youth Working Group	<b>Child Welfare Placements.</b> The Working Group suggests exploring what supports/services are lacking and prevent permanency from being achieved regarding placement stability of crossover youth placed in foster care.
New Recommendation	<b>Children of Incarcerated Parents.</b> Build awareness of and responsiveness to the behavioral health needs and risks of children of incarcerated parents into the behavioral health system through data analysis, information sharing, workforce training, and targeted interventions and coordination between KDOC, DCF, KDADS, KDHE, KSDE and community partners serving children of incarcerated parents.

Figure A-1 (continued). **Other Recommendations**

Source	Recommendation
<b>SPECIAL POPULATIONS (CONTINUED)</b>	
New Recommendation	<b>Perinatal Mood and Anxiety Disorders (PMAD).</b> Increase identification of perinatal mood and anxiety disorders (PMAD) and options for care provision, including workforce development and training on PMAD.
<b>Data Systems</b>	
Crossover Youth Working Group	<b>Child Welfare Placements.</b> The Working Group proposes future efforts to study data on outcomes for youth placed in group residential homes and to understand whether youth who might have been detained prior to SB 367 are now being placed in the child welfare system.
<b>INTERACTIONS WITH THE LEGAL SYSTEM AND LAW ENFORCEMENT</b>	
Mental Health Task Force, 2019	<b>Suspension of Medicaid.</b> Implement policies that allow for the suspension of Medicaid benefits when persons enter an institution rather than terminating their coverage entirely, to improve transition planning and access to care.
Governor's Substance Use Disorder Task Force	<b>Naloxone.</b> Promote Naloxone education and use for first responders and pursue all available funding. (Note: Working Group members indicated that this recommendation had largely been implemented.)
Governor's Substance Use Disorder Task Force	<b>Good Samaritan.</b> Enact a 911 Good Samaritan Law. This law must be crafted to avoid unintentionally allowing persons to avoid persecution for serious felony charges, especially when their actions directly involved providing illicit substance to the ill individual.
<b>SYSTEM TRANSFORMATION</b>	
Governor's Substance Use Disorder Task Force	<b>Kansas Placement Criteria Program.</b> Implement modern technology and data collection to replace the discontinued Kansas Placement Criteria Program (KCPC).
Governor's Substance Use Disorder Task Force	<b>Payment Reform.</b> Support substance use disorder payment reform targeted to improve population health.
Governor's Substance Use Disorder Task Force	<b>Screening, Brief Intervention and Referral to Treatment (SBIRT).</b> Increase access to and utilization of Screening, Brief Intervention and Referral to Treatment (SBIRT) by expanding who can be reimbursed for providing SBIRT (e.g., include in block grant funding) and where SBIRT can be provided (e.g., in the education system).

Figure A-1 (continued). **Other Recommendations**

Source	Recommendation
<b>SYSTEM TRANSFORMATION (CONTINUED)</b>	
Child Welfare System Task Force	<b>Analysis of Service Delivery.</b> The State of Kansas should establish a work group or task force to conduct an analysis to: 1) determine what it costs to adequately fund high-quality child welfare services; 2) by 2021, evaluate the benefits of privatizing child welfare services; and 3) determine the best public/private collaboration to deliver child welfare services. DCF shall determine appropriate outcomes measures and periodic evaluations shall be conducted to ensure contractors are achieving set outcomes and provide opportunities for ongoing collaboration and review. Summary reports should be provided to the Legislature annually.
Mental Health Task Force, 2019	<b>Learning Across Systems.</b> Create a position/entity to track information about adverse outcomes that occur and identify strategies for addressing them in a timely manner.
Crossover Youth Working Group	<b>Juvenile Intake and Assessment.</b> Their view of Juvenile Intake and Assessment Services was limited in scope to only FY2019. Data from intake and assessments completed throughout a youth's lifetime should be reviewed. Robust analysis from completed the Kansas Detention Assessment Instrument (KDAI) could be conducted when integrated into the data system.
<b>TELEHEALTH</b>	
New Recommendation	<b>Verbal Consent.</b> Recommend the opportunity to obtain verbal consent for care with written consent established as follow-up.
New Recommendation	<b>Telehealth Care Coordination.</b> Explore options to cover reimbursement for care coordination around the provision of telehealth services.
New Recommendation	<b>Broadband.</b> Expand access to broadband.
New Recommendation	<b>Jail Telehealth Services.</b> Explore challenges to address challenges (e.g., privacy, technology, funding) related to providing telehealth services in a jail setting.

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## Appendix B. Recommendation Rubric

Figure B-1. Mental Health Modernization and Reform, Working Group Recommendation Rubric, 2020

<b>Recommendation:</b>	
<b>Rationale:</b>	
<b>Ease of Implementation</b> (Score 1-10):	<b>Potential for High Impact</b> (Score 1-10):
<p>Consider:</p> <p><input type="checkbox"/> Program Change (Easiest)</p> <p><input type="checkbox"/> Pilot Program</p> <p><input type="checkbox"/> Program Overhaul</p> <p><input type="checkbox"/> New Program (Most difficult)</p> <p>Will cost be a barrier to implementation?</p> <p>Does the recommendation include strategies for continuity? (<i>How does it consider sustainability?</i>)</p> <p>Which of the following mechanisms may affect the achievability of the recommendation?</p> <p><input type="checkbox"/> Legislative session</p> <p><input type="checkbox"/> Federal approval process</p> <p><input type="checkbox"/> Regulatory process</p> <p><input type="checkbox"/> Contracts</p> <p><input type="checkbox"/> Agency budget development</p> <p><input type="checkbox"/> Grant cycles</p> <p><input type="checkbox"/> Systems (e.g., IT)</p>	<p>Consider:</p> <p>Will it benefit a large population? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will it significantly impact special populations?</p> <p><input type="checkbox"/> Foster care</p> <p><input type="checkbox"/> Frontier communities</p> <p><input type="checkbox"/> Rural communities</p> <p><input type="checkbox"/> Urban communities</p> <p><input type="checkbox"/> Limited English Proficient (LEP) persons</p> <p><input type="checkbox"/> Low-income individuals</p> <p><input type="checkbox"/> Children</p> <p><input type="checkbox"/> Veterans</p> <p><input type="checkbox"/> Others? (<i>List here</i>)</p> <p>Does it serve those who have been disproportionately impacted by the issue? (<i>Does it address inequities?</i>)</p> <p>Could the recommendation produce savings in other areas?</p>

Figure B-1 (continued). Mental Health Modernization and Reform, Working Group Recommendation Rubric, 2020

<b>How does this recommendation contribute to modernization?</b>	
<b>Action Lead:</b> <i>(Who takes point on this recommendation?)</i>	<b>Key Collaborators:</b> <i>(Who should be included as decisions are made about how to implement this recommendation?)</i>
<b>Intensity of Consensus:</b> <i>(Is there group consensus that this recommendation is important for the modernization and reform of the behavioral health system in the state? Does a wide cross-section of stakeholders feel that this recommendation would be mutually beneficial? To be addressed during final review)</i>	



## Appendix C. High-Priority Topic Lists

The Working Groups have made recommendations related to the following topics for immediate action (Figure C-1). **Recommendations for immediate action are those that should be completed in the next two years.** The full text for each recommendation and Working Group rationale is available in the body of the report (beginning [page 7](#)).

Figure C-1. Recommendation Topics for Immediate Action

Workforce	Funding and Accessibility	Community Engagement
<input type="checkbox"/> <a href="#">Recommendation 1.1 Clinical Supervision Hours</a> <input type="checkbox"/> <a href="#">Recommendation 1.2 Access to Psychiatry Services</a> <input type="checkbox"/> <a href="#">Recommendation 1.3 Provider MAT Training</a>	<input type="checkbox"/> <a href="#">Recommendation 2.1 Certified Community Behavioral Health Clinic Model</a> <input type="checkbox"/> <a href="#">Recommendation 2.2 Addressing Inpatient Capacity</a> <input type="checkbox"/> <a href="#">Recommendation 2.3 Reimbursement Rate Increase and Review</a> <input type="checkbox"/> <a href="#">Recommendation 2.4 Suicide Prevention</a> <input type="checkbox"/> <a href="#">Recommendation 2.5 Problem Gambling and Other Addictions Fund</a>	<input type="checkbox"/> <a href="#">Recommendation 3.1 Crisis Intervention Centers</a> <input type="checkbox"/> <a href="#">Recommendation 3.2 IPS Community Engagement</a>
Prevention and Education	Treatment and Recovery	Special Populations
<input type="checkbox"/> <a href="#">Recommendation 4.1 988 Suicide Prevention Line Funding</a> <input type="checkbox"/> <a href="#">Recommendation 4.2 Early Intervention</a> <input type="checkbox"/> <a href="#">Recommendation 4.3 Centralized Authority</a>	<input type="checkbox"/> <a href="#">Recommendation 5.1 Psychiatric Residential Treatment Facilities</a>	<input type="checkbox"/> <a href="#">Recommendation 6.1 Domestic Violence Survivors</a> <input type="checkbox"/> <a href="#">Recommendation 6.2 Parent Peer Support</a>
Data Systems	Legal System and Law Enforcement	System Transformation
<input type="checkbox"/> <a href="#">Recommendation 7.1 State Hospital EHR</a> <input type="checkbox"/> <a href="#">Recommendation 7.2 Data and Informed Survey Opt-Out</a> <input type="checkbox"/> <a href="#">Recommendation 7.3 Information Sharing</a> <input type="checkbox"/> <a href="#">Recommendation 7.4 Needs Assessment</a>	<input type="checkbox"/> <a href="#">Recommendation 8.1 Correctional Employees</a> <input type="checkbox"/> <a href="#">Recommendation 8.2 Criminal Justice Reform Commission Recommendations</a> <input type="checkbox"/> <a href="#">Recommendation 8.3 Law Enforcement Referrals</a>	<input type="checkbox"/> <a href="#">Recommendation 9.1 Regional Model</a> <input type="checkbox"/> <a href="#">Recommendation 9.2 Long-Term Care Access and Reform</a> <input type="checkbox"/> <a href="#">Recommendation 9.3 Integration</a>
Telehealth		
<input type="checkbox"/> <a href="#">Recommendation 10.1 Quality Assurance</a> <input type="checkbox"/> <a href="#">Recommendation 10.2 Reimbursement Codes</a> <input type="checkbox"/> <a href="#">Recommendation 10.3 Telehealth for Crisis Services</a>		

The Working Groups have made recommendations related to the following topics (*Figure C-2*) and indicated that they should be considered of strategic importance. **Recommendations of strategic importance are those for which work should start immediately but will be completed in the long-term.** The full text for each recommendation and Working Group rationale is available in the body of the report (beginning [page 7](#)).

**Figure C-2. Recommendation Topics of Strategic Importance**

Workforce	Funding and Accessibility	Community Engagement
<input type="checkbox"/> <a href="#">Recommendation 1.4 Workforce Investment Plan</a> <input type="checkbox"/> <a href="#">Recommendation 1.5 Family Engagement Plan</a>	n/a	<input type="checkbox"/> <a href="#">Recommendation 3.3 Foster Homes</a> <input type="checkbox"/> <a href="#">Recommendation 3.4 Community-Based Liaison</a>
Prevention and Education	Treatment and Recovery	Special Populations
<input type="checkbox"/> <a href="#">Recommendation 4.4 Behavioral Health Prevention</a>	<input type="checkbox"/> <a href="#">Recommendation 5.2 Service Array</a> <input type="checkbox"/> <a href="#">Recommendation 5.3 Frontline Capacity</a> <input type="checkbox"/> <a href="#">Recommendation 5.4 Housing</a>	<input type="checkbox"/> <a href="#">Recommendation 6.3 Crossover Youth</a> <input type="checkbox"/> <a href="#">Recommendation 6.4 I/DD Waiver Expansion</a> <input type="checkbox"/> <a href="#">Recommendation 6.5 Family Treatment Centers</a>
Data Systems	Legal System and Law Enforcement	System Transformation
<input type="checkbox"/> <a href="#">Recommendation 7.5 Cross-Agency Data</a>	<input type="checkbox"/> <a href="#">Recommendation 8.4 Defining Crossover Youth Population</a>	<input type="checkbox"/> <a href="#">Recommendation 9.4 Evidence Based Practices</a> <input type="checkbox"/> <a href="#">Recommendation 9.5 Family Psychotherapy</a>
Telehealth		
<input type="checkbox"/> <a href="#">Recommendation 10.4 Originating and Distant Site</a> <input type="checkbox"/> <a href="#">Recommendation 10.5 Child Welfare System and Telehealth</a>		

**Figure C-3. High Priority Discussion Item**

**Medicaid Expansion.** In addition to these recommendations for immediate action and of strategic importance, the Finance and Sustainability Working Group also puts forward the issue of Medicaid expansion as a high-priority discussion item for the Special Committee. The recommendation discussed by the Working Group related to Medicaid Expansion reads, “Recommend a full expansion of Medicaid in order to increase access to healthcare for uninsured, low-income Kansans.”

More information on this recommendation is available in the Funding and Accessibility section beginning on [page 16](#).

## **Appendix D. Special Committee and Working Group Membership**

### **2020 Special Committee on Mental Health Modernization and Reform**

- Senator Larry Alley
- Representative Tory Marie Arnberger
- Representative Barbara Ballard
- Representative Will Carpenter
- Senator Dan Kerschen
- Representative Brenda Landwehr, Chairperson
- David Long, Committee Assistant
- Representative Megan Lynn
- Senator Carolyn McGinn, Vice-chairperson
- Senator Pat Pettey
- Representative Adam Smith
- Senator Mary Jo Taylor
- Representative Rui Xu

### **2020 Special Committee on Mental Health Modernization and Reform Roundtable Members**

- Sandra Berg, Executive Director, United Behavioral Health – KanCare
- Kathy Busch, Chair, State Board of Education
- Wes Cole, Chair, Governor’s Behavioral Health Services Planning Council
- Denise Cyzman, Chief Executive Officer, Community Care Network of Kansas
- Sheriff Jeff Easter, Sheriff of Sedgwick County, Kansas
- Sarah Fertig, State Medicaid Director, Kansas Department of Health and Environment
- Coni Fries, Blue Cross and Blue Shield of Kansas City, Vice President Governmental Relations
- B. Russell Harper, State Government Affairs, Representative of CVS Health on Behalf of Aetna
- Greg Hennen, Executive Director, Four County Mental Health Center, Inc.
- Secretary Laura Howard, Secretary, Kansas Department for Aging and Disability Services and Kansas Department for Children and Families

- Don Jordan, Former Superintendent, Osawatomie State Hospital, Former Secretary, Social and Rehabilitation Services (SRS)
- Kyle Kessler, Executive Director, Association of Community Mental Health Centers of Kansas, Inc.
- Sheriff Scott King, Sheriff of Pawnee County, Kansas
- Spence Koehn, Court Services Specialist, Office of Judicial Administration
- Rachel Marsh, Executive Director, Children's Alliance of Kansas
- Sunee Mickle, Vice President Government and Community Relations, Blue Cross and Blue Shield of Kansas
- Josh Mosier, Manager of Client Services, Kansas Health Information Network (KHIN)
- Secretary Lee Norman, Secretary of Kansas Department of Health and Environment
- Kandice Sanaie, Senior Director State Government Affairs, Cigna
- Chief Don Scheibler, Chief of Police, Hays, Kansas
- Sherri Schuck, Pottawatomie County Attorney
- Rennie Shuler-McKinney, Director of Behavioral Health, AdventHealth Shawnee Mission
- Lisa Southern, Executive Director and Licensed Clinical Psychotherapist, Compass Behavioral Health
- Deborah Stidham, Director of Addiction and Residential Services, Johnson County Mental Health center
- William Warnes, Medical Director for Behavioral Health, Sunflower Health Plan

### **Finance and Sustainability Working Group (WG1)**

- Senator Larry Alley
- Charles Bartlett, Director of Adult Services, Kansas Department for Aging and Disabilities Services
- Andy Brown, Commissioner of Behavioral Health Services, Kansas Department for Aging and Disabilities Services
- Representative Will Carpenter
- Sarah Fertig, Medicaid Director, Kansas Department of Health and Environment
- Coni Fries, Vice President of Government Relations, Blue Cross and Blue Shield of Kansas City
- Greg Hennen, Co-Chair, Executive Director, Four County Mental Health Center

- Laura Howard, Secretary of Kansas Department for Aging and Disabilities Services and Kansas Department for Children and Families
- Don Jordan, Former Superintendent, Osawatomie State Hospital, Former Secretary, Social and Rehabilitation Services (SRS)
- Representative Brenda Landwehr
- Representative Megan Lynn
- William Warnes, Co-Chair, Medical Director for Behavioral Health, Sunflower Health Plan

### **Policy and Treatment Working Group (WG2)**

- Representative Barbara Ballard
- Andy Brown, Commissioner of Behavioral Health Services, Kansas Department for Aging and Disabilities Services
- Wes Cole, Chairperson, Governor's Behavioral Health Services Planning Council
- Erin George, Person with Lived Experience
- Kellie Hans Reid, Director of Medicaid and Children's Mental Health, Kansas Department for Children and Families
- Gary Henault, Co-Chair, Director of Youth Services, Kansas Department for Aging and Disabilities Services
- Senator Dan Kerschen
- Representative Brenda Landwehr
- Rachel Marsh, Co-Chair, Chief Executive Officer, Children's Alliance of Kansas
- Senator Carolyn McGinn
- Sunee Mickle, Vice President of Government and Community Relations, Blue Cross and Blue Shield of Kansas
- Senator Pat Pettey
- Kandice Sanaie, Director of State Affairs, Cigna
- Rennie Shuler-McKinney, Director of Behavioral Health, AdventHealth Shawnee Mission
- Deborah Stidham, Director of Addiction and Residential Services, Johnson County Mental Health Center
- Lisa Southern, Executive Director and Clinician, Compass Behavioral Health
- Kelsee Torrez, Behavioral Health Consultant, Kansas Department of Health and Environment

### **System Capacity and Transformation Working Group (WG3)**

- Representative Tory Marie Arnberger
- Sandra Berg, Executive Director, United Behavioral Healthcare
- Representative Elizabeth Bishop
- Andy Brown, Commissioner of Behavioral Health Services, Kansas Department for Aging and Disabilities Services
- Andrea Clark, Co-Chair, CIT/Veterans Program Coordinator, Kansas Department for Aging and Disabilities Services
- Denise Cyzman, Chief Executive Officer, Community Care Network of Kansas, formerly known as Kansas Association for the Medically Underserved
- Laura Howard, Secretary of Kansas Department for Aging and Disabilities Services and Kansas Department for Children and Families
- Kyle Kessler, Co-Chair, Executive Director, Association of Community Mental Health Centers of Kansas, Inc.
- Spence Koehn, Court Services Specialist, Office of Judicial Administration
- Representative Brenda Landwehr
- Representative Rui Xu

## Appendix E. References

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# **Strategic Framework for Modernizing the Kansas Behavioral Health System**

*Working Groups Report to the Special Committee  
on Mental Health Modernization and Reform*

[Note: **Updated** to reflect recommendations approved by the Special Committee at its meetings on December 10-11, 2020.]

December 9, 2020

**Figure 3. Select Measures to Assess the Kansas Behavioral Health System**

PROCESS MEASURE				
Measure:	Number	Percent		
Kansas counties recognized as a <a href="#">Mental Health Professional Shortage Area</a> . <i>Lower number/percentage of counties is better.</i>	99 (2019)	94.3% (2019)		
Counties served by Mobile Response and Stabilization Services. <i>Higher number/percentage of counties is better.</i>	*	*		
Counties served by Crisis Intervention Centers. <i>Higher number/percentage of counties is better.</i>	*	*		
OUTCOME MEASURES				
Measure:	Kansas current (year)	Kansas previous (year)	U.S. current (year)	U.S. previous (year)
Uninsured rate (adults age 19-64). <i>Lower rates are better.</i>	13.1% (2019)	12.6% (2018)	12.9% (2019)	12.5% (2018)
Uninsured rate (children age 0-18). <i>Lower rates are better.</i>	5.8% (2019)	5.1% (2018)	5.7% (2019)	5.2% (2018)
Statewide age-adjusted mortality rate for suicide per 100,000 population. <i>Lower rates are better.</i>	19.9% (2017)	19.2% (2016)	15.2% (2017)	14.7% (2016)
Percent of high school students who report feeling sad or hopeless almost every day for two weeks or more in a row so that they stopped doing some usual activities (i.e., criteria for and predictors of clinical depression). <i>Lower percentage is better.</i>	32.5% (2019)	24.8% (2017)	36.7% (2019)	31.5% (2017)
Percent of children, ages 3 through 17, with a mental/behavioral condition who receive treatment or counseling. <i>Higher percentage is better.</i>	55.9% (2018-2019)	52.7% (2017-2018)	53.2% (2018-2019)	52.7% (2017-2018)
Individuals with SPMI that have been enrolled in supportive housing and have not had an ER or Psychiatric Hospital admission in the last 12 months. <i>Higher percentage is better.</i>	*	*	NA	NA

**Figure 3 (continued). Select Measures to Assess the Kansas Behavioral Health System**

OUTCOME MEASURES (continued)							
Measure:	Kansas current (year)	Kansas previous (year)	U.S. current (year)	U.S. previous (year)			
Individuals with SPMI that have been enrolled in supportive employment and have not had an ER or Psychiatric Hospital admission in the last 12 months. <i>Higher percentage is better.</i>	*	*	NA	NA			
Percent of individuals with an inpatient psychiatric stay in the previous year, that have returned to and remain in the community without additional hospitalizations. <i>Higher percentage is better.</i>	**	**	NA	NA			
MENTAL HEALTH in AMERICA RANKINGS of 50 states and Washington D.C. by report year							
Select Measure: <i>States with positive outcomes are ranked higher (closer to 1) than states with poorer outcomes.</i>	2021	2020	2019	2018	2017	2016	2015
Kansas rankings: overall.	#29	#42	#24	#19	#21	#15	#19
Kansas ranking: Adult (prevalence and access to care).	#38	#43	#28	#22	#23	#16	#23
Kansas ranking: Youth (prevalence and access to care).	#26	#37	#21	#19	#18	#15	#8
Kansas ranking: Adults with mental illness who report unmet needs.	#51	#46	#29	#39	#38	#28	#51
Kansas ranking: Youth with at least one major depressive episode who did not receive mental health services.	#18	#47	#40	#29	#12	#12	NA

Note: The asterisk (\*) indicates that data are reportable by a state agency. The double-asterisk (\*\*) means that the measure could be reported in the future, assuming implementation of certain recommendations related to data interoperability and higher rates of participation in health information exchanges. NA stands for not available.

The Mental Health in America overall ranking uses national data from surveys including the National Survey on Drug Use and Health (NSDUH) and the Behavioral Risk Factor Surveillance System (BRFSS). The overall ranking is comprised of 15 measures for adults and youth around mental health issues, substance use issues, access to insurance, access to adequate insurance, as well as access to and barriers to accessing mental health care. A rank of 1-13 indicates lower prevalence of mental illness and higher rates of access to care, and an overall ranking 39-51 indicates higher prevalence of mental illness and lower rates of access to care. Data in each reporting year come from previous reporting periods. For example, in the 2021 report, most indicators reflect data from 2017-2018, while the 2020 report includes data from 2016-2017 and so forth. The baseline report year is 2015. For more information, go to <https://www.mhanational.org/issues/2021/ranking-guidelines>.

Source: Data as reported by the Kansas Department for Aging and Disability Services (KDADS), Kansas Department of Health and Environment (KDHE), Kansas Department of Corrections (KDOC), Kansas State Department of Education (KSDE) and KHI analysis of data from the U.S. Census Bureau 2018-2019 American Community Survey Public Use Microdata Sample files for uninsured rates and 2015-2021 Mental Health in America Rankings.

[**Note:** In above fields where data is absent and denoted with an asterisk (\* or \*\*), the Committee requests the reporting agency or entity submit data as it becomes available or upon program changes.]

### Workforce Recommendation 1.1: Clinical Supervision Hours [Immediate Action]

<b>Recommendation:</b> Where applicable, reduce the number of clinical supervision hours required of master's-level behavioral health clinicians to obtain clinical licensure from 4,000 to 3,000, similar to the reduction in clinical hours of social workers.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Committee on Alcohol and Other Drug Abuse of the Governor's Behavioral Health Services Planning Council. <sup>1</sup> A similar change was made for social workers in 2019 and has made recruitment of social workers easier in some parts of the state. BSRB intends to support legislation that would enact this change in the 2021 Legislative Session. This change would bring Kansas licensing requirements in alignment with neighboring states.	
<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Would require a program change and change in legislation.</li><li>• Cost is not a barrier to implementation.</li></ul>	<ul style="list-style-type: none"><li>• Would impact the entire state.</li><li>• Could lead to a reduction in workforce inequities by geography, particularly in rural and frontier counties.</li></ul>
<b>Measuring Impact:</b> Percent or number of master's-level behavioral health clinicians practicing in Kansas.	
<b>Action Lead:</b> BSRB	<b>Key Collaborators:</b> Legislature, KDADS

Return to [Figure 1](#) or [Figure C-1](#).

### Workforce Recommendation 1.2: Access to Psychiatry Services [Immediate Action]

<b>Recommendation:</b> Require a study be conducted by KDHE with an educational institution, to explore strategies to increase the number of psychiatrists, child and adolescent psychiatrists, and psychiatric nurses. <b>[Note:</b> The Committee requests consideration be given to educational institutions, regardless of size, that can provide this expertise and assistance.]	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force. <sup>2</sup> Multiple areas in the state are struggling to recruit and retain psychiatrists and psychiatric nurses, with an additional 54 psychiatrists needed to eliminate the Mental Health Care Health Professional Shortage Areas (HPSAs) in Kansas. <sup>3</sup> An important next step once the study is completed would be exploring implementation of the strategies outlined in the report.	
<b>Ease of Implementation (Score 1-10): 9</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Would be relatively easy to implement once funding is available.</li></ul>	<ul style="list-style-type: none"><li>• Implementing strategies from the report could impact frontier and rural communities that struggle to recruit psychiatric providers.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Percent or number of mental health care professionals participating in the Kansas State Loan Repayment Program.</li><li>• Number of Kansas counties recognized as a Mental Health Professional Shortage Area.</li><li>• Number of adult and child/adolescent psychiatry residents in Kansas.</li></ul>	
<b>Action Lead:</b> KDHE	<b>Key Collaborators:</b> Educational institution

### **Workforce Recommendation 1.5: Family Engagement Practices [Strategic Importance]**

<b>Recommendation:</b> Provide adequate workforce compensation and reimbursement rates for time spent planning and implementing family engagement practices. Such support should be based on local needs, priorities, and goals determined at the program and school levels, in partnership with families.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Children’s Subcommittee of the Governor’s Behavioral Health Services Planning Council. <sup>7</sup> Parent and family engagement practices can create shared responsibility between providers and families, such as by involving families in decision making. It can lead to improved clinical outcomes, as well as improved educational outcomes and health behaviors when parents and families are engaged by schools.	
<b>Ease of Implementation (Score 1-10): 5</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"><li>• Cost could be a barrier to implementation.</li><li>• Could require changes in a legislative session and agency budget development.</li></ul>	<ul style="list-style-type: none"><li>• High impact for pediatric behavioral health population.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• Number of families served.</li><li>• Percent of children and parents whose functionality scores improved (over set time period).</li><li>• Rate of provider turnover.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> KDHE, Legislature

Return to [Figure 1](#) or [Figure C-2](#).

## ***Funding and Accessibility***

In a modernized behavioral health system, the State will need to proactively pursue new funding mechanisms, including alternative models such as the Certified Community Behavioral Health Clinic (CCBHC) model, to ensure that reimbursement rates are competitive. The State has the expertise, research and recommendations in place to support changes to how behavioral health is funded in Kansas, and implementation should be pursued across administrations.

The Working Group asserted that accurate and appropriate funding **of for all Kansans who currently lack coverage** is a key element of a sustainably funded, modern behavioral health system, and a modernized system will successfully identify the right populations to serve and make services meaningfully accessible. Likewise, a modernized system should rely on measurable outcomes to drive decisions. Key challenges related to funding and accessibility requirements for budget neutrality on the 1115 Medicaid Waiver, limited availability of SUD block grant dollars, and low reimbursement rates at community mental health centers and for SUD providers.



**Funding and Accessibility Recommendation 2.3: Reimbursement Rate Increase and Review [Immediate Action]**

<b>Recommendation:</b> Implement an immediate increase of 10-15 percent for reimbursement rates for behavioral health services. After increasing reimbursement rates, establish a Working Group to regularly review the reimbursement structures for behavioral health services for both the uninsured and the Medicaid population.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force (MHTF). <sup>10</sup> The MHTF recommendation included a detailed review of reimbursement rates and recommended rates be updated accordingly. Working Group members, however, felt that a pressing need was an overall increase to reimbursement rates for behavioral health services in order to maintain the Community Mental Health Center (CMHC) system in the state. In discussion, Working Group members highlighted that few changes to reimbursement rates had occurred in the last 20 years and were overdue. Once reimbursement rates are increased, Working Group members recommend having a task force review the behavioral health reimbursement structure of both the uninsured and Medicaid populations to ensure long-term sustainability. In the 2020 Legislative Session, the final budget bill included a proviso requiring KDHE to complete a detailed review of costs and reimbursement rates for behavioral health services in the state. <sup>11</sup> This review is due in January 2021 and may include information to be reviewed by a Working Group or task force.	
<b>Ease of Implementation (Score 1-10): 6</b>	<b>Potential for High Impact (Score 1-10): 8</b>
<ul style="list-style-type: none"> <li>• Cost will be a barrier to implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• Would impact a large population.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Frequency of reimbursement rate updates</li> </ul>	
<b>Action Lead:</b> Legislature	<b>Key Collaborators:</b> KDADS, KDHE, CMHCs

Return to [Figure 1](#) or [Figure C-1](#).



**Prevention and Education Recommendation 4.2: Early Intervention [Immediate Action]**

<b>Recommendation:</b> Increase access to early childhood mental health services by including additional language in the Medicaid state plan to explicitly cover <b>the cost</b> of early childhood mental health screening, assessment and treatment.	
<b>Rationale:</b> A version of this recommendation was originally developed by the Mental Health Task Force, and action steps that could support this recommendation can be found in Recommendation 3.4 of the Mental Health Task Force Report to the Kansas Legislature, January 14, 2019. <sup>21</sup> <p>Early identification of behavioral health symptoms can allow for earlier intervention, leading to better outcomes for youth. Additional funds would be needed to continue and expand this work statewide, which was partially piloted via the Substance Abuse and Mental Health Administration (SAMHSA) Systems of Care grant.</p>	
<b>Ease of Implementation (Score 1-10): 3</b>	<b>Potential for High Impact (Score 1-10): 10</b>
<ul style="list-style-type: none"> <li>• Would require a program change and potentially new services if additional diagnosis codes are approved.</li> <li>• Cost could be a barrier to implementation.</li> <li>• Could require a federal approval process, agency budget development and systems to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Would benefit a large population.</li> <li>• Would impact individuals in foster care, low-income individuals, children and those with limited English proficiency.</li> <li>• Could produce cost savings via reductions in ER visits, pediatrics visits, and use of the criminal justice system and state hospitals.</li> </ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"> <li>• Percent of Medicaid-eligible children age 0-5 receiving initial trauma and mental health screen within 90 days of entering coverage.</li> <li>• Utilization of early childhood mental health screening, assessment, and treatment Medicaid codes.</li> </ul>	
<b>Action Lead:</b> KDHE & KDADS	<b>Key Collaborators:</b> DCF, MCOs

Return to [Figure 1](#) or [Figure C-1](#).

### System Transformation Recommendation 9.1: Regional Model [Immediate Action]

**Recommendation:** Develop a regional model that would supplement the traditional state hospital setting with regionalized facilities accepting both voluntary and involuntary admissions for persons in acute services as well as longer-term/tertiary specialized care. Currently, there is a particular gap in capacity in south central Kansas.

**Rationale:** A version of this recommendation was originally developed by the Mental Health Task Force (MHTF).<sup>39</sup> It was a standalone recommendation in the 2018 MHTF report and then consolidated into Recommendation 1.1 and 1.2 in the 2019 MHTF report. The Working Group discussed that while cost is a primary barrier to implementation, there are opportunities for cost savings by reducing the high cost of transporting individuals to Osawatomie State Hospital (OSH) or Larned State Hospital. Both institutions are a significant distance from key population centers, particularly in the south-central region of the state. This recommendation could be implemented by a combined approach of state institution alternatives (SIAs) and smaller, regional state facilities.

Cost savings accrued via the recommendation could be redirected to the provision of evidence-based services. In addition to cost savings, a reduction in travel would increase safety of the individuals in need of care as well as those in the behavioral health workforce currently providing transportation services, as well as allow individuals to remain closer to local support systems. This recommendation is also seen as a key component to lifting the ongoing moratorium at OSH and is included in the current plan to do so.

<b>Ease of Implementation (Score 1-10): 8</b>	<b>Potential for High Impact (Score 1-10): 9</b>
<ul style="list-style-type: none"><li>• Cost would be a barrier to implementation based on the need for appropriation.</li></ul>	<ul style="list-style-type: none"><li>• Would benefit a large population.</li><li>• Could produce cost savings via reduction in transportation costs.</li></ul>
<b>Measuring Impact:</b> <ul style="list-style-type: none"><li>• More work is needed to identify measures appropriate to capture the impact of this recommendation.</li></ul>	
<b>Action Lead:</b> KDADS	<b>Key Collaborators:</b> Providers, <b>Local Units of Government, Law Enforcement</b>

Return to [Figure 1](#) or [Figure C-1](#).

### Telehealth Recommendation 10.2: Reimbursement Codes [Immediate Action]

**Recommendation:** Maintain reimbursement codes added during the public health emergency for tele-behavioral health services and consider options to prevent loss of facility fees so that providers are not losing revenue by delivering telehealth services.

**Rationale:** This is a new recommendation developed by the Telehealth subgroup in consultation with supplemental experts. While many behavioral health services could be provided via telehealth prior to the COVID-19 pandemic, additional codes (e.g., for the SED waiver, crisis intervention, tobacco cessation) have become eligible for reimbursement during the public health emergency (PHE).<sup>44,45,46</sup> Working Group members indicated that some of these services should be maintained after the PHE ends, though the changes were initially intended to be temporary. Additionally, the PHE has led to an expansion of the types of sites where patients can receive care, including at home. Services provided to patients in their homes are not eligible for a facility fee payment for the originating site. In situations where support (e.g., IT support, patient education and preparation) is provided to patients receiving telehealth services in their home, commensurate compensation should be made available to service providers.

Services provided to patients in their homes do not receive a facility fee payment for the originating site, which can contribute to lost revenue for providers, many of whom are having to do additional work (e.g., IT support, patient education and preparation) to provide high-quality services to patients in their home. Consideration should be given to the feasibility of providing additional reimbursement for providers who furnish technical support for patients who receive telehealth services in their homes.

However, further study and consideration should be given to the unintended consequences of mandating payments to providers in excess of in-person mental health visits. The committee would not want to encourage telemedicine in a manner that would incentivize providers to leave their community practices, especially in rural and underserved areas or otherwise reduce their availability for the delivery of in-person care. In addition, if this proposal for additional telemedicine provider payments is applicable beyond the Medicaid program, it likely qualifies as a “provider or benefit” mandate requiring the production of a cost benefit analysis and the “test tracking” of the proposed new charges on the state employees health plan as required by K.S.A. 40-2248 through 40-2249a. [Note: Language submitted during WG report presentation before the Committee.]

**Measuring Impact:**

- Number of telehealth codes open for Medicaid reimbursement pre- and post-pandemic
- Utilization of these telehealth codes

**Action Lead:** KDHE Division of Healthcare Finance

**Key Collaborators:** KDADS, managed care organizations, community mental health centers

Return to [Figure 1](#) or [Figure C-1](#).

## Top 6 Behavioral Health Codes by Amount Paid

2019

Rank	Procedure Code	Procedure Code Description	Amount Paid
1	H0036	COMMUNITY PSYCHIATRIC SUPPORTIVE TREATMENT FACE TO FACE PER 15 MINUTES	\$52,081,598
2	99213	ESTABLISHED PATIENT OFFICE OR OTHER OUTPATIENT VISIT TYPICALLY 15 MINUTES	\$48,197,829
3	90837	PSYCHOTHERAPY 60 MINUTES	\$27,489,425
4	H2017	PSYCHOSOCIAL REHABILITATION SERVICES PER 15 MINUTES	\$24,778,469
5	99214	ESTABLISHED PATIENT OFFICE OR OTHER OUTPATIENT VISIT TYPICALLY 25 MINUTES	\$24,164,013
6	90834	PSYCHOTHERAPY 45 MINUTES	\$8,176,032
TOTAL			\$184,887,366

\*Paid Claims Only

\*No Voided Claims

\*First Date of Service between 1/1/2019 and 12/31/2019

\*Latest Claims Only

\*Dollar amounts are all funds (state + federal)

## Top 6 Behavioral Health Codes by Claim Count

2019

Rank	Procedure Code	Procedure Code Description	Claim Count
1	99213	ESTABLISHED PATIENT OFFICE OR OTHER OUTPATIENT VISIT TYPICALLY 15 MINUTES	697860
2	99214	ESTABLISHED PATIENT OFFICE OR OTHER OUTPATIENT VISIT TYPICALLY 25 MINUTES	400466
3	H0036	COMMUNITY PSYCHIATRIC SUPPORTIVE TREATMENT FACE TO FACE PER 15 MINUTES	333807
4	H2017	PSYCHOSOCIAL REHABILITATION SERVICES PER 15 MINUTES	274834
5	90837	PSYCHOTHERAPY 60 MINUTES	257649
6	90834	PSYCHOTHERAPY 45 MINUTES	123141

\*Paid Claims Only

\*No Voided Claims

\*First Date of Service between 1/1/2019 and 12/31/2019

\*Latest Claims Only

\*Dollar amounts are all funds (state + federal)



# **Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2021 Kansas Legislature**

**CHAIRPERSON:** Senator Rick Wilborn

**VICE-CHAIRPERSON:** J. Russell Jennings

**OTHER MEMBERS:** Senators Molly Baumgardner, Ed Berger, John Doll, Oletha Faust-Goudeau, Pat Pettey, and Mary Jo Taylor; Representatives Sydney Carlin, Gail Finney, Dennis “Boog” Highberger, Kyle Hoffman, Stephen Owens, and John Resman

## **CHARGE**

KSA 2019 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). In addition to its statutory duties, the committee was charged to study the following topics:

- Benefits provided to KDOC employees and their families who become ill or die after exposure to COVID-19 in a KDOC facility;
- COVID-19 action plans in KDOC facilities;
- Compassionate medical release and terminal medical release;
- Early release programs for persons convicted of certain crimes;
- Kansas prison population and programming effectiveness, focusing on racial demographics of offenders and demographic sentencing data;

- The impact of recent criminal justice legislation on racial minorities, including presentations concerning the studies and recommendations of the Kansas Criminal Justice Reform Commission and the Governor’s Commission on Racial Equity and Justice; and
- Daily operations of the Kansas Juvenile Correctional Complex by means of a tour to provide a first-hand view.



# Joint Committee on Corrections and Juvenile Justice Oversight

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee on Corrections and Juvenile Justice Oversight recognizes the efforts of the Secretary of Corrections and the staff of the Kansas Department of Corrections (KDOC) in managing the COVID-19 pandemic in department facilities and extends its deepest gratitude to the staff working in those facilities who placed themselves in harm's way every day to protect the people of the State of Kansas. Additionally, to the families, friends, and co-workers of those staff who died as a result of COVID-19 while in service to the state, the Committee extends its deepest sympathies.

The Committee recommends the Legislature hold firm on limitations placed on the Evidence-Based Programs Account of the State General Fund (SGF) and not use it to balance the state budget.

The Committee recommends addressing conditions of confinement of the female inmates at the Topeka Correctional Facility, through the possible repurposing of the Kansas Juvenile Correctional Complex, or through other facility improvements.

The Committee recommends improvements to the juvenile legal defense system be explored.

The Committee recommends that adult and juvenile offenders, preferably during their term of confinement, or upon release, have the opportunity to be involved in WorkKeys or another nationally recognized educational program to prepare them for work, and that work preparation be emphasized.

The Committee recommends an expedited study of the potential of repurposing the Kansas Juvenile Correctional Complex (KJCC) in Topeka, perhaps for adult KDOC use, and creating three smaller, regionally dispersed juvenile facilities in south-central, northeast, and western Kansas (possibly including the former juvenile correctional facility in Larned), including the potential use of reinvestment funds and bonding paid through the Juvenile Detention Facilities Fund for such a project without new SGF funding. The purpose would be to better utilize KJCC bed capacity, to keep offenders nearer to families, and to utilize smaller facilities consistent with best practices for juvenile correctional facilities.

The Committee recommends the Legislature revisit 2020 HB 2547, as amended by the House Committee on Corrections and Juvenile Justice, making changes to suspended drivers' license requirements, and 2020 SB 275, as amended by House Committee on Transportation, regarding eligibility requirements for restricted driving privileges, exclusion from an additional 90-day waiting period, and removing and changing certain fees that apply for failure to comply with a traffic citation. The Committee also recommends further study be undertaken to seek an appropriate method to provide the financial support necessary for Kansas courts to operate, should this legislation be enacted, and that in the course of such study careful consideration be given to all fees that are assessed, including those for expungements, to fund the Courts in lieu of SGF support.

The Committee supports the restoration of funding to the KDOC budget for facility renovation to create 250 beds for substance abuse treatment for inmates, to ensure that those who need substance abuse treatment while in KDOC custody can receive it.

The Committee recommends the expansion of successful, evidence-based programs involving early intervention and early childhood, and consideration of the potential impact of these.

The Committee continues to be concerned regarding the lack of progress on juvenile crisis intervention centers, and asks the appropriate standing committees to carefully study any proposal by the Department for Children and Families or the Department for Aging and Disability Services.

The Committee requests KDOC explore the possibility of an expanded medical and compassionate release program.

The Committee supports consideration of the possible removal of barriers to employment for those receiving technical education or occupational licensing while incarcerated or while trying to reintegrate into society.

The Committee recommends the Legislature consider the possibility of amnesty for those with outstanding suspended driver's licenses and reinstatement fees due.

***Proposed Legislation:*** The Committee requests legislation based on the following bills that passed the House or were recommended favorably by the House Committee on Corrections and Juvenile Justice in 2020 be prefiled in both the House and Senate, if approved by the Legislative Coordinating Council, and that the chairperson and vice-chairperson of this Committee meet with leadership following the December elections to coordinate between chambers to expedite the consideration of the legislation, including joint House and Senate committee hearings:

- HB 2469, as amended by the House Committee on Corrections and Juvenile Justice, extending terminal medical release to inmates in the custody of the Department of Corrections with a condition likely to cause death within 120 days;
- HB 2484, as amended by House Committee, increasing good time credits and program credits for certain offenders;
- HB 2485, as introduced, aligning the felony loss thresholds for certain property crimes;
- HB 2494, as introduced, amending the criminal penalties for unlawfully tampering with electronic monitoring equipment;
- HB 2518, as introduced, counting any crime with a domestic violence designation as a prior conviction under domestic battery; and
- HB 2708, as introduced (with small changes suggested by the Judicial Branch), creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with court services and community corrections for supervision.

## BACKGROUND

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

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

The Committee is composed of 14 members, with 7 members each from the House and the Senate. In odd-numbered years, the chairperson and ranking minority member are House members and the vice-chairperson is a Senate member; in even-numbered 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 2019 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under KDOC's control and supervision. The Committee is also charged to review and study the adult

correctional programs, activities, and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

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

In addition to its statutory duties, the 2020 Committee was charged by the Legislative Coordinating Council to study the following topics:

- Benefits provided to KDOC employees and their families who become ill or die after exposure to COVID-19 in a KDOC facility;
- COVID-19 action plans in KDOC facilities;
- Compassionate medical release and terminal medical release;
- Early release programs for persons convicted of certain crimes;
- The Kansas prison population and programming effectiveness, focusing on racial demographics of offenders and demographic sentencing data;
- The impact of recent criminal justice legislation on racial minorities, including

presentations concerning the studies and recommendations of the Kansas Criminal Justice Reform Commission and the Governor’s Commission on Racial Equity and Justice; and

- Daily operations of the Kansas Juvenile Correctional Complex by means of a tour to provide a first-hand view.

## COMMITTEE ACTIVITIES

The Committee requested three meeting days and authorization to tour the KJCC. The Legislative Coordinating Council granted the Committee a total of three meeting days. The Committee met November 17 and 18, 2020, at the Statehouse, with some members and conferees appearing *via* Zoom videoconference. Due to the ongoing COVID-19 pandemic, the Committee did not tour the Kansas Juvenile Correctional Complex.

### November 17, 2020, Meeting

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

The Secretary of Corrections began the overview of Juvenile Services with introductory remarks before introducing the Deputy Secretary of Juvenile and Adult Community-Based Services (Deputy Secretary) to continue the overview.

The Deputy Secretary began by reviewing several recent initiatives involving Juvenile Services, including implementation of the Crossover Youth Practice Model (CY Model) and standardization of a state definition of “crossover youth”; implementation of the National Girls Initiative to reduce reliance on incarceration of females and build up the continuum of care available for girls; assessment of the Kansas juvenile defense structure by the National Juvenile Defender Center; and implementation of the Immediate Intervention Program Database and other Juvenile Services technology updates.

Next, the Deputy Secretary reviewed current programs and services at the KJCC. She reported the latest population count in the facility was 144 youth, including 5 females. Youth in the facility

are placed in smaller cohorts and remain with this same group, which helped mitigate the spread of COVID-19 at the facility. Behavioral health services are being emphasized, and a contractor was developing a virtual family therapy program.

The Deputy Secretary then provided an overview of the Juvenile Services response to the COVID-19 pandemic. For community-based services, virtual site visits and virtual training through the Zoom platform have been implemented. In-person site visits will resume after the pandemic. At the KJCC, the low population has allowed the youth to be spread out and kept within their smaller cohorts. Admissions have been slowed, and mandatory mask use and testing have been implemented. Family visitation is being conducted *via* video, and educational services are continuing. A “drive-up” graduation ceremony was conducted, and 16 youth had been released on honoree reintegration passes.

Turning to trends and outcomes, the Deputy Secretary stated functional family therapy has been implemented in all 105 counties. The use of earned discharge credit has increased, and the juvenile probation success rate across the state was 69.5 percent. In 2017, Kansas was below the national average youth incarceration rate for the first time, the five-year population trend at KJCC shows a decrease, and the offenses and risk levels of the youth at KJCC indicate that the “right” youth are at the facility. The Deputy Secretary reported no misdemeanants at the facility. KDOC is working with the Kansas Advisory Group and the Juvenile Justice Oversight Committee (JJOC) to further study racial and ethnic disparity, as there is evidence that males and nonwhite youth are overrepresented in the “deeper ends” of the system.

Finally, the Deputy Secretary highlighted several ongoing challenges for Juvenile Services, including maintaining continuous quality improvement, improving data through partnerships and sharing, upgrading information technology systems, and addressing fatigue due to both COVID-19 and the ongoing implementation of juvenile justice reforms.

In response to questions from the Committee, the Deputy Secretary stated KDOC does not have

a role in the juvenile defense system; KDOC contracts with psychiatric residential treatment facilities (PRTFs) for beds but did not then have any youth in a PRTF; there is a school on the grounds of the KJCC; Aggression Replacement Training is used at KJCC; female youth at KJCC make up a separate cohort and their treatment is more individually focused due to the low number; and other states have used a model with regionally dispersed JCFs with lower bed capacities with success. In response to a question from a Committee member, the Secretary stated there was no plan to reduce the budget for Juvenile Services.

Committee members requested additional information regarding possible use of WorkKeys with juvenile offenders and the number of KJCC youth who have previously been in the foster care system.

#### ***Update—Juvenile Justice Oversight Committee***

The Chairperson of the JJOC updated the Committee on the activities of JJOC in 2020. She noted the impact of the COVID-19 pandemic on the juvenile justice system, but stated that changes related to cross-system work and crossover youth have increased in both size and scope, and JJOC has also focused on increasing the collection and reporting of additional data to understand outcomes, with 2020 being a turning point in the use of data in the Kansas juvenile justice system.

The JJOC Chairperson then walked through various stages or aspects of the juvenile justice system and discussed specific progress that had been made in each, including schools, intake, immediate intervention, adjudication and disposition, supervision, and programming. She reviewed training that has been provided to those involved in both the juvenile justice system and in foster care case management, and discussed cross-agency collaboration on the CY Model and the validation of the Youth Level of Services/Case Management Inventory.

The Chairperson then reviewed the JJOC approval of reinvestment funds from the Evidence-Based Juvenile Programs Account of the State General Fund (SGF), including approval of funding for several statewide program contracts, updating of outdated assessment tools, ongoing training, data updates, program implementation,

non-competitive judicial district grants, and Juvenile Correctional Advisory Board requests. Several planned expenditures for 2020 were delayed, including Juvenile Crisis Intervention Center (JCIC) funding, a family engagement process and guide, mental health services funding, family substance abuse counseling, an open-ended cognitive program, and adoption of a justice system navigator.

Finally, the Chairperson outlined JJOC's three goals for the coming year: continue and expand the CY Model, work with an outside agency to implement mental health counseling for youth, and work with the Kansas Advisory Group to facilitate a study on racial and ethnic disparities.

Responding to questions from the Committee, the JJOC Chairperson stated the causes behind the lack of proposals for JCICs needed to be examined, and may include local-level socio-economic issues; the JJOC has made some recommendations for changes to the reforms implemented as a result of 2016 SB 367, but care must be taken to not change too much while the reforms are still being implemented; she was appointed to the JJOC as the representative of the Department for Children and Families (DCF) by the Governor, as she serves as the DCF Kansas City Regional Director; and JJOC will continue to focus on making recommendations for use of reinvestment funds for evidence-based programs. Committee members also discussed the status, history, and funding of JCICs.

#### ***Update—Kansas Criminal Justice Reform Commission (KCJRC)***

The Chairperson of the KCJRC provided the Committee with an update on the work of the KCJRC, including the following information. KCJRC began its work in summer 2019 by forming subcommittees to examine specific issues within the criminal justice system and to bring specific, substantive proposals back to the full Commission. Some of the subcommittees further broke down into working groups on sub-issues. The KCJRC formed six subcommittees: Data Management; Diversion, Specialty Courts, Specialty Prisons, and Supervision; Mental Health and Substance Abuse; Proportionality and Sentencing; Race and the Criminal Justice System; and Reentry.

The KCJRC submitted its interim report to the Legislature in December 2019, including recommendations for legislation for the 2020 Session. Many bills appeared to be on track for passage before the session ended early due to the COVID-19 pandemic.

The KCJRC Chairperson stated, at its meeting on November 9, 2020, KCJRC began reviewing the final recommendations from the subcommittees, finalizing recommendations from three of the six subcommittees that day. The recommendations submitted by the remaining three subcommittees would be finalized at a meeting on November 23, 2020. [Note: The KCJRC submitted its [Final Report](#) to the Legislature on December 1, 2020.]

The Chairperson then reviewed a summary of the 51 recommendations either approved by KCJRC on November 9 or to be considered on November 23, 2020. The Chairperson stated that, in addition to the specific recommendations developed by each subcommittee, KCJRC also would recommend the Legislature authorize an extension of KCJRC's work for at least one additional year, through 2021, due to the impact of the COVID-19 pandemic on legislation introduced during the 2020 Session and the renewed urgency of the subsequent national discussion on issues of criminal justice reform. He stated KCJRC has already identified nine issues for further study if additional time is granted.

The Vice-chairperson of KCJRC (who is also a member of this Committee) discussed his work with the Mental Health and Substance Abuse Subcommittee, highlighting the necessity of enabling offenders to return to a healthy life. He noted many of the recommendations of the KCJRC subcommittees were developed using information provided by the Council of State Governments (CSG) Justice Center, and are based on concepts that have been proven to work in other states. His subcommittee decided to not focus on the funding aspects in developing its recommendations, but to identify concepts to be implemented when funding is available.

In response to a question from the Committee regarding increasing reentry success, the KCJRC Chairperson stated a multi-pronged approach is

needed, including addressing driving privileges so that supervised persons may drive to work, utilizing remote platforms for some parole or probation officer check-ins, and finding funding streams to provide housing.

A Committee member noted the importance of allowing access to benefits of the Supplemental Nutrition Assistance Program (SNAP), as included in the KCJRC recommendations. Another Committee member (who also is a member of the KCJRC) discussed her work with the Reentry Subcommittee, noting that some persons engaged in reentry encounter difficulties in finding landlords who will rent housing to them and in obtaining occupational licenses for occupations in which they have received training.

In response to a comment by a Committee member that the various entities studying criminal justice issues rarely hear from persons who are affected by the issues in the criminal justice system, the Chairperson stated one of the recommendations of the Race and the Criminal Justice System Subcommittee was to include people who have been adversely affected by or who have been in the system, if the KCJRC is authorized to continue its work.

#### ***Update—Justice Reinvestment Assessment and Findings***

Staff from the CSG Justice Center presented an update regarding their work with the KCJRC. Justice Center staff stated they were asked to conduct a comprehensive system analysis and explore ways to prioritize prison for people who pose a threat to public safety by managing expensive prison population growth and pressure; increase support for victims of crime; strengthen community supervision and resources to change behavior and reduce recidivism and revocations; and break the cycle of recidivism by ensuring that criminal justice system practitioners have needed resources to help people succeed, including access to mental health and substance use treatment, as well as employment and housing support. Assessments were conducted in the areas of victim services, violent crime, sentencing, supervision, behavioral health, and reentry, with Justice Center staff connecting with more than 180 stakeholders in 99 Kansas counties.

Justice Center staff stated the goal of their work in Kansas was to help prioritize corrections investments that work to reduce recidivism and maintain public safety, while using limited taxpayer dollars efficiently. Sustaining reduced prison populations could save Kansas \$26 million in incarceration costs annually.

Next, Justice Center staff reviewed data showing the pressure that drug-related crime creates at each point in the criminal justice system, and noted that a substantial and growing proportion of the prison population is due to sentences for drug offenses, including a dramatic increase in the number of women in prison for drug offenses. The Justice Center estimates it cost \$41 million to incarcerate people for drug offenses in Kansas in fiscal year (FY) 2019.

Justice Center staff then reviewed several specific policy options that had been approved by various KCJRC subcommittees based on the work of the subcommittees and Justice Center staff. The proportionality and guidelines subcommittee approved six policy options intended to prioritize prison space for people convicted of the most serious crimes, expand diversion options available to prosecutors and judges, and support high-quality and effective supervision practices to reduce recidivism. These policy options include amending the drug and nondrug grids to expand presumptive probation and border box zones to reflect actual sentencing patterns, reinvesting saved incarceration costs into supervision resources, and reducing dual supervision.

Justice Center staff then reviewed policy options approved by subcommittees to be considered at the next KCJRC meeting, and options that were already approved for inclusion in the report.

In response to questions from the Committee, Justice Center staff stated Kansas drug sentencing severity levels are based upon the quantities of the drug involved; Kansas sentencing grids are designed to try to suppress “outlier” sentences; and many states with sentencing guidelines like Kansas also have a decay factor so that previous offenses no longer count in criminal history after a certain amount of time, which is a concept the Kansas Sentencing Commission may consider.

### ***Update—Governor’s Commission on Racial Equity and Justice (CREJ)***

The co-chairpersons of the CREJ presented the Committee with an overview of the Commission and an update regarding its work. CREJ was established in June 2020 *via* Executive Order 20-48 and was asked to study issues of racial equity and justice across systems in Kansas, focusing first on policing and law enforcement. CREJ includes perspectives from the criminal justice system, education, health care, and advocacy organizations, and is focused on broad issues of racial equity in Kansas, including some elements of the criminal justice system.

The co-chairpersons stated the full CREJ had met 11 times since July, and had heard from various experts in areas related to policing and law enforcement. Additionally, the CREJ had held 26 learning sessions with community members and stakeholders, including those from law enforcement, health care, education, and municipal government, as well as academic experts. Meanwhile, the CREJ began to build recommendations for its report to the Governor and was obtaining feedback from stakeholders about the content and language of the recommendations. CREJ anticipates presenting its final report to the Governor on December 1, 2020, after which the report and recommendations would be made public. [Note: The CREJ published its [final report](#) on December 1, 2020.]

In response to questions from Committee members, the co-chairpersons stated all CREJ sessions took place *via* Zoom videoconference, so individuals could attend no matter their location; law enforcement has representatives on CREJ and some members had participated in ride-alongs with law enforcement in the past; recommendations were expected to center on training, data collection and analysis, and support for municipalities, among other topics; the Commission heard information related to education and behavioral health, and anticipated delving further into those topics in 2021; the Commission held listening sessions with community involvement, even though COVID-19 limited in-person community meetings; and the Commission would welcome personal stories regarding involvement with policing through emails, phone calls, or social media.

## **November 18, 2020, Meeting**

### ***Overview—Kansas Sentencing Commission (KSC)***

The Executive Director of the KSC provided the Committee with an overview of the agency and its annual report, prison population projections, and policy recommendations.

The Executive Director stated among other activities, the KSC provides bed impact analyses to the Legislature during the Legislative Session; serves as the state statistical analysis center for criminal justice, including maintaining a database of sentencing and probation revocation journal entries; maintains and updates the *Kansas Sentencing Guidelines Desk Reference Manual*; produces annual bed population and inmate classification projections for KDOC; and administers 2003 SB 123 drug treatment program payments to drug abuse treatment providers.

Reviewing the annual report, the KSC Executive Director stated in FY 2019 the top five offenses resulting in prison, probation, and jail sentences were drug offenses, theft, burglary, aggravated battery, and driving under the influence (DUI). He discussed the race, gender, ethnicity, and age distribution of offenders. The Executive Director also discussed admissions to KDOC, stating admissions decreased 2 percent in FY 2019 and the number of probation sentences increased by 6.5 percent. He further stated of the 3,939 probation drug offenses in FY 2019, 77.8 percent were for possession offenses. The four counties with the largest numbers of prison, probation, and jail sentences were Sedgwick, Johnson, Wyandotte, and Shawnee, whose sentences totaled 46.9 percent of the total sentences statewide.

Turning to FY 2021 prison population projections, the KSC Executive Director stated the COVID-19 pandemic had reduced the prison population and prison admissions. He reported a prison population of 9,189, down from 10,044 in 2019, with a capacity of 10,368. By 2030, the prison population is projected to rise to 9,584, with both the male and female populations projected to remain under current capacity. He stated these projections would provide the Legislature with an opportunity to keep prison admission numbers down by drawing on the criminal justice reform

efforts currently underway, including by supporting probationers with needed support during their supervision.

In response to questions from the Committee, the KSC Executive Director stated the reduced admissions reflect both a reduction in new admissions and a reduction in parolees and those under postrelease supervision being returned to prison; numbers reflect an increase in domestic violence-related offenses, but a decrease in probation revocations, among many other factors; 70 percent of prison admissions for drug offenses involve methamphetamine, followed by marijuana at about 20 percent, and opiates at a lower percentage; and lengths of sentences and parole for “old law” (pre-sentencing-guidelines) offenders is set by statute and could be changed by the Legislature.

Continuing with his presentation, the Executive Director discussed the KSC’s policy recommendations for the 2021 Legislative Session. The recommendations include several that were presented in 2020 but that did not make it through the legislative process before the Session was shortened due to the COVID-19 pandemic. He stated the policy recommendations will include substance abuse treatment for diverted drug possession offenders; expansion of presumptive probation and border boxes on the drug grid; addressing sentencing proportionality with regard to several crimes or classes of crimes; modifying offender registries; clarifying multiple sentencing of offenders; clarifying prior convictions for special sentencing rules; allowing earned discharge credit while in prison or on probation; allowing efficient transfer of 2003 SB 123 probation to offender place of residence; codifying the definition of “absconds from supervision”; extending compassionate release eligibility; adjusting KSC membership; and, in the statutes governing care and treatment for mentally ill persons, modifying the temporary custody hearing statutes to allow a court to prohibit possession of a firearm.

### ***Overview—KDOC***

The Secretary of Corrections and the Deputy Secretary of Juvenile and Adult Community-Based Services began the KDOC overview by responding to questions the Committee had asked



during the Juvenile Services presentation on November 17, 2020.

### *Initiatives and Challenges*

The Secretary then discussed current KDOC initiatives, including replacement of aged information technology data systems; deployment of new technology; a pilot program for virtual hearings with the court system; federal grant funding obtained to improve and expand supervision and services; development of a “Career Campus” concept at Lansing Correctional Facility (LCF); expansion of workforce training opportunities; virtual public comment sessions for the Prisoner Review Board; and several initiatives regarding assessment of resource allocation. The Secretary stated ongoing challenges include COVID-19; employee compensation; aged information systems; facility infrastructure; high caseloads in the community and in facilities; and flat funding of community supervision. The Secretary stated the effect of COVID-19 had been severe, including the deaths of 3 staff members and 11 residents related to the pandemic.

In response to questions from the Committee, the Secretary stated LCF staffing levels are not as low as the initial projection for the facility project indicated; KDOC is planning to bring back inmates then in contract beds in Arizona; work-release programs had been suspended due to COVID-19, but there were no plans to abandon the Wichita Work Release facility; and the Topeka Correctional Facility population had decreased to about 200 under capacity.

### *Community-Based Services*

The Deputy Secretary of Juvenile and Adult Community-Based Services provided the Committee with an overview of the Kansas adult community supervision system. She noted as of June 30, 2020, there were twice the number of people on community supervision (including probation, post-release, and parole) than in prison. She stated probation costs \$7.09 per day and postrelease supervision costs \$6.29 per day, compared to \$82.47 per day in a facility. However, to be effective, community-based services must have the resources to manage caseloads and provide access to programs, education, employment, job skills, housing, and treatment.

The Deputy Secretary stated the five-year trends for probation and postrelease supervision show increases. She noted the use of global positioning system (GPS) monitors is limited due to their mandatory use in some cases and budget limitations.

After reviewing data regarding the employment of persons on postrelease supervision and federal grant funding awarded to KDOC to build capacity among line supervisors and in local community corrections agencies, the Deputy Secretary discussed community supervision during the COVID-19 pandemic. Supervision fees were waived in April and May, transportation was adjusted, and revocation was limited to certain more severe circumstances. SB 123 (2003) drug treatment program training was shifted to a virtual format, which resulted in increased frequency of training.

The Deputy Secretary reviewed several community-based services initiatives and then described ongoing challenges, including high caseloads, lack of resource capacity, dual supervision, lack of employment and housing options, internal and external pay inequity, and staff retention.

In response to questions from the Committee, the Deputy Secretary stated supervision requirements are based on risk level; supervision officers were working remotely and making many contacts through virtual means, which has helped address transportation challenges; postrelease supervision numbers are increasing because the number of people being released from prison is increasing; community corrections agencies receive grant funding from the state, and any amount the county deems needed above that is the responsibility of the county; and some of the potential cost savings from reducing prison population needs to be reinvested in community supervision to accommodate the shift from prison to supervision.

### *Facilities*

The Deputy Secretary of Facilities Management provided an overview of KDOC facilities, beginning with current capacity. Actual facility capacity following the LCF construction is 10,742, which represents an increase of 1,250

from before the construction. Operating capacity for FY 2022 will be 10,368.

The Deputy Secretary stated expansion projects at Lansing and Winfield are proceeding and will add beds for the purposes of substance abuse treatment and specialized housing for older infirm residents. He noted the reduced facility population in 2020 presents an opportunity for the state to rethink criminal justice approaches and realign units at facilities for more effective management of the population, and he presented several options regarding capacity.

The Deputy Secretary then reviewed facility initiatives, including a pilot program using equipment to detect and interdict mail contaminated with illegal substances; technical assistance on a classification system; implementation of rostering software; and technical assistance for staffing analysis. He stated facility challenges include high counselor caseloads; limited capacity for needed services; staff retention; social distancing difficulty; and aging infrastructure that lacks programming space.

In response to questions from the Committee, the Deputy Secretary stated the population in open dormitory-type KDOC facilities has been reduced to facilitate distancing; significant cost savings due to the reduced population would be realized only if facilities or portions of facilities could be closed; and precautions taken by staff are standardized, regardless of the type of facility.

### *Specific Study Topics*

The Secretary addressed several specific study topics assigned to the Committee. Regarding legislative impact on racial minorities, he stated persons of color are in prison at rates greater than in the general population: while 6 percent of Kansas' population is African American and 1 percent is American Indian, 28 percent of the prison population is African American and 3 percent is American Indian. He commented on rates of recidivism and the proportion of inmates who receive programming to meet assessed needs, and stated that expanded data capacity will enable better understanding of the impact of the criminal justice system on persons of color.

Regarding compassionate and terminal medical release, the Secretary provided a statutory overview of functional incapacitation release and terminal medical release. In the period of FY 2016 through FY 2020, three applications for functional incapacitation release were reviewed and two were approved. There were no terminal medical releases during the same period. The Secretary stated the current 30-day timetable for terminal medical release does not provide enough time for KDOC to process the application, and the KSC may recommend this period be extended to 120 days. He noted pilot projects for early release programs for both adults (house arrest) and juveniles (reintegration passes).

In response to questions from the Committee, the Secretary stated KDOC is not resistant to compassionate or medical release, but that the current bar for such release is high, and that the KDOC medical contractor provides end-of-life care for the population and would make the determination whether someone could qualify for the terminal medical release.

### *Programming*

The KDOC Executive Director of Programs and Risk Reduction provided the Committee with an overview of the impact of programming and KDOC's experience with programs. She noted various needs of justice-involved persons and that 98 percent of adults in KDOC facilities will return to the community. She reviewed key programming principles, including robust assessments, targeting areas of need, effective responses to behavior, evidence-based programs, emphasis on employment and education, and strong transition from inside to out. After presenting data on programming effectiveness, the Executive Director reviewed unmet program needs of persons released in FY 2020.

Next, the Executive Director summarized KDOC's workforce readiness programs and an evaluation of their effectiveness, KDOC's education services capacity, and a federal grant KDOC is using to provide substance abuse programming and case management for residents in restrictive housing. She stated seven Kansas colleges are expanding for-credit career and technical education opportunities, which will

allow approximately 700 residents to participate in 25 programs at 8 correctional facilities.

Finally, the Executive Director reviewed programming initiatives for restrictive housing and long-term residents and in higher education, and noted that programming challenges include high unit team staff caseloads; technology gaps; community capacity; infrastructure and space for programs, classes, and study areas; lack of industry jobs; and insufficient facility resources to reach everyone, especially the long-term and restrictive housing population.

In response to questions from the Committee, the Executive Director stated “ban the box” has been useful in increasing employment for persons reintegrating after prison, and “bridging the box” is a similar movement; KDOC would explore purchase opportunities through the Midwestern Higher Education Compact; time barriers for programming are not a result of the assessment and intake process, but rather the short length of stay in situations such as revocations; and persons who are not initially successful in achieving a GED have the opportunity to keep working toward successful completion, if they are willing.

#### *Additional Specific Study Topics*

The Secretary addressed additional specific study topics assigned to the Committee, beginning by outlining the line-of-duty death benefits provided for KDOC employees. He then provided additional information regarding the KDOC COVID-19 response, as follows.

He stated KDOC had an existing practice for facilities to have a pandemic plan, which they modified for COVID-19 in partnership with the Kansas Department of Health and Environment. The Secretary detailed KDOC’s implementation of recommended public health measures and testing strategies. Other strategies implemented by KDOC included waiving of medical co-pays, suspension of volunteers and visitation, and free calls and video visits.

The Secretary stated residents and staff had anxiety associated with the unknown and concern for the health of their family members. KDOC’s parole and central office workforce have adjusted to a telework environment, and the reduced

population in facilities has allowed for social distancing and has been vital to virus management. He provided the Committee with a list detailing KDOC’s utilization of coronavirus relief funds.

In response to questions from the Committee, the Secretary stated the population from the Wichita Work Release Center was returned to LCF during the pandemic due to a lack of time, lack of resources in Sedgwick County, and an infection in the population; there had been COVID-19 cases among the inmates in contract beds in Arizona; a \$5 incentive offered to inmates to receive the influenza vaccine is working well; and KDOC has implemented hazard pay for employees working in facilities with positive cases *via* a statute allowing the Secretary to provide monetary awards for meritorious service (KSA 75-37,105).

### **CONCLUSIONS AND RECOMMENDATIONS**

At the end of its November 18 meeting, following discussion, the Committee adopted the following recommendations.

The Committee recognizes the efforts of the Secretary of Corrections and the staff of KDOC in managing the COVID-19 epidemic in department facilities and extends its deepest gratitude to the staff working in those facilities who placed themselves in harms’ way every day to protect the people of the State of Kansas. Additionally, to the families, friends, and co-workers of those staff who died as a result of COVID-19 while in service to the state, the Committee extends its deepest sympathies.

The Committee requests legislation based on the following bills that passed the House or were recommended favorably by the House Committee on Corrections and Juvenile Justice in 2020 be prefiled in both the House and Senate, if approved by the Legislative Coordinating Council, and that the chairperson and vice-chairperson of this Committee meet with leadership following the December elections to try to coordinate between chambers to expedite the consideration of the legislation, including joint House and Senate committee hearings:

- HB 2469, as amended by the House Committee on Corrections and Juvenile

Justice, extending terminal medical release to inmates in the custody of the Department of Corrections with a condition likely to cause death within 120 days;

- HB 2484, as amended by House Committee, increasing good time credits and program credits for certain offenders
- HB 2485, as introduced, aligning the felony loss thresholds for certain property crimes;
- HB 2494, as introduced, amending the criminal penalties for unlawfully tampering with electronic monitoring equipment;
- HB 2518, as introduced, counting any crime with a domestic violence designation as a prior conviction under domestic battery; and
- HB 2708, as introduced (with small changes suggested by the Judicial Branch, creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with court services and community corrections for supervision.

The Committee recommends the Legislature hold firm on limitations placed on the Evidence-Based Programs Account of the SGF and not use it to balance the state budget.

The Committee recommends addressing conditions of confinement of the female inmates at the Topeka Correctional Facility, through the possible repurposing of the Kansas Juvenile Correctional Complex, or through other facility improvements.

The Committee recommends improvements to the juvenile legal defense system be explored.

The Committee recommends adult and juvenile offenders, preferably during their terms of confinement, or upon release, have the opportunity

to be involved in WorkKeys or another nationally recognized educational program to prepare them for work, and that work preparation be emphasized.

The Committee recommends an expedited study of the potential of repurposing the Kansas Juvenile Correctional Complex in Topeka, perhaps for adult Department of Corrections use, and creating three smaller, regionally dispersed juvenile facilities in south-central, northeast, and western Kansas (possibly including the former juvenile correctional facility in Larned); including the potential use of reinvestment funds and bonding paid through the Juvenile Detention Facilities Fund for such a project without new SGF funding. The purpose would be to better utilize KJCC bed capacity, to keep offenders nearer to families, and to utilize smaller facilities consistent with best practices for juvenile correctional facilities.

The Committee recommends the Legislature revisit 2020 HB 2547, as amended by the House Committee on Corrections and Juvenile Justice, making changes to suspended drivers' license requirements, and 2020 SB 275, as amended by House Committee on Transportation, regarding eligibility requirements for restricted driving privileges, exclusion from the additional 90-day wait period, and removing and changing certain fees that apply for failure to comply with a traffic citation. The Committee also recommends further study be undertaken to seek an appropriate method to provide the financial support necessary for Kansas courts to operate, should this legislation be enacted, and that in the course of such study careful consideration be given to all fees that are assessed, including those for expungements, to fund the Courts in lieu of SGF support.

The Committee supports the restoration of funding to the KDOC budget for facility renovation to create 250 beds for substance abuse treatment for inmates, to ensure those who need substance abuse treatment while in KDOC custody can receive it.

The Committee recommends the expansion of successful, evidence-based programs involving early intervention and early childhood, and consideration of the potential impact of these.

The Committee continues to be concerned regarding the lack of progress on juvenile crisis intervention centers, and asks the appropriate standing committees to carefully study any proposal by the Department for Children and Families or the Department for Aging and Disability Services.

The Committee requests KDOC explore the possibility of an expanded medical and compassionate release program.

The Committee supports consideration of the possible removal of barriers to employment for those receiving technical education or occupational licensing while incarcerated or while trying to reintegrate into society.

The Committee recommends the Legislature consider the possibility of amnesty for those with outstanding suspended driver's licenses and reinstatement fees due.

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# Report of the Joint Committee on Kansas Security to the 2021 Kansas Legislature

**CHAIRPERSON:** Senator Dan Goddard

**VICE-CHAIRPERSON:** Representative Eric Smith

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

**CHARGE**

## *Review Various Security Matters*

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

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

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# Joint Committee on Kansas Security

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee on Kansas Security notes the increasing importance of security for the information assets of the State and therefore strongly encourages cybersecurity training for all legislators and those who work in state government. The State of Kansas and individuals are at risk of fraud and abuse of information systems and the data they contain. The State cannot afford a lax approach to cybersecurity training that has occurred over the past several years by various state agencies as pointed out in reports of the Legislative Division of Post Audit.

- The Committee recommends the Kansas Legislative Office of Information Services offer cybersecurity training to legislators and strongly encourages legislators to participate.
- The Committee commends the Department of Health and Environment (KDHE) for its requirement that each employee receive annual information security training and its emphasis on keeping Kansans' health information confidential.
- The Committee encourages other agencies to review the KDHE training requirements and implement similar protocols. Additionally, there is a need for a thorough and comprehensive review of agency training programs to ensure compliance with information security guidelines by all employees.
- The Committee suggests members of the House Committee on Appropriations and the Senate Committee on Ways and Means, during the budget process, ask each agency to provide information on its security training protocols.
- It became apparent during the Committee meetings a major problem exists with the age and efficiency of the information security systems currently in place in state agencies. The Committee recommends legislative consideration of agency budget enhancements for updating and securing agency information systems.

The Committee notes the increased role of Internet-based conferencing for legislative meetings and needed upgrades to the Statehouse in response and the continuing requirement to provide funding to maintain the added equipment.

The Committee commends the Department of Agriculture for its emphasis on education for food preparation and service businesses and its interactions with licensees using Internet-based conferencing under certain circumstances.

The Committee recognizes changes in business practices by agencies in response to the COVID-19 pandemic. It encourages agencies to evaluate those practices for efficacy and efficiency to determine which practices should be continued when in-person contact is no longer curtailed.

The Committee commends agencies that quickly respond to identified information security weaknesses and the Legislative Division of Post Audit (LPA) for its work on evaluating agency information technology security.

The Committee recommends the LPA recommend to the Legislative Post Audit Committee to schedule a follow-up cybersecurity audit of the Judicial Branch in calendar year 2021.

The Committee recommends the Kansas Highway Patrol, through its Troop K (Capitol Police), develop and implement drills with regard to demonstrations within and near the Statehouse to prevent future interruptions of official legislative proceedings such as committee meetings and meetings in the chambers.

The Committee recommends the 2021 Legislature review and update the Kansas Emergency Management Act to incorporate lessons learned during the COVID-19 pandemic. Specifically, the Committee recommends examination of statutory language including but not limited to KSA 48-924(b) that affects mobilization of the Kansas Division of Emergency Management and the Kansas National Guard. It notes demobilization tied to expiration of a formal declaration of emergency creates inefficiencies when an emergency is reasonably expected to be ongoing.

The Committee supports and commends the collaborative efforts of the Kansas Bureau of Investigation (KBI) and the Department for Children and Families (DCF) to assist youth in foster care who may be or become victims of human trafficking or sexual violence. It expresses its hope such efforts can be extended statewide.

The Committee supports proposals of the KBI:

- To mandate the submission and testing of every sexual assault kit collected through a reported sexual offense; and
- To establish Child Victim Task Forces like that in the Northeast Region in other KBI regions of the state and work in cooperation with the DCF to protect vulnerable children.

***Proposed Legislation:*** None.

## BACKGROUND

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

- Matters relating to the security of state officers and employees;
- Security of buildings and property under the ownership or control of the State;
- Matters relating to the security of a public body or agency, public building, or facility;

- Matters relating to the security of the infrastructure of Kansas, including any information system; and
- Measures for the improvement of security for the state.

## COMMITTEE ACTIVITIES

Initially granted one meeting day by the Legislative Coordinating Council (LCC), the Committee met on November 16, 2020. At that meeting, Committee members agreed to request a second meeting day from the LCC. That request was granted, and the Committee met again on December 1, 2020. Both meetings were in the Statehouse, with limited participation *via* Zoom. The Committee heard presentations from representatives of the Adjutant General's

Department, Division of Emergency Management; Judicial Branch; Kansas Bureau of Investigation; Kansas Department of Agriculture; Kansas Department of Labor; Kansas Highway Patrol; Kansas Legislative Office of Information Services; and Legislative Division of Post Audit. Certain presentations and portions of presentations were closed under the provisions of KSA 75-4319(b) (12)(C). Staff were not present in the closed sessions.

### **Adjutant General's Department, Division of Emergency Management**

At the meeting on November 16, the Assistant Director of the Kansas Division of Emergency Management (KDEM) reviewed the role of the agency in planning for disaster response and noted the State responds when the resources of the local government and those with whom the local government has mutual aid agreements are insufficient. She stated a local declaration of disaster, in writing or orally, starts the response, and a declaration of disaster from the Governor gives more authority for KDEM to respond.

The Assistant Director described the Kansas Response Plan, which was to be updated in January 2021. She noted the importance of planning, as the agency could be involved with responses to disasters as diverse as grassland fires, a foreign animal disease for which there is a stop-movement order, or a radiological incident at Wolf Creek Generating Station. She reported the agency reviews its response after each incident and described various assets that could be deployed.

The remainder of the Assistant Director's testimony on November 16 was provided in a closed session, with the Chief of Legislative Affairs for the Adjutant General's Department also present. The Assistant Director also gave testimony in a closed session at the December 1 meeting, with the Adjutant General, the Chief of Legislative Affairs, and the Branch Director for Planning and Mitigation, KDEM, also present.

### **Judicial Branch**

Representatives of the Judicial Branch presented information in a closed session at the December 1 meeting. Also present was the

Information Technology (IT) Audit Manager, Legislative Division of Post Audit.

### **Kansas Bureau of Investigation**

At the meeting on November 16, the Executive Officer of the Kansas Bureau of Investigation (KBI) provided information about crime trends, reporting in fiscal year (FY) 2019, overall violent crime (murder, rape, robbery, and aggravated assault and battery) was up 2.6 percent, with the rate for aggravated assault and battery up 6.1 percent. Property crime (burglary, theft, and motor vehicle theft) declined 6.8 percent from FY 2018 to FY 2019. He reported the top five threat concerns for the region that includes Kansas are violent crime with firearms, criminal gangs and crews, homicides, drug trafficking and proliferation, and drug user derivative crime.

To address issues identified regarding analysis of sexual assault kits associated with reported sexual offenses, the agency will seek legislation to compel law enforcement agencies to adopt policies requiring the submission of the kits to forensic laboratories within 14 days and the laboratories to examine those kits, the Executive Officer said.

The Executive Officer stated from calendar years 2015 to 2019, 7,447 children were victims of sexually motivated crimes in Kansas. He described a collaboration between the KBI and the Department for Children and Families (DCF) regarding KBI support to DCF staff with the investigation of violent crimes against children and the agency's activities with the Northeast Child Victims Task Force, activities he said the agency would like to expand to more areas of the state.

The Executive Officer discussed KBI investigation of officer use of force incidents in Kansas (approximately 25 so far in FY 2021, 18 of them investigated by the KBI) and how the planned replacement for the Kansas Incident Based Response System will provide more data on that topic. He also noted the replacement of the Automated Fingerprint Identification System with the Automated Biometric Identification System was underway. He reported the new KBI Cyber Crimes Unit is receiving training and procuring needed hardware and software.

The Executive Officer reviewed additional agency efforts to reduce and track criminal activity in Kansas.

### **Kansas Department of Agriculture**

The Animal Health Commissioner and the Program Managers of Plant Protection and Weed Control and of Food Safety and Lodging presented information to the Committee on behalf of the Kansas Department of Agriculture (KDA) at the November 16 meeting.

The Animal Health Commissioner stated the KDA cooperates with the U.S. Department of Agriculture and a network of more than 1,700 veterinarians in Kansas to monitor for outbreaks of foreign animal diseases, and he reported an increase in the number of outbreak investigations from 22 in federal fiscal year (FFY) 2019 to 57 in FFY 2020. He noted the agency performs exercises regarding stop-movement orders in case of a disease outbreak and an outbreak of foot-and-mouth disease could affect the entire country. He noted KDA focuses on stopping movements of animals infected or exposed to foreign animal diseases, implementing operational biosecurity, increasing traceability, and, when feasible, vaccination. The Animal Health Commissioner mentioned the agency had done some planning for euthanasia and disposal of animal carcasses that could not be processed in a timely manner due to outbreaks of COVID-19 among workers at meat processing plants, but carrying out such plans had not been necessary.

The Program Manager for Plant Protection and Weed Control stated the main pathways of introduction of plant diseases into Kansas are untreated wood packing material, live plants, seed, and firewood. He noted KDA works to prevent problems through licensing, permitting, inspections, surveys, and investigations. The Program Manager provided information on the Secretary of Agriculture's statutory authority to respond to an outbreak of plant pests or disease with quarantine, including disposing of plants infested with pests; making an emergency declaration of a noxious weed; and taking whatever action is necessary specifically to destroy plants affected with or hosting black stem rust disease. The Program Manager briefly discussed recent instances that required a response

that included live plant disease and unsolicited seed shipments.

The Program Manager noted the work of the State Noxious Weed Advisory Committee to address concerns with cedar trees.

The Program Manager for Food Safety and Lodging stated the program's 46 inspectors perform an average of 21,000 inspections a year of the state's more than 17,000 licensed food establishments, food processors, and lodging establishments. He reviewed inspection priorities, noting all inspections of new facilities are scheduled but that other inspections are unannounced; agency procedures to mitigate risks of unintentional or intentional food-borne illness; and investigations of food-borne illness. In response to questions about the effect of the COVID-19 pandemic on this work, he stated some inspections and work to educate licensed businesses have been done *via* videoconferencing, and the agency anticipated using videoconferencing for certain types of interactions with licensees into the future, saving inspector travel time and increasing efficiency.

The Deputy Secretary of Agriculture stated the agency has sufficient authority to mitigate the risks discussed.

### **Kansas Department of Health and Environment**

At the Committee's November 16 meeting, information regarding Kansas Department of Health and Environment (KDHE) information security and agency systems and contact tracing with regard to COVID-19 was provided by the agency's Chief Information Officer (CIO) and the Deputy State Epidemiologist. The State Epidemiologist also answered a question from a Committee member.

The CIO reported on annual cybersecurity training required of all KDHE associates and contractor staff members and said network access is denied for noncompliance. The CIO noted new associates are required to complete the training within 30 days of their start date. He provided general information on technical security components used for protection of data, data encryption, and authentication of users.

The Deputy State Epidemiologist reviewed processes for its contract tracing system, which was developed by Accenture (a state technology vendor) using the Salesforce platform. She noted explicit data-sharing rules apply to this system, there are operational separations of duties, and staff and systems meet statutory and regulatory requirements. Included in staff training is training on confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Deputy State Epidemiologist also reviewed the KDHE disease surveillance and reporting system, EpiTrax. She noted all states and U.S. territories use electronic disease surveillance systems, but information crosses state lines only in very rare circumstances (described by the State Epidemiologist); in those cases only information that is not personally identifiable is transferred. The CIO noted staff and systems meet statutory and regulatory requirements, and the systems are compliant with requirements of the federal Centers for Disease Control and Prevention. He provided an overview of the security protocols used to protect the systems data

The KDHE officials stated Coronavirus Aid, Relief, and Economic Security (CARES) Act moneys are being used for these efforts and state support may be required when those moneys are no longer available, including for disease surveillance and laboratory staff. They said the agency is learning new practices and is investing in technology to leverage its capabilities.

### **Kansas Department of Labor**

At the Committee's November 16 meeting, a Deputy Secretary of Labor, accompanied by the Kansas Department of Labor's (KDOL's) Director of Government Affairs and its Information Security Officer, provided an overview of the layers of security for the agency as a whole and for the unemployment compensation system specifically. The Deputy Secretary described, in general terms, approaches the agency takes to guard against threat vectors both internal (e.g., disgruntled employees, employee mistakes) and external (e.g., hackers, fraudsters). He reviewed controls on physical access to KDOL offices and systems. He stated agency attorneys had extensively overhauled data-sharing agreements related to unemployment compensation data and had developed a standard memorandum of

understanding that incorporates state and federal Treasury Offset Program requirements for data security.

The Deputy Secretary stated there has been an "epidemic" of identity theft but no evidence of a data breach for KDOL; he noted there are clear reporting requirements for data breaches. He also stated unemployment compensation fraud had been at a very low level before the COVID-19 pandemic. He noted the agency was collaborating with law enforcement agencies and used its own law enforcement staff members with regard to unemployment compensation fraud and the agency faced daily challenges related to identity theft.

Committee members requested additional information; the Deputy Secretary stated some of the information could be provided only in a closed session. A closed presentation on KDOL cybersecurity was provided at the Committee's December 1 meeting. Participating remotely, the Acting Secretary of Labor, two Deputy Secretaries of Labor, the Secretary of Administration, and the Chief Information Security Officer of the Kansas Information Security Office were authorized to be present.

### **Kansas Highway Patrol**

Two representatives of the Kansas Highway Patrol presented information to the Committee in a closed session at the November 16 meeting. Two officials of the Department of Administration also were present in the closed session.

### **Kansas Legislative Office of Information Services**

At the November 16 meeting, the Legislative Chief Information Technology Officer (LCITO) presented information regarding the Kansas Legislative Office of Information Services (KLOIS), including experience and current cybersecurity activities of staff, a general description of the Statehouse Secure Data Center and updates to software and hardware, and information on legislative meetings using videoconferencing.

The LCITO noted top KLOIS staff have many years of IT experience and described their involvement in the Information Technology

Executive Council (KSA 75-7202) and the Task Force on Cybersecurity of the National Conference of State Legislatures. He stated KLOIS staff have attended or participated in cyber range incident response training, Windows 10, Windows Server 2019, and active directory training.

The LCITO described, in general terms, security measures utilized to protect legislative data. This includes multiple levels of physical security for entry to the Statehouse Secure Data Center, in a subbasement of the Statehouse, and off-site backup systems used to protect legislative data.

The LCITO stated KLOIS staff continually update software and update or replace hardware to keep legislative systems secure, and he described cybersecurity tools KLOIS staff use and upgrades to capacity for legislative interfaces. He noted KLOIS maintains a strict change control process including management approval for updating systems. He stated screening systems block an average of 35,000-40,000 emails each day from coming into the legislative email inboxes, preventing phishing, computer viruses, and malware.

The LCITO stated the Legislature has used Zoom for meetings since March, first with all attendees participating remotely and in hybrid remote and in-person meetings since June. The system allowed simultaneous access to the meetings for the public using the Legislature's YouTube channels and the Legislature's website audio archive system (Harmony). KLOIS and other legislative agency staff monitored remote and hybrid meetings to ensure security. He noted limitations of this system.

The Kansas Virtual Statehouse Project, which the LCITO described, is designed to implement video conference systems in Statehouse committee rooms and the House and Senate chambers. These systems include cameras and monitors mounted to walls, room and centralized system controls, room audio integration, calendar integration, closed captioning, and audio/video streaming. He stated the project, begun in July 2020, is using moneys provided under the federal CARES Act, and the goal was system operation before the start of the

2021 Legislative Session. The security of Legislative meetings is a major requirement of the systems.

### **Legislative Division of Post Audit**

In a closed session at the November 16 meeting, the Legislative Division of Post Audit (LPA) IT Audit Manager, accompanied by the Post Auditor, presented the results of IT audits of the Kansas Department of Transportation (KDOT) and the Judicial Branch. KDOT and Judicial Branch representatives were present when the audit relevant to them was presented.

In a closed session at the December 1 meeting, the IT Audit Manager presented the results of audits of the State Board of Regents and the Kansas Department of Corrections. Agency representatives were present when the audit relevant to them was presented.

### **CONCLUSIONS AND RECOMMENDATIONS**

At its meetings on November 16 and December 1, Committee members discussed their conclusions and recommendations to the 2021 Legislature and agreed to the following:

The Committee notes the increasing importance of security for the information assets of the State and therefore strongly encourages cybersecurity training for all legislators and those who work in state government. The State of Kansas and individuals are at risk of fraud and abuse of information systems and the data they contain. The State cannot afford a lax approach to cybersecurity training that has occurred over the past several years by various State agencies as pointed out in reports of the LPA.

- The Committee recommends the KLOIS offer cybersecurity training to legislators and strongly encourages legislators to participate.
- The Committee commends KDHE for its requirement that each employee receive annual information security training and its emphasis on keeping Kansans' health information confidential.

- The Committee encourages other agencies to review the KDHE training requirements and implement similar protocols. Additionally, there is a need for a thorough and comprehensive review of agency training programs to ensure compliance with information security guidelines by all employees.
- The Committee suggests members of the House Committee on Appropriations and the Senate Committee on Ways and Means, during the budget process, ask each agency to provide information on its security training protocols.
- It became apparent during the Committee meetings a major problem exists with the age and efficiency of the information security systems currently in place in State agencies. The Committee recommends legislative consideration of agency budget enhancements for updating and securing agency information systems.

The Committee notes the increased role for Internet-based conferencing for legislative meetings and needed upgrades to the Statehouse in response, and the continuing requirement to provide funding to maintain the added equipment.

The Committee commends the KDA for its emphasis on education for food preparation and service businesses and its interactions with licensees using Internet-based conferencing under certain circumstances.

The Committee recognizes changes in business practices by agencies in response to the COVID-19 pandemic. It encourages agencies to evaluate those practices for efficacy and efficiency to determine which practices should be continued when in-person contacts are no longer curtailed.

The Committee commends agencies that quickly respond to identified information security

weaknesses and LPA for its work on evaluating agency information technology security.

The Committee recommends the LPA recommend to the Legislative Post Audit Committee to schedule a follow-up cybersecurity audit of the Judicial Branch in calendar year 2021.

The Committee recommends the Kansas Highway Patrol, through its Troop K (Capitol Police), develop and implement drills with regard to demonstrations within and near the Statehouse to prevent future interruptions of official legislative proceedings such as committee meetings and meetings in the chambers.

The Committee recommends the 2021 Legislature review and update the Kansas Emergency Management Act to incorporate lessons learned during the COVID-19 pandemic. Specifically, the Committee recommends examination of statutory language including but not limited to KSA 48-924(b) that affects mobilization of the Kansas Division of Emergency Management and the Kansas National Guard. It notes demobilization tied to expiration of a formal declaration of emergency creates inefficiencies when an emergency is reasonably expected to be ongoing.

The Committee supports and commends the collaborative efforts of the KBI and the DCF to assist youth in foster care who may be or become victims of human trafficking or sexual violence. It expresses its hope such efforts can be extended statewide.

The Committee supports proposals of the KBI:

- To mandate the submission and testing of every sexual assault kit collected through a reported sexual offense; and
- To establish Child Victim Task Forces like that in the Northeast Region in other KBI regions of the state and work in cooperation with the DCF to protect vulnerable children.

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# **Report of the Joint Committee on Pensions, Investments and Benefits to the 2021 Kansas Legislature**

**CHAIRPERSON:** Senator Jeff Longbine

**VICE-CHAIRPERSON:** Representative Steven Johnson

**OTHER MEMBERS:** Senators Rick Billinger, Vic Miller, Pat Pettey, and Mary Jo Taylor; Representatives Doug Blex, Brenda Dietrich, Broderick Henderson, Jim Kelly, Annie Kuether, Brett Parker, Sean Tarwater, and Rui Xu (substitute member)

## **CHARGE**

To fulfill the Joint Committee's duties and responsibilities, as provided by KSA 46-2201, the Joint Committee will monitor, review, and make recommendations regarding the Kansas Public Employees Retirement System (KPERS or Retirement System).

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# Joint Committee on Pensions, Investments and Benefits

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee submits the following comments and recommendations.

- **Annual valuation report and total fund performance.** The Joint Committee commends the outstanding work of the Kansas Public Employees Retirement System (KPERS) Board of Trustees and KPERS staff in the continued improvement of the unfunded actuarial liability (UAL). The Joint Committee recommends meeting funding requirements and working with KPERS on its cash position needs to provide certainty and funding. The Joint Committee further recommends to not reamortize prior to the ten-year mark (presently, the legacy UAL will extinguish in 2033) unless such recommendation comes from the KPERS Board of Trustees.
- **Board of Trustees and KPERS administration.** The Committee supports the modernization of the KPERS pension administration system.
- **Deferred Retirement Option Program (DROP) audit review, comment, and legislation.** The Joint Committee recommends retaining only those eligible employees of the Kansas Highway Patrol and Kansas Bureau of Investigation in the DROP until the current statutory sunset date of January 1, 2025, in order to gain additional information about these participants and allow the Legislature to evaluate the cost and success of the program before considering expansion to other Kansas Police & Firemen's Retirement System (KP&F) agencies.
  - The Joint Committee recommends the introduction of legislation that would allow participants to extend their (currently) locked-in periods of participation (three years, four years, or five years chosen at sign-up for the program). Further, the Committee requests a fiscal estimate, prior to the 2021 Legislative Session, from the KPERS staff regarding the costs associated with this proposal. [House bill]
- **Legislation.** The Committee recommends the introduction of legislation during the 2021 Legislative Session to bring the KPERS' Internal Revenue Code guidepost section into compliance with the relevant federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provisions and further recommends legislation to update the 457 plan's companion 401(a) plan language in KPERS statutes. [Senate bill]
- **Legislation.** The Committee recommends reintroducing provisions of 2020 HB 2452, pertaining to death and disability benefits and service-connected deaths. [House bill]
- **Working-after-retirement statutes and emergency management.** The Joint Committee notes its discussion regarding the impacts of the COVID-19 pandemic on KPERS staff and the administration of retirement benefits. The Committee discussed working-after-retirement provisions and the temporary waiver of the required waiting period.

As the 2021 Legislature considers the broader topic of emergency management, the Joint Committee notes modifications to KPERS statutes regarding working after retirement should be considered, given the recent waiver of such requirements during the pandemic (*i.e.*, waiting period, opening and closing date, and timing of the expiration date when either the disaster declaration has ended or a school year or semester completes). The Committee notes its discussion regarding whether such potential legislation would involve only KPERS or a broader issue of the Kansas Emergency Management Act or Executive Orders of the Governor. There also was discussion on, if the decision is KPERS-specific, whether the Legislature, the KPERS Board of Trustees, or the State Board of Education would have the ability to make the waiting period change. The Committee discussed providing guidance should a pandemic occur. The Committee finds clarity and consistency is needed to allow, in such circumstances, certain employers to fill job needs.

- **KP&F Participation.** The Joint Committee encourages individual standing committees of the Legislature to continue discussion on possible additions to the KP&F. The Committee acknowledges its prior study and recommendation in 2019 regarding the transfer of employee groups into different KPERS plans and future study topics (*e.g.*, state and local correctional groups). The Committee also recognizes ongoing work on a legislative solution for certain employees of the Kansas Department of Wildlife, Parks and Tourism and encourages this option be examined by the legislative committee before consideration of movement to KP&F.
- **Retirement System–Tier 3 Formula.** The Committee recommends the ongoing review of the Tier 3 dividend formula to provide equity as intended.

**Proposed Legislation:** The Committee requests the introduction of three bills.

## BACKGROUND

The Joint Committee on Pensions, Investments and Benefits, created in 1992, is authorized by KSA 2019 Supp. 46-2201 to:

- Monitor, review, and make recommendations relative to investment policies and objectives formulated by the Kansas Public Employees Retirement System (KPERS or the Retirement System) Board of Trustees (Board);
- Review and make recommendations related to KPERS benefits;
- Consider and make recommendations on the confirmation of members nominated by the Governor to serve on the Board; and

- Introduce legislation it determines to be necessary.

The Legislative Coordinating Council authorized the Joint Committee to meet on one day.

## COMMITTEE ACTIVITIES

The Committee met on December 2, 2020, to receive reports and updates from the Post Auditor on the Deferred Retirement Option Program (DROP) and audit findings; the KPERS administration and the KPERS Board of Trustees on the December 31, 2019, annual valuation and pension bond performance, investment performance, and the KPERS Tier 3 dividend formula; and committee staff on recent retirement benefits legislation. The Committee also requested and received comment on potential impacts of the COVID-19 pandemic on the Retirement System

(investments and the economy and the administration of benefits) and on the KPERS agency operations.

## **2019 Valuation of KPERS**

The Committee reviewed the latest actuarial valuation, which serves as a snapshot of the financial condition of the Retirement System as of December 31, 2019. The Executive Director of KPERS characterized the report overall as good news, with several indicators moving in the right direction. [Note: This annual actuarial valuation, which measures assets and liabilities, provides the basis for calculating future employer contribution rates. The 2019 valuation is used to set the fiscal year (FY) 2023 contribution rates for State/School employers and calendar year (CY) 2022 contribution rates for local employers and serves as the baseline for any cost studies in the 2021 Legislative Session.]

As of December 31, 2019, the actuarial value was estimated to be \$20.976 billion. Actuarial assets are calculated by averaging, or “smoothing,” investment gains and losses over a five-year period. There is a net deferred loss of \$568 million to be realized in the outlying years. Net investments on a calendar-year basis were 17.1 percent (market value). Due to smoothing, the return on actuarial assets was 6.7 percent.

The Retirement System’s overall funded ratio of assets to liabilities improved from 68.4 percent (2018 valuation) to 70.0 percent. (The standards for public pension plans suggest a retirement system should be funded between 80.0 and 100.0 percent of future liabilities owed.) The unfunded actuarial liability (UAL) for the Retirement System decreased from \$9.2 billion (2018 valuation) to \$9.0 billion; the total actuarial liability is \$29.98 billion. For KPERS funding to remain at a “steady state,” State/School Group employer contributions in FY 2021 will need to be \$626.2 million, which includes \$93.2 million for the normal employer cost rate, \$507.2 million for the UAL, and \$25.8 million for the deferred school contributions of FY 2017 and FY 2019.

The report further indicated the actuarially required contribution (ARC) rates for KPERS State/School employers decreased from 14.09 percent in FY 2022 to 13.86 percent in FY 2023.

The statutory employer contribution for the State/School group is 14.23 percent in FY 2021, and this contribution is equal to the ARC rate in FY 2021 for the first time in 25 years. It was noted the Legislature approved additional contributions to KPERS in 2018 and 2019. The additional contributions totaled \$304 million over two years with \$134 million received for CY 2018 and \$166 million received during CY 2019. The funds were directed to the School group UAL but impacted the funding for the State/School group. Additional contributions lowered the State/School employer contribution rate by 0.36 percent in FY 2021 and 0.29 percent in FY 2022. The Committee and the Executive Director discussed the funding projections presented, the anticipated investment experience and overall portfolio assumptions, and the timing of potential future reamortization in relationship to the legacy UAL timeline (2033).

## **Investment Performance of Bond Proceeds**

Pension obligation bonds serve as a form of arbitrage intended to reduce future employer contributions and improve the solvency of KPERS. The pension obligation bond proceeds improve the funded status of the Retirement System. The State has issued two pension obligation bond series. The first was in 2004 for a total of \$500 million, gross of fees (2004C bond issue), and the second was issued in 2015 for \$1.0 billion, net of fees (2015H bond issue). In 2004, the Legislature approved a \$500.0 million bond issue, which was issued with a 30-year maturity and an interest cost of 5.39 percent. KPERS received \$440.165 million in net proceeds. Annual debt service is approximately \$33.0 million from the Expanded Lottery Act Revenues Fund. In 2015, the Legislature approved a \$1.0 billion bond issue, which was issued with a 30-year maturity and an interest cost of 4.68 percent. KPERS received \$1.0 billion in net proceeds. Annual debt service is approximately \$65.0 million from the State General Fund (SGF).

The average annualized total returns for the 2004C and 2015H bond issues, as of September 30, 2020, were 7.13 percent and 6.82 percent respectively. As of October 31, 2020, the two bond series had added approximately \$473.0 million to KPERS (2004C, \$332.0 million; 2015H, \$141.0 million).

## **Investment Performance of the KPERS Portfolio; COVID-19 Impacts**

At the end of FY 2020, the net asset market value of the portfolio was more than \$20.190 billion. The gross return of the total portfolio, which consists of domestic equity, international equity, fixed income, yield driven, real return, cash, real estate, and alternative investments, was 2.1 percent, which was 0.3 percent below the benchmark. The Chief Investment Officer (CIO), KPERS, further reviewed the total fund performance through June 2020, and highlighted the best-performing asset classes for FY 2020: fixed income, real return, and domestic equity, generating returns of 8.7 percent, 7.5 percent, and 6.5 percent respectively. For the trailing returns of the past 3-, 5-, 10-, and 25-year periods, the portfolio has surpassed its respective benchmarks. The CIO commented the FY 2020 performance could be characterized by high market volatility and low returns.

Addressing the topic of the COVID-19 pandemic, the CIO stated the current investment environment has massive uncertainty related to the global pandemic and cited both positive and negative indicators present in the economic environment. She also reported the investment team had been working remotely since March 23, and in general, the industry has moved to a work-from-home environment. This limits investment manager relationships to general partners and a number of fundraisings (private equity) have been delayed. She also addressed risk mitigation strategies and stress-testing scenarios. The CIO and the Committee reviewed available FY 2021 data (as of October 31, 2020), which indicated both July and August were positive months with a consistent portfolio index over 3.0 percent, and September and October were negative months due to market volatility. For the calendar year to October 31, 2020, the total return is 4.2 percent short of the return on investment. It was noted the S&P 500 was up 11 percent in November, and the estimated performance could possibly be around 7.0 percent, which would help the annual valuation for CY 2020.

## **COVID-19 Impact on KPERS Operations and Retirements**

The Executive Director, KPERS, provided information on the COVID-19 pandemic's impacts on operations and retirements. In 2020, there has been an increase in the number of retirements compared to the number in prior years. He noted it was unknown how much of the increase is due to COVID-19, but it is a key factor. The number of new applications for retirements and survivor benefits was 1,087 in September and October 2020, compared with 846 retirement applications processed during the same two-month period in 2019. He noted the 28.5 percent increase may have been due to early retirement incentives, a reluctance to return to work or to continue virtual employment during the pandemic, or a lack of actual work (and compensation) for certain school employees. The number of January 2021 retirement applications submitted as of November 23, 2020, was 28.9 percent higher than the number submitted as of that same date in 2019. The Executive Director further discussed the most significant increase of new retirees was for School group members, which had year-over-year increase of 185 retirements, or nearly 48 percent, for the month of September and October. The State group only experienced an increase of 56 retirements, or 12.2 percent. The Executive Director reviewed the other area where KPERS is seeing a large increase—withdrawal applications. The number of withdrawal payments increased to 3,517 in September and October 2020, 1,756 more than the 1,761 payments issued in September and October 2019, a nearly 100 percent increase. Most of the withdrawals are due to financial challenges of the COVID-19 pandemic or may result from an internal project notifying inactive, non-members that accounts are no longer eligible for interest credits.

The Executive Director indicated it is unclear whether or how long the increases in applications and withdrawals will continue. He also highlighted virtual pre-retirement seminars and efforts to increase remote work opportunities for KPERS staff. In terms of day-to-day operations, the Executive Director noted efforts to add plexiglass barriers, focus on remote working, and keep minimum staffing levels on-site. He reported the building had been closed to the public since November 23. The Committee and the Executive

Director discussed working-after-retirement changes made to accommodate the pandemic and employer needs. The Executive Director stated under the Governor's Executive Order issued in March 2020, if the school employer wanted to hire back a KPERS retiree due to the COVID-19 pandemic, there was the ability to suspend the working-after-retirement waiting period through the end of the school year.

Data provided subsequent to the meeting by the KPERS staff, indicates, as of December 7, KPERS has received waiver requests from 29 employers (out of 1,526 participating employers), including 3 local employers and 26 school districts and educational cooperatives. The requests are primarily for teaching positions, but the local employer requests include a detention facility and a local hospital. KPERS further reports some employers are requesting specific, individual positions for waiver while others have request a waiver for a list of retirees that may or may not have been hired (therefore, an exact count of affected retirees cannot be made available). The maximum number of retirees included in such waiver requests is 142 (115 school employees and 27 local employees).

### **Deferred Retirement Option Program (DROP) and Audit Report**

The Executive Director, KPERS, provided information on the DROP for Kansas Police & Firemen's Retirement System (KP&F) members in the Kansas Highway Patrol (KHP) and the Kansas Bureau of Investigation (KBI). Under DROP, eligible members with normal unreduced retirement initiate the calculation of retirement benefits, but choose to defer the actual receipt of the benefits for a three-, four-, or five-year period. During the DROP period, the member does not earn additional service credits but continues to work and contribute 7.15 percent of compensation into DROP. The KHP or KBI continues to make employer contributions to KP&F. Retirement benefits are held in a separate account, and at the end of the period, the member receives the lump sum with interest. The DROP account can earn interest according to a statutory formula, and currently the formula allows for 3.0 percent interest in any year in which KPERS investments reach the 7.75 percent investment return assumption. The DROP, which was created as a

five-year pilot program in 2015 and was expanded to include certain KBI employees in 2019, has a statutory sunset date of January 1, 2025.

During Committee discussion, the Executive Director confirmed DROP was created to assist the KHP with recruitment and retention. He also reviewed the circumstances in which DROP participants would be (e.g., terminate employment) or would not be (e.g., changing from a three-year to five-year option) permitted to elect changes in their DROP arrangement. It was noted if the member withdraws from the DROP program, the accrued benefit is set aside, and any interest earned would be forfeited. KPERS staff later confirmed of the 44 DROP participants, 7 selected the 3-year option, 2 selected the 4-year option, and 35 selected the 5-year option.

The Post Auditor reviewed a performance audit, which was authorized by the Legislative Post Audit Committee in April 2020 and published in September 2020, evaluating the DROP. He noted the audit objective was to answer the following questions:

- How does the Deferred Retirement Option Program affect state agencies?
- How does Kansas' Deferred Retirement Option Program compare to similar programs in other public pension plans?

The Post Auditor stated, of the retirement-eligible KP&F members surveyed, there were 39 participants in the DROP (35 KHP members and 4 KBI members). He further noted the DROP has a very limited number of participants, and out of 7,500 employees covered under the KP&F plan, only KHP and KBI employees are allowed to participate. The cost for the participating employers and KPERS to administer the DROP in its current form is very low and designed to be cost neutral to the KP&F plan. The Post Auditor reported a survey was sent to a 111 eligible current and former employees, including both DROP participants and non-participants, and of the 60 responses received, 28 came from DROP participants who acknowledged the program influenced their retirement decisions. The Post Auditor indicated the DROP was shown to be more effective in retaining higher-ranking

administrative staff, such as captains and majors, which represent 36 percent of KHP DROP participants. The DROP is less effective for retaining staff in the counties that are understaffed, and 8 participants have come from 6 of the 65 understaffed counties KHP initially identified in 2015. He noted the Kansas DROP was compared to four other programs in other states that were designed to be cost neutral to the respective retirements systems with both similarities and differences. Committee discussion with the Post Auditor focused on permitting additional groups to enter the DROP before its statutory sunset in 2025.

## Overview of 2020 Legislation

Staff of the Office of Revisor of Statutes (Revisor) provided an overview of KPERS policy and funding bills that had committee consideration during the 2020 Legislative Session. The Revisor staff noted no legislation on these topics was enacted into law during the shortened session, but the following bills and topics received consideration:

- HB 2452 would have provided additional benefits for a KP&F tier II member's spouse and children under the age of 18, or under the age of 23 if the child is a full-time student, if the member dies from a service-connected disability.
- HB 2619 would have adjusted the frequency of the KPERS actuarial experience study from once every three years to once every four years (the Senate Substitute for this bill, on a topic related to financial institutions, was vetoed by the Governor).
- SB 269 would have increased the mandatory retirement age for judges to 80 years of age.
- HB 2503/SB 321 would have amortized the State/School KPERS group UAL over a 25-year period; authorized the transfer of \$268,412,000 from the SGF to the KPERS fund during fiscal year 2020; and eliminated certain level-dollar employer contribution payments.

- SB 368 would have transferred \$268,412,000 from the SGF to the KPERS Fund in FY2020 to pay the remaining balance of delayed KPERS State/School employer contributions from FY 2017 and FY 2019. The bill also would have eliminated the level-dollar employer contribution payments of \$6.4 million and \$19.4 million per year for 20 years that became statutory requirements after FY 2017 and FY 2019 employer contribution delays.

## KPERS 3 Dividend Formula

The Planning and Research Officer, KPERS, provided information on the KPERS 3 dividend credit, which was part of 2012 law creating a cash balance plan. Differing from KPERS 1 and 2 plan design, the cash balance retirement plan is based on the member's contributions and earning retirement credits from the employer, which are tracked throughout the member's career. Interest is applied to the two accounts, and the benefit is based on the total account balance at retirement and has nothing to do with the number of years worked or finalized average salary. The two components of interest that is credited under the cash balance plan are the guaranteed portion and the dividend. The KPERS 3 dividend was originally structured as a discretionary dividend credit that could be provided by the Board. In 2014, enactment of HB 2533 resulted in two adjustments to the interest crediting in KPERS 3 plan design: reducing the guaranteed interest credit rate on the member and employer accounts from 5.25 percent to 4.0 percent and replacing the discretionary dividend credit language with a formulaic dividend design. The current dividend design (KSA 74-49,306) is equal to 75.0 percent of the 5-year average net compound rate of return above 6.0 percent, as determined by the Board for each calendar year and the 4 preceding years. CY 2019 was the fifth year of the KPERS 3 plan and the first year there was a five-year rolling average. The dividend is reviewed by the Board each March, and over the first five years of KPERS 3, the formulaic interest dividend credit has applied twice.



## KPERS Board of Trustees Priorities

The Executive Director, KPERS, presented an overview of the Board activities and noted the Board reviewed possible technical, budget, and policy items during its November meetings. Consistent with Board policies, the Board is not recommending any policy changes in terms of benefit enhancements, leaving the decision to the Legislature. The Board has directed KPERS staff to pursue introduction of legislation for a technical update of KPERS guidepost statutes. In addition, the Board has approved a multi-year modernization of the KPERS pension administration system. The Board was advised by KPERS' tax and compliance counsel to update the KPERS' Internal Revenue Code guidepost section (KSA 74-49,123) during the 2021 Session to align with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provisions pertaining to certain retirement plans. The counsel also recommended updating the 457 plan's companion 401(a) plan language in KPERS statutes.

The Executive Director stated the highest priority for the 2021 Legislative Session is modernization of the pension administration system. KPERS maintains a pension administration system that provides the functionality needed to collect data and contributions from employers and to process and pay benefits. KPERS started using the system in 2005. The existing system remains capable of providing processes such as collecting contributions and paying benefits but, due to the required customizations over the years, has become less efficient and more unstable over time. KPERS administration and the Board made the decision to begin the multi-year modernization effort with the FY 2021 budget. The Executive Director noted the 2020 Legislature authorized the system assessment, which was completed in September 2020 by the Segal consulting firm. The modernization project will likely extend over four or five fiscal years with a total cost between \$20 million and \$30 million from the KPERS Trust Fund. The KPERS budget request for the upcoming budget cycle includes \$11.9 million over two years (\$6.6 million in FY 2022 and \$5.3 million in FY 2023) for this project.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee submits the following comments and recommendations:

- **Annual valuation report and total fund performance.** The Committee commends the outstanding work of the KPERS Board of Trustees and KPERS staff in the continued improvement of the unfunded actuarial liability. The Joint Committee recommends meeting funding requirements and working with KPERS on its cash position needs to provide certainty and funding. The Joint Committee further recommends to not reamortize prior to the ten-year mark (presently, the legacy UAL will extinguish in 2033) unless such recommendation comes from the KPERS Board of Trustees.
- **Board of Trustees and KPERS administration.** The Committee supports the modernization of the KPERS pension administration system.
- **DROP audit review, comment, and legislation.** The Committee recommends retaining only those eligible employees of the KHP and KBI in the DROP until the current statutory sunset date of January 1, 2025, in order to gain additional information about these participants and allow the Legislature to evaluate the cost and success of the program before considering expansion to other KP&F agencies.
  - The Joint Committee recommends the introduction of legislation that would allow DROP participants to extend their (currently) locked-in periods of participation (a minimum of three years to a maximum of five years, chosen at sign-up). Further, the Committee requests a fiscal estimate, prior to the 2021 Legislative Session, from the KPERS staff regarding the costs associated with this proposal.
- **Legislation.** The Committee recommends the introduction of legislation during the

2021 Legislative Session to bring the KPERS' Internal Revenue Code guidepost section into compliance with the relevant federal CARES Act provisions and further recommends legislation to update the 457 plan's companion 401(a) plan language in KPERS statutes.

- **Legislation.** The Committee recommends reintroducing provisions of HB 2452, pertaining to death and disability benefits, service-connected deaths.
- **Working-after-retirement statutes and emergency management.** The Committee notes its discussion regarding the impacts of COVID-19 on KPERS staff and the administration of retirement benefits. The Committee discussed working-after-retirement provisions and the temporary waiver of the required waiting period. As the 2021 Legislature considers the broader topic of emergency management, the Joint Committee notes modifications to KPERS statutes regarding working after retirement should be considered, given the recent waiver of such requirements during the pandemic (*i.e.*, waiting period, opening and closing date, and timing of the expiration date when either the disaster declaration has ended or a school year or semester completes). The Committee notes its discussion regarding whether such potential legislation would involve only KPERS or a broader issue of the

Kansas Emergency Management Act or Executive Orders of the Governor. There also was discussion on, if the decision is KPERS-specific, whether the Legislature, the Board, or the State Board of Education would have the ability to make the waiting period change. The Committee discussed having guidance should a pandemic occur. The Committee finds clarity and consistency is needed to allow, in such circumstances, certain employers to fill job needs.

- **KP&F participation.** The Joint Committee encourages individual standing committees of the Legislature to continue discussion on possible additions to the KP&F. The Committee acknowledges its prior study and recommendation in 2019 regarding the transfer of employee groups into different KPERS plans and future study topics (*e.g.*, state and local correctional groups). The Committee also recognizes ongoing work on a legislative solution for certain employees of the Kansas Department of Wildlife, Parks and Tourism and encourages this option be examined by the legislative committee before consideration of movement to KP&F.
- **Retirement System–Tier 3 Formula.** The Joint Committee recommends the ongoing review of the Tier 3 dividend formula to provide equity as intended.

# **Report of the Health Care Stabilization Fund Oversight Committee to the 2021 Kansas Legislature**

**CHAIRPERSON:** Gary Hayzlett

**LEGISLATIVE MEMBERS:** Senators Anthony Hensley and Gene Suellentrop; Representatives Henry Helgersen and Richard Proehl

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

**CHARGE**

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

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# Health Care Stabilization Fund Oversight Committee

## ANNUAL REPORT

### Conclusions and Recommendations

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

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

- **Actuarial report and status of the HCSF; income and rate level indications.** The Committee notes the report provided by the Board of Governors' actuary characterized 2019 as a "surprisingly good year" for the HCSF with slightly higher than anticipated surcharge revenue and better than anticipated loss experience. While there was a significant drop in the reserves on open claims, it was noted payments were up only slightly. This Committee notes this analysis was submitted to the Board of Governors in late February 2020. The Committee also notes the Board's consideration of three options for the calendar year 2021 rates; the Board elected to make selective rate changes and to continue to compress the factors for years of compliance. These actions resulted in an overall increase in surcharge rates of 2.6 percent. The Committee recognizes the changing environment, given the present COVID-19 pandemic, and the impacts on the HCSF:
  - *Revenue and leveraging concerns.* The Committee notes the HCSF revenue comes primarily from two sources: health care provider surcharges and investment income. This equates to a leveraging effect; should one source (investment income) provide lower than anticipated revenue, the other source may be increased to offset this loss of revenue. Given the present status of U.S. Treasury rates and investment yield for the HCSF anticipated prior to the pandemic, the Committee notes its concerns regarding both short-term and longer-term impacts on the HCSF, the rate level indications, and health care providers participating in the Fund. [Note: A 10 basis point decrease indicates a 1 percent increase in the surcharge. Based on the present U.S. Treasury rates, 2 percent for the surcharge now could become 12 percent if there is a decrease of 100 basis points.]
- **COVID-19 impacts on claims and settlements.** The Committee recognizes the present public health emergency and the efforts to minimize public participation in the judicial

system. The Committee notes the delay in consideration of both filed claims and those claims to be filed. Once the courts are more broadly opened, testimony indicates medical malpractice actions will be placed behind the criminal trials that are pending, and it could be well into fiscal year 2021 before the courts are able to hear such claims. The Committee observes:

- A *Hilburn* medical malpractice action could not move forward if those cases are not being heard. The Committee recognizes the Board of Governors will continue to monitor the impact of the *Hilburn* decision;
  - The Board of Governors and Kansas Medical Mutual Insurance Company representatives indicated that there seems to be an impact on the number of cases that are also being filed overall; and
  - The Board of Governors reports, as of October 1, 2020, 25 lawsuits and claims have been made against 3 long-term care facilities. Absent discovery, which has been delayed, the Board cannot yet ascertain whether some of these allegations would fall outside the realm of professional liability and into corporate liability.
- **Marketplace conditions; approaching headwinds.** The Committee acknowledges the concerns presented by health care insurer and provider representatives and notes the considerable impact the pandemic has made to exacerbate the ability to provide adequate and affordable professional liability insurance to health care providers:
    - After a favorable period of market conditions, with availability, lower pricing, and open terms of coverage, compression is being observed in the marketplace;
    - The reinsurance marketplace, for long-term care facilities, is restricting access, with limitations on terms of coverage. The Committee is especially concerned about reports of reinsurance coverage exclusions for infectious diseases and other pandemic-related conditions and the resulting impact on the pricing for primary coverage for long-term care facilities, including hospitals providing long-term care; and
    - The governance of and future for telehealth, in terms of best practices and standard of care and licensure for either Kansas providers providing coverage outside of the state of Kansas or for providers outside of Kansas who would be providing service to Kansas citizens.
- **Legislative proposals; amendments to the Health Care Provider Insurance Availability Act (HCPIAA).** The Committee recognizes the duration of the 2020 Legislative Session prevented more-formal consideration of legislation addressing some matters of concern to health care insurers, providers, and the Board of Governors. The Committee supports consideration on the proposals discussed and presented by the Board (corporate practice of medicine and business entity regulation and technical corrections to the HCPIAA) and the Kansas Medical Society/Kansas Hospital Association representative (changes to the required coverage limits and number of offerings).
- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the HCSF:
    - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund (SGF). The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded

by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF (excepting self-insurance programs reimbursement). Furthermore, as set forth in the HCPIAA, the HCSF is required to be “held in trust in the state treasury and accounted for separately from other state funds”; and

- Further, the Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.
- The Committee requests its report be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate budget and subcommittees of the standing committees on appropriations.

***Proposed Legislation:*** None

## **BACKGROUND**

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

The Committee met October 1, 2020.

## **COMMITTEE ACTIVITIES**

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

The Willis Towers Watson actuarial report serves as an addendum to the report provided to the HCSF Board of Governors dated July 14, 2020, which was based on the review of HCSF data as of December 31, 2019. The actuary addressed forecasts of the HCSF’s position at June 30, 2020, and June 30, 2021, based on the company’s annual review, along with the prior estimate for June 2020. In 2019, the estimate of

the HCSF-held assets as of June 30, 2020, was \$289.86 million, and the HCSF had liabilities of \$263.20 million, with \$26.66 million in reserve (2019 Study). As of June 30, 2020, the HCSF actually held assets of \$296.75 million and had liabilities of \$255.05 million, with \$41.70 million in reserve. The projection for June 30, 2021, is as follows: assets of \$302.68 million, liabilities of \$261.34 million, and \$41.34 million in reserve. The actuary noted based on the analysis provided to the Board of Governors, the HCSF needs to raise its surcharge rates by 2.3 percent for calendar year (CY) 2021 in order to maintain its unassigned reserves at the expected year-end CY 2020 level (estimated \$41.0 million).

The actuary explained the forecasts of unassigned reserves assume a 2.6 percent increase in surcharge rates for CY 2021, an estimated surcharge revenue in fiscal year (FY) 2021 of \$31.7 million, a 2.25 percent interest rate for estimating the tail liabilities on a present value basis [*Note:* The actuary commented this rate assumption was likely overestimated given current interest rates], a 2.85 percent yield on HCSF assets for estimating investment income, full reimbursement for University of Kansas (KU)/Wichita Center for Graduate Medical Education (WCGME) claims, and no change in current Kansas tort law or HCSF law. Based on these conclusions, it was suggested the Board of Governors consider a small increase in rates for CY 2021 with potentially some variation by class

and years of compliance. [Note: The Board chose to raise surcharge rates by an average of 2.6 percent effective January 1, 2021.]

The actuary reviewed the HCSF's liabilities as of June 30, 2020. The liabilities highlighted included claims made against active providers (losses) as \$77.5 million; associated defense costs (expenses) as \$15.5 million; claims against inactive providers, as known on June 30, 2020, as \$9.3 million; tail liability of inactive providers as \$144.1 million; future payments as \$13.1 million; claims handling as \$9.1 million; and other liabilities, described as mainly plaintiff verdicts on appeals, as \$100,000. Total gross liabilities were \$268.6 million; the HCSF is reimbursed \$13.6 million for the KU/WCGME programs, for a final net liability of \$255.1 million.

The actuary reviewed the HCSF's (surcharge) rate level indications for CY 2021, noting the indications assume a break-even target. The actuary highlighted payments, with settlements and defense costs of \$32.19 million; change in liabilities of \$6.04 million; administrative expenses of \$1.9 million; and transfers to the Health Care Provider Availability Plan (Availability Plan) and the Kansas Department of Health and Environment (KDHE) assumed to be \$500,000 (assuming a \$300,000 Availability Plan transfer and a \$200,000 KDHE transfer). In total, the cost for the HCSF to break even is \$40.62 million. The actuary stated the HCSF has two sources of revenue: its investment income (assumed to be \$8.42 million based on 2.85 percent yield) and surcharge payments from providers (\$32.2 million needed to break even). The actuary explained the rate-level indication and said rates need to be raised an estimated 2.3 percent in order to achieve break-even status.

The actuary also reported on trends in the HCSF's loss experience for active and inactive providers from CY 2015 through CY 2019. The actuary noted CY 2019 was better than anticipated, noting the concern at this time last year was the growth in year-end loss reserves, from \$40.68 million in 2017 to \$59.0 million in 2018 (active providers). During CY 2019, this trend changed significantly from the prior year, declining to \$40.83 million. The actuary indicated with a decrease in the year-end loss reserves without an appreciable increase in settlements, it

was a much better year than had been anticipated. The actuary reported similarly on the inactive providers with the year-end loss reserves at December 2019 down significantly from year-end 2018 without much of an increase on the settlements. The actuary highlighted trends in the HCSF loss experience for active and inactive providers by program year and noted there was not much inflation in the HCSF's overall experience for active providers over the past 13 to 14 years. The actuary indicated it was a better result this year than what was assumed last year. The actuary indicated there is some inflation for inactive providers, explaining this is due, in part, to the law change in 2014, which expanded the HCSF's coverage for inactive providers, particularly for those that had been in the HCSF for less than five years.

The actuary reported on the HCSF's investment yield over the past eight fiscal years, indicating FY 2020 showed a slight rebound with the yield increasing to 2.77 percent. The actuary noted the assumed yield in the 2019 study was 2.95 percent. The actuary stated it was decided to reduce it another 10 basis points in this year's study. The actuary commented this decision was made in February 2020, and since then, the 10-year U.S. Treasury yield rate has dropped significantly. The actuary explained in October 2019, the 10-year U.S. Treasury's yield was 1.8 percent; in October 2020, it was between 0.65 and 0.70 percent. The actuary indicated if the rate stays at this level, then it is anticipated the assumed yield will need to be reduced on the next analysis for the HCSF in January or February 2021. The actuary noted every change in 10 basis points in the interest rate is worth 1 percent in surcharge rate level. The actuary further noted if the assumed interest rate drops from 2.85 percent to 1.85 percent, then the HCSF's surcharge indication of 2 percent becomes 12 percent. The actuary explained the yield's leveraging impact on the HCSF's financials and the potential pressure on the HCSF Board of Governors to raise rates for 2022.

The actuary next provided an overview regarding indications by provider class. The report states the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. The actuary explained this analysis is reviewed annually by the Board of



Governors to provide the Board with the opportunity to consider surcharge rate changes at the individual classification level. He provided a history of surcharge rate changes since 2009. The actuary noted a 6 percent change went into effect earlier this year (CY 2020).

The actuary provided an overview of the three options for CY 2021 surcharge rates that were provided to the Board of Governors. The actuary highlighted the Board's decision to implement Option 3 for the CY 2021 rates. The actuary explained Option 3 was to make selective rate changes by class (e.g., not raise the rates on classes that were performing well and to take more than 2 percent on classes that were underperforming), and also to continue to compress the factors for years of compliance. The actuary indicated Option 3 has an overall increase in HCSF surcharge rates of 2.6 percent.

### ***Discussion***

The actuary characterized 2019 as a “surprisingly good year” for the HCSF and explained revenue came in a little higher than was anticipated with loss experience performing much better than anticipated and much better than in 2018. The actuary noted while there was a significant drop in the reserves on open claims, payments were up only slightly. As a result, the HCSF's financial position on June 30, 2020, was stronger than was anticipated in October 2019. The actuary noted a “somewhat cautious” approach in the forecasts, given these recent favorable results and the potential impacts of the *Hilburn v. Enerpipe Ltd.* (No. 112,765) decision.

On the topic of loss and loss adjustments expenses for active and inactive providers, the actuary confirmed variation between the groups, noting the denominator for the loss experience of inactive providers is not yet known. The actuary indicated the company would work to determine a way to display trends in HCSF loss experience for inactive and active providers together for future Committee meetings.

Committee members and the actuary discussed the declining investment yield and concerns regarding the leveraged relationship between the investment yield and income assumptions and the rate indication for health care providers

(surcharge). The actuary confirmed the impact of both a 10 basis point change (1 percent) and the 100 basis point change (10 percent). If the HCSF investment yield is dropped to 1.85 percent, for example, then the HCSF has a surcharge indication of another 10 points. The Committee and actuary also discussed future assumptions should effective yields continue to be at a lower level; the actuary indicated the HCSF's assets are laddered out fairly well, so it would take some time for the effective yield to start dropping significantly. The actuary cautioned this lowering of yield will put pressure on the rate level indications each year such market conditions stay at their present levels – if anticipated investment income decreases, any shortfall must be made up by the providers in the form of surcharge payments.

On the topic of the CY 2021 surcharge rates and the three options presented by the company to the Board of Governors, the actuary concurred each option was a “reasonable” option and further explained the Board's decision was made in spring 2020 based on information known in late February. At that time, the impact of the COVID-19 pandemic was fairly uncertain.

### ***Comments***

In addition to the report from the HCSF Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for its consideration. This included information from the Kansas Legislative Research Department's *FY 2021 Appropriations Report* detailing the actual and approved Board of Governors' expenditures, including the related subcommittee reports and the Committee's conclusions and recommendations contained in its most recent annual report. The information also included a memorandum outlining relevant health care provider legislation considered in the 2020 Legislative Session. The analyst highlighted the amendments to the Health Care Provider Insurance Availability Act (HCPIAA) proposed in 2020 SB 493, which had been scheduled for hearing shortly before the Legislature's unexpected early adjournment in March and did not advance during the 2020 Session. Its provisions were also not incorporated into Senate Sub. for HB 2054, which was a bill addressing emergency management, business and

health care liability, and other COVID-19-related topics. She indicated SB 493 would have made substantial changes to how the health care provider community receives its professional liability coverage. She indicated the bill would have increased the minimum thresholds on the professional liability insurance coverage for the basic coverage from \$200,000 per claim and \$600,000 per year aggregate to \$500,000 per claim and \$1.5 million per year aggregate. Additionally, the number of options for those coverage limits would have been changed from three to two. The analyst noted other amendments would have affected the membership of the Board of Governors, as well as its powers, duties, and function under certain conditions. Additionally, the bill would have provided a response to *Hilburn* by specifically proposing dissolution of the HCSF should the Kansas Supreme Court declare the statutory noneconomic damages cap in KSA 60-19a02 unconstitutional.

A representative of the Office of Revisor of Statutes provided an overview of the 2020 Special Session HB 2016 (law), which addressed a wide number of subjects related to the COVID-19 pandemic. The revisor highlighted the provisions of the bill related to health care providers and liability for health care providers:

- Immunity for health care providers for any rendering of or failure to render health services, including services that were altered, delayed, or withheld as a direct response to the COVID-19 public health emergency, with some exceptions (e.g., gross negligence or willful, wanton, or reckless misconduct or services not related to COVID-19). These provisions apply retroactively to any cause of action accruing on or after March 12, 2020, and continue to apply through the end of the state of disaster emergency [section 10];
- Liability protection provisions for adult care homes, which provide an affirmative defense to liability in any civil action for a COVID-19-related claim against an adult care home if the facility was caused to reaccept a resident who was removed from the facility for treatment for COVID-19, treats residents who test positive for

COVID-19 in compliance with a statute or rule and regulation, or is acting in compliance with public health directives [section 13];

- Expansion of telemedicine (provisions are very similar to Executive Order [EO] 20-08), which authorized the expanded use of telemedicine by physicians in the state of Kansas, as well as the practice of telemedicine by out-of-state physicians with patients located in the state of Kansas if these providers advise the State Board of Healing Arts (State Board) that they are engaging in that practice [section 20]; and
- Granting hospitals some greater degree of flexibility in their operations during the COVID-19 pandemic, by allowing the admission of patients in excess of the number of licensed beds or admitting patients inconsistent with the licensed classification of those beds for the duration of the pandemic, as well as greater flexibility in using off-campus, non-hospital space for certain COVID-19-related services. The bill also relaxed some restrictions on critical access hospitals and their admission of patients for the duration of the state of disaster emergency [section 21].

The revisor noted the bill also included provisions related to temporary emergency licensure of health care professionals under the jurisdiction of the State Board (codifying EO 20-26). He explained 2020 Special Session HB 2016 essentially grants the State Board the authority to issue these licenses during the pandemic if the applicant for such a license has qualifications that the State Board deems are necessary to protect public safety and welfare. He also noted the bill amended the scope of practice and relaxed some supervision requirements for certain health care professionals and other individuals and facilities [Section 23, also provisions in EO 20-26]. The revisor noted additional provisions relating to lapsed or canceled licenses, certain professional certifications, and licensure of hospitals, adult care homes, and other facilities (for entities that may have some difficulty meeting those requirements during the pandemic). The provisions of the bill

will expire, generally, at some point after the state of disaster emergency or on January 26, 2021.

### **Chief Counsel's Update**

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2020 medical professional liability experience (based on all claims resolved in FY 2020, including judgments and settlements). She stated 12 medical malpractice cases, involving a total of 18 Kansas health care providers, were tried to juries during FY 2020; 9 were tried in Kansas courts, and 3 were tried in Missouri courts. The trials were held in the following jurisdictions: Sedgwick County (4), Johnson County (2), Douglas County (1), Morris County (1), Wyandotte County (1), and Missouri courts (3). Of the 12 cases tried, 11 resulted in complete defense verdicts, and 1 case resulted in a verdict for the plaintiff for an amount within the primary coverage limits.

The Chief Counsel noted in the past several years, fewer cases have gone to trial, but in FY 2020, two more cases went to trial. She further noted due to the COVID-19 pandemic, no civil trials took place in March, April, May, or June 2020, meaning these 12 cases went to trial in 8 months. The Chief Counsel indicated for FY 2021, no jury trials are currently taking place; several are scheduled for the end of CY 2020, but realistically speaking, it will probably be well into CY 2021 before the courts are able to reopen the courthouses or create mechanisms to have jury trials. She stated when that happens, the first cases tried will likely be the criminal trials, and it is anticipated it will be well into next spring before any cases actually go to trial.

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2020, 73 claims in 69 cases were settled involving HCSF moneys. Settlement amounts incurred by the HCSF totaled \$27,121,225 (does not include settlement contributions by the primary or excess insurance carriers). She noted in the past three fiscal years, about the same number of cases have settled, indicating the major difference between this year and last year is that \$3,713,350 more was incurred in settlements for this past fiscal year. The Chief Counsel also reported on the severity of the claims, noting there were two more cases that fell into the \$600,001-\$1,000,000 settlement range

than during the previous year. Of the 73 claims involving HCSF moneys, the HCSF incurred \$27,121,225; the primary insurance carriers contributed \$12,400,000 to these claims. The Chief Counsel noted nine of those claims involved inactive Kansas health care providers for which the HCSF provided primary coverage. In addition, excess insurance carriers provided coverage for five claims for a total of \$7,700,000. For the 73 claims involving the HCSF, the total settlement amount was \$47,221,225. She also indicated in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 106 claims in 98 cases. The total amount of these reported settlements was \$9,868,875. The Chief Counsel's testimony also included a historical report of HCSF total settlements and verdicts from FY 1977 to FY 2020. The report indicated for FY 2020, the HCSF incurred \$27,121,225 in 73 claims settlements with no verdict amounts.

The Chief Counsel also reported 302 new medical malpractice cases during FY 2020, an amount lower than the prior year's total of 323. The Chief Counsel commented this was not likely due to the COVID-19 pandemic, noting that while the courthouses were closed to trials, in Kansas cases may be filed online. She stated it will be interesting to see in the next six months whether there is an uptick in the number of cases, and if so, it would likely be related to COVID-19. The Chief Counsel noted since FY 2015, the number of new medical malpractice cases reported to the HCSF has gradually increased; this was anticipated. She indicated this was due to the 2014 law that added five new categories of health care providers to the HCSF: nursing facilities, assisted living facilities, residential health care facilities, nurse midwives, and physician assistants.

### ***Adult Care Homes and Claims***

The Chief Counsel reported on the number of claims against adult care homes over the past several years; in 2019, of the 323 claims, 53 claims were suits and claims against adult care homes; and in 2020, of the 302 claims, 75 claims were suits and claims against adult care homes. She noted starting at the end of April and May 2020, the Board of Governors began seeing claims filed against adult care homes based on COVID-19-related issues. The Chief Counsel reported for

FY 2020, 21 new suits and claims were COVID-19-related. Removing the COVID-19-related cases, the experience for adult care homes for 2020 was the same as it was for 2019. She further reported in regard to the COVID-19 claims to date, as of October 1, 2020, 25 lawsuits and claims had been made against 3 facilities: a Wyandotte County facility with 19 suits and claims made against it, a Johnson County facility with 4 lawsuits and claims made against it, and a Sedgwick County facility with 2 lawsuits filed against it. It is anticipated the numbers of these types of claims will increase during the next two fiscal years.

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

The Chief Counsel addressed the self-insurance programs and reimbursement for KU Foundations and Faculty and residents. She indicated FY 2020 was a good year, as these costs were \$1,196,273.25 less than costs in the previous year. She stated the FY 2020 KU Foundations and Faculty program incurred \$1,565,444.80 in attorney fees, expenses, and settlements; \$500,000.00 came from the Private Practice Reserve Fund, and \$1,065,444.80 came from the State General Fund (SGF). The Chief Counsel explained the programs incurred less moneys, as there were half the settlements and fewer lawsuits than during the previous year. She noted the number of lawsuits pending at the end of FY 2020 was 41, so it is anticipated during the next fiscal year, the self-insurance program amounts expended for attorney fees and expenses will increase as the number of lawsuits pending has increased.

In regard to the self-insurance programs for the KU/WCGME resident programs, including the Smoky Hill residents in Salina, the total amount for FY 2020 was \$933,533.33. The Chief Counsel reported the FY 2020 total was half of the FY 2019 total. She noted two reasons for the decrease: First, there was one settlement compared to five the prior year, and second, in the past two years, there have been about half of the number of lawsuits that were pending against residents in training than in FY 2018. This overall decrease, from 25 to 14 cases, is seen in the the amount of defense costs incurred.

The Chief Counsel provided a list of the historical expenditures by fiscal year for the KU Foundations and Faculty and the residents in training and indicated the ten-year average for the program cost for the faculty and foundations self-insurance programs is about \$1.8 million, meaning FY 2020's costs were slightly below average. The Chief Counsel indicated she anticipates defense costs will probably increase next year. For the residency program, the ten-year average is about \$985,000 a year, so FY 2020 was termed an average year. The Chief Counsel noted this year, for the first time, the number of full-time faculty numbers exceeded the number of residents in training. The Chief Counsel also provided information about moneys paid by the HCSF as an excess carrier. She reported there was a claim for FY 2020 against a resident in training with the settlement amount of \$500,000; \$200,000 was reimbursed by the state of Kansas, and \$300,000 fell within the HCSF's excess coverage. For the faculty and foundations for this past year, three claims fell into the HCSF's excess coverage for a total of \$535,000.

### ***Discussion***

During Committee discussion, the the Chief Counsel indicated the nature of the allegations against adult care homes appears to include claims that appropriate protective equipment was not used, the facility allowed employees who had symptoms of COVID-19 to go to work without being tested, or that appropriate techniques were not utilized to contain the spread of the virus. She further indicated some of the early suits were filed at the end of April and the beginning of May, and the facilities have been overwhelmed with trying to take care of their residents, so the discovery process has been slow, and the exact nature of the claims has not been fully discovered. At the time of the Committee's meeting, the Board of Governors could not yet ascertain whether some of these allegations would fall outside the realm of professional liability and into corporate liability. When asked about whether other health care providers (subject to the HCSF) could be included in these claims and suits, the Chief Counsel noted a records request is out to determine any negligence on the part of other kinds of health care providers, but she has not seen any formal claims made in that regard.

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

The President and Chief Executive Officer, Kansas Medical Mutual Insurance Company (KAMMCO), reviewed overall market conditions and highlighted impacts associated with the COVID-19 pandemic. The KAMMCO conferee indicated the marketplace in Kansas and around the country has benefited from an extremely soft medical malpractice insurance marketplace, meaning there is availability, low pricing, and open terms of coverage. He noted signs of change emerging over the past few years and pointed to a significant turn late last fall. He reported reinsurance companies were beginning to withdraw from that marketplace and have announced a similar withdrawal from the hospital professional liability marketplace. He explained this occurrence as a “contraction” of the marketplace. The KAMMCO conferee further explained that with fewer companies (due to those companies having experienced losses or having uncertainties about the environment), pricing starts to increase, and policy terms get more constricted. He indicated the COVID-19 pandemic has accelerated and exacerbated that market trend. He reported KAMMCO would soon hold its reinsurance meetings to work on the January 1 renewal products and has already learned fewer companies will offer insurance coverage, pricing is getting more difficult, and some terms are being constricted.

The KAMMCO conferee addressed telehealth and the impact of the COVID-19 pandemic on the health care delivery system. He noted the acceleration of the application of telehealth across the country and Kansas, noting KAMMCO, like the Board of Governors, is studying these issues and gathering information from providers in more detail about their level of telehealth activities to better understand health care delivery and resulting liabilities for both those providers operating in-state and those Kansas providers providing health care services in other states.

The KAMMCO conferee also noted COVID-19’s impact on adult care facilities, particularly its effects on the residents, staff, and finances. He indicated the insurance marketplace will soon face similar impacts and reported companies are beginning to either withdraw or raise pricing in

such a way that makes it difficult to continue in that marketplace, and reinsurers are adopting similar practices. The KAMMCO conferee explained companies like KAMMCO have seen signs that the reinsurance industry for long-term care is going to insist on an exclusion for infectious or communicable disease in reinsurance contracts, which would then follow through into underwriting. He noted this is in direct response to the pandemic, and it would be particularly devastating to the adult care community’s ability to secure the adequate insurance coverage it needs.

He indicated KAMMCO will work with the reinsurance industry to see if the issue can be mitigated; he reported one company in Kansas, the Berkshire Hathaway Company, however, has already filed such an exclusion with the Commissioner of Insurance (Commissioner). The KAMMCO conferee explained the Commissioner did approve the exclusion for excess or umbrella-type coverage, but declined the filed exclusion for the basic coverage that is mandated by the HCPIAA. He further explained the Commissioner said there was no statutory ability in the HCPIAA to be able to exclude that condition from the definition of health care services rendered or failed to be rendered, so the Commissioner disapproved that filing. In the short term, companies writing primary coverage will then be required to provide it, but the reinsurers will not choose to reinsure and certainly will not reinsure it for excess or umbrella-type coverage. He noted this is a major issue that insurers are going to face over the next few years. Insurers will deal with that issue in an environment where many of the claims filed against adult care homes will likely be COVID-19-related, *i.e.*, many of the claims will fit squarely inside an exclusion for infectious or communicable disease.

During Committee discussion, the KAMMCO conferee indicated he has visited with the Kansas Hospital Association (KHA) about reinsurance concerns for hospitals; he noted community hospitals that have swing beds and long-term care beds that are not separate facilities but are licensed underneath that hospital license are especially concerned. The KAMMCO conferee noted this insurance issue does not just affect providers and hospitals or long-term care facilities; it affects patients and their families in Kansas and nationwide. Responding to a question about

liability protections for long-term care facilities, the KAMMCO conferee discussed affirmative defense, indicating it does not rise to the same level as the immunity provided to all the other health care providers by 2020 Special Session HB 2016. He explained the adult care home's attorney must raise any affirmative defenses in the answer to a filed lawsuit. The KAMMCO conferee further explained when a medical malpractice claim is filed, different factors are considered, such as the timing of the claim, present law, and whether the statute of repose or the statute of limitations might exclude the claim from being successfully litigated. He indicated the next step in the claim process is discovery and then potentially a trial in order to determine whether that affirmative defense will stand. He further explained while the affirmative defense exists and provides the opportunity to argue for the actions of the adult care home under certain circumstances, a significant amount of discovery and work must go into actualizing those arguments and forming an effective defense.

The KAMMCO conferee also reported on the Availability Plan, commenting the number of insured providers compared to the previous year is not significantly different, with one notable surprise. He indicated at this time in 2019, roughly 8 adult care facilities were insured by the Availability Plan, meaning those facilities could not find insurance in the regular marketplace, and as of the date of the meeting, 20 facilities were insured by the Availability Plan. The KAMMCO conferee stated this is the beginning of what could develop into a crisis. He commented on the growing issues that could lead to this crisis: potential loss of the cap on noneconomic damages; the spread of COVID-19 and a resulting weakened health care delivery mechanism as a result of a two-month shutdown; and an already present hardening in the insurance marketplace that will be accelerated into a more acute problem.

The KAMMCO conferee noted its claims are down about 16 percent this year; the Kansas Supreme Court, as part of one of the emergency orders of the Governor, has tolled the statute of limitations. He explained law firms possibly do not feel any particular urgency to file those claims because they do not have to contend with any sort of statute of limitations. The KAMMCO conferee further explained this issue will present

compression in the future for those claims, which could be problematic for the insurance industry and the HCSF. In discussion with the Committee, the KAMMCO conferee noted information referenced by the Executive Director; Kansas is fifth lowest in terms of costs. The KAMMCO conferee indicated Kansas has enjoyed a stable and effective medical malpractice environment. He discussed noneconomic caps and the resulting uncertainty for tort reform, noting the delay in establishing a *Hilburn* test case for medical malpractice actions. He also contrasted the varied experience of the COVID-19 pandemic, highlighting the infection fatality rate difference between New York City and the state of Kansas. He spoke to this "mixed environment" that has both positive and negative indicators present.

When asked about 2021 rates for adult care facilities given the reinsurance issues present in the marketplace, the KAMMCO conferee indicated actuarial work that the organization has conducted suggests the result could be a lower double-digit increase for adult care homes for 2021; he cautioned COVID-19 will not help those rate indicators. He also commented on the expectation that reinsurers will not cover anything pandemic-related starting January 1, 2021. The Committee and conferee discussed future implications and the consideration of creating protections and clarifying definitions that include infectious disease. The KAMMCO conferee indicated the HCSF is financially healthy, well-run, and has definitions in statute that require the delivery of health care services with very few exceptions. He indicated utilizing the HCSF will help insulate companies like KAMMCO from what other carriers will experience nationwide.

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

The Executive Director of the Kansas Medical Society (KMS) presented comments, stating she would also represent the KHA in her remarks concerning the drafting of and interest in proposed changes to the HCSF law. The conferee first addressed the purpose of the HCSF, indicating the HCSF is performing exactly as it was intended when it was put in place many years ago. She provided a brief history of the HCSF, indicating although providers could get access to insurance, there still needed to be some legal reforms to make

it more affordable in order to maintain that access for patients. She stated the cap on noneconomic damages has been a critical component in achieving affordability and access. The conferee indicated there is a question about whether the cap still stands for medical malpractice. The KMS remains a proponent of the HCSF because it is stabilizing the marketplace for medical malpractice insurance. The conferee also indicated KMS believes the Committee should continue its operation, and it is not necessary to have a secondary independent actuarial analysis.

The KMS conferee provided an overview of 2020 SB 493 and described the structural changes that would allow the HCSF to continue to perform in a way that provides adequate coverage. She indicated KMS and KHA plan to bring forward a similar bill for the 2021 Session; these associations have been working in conjunction with the HCSF Board of Governors and have thoroughly vetted this subject both with legislative leaders and more broadly with all defined types of health care providers. The KMS conferee explained the proposed draft removes the provision contained in 2020 SB 493 that would dissolve the HCSF in response to a ruling from the Kansas Supreme Court. The conferee also provided an explanation of the proposed changes: moving from three coverage options to two options, increasing the minimum coverage requirement to \$500,000, and allowing up to \$2.0 million in excess coverage to be offered as opposed to \$1.0 million through the HCSF. During discussion, the KMS conferee agreed with the comment that roughly 90 percent of those insured by the HCSF currently carry \$1.0 million of coverage. She added the HCSF cannot elect to offer higher limits without a statutory change, so this legislation would be necessary to allow for that increase in coverage.

Written testimony submitted by the Kansas Association of Osteopathic Medicine supported the continued operation of the HCSF, noting stabilizing support provided by the Fund and the affordability of malpractice insurance in Kansas. The testimony pointed to the present challenges: the *Hilburn* decision and upward pressure on the HCSF due to higher claims, the inclusion of the corporate practice of medicine (business entities participating in the Fund), and the uncertainty for health care providers due to the pandemic. The

testimony supported continued operation of the HCSF, its oversight by the Committee, and the continued treatment of the HCSF and its reserves as separate from the SGF.

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

The Executive Director of the HCSF Board of Governors (Executive Director) provided a brief history of the HCPIAA, explaining when the law was passed in 1976, it had three main functions: a requirement that all health care providers, as defined in KSA 40-3401, maintain professional liability insurance coverage; creation of a joint underwriting association, the Availability Plan, to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and creation of the HCSF to provide excess coverage above the primary coverage purchased by health care providers and to serve as reinsurer of the Availability Plan. He noted 16,426 health care providers participate and are provided coverage in the HCSF.

The Executive Director provided the Board of Governors' statutory report (as required by KSA 40-3403(b)(1)(C) and issued October 1, 2020). The FY 2020 report indicated:

- Net premium surcharge revenue collections amount to \$28,705,874. The lowest surcharge rate for a health care professional was \$100 (a first-year provider selecting the lowest coverage option) and the highest surcharge rate was \$18,376 for a neurosurgeon with three or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas resident neurosurgeon (if licensed in Missouri) would result in a total premium surcharge of \$23,889 for this health care provider;
- The average compensation per settlement (69 cases involving 73 claims were settled) was \$371,524. These amounts are in addition to compensation paid by primary insurers (typically \$200,000 per claim). The report stated amounts reported for verdicts and settlements were not

necessarily paid during FY 2020, and total claims paid during the fiscal year amounted to \$27,651,536; and

- The balance sheet, as of June 30, 2020, indicated total assets of \$299,601,265 and total liabilities of \$271,785,592.

### ***Availability Plan***

The Executive Director's report also included an update on the Availability Plan. The Executive Director reported as of October 1, 2019, there were 287 plan participants, including 176 physicians, 7 physician assistants, 13 nurse anesthetists, 2 chiropractors, and 2 nurse midwives, as well as 26 professional corporations and 27 facilities (the physician total includes those residents in training who are employed *via* "moonlighting"). He noted without the Availability Plan, these health care providers would be unlikely to be able to provide services within the state.

### ***Contemporary Issues***

*Legislation and recent law.* The Executive Director provided an update on 2020 SB 493, indicating the bill would have changed the three limit coverage levels of the HCSF of \$100,000, \$300,000, or \$800,000 to two limit coverage levels, \$500,000 or \$1,500,000. He stated a similar bill is expected to be introduced in the 2021 Legislative Session on behalf of KMS and noted the Board of Governors is working alongside the interested parties in drafting the bill language. The Executive Director also reported on HB 2119, explaining the Board was directed by the 2019 law to complete an actuarial study and review how the "corporate practice of medicine" (regulation of business entities) would affect the HCSF. The Executive Director reported the agency did provide this report to the Legislature on January 1, 2020; however, due to the shortened session, this issue was not addressed by the Legislature. He stated the Board of Governors will be requesting legislation in the 2021 Session to address two broad concerns with the law. The Executive Director indicated the Board plans to request introduction of a bill addressing technical issues, including the use of the term "health care," and other items. The Executive Director reported the Board continues to monitor the resulting impacts

of the *Hilburn* decision to see how that might further affect the HCSF.

*COVID-19.* The Executive Director addressed the agency's efforts to keep staff members working safely and the agency's response to the need during the COVID-19 pandemic to be continuously working as emergency orders came in, as temporary licensing was allowed, and how it responded to emerging issues, including telemedicine.

During discussion, the Executive Director commented on the issue of telemedicine, indicating the Board of Governors is always looking at how trends affect decisions relating to the HCSF and more broadly how the field of medicine and health care is changing. He addressed the desire to keep Kansas health care providers in Kansas, and noted the staff and the Board believe keeping liability insurance rates at a level that is more acceptable is one of those components.

## **CONCLUSIONS AND RECOMMENDATIONS**

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

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



- **Actuarial report and status of the HCSF; income and rate level indications.** The Committee notes the report provided by the Board of Governors' actuary characterized 2019 as a "surprisingly good year" for the HCSF with slightly higher than anticipated surcharge revenue and better than anticipated loss experience. While there was a significant drop in the reserves on open claims, it was noted payments were up only slightly. This Committee notes this analysis was submitted to the Board of Governors in late February 2020. The Committee also notes the Board's consideration of three options for the CY 2021 rates; the Board elected to make selective rate changes and to continue to compress the factors for years of compliance. These actions resulted in an overall increase in surcharge rates of 2.6 percent. The Committee recognizes the changing environment, given the present COVID-19 pandemic, and the impacts on the HCSF:
  - *Revenue and leveraging concerns.* The Committee notes the HCSF revenue comes primarily from two sources, health care provider surcharges and investment income. This equates to a leveraging effect; should one source (investment income) provide lower than anticipated revenue, the other source may be increased to offset this loss of revenue. Given the present status of U.S. Treasury rates and investment yield for the HCSF anticipated prior to the pandemic, the Committee notes its concerns regarding both short-term and longer-term impacts on the HCSF, the rate level indications, and health care providers participating in the Fund. [Note: A 10 basis point decrease indicates a 1 percent increase in the surcharge. Based on the present U.S. Treasury rates, 2 percent for the surcharge now could become 12 percent if there is a decrease of 100 basis points.]
- **COVID-19 impacts on claims, settlements.** The Committee recognizes the present public health emergency and the efforts to minimize public participation in the judicial system. The Committee notes the delay in consideration of both filed claims and those claims to be filed. Once the courts are more broadly opened, testimony indicates medical malpractice actions will be placed behind the criminal trials that are pending, and it could be well into FY 2021 before the courts are able to hear such claims. The Committee observes:
  - A *Hilburn* medical malpractice action could not move forward if those cases are not being heard. The Committee recognizes the HCSF Board of Governors will continue to monitor the impact of the *Hilburn* decision;
  - The Board of Governors and KAMMCO representatives indicated there seems to be an impact on the number of cases that are also being filed overall; and
  - The Board of Governors reports, as of October 1, 2020, 25 lawsuits and claims have been made against 3 long-term care facilities. Absent discovery, which has been delayed, the Board cannot yet ascertain whether some of these allegations would fall outside the realm of professional liability and into corporate liability.
- **Marketplace conditions; approaching headwinds.** The Committee acknowledges the concerns presented by health care insurer and provider representatives and notes the considerable impact the pandemic has made to exacerbate the ability to provide adequate and affordable professional liability insurance to health care providers:
  - After a favorable period of market conditions, with availability, lower pricing, and open terms of coverage, compression is being observed in the marketplace;

- The reinsurance marketplace, for long-term care facilities, is restricting access, with limitations on terms of coverage. The Committee is especially concerned about reports of reinsurance coverage exclusions for infectious diseases and other pandemic conditions and the resulting impact on the pricing for primary coverage for long-term care facilities, including hospitals providing long-term care; and
- The governance of and future for telehealth, in terms of best practices and standard of care and licensure for either Kansas providers providing coverage outside of the state of Kansas or for providers outside of Kansas who would be providing service to Kansas citizens.
- **Legislative proposals; amendments to the HCPIAA.** The Committee recognizes the duration of the 2020 Legislative Session prevented more-formal consideration of legislation addressing some matters of concern to health care insurers, providers, and the Board of Governors. The Committee supports consideration on the proposals discussed and presented by the Board (corporate practice of medicine and business entity regulation; technical corrections to the HCPIAA) and the KMS/KHA representative (changes to the required coverage limits and number of offerings).
- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, the

Legislature, and the Governor regarding the HCSF:

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

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

# **Report of the Kansas Criminal Justice Reform Commission to the 2021 Kansas Legislature**

**CHAIRPERSON:** Marc Bennett

**VICE-CHAIRPERSON:** Representative Stephen Owens

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

**FACILITATOR:** Reggie Robinson [until 9/19/20]

**NON-LEGISLATIVE MEMBERS:** Chief Todd Ackerman, Jennifer Baysinger, Honorable Glenn Braun, Sheriff Bill Carr, Honorable Marty Clark, Professor John Francis, Chad Harmon [from 6/8/20], Spence Koehn [from 4/13/20], Chris Mechler [until 11/25/19], Tabitha Owen, Sylvia Penner, Bill Persinger, Professor Jean Phillips, Amy Raymond [from 11/25/19 until 4/13/20], Pastor Adrion Roberson, Brenda Salvati [until 6/8/20], Shelly Williams; Derek Schmidt, Attorney General (non-voting); Scott Schultz, Executive Director, Kansas Sentencing Commission (non-voting); and Jeff Zmuda, Secretary of Corrections (non-voting).

## **CHARGE**

The Commission is directed by KSA 2019 Supp. 21-6902 to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;
- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;
- Analyze diversion programs and recommend options to expand diversion programs and implement statewide standards;
- Review community supervision levels and programming available for those serving sentences for felony convictions;

- Study and make recommendations for specialty courts statewide;
- Survey and make recommendations regarding available evidence-based programming for offenders in correctional facilities and in the community;
- Study Department of Corrections policies for placement of offenders and make recommendations for specialty facilities, to include geriatric, 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.

November 2020

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# Kansas Criminal Justice Reform Commission

## FINAL REPORT

### Conclusions and Recommendations

The Commission adopted the following recommendations, organized into three groups. More complete recommendations may be found in the Conclusions and Recommendations section of the report at the end of the report. [Note: The numbering of *recommendations* is for ease of reference only and does not reflect priority order.]

#### Recommendations for Legislation or Other Support by the Legislature:

The Commission recommends the Legislature adopt legislation to accomplish or otherwise support the following:

1. *SB 123 and diversion.* Adopt legislation that includes the provisions of 2020 HB 2708, relating to drug abuse treatment for people on diversion;
2. *Specialty courts.* Require the Kansas Supreme Court to adopt rules for the establishment and operation of one or more specialty court programs within the state;
3. *Identification certificate.* Amend KSA 8-246 to add Court Services and Community Corrections agencies as entities authorized to provide an identification certificate;
4. *Earned compliance.* Adopt an initiative in support of earned compliance credit and the strengthening of early discharge mechanisms for people on supervision;
5. *Supervision conditions.* Create a work group to create standardized conditions of supervision;
6. *Concurrent supervision.* Create a work group to examine policy to consolidate concurrent supervision cases;
7. *Effective responses to behavior.* Support the formalization of the Kansas Department of Corrections' (KDOC's) approach to parole and post-release supervision violations, including implementation of Effective Responses to Behavior;
8. *Proportional penalties.* Adopt legislation that includes the provisions of 2019 HB 2047, concerning decreasing the penalties in drug grid level 5 to be similar to those for nondrug grid level 8;
9. *Tampering with an electronic monitoring device.* Adopt legislation that includes the provisions of 2020 HB 2494, concerning unlawful tampering with an electronic monitoring device, and lowering the severity level from a level 6 nonperson felony to a level 8 nonperson felony;

10. *Felony loss threshold.* Adopt legislation that includes the provisions of 2020 HB 2485, concerning increasing the felony loss threshold from \$1,000 to \$1,500 on certain property crimes;
11. *Prior convictions - domestic violence.* Adopt legislation that includes the provisions of 2020 HB 2518, concerning including prior convictions with a domestic violence designation as qualifying prior convictions with regard to domestic battery sentencing;
12. *Pretrial substance abuse treatment.* Adopt legislation that includes the provisions of 2020 HB 2708, concerning the implementation of pretrial substance abuse programs;
13. *Compassionate release.* Adopt legislation that includes the provisions of 2020 HB 2469, concerning implementation of an expanded compassionate release program;
14. *Good-time credit.* Adopt legislation that includes the provisions of 2020 HB 2484, concerning early discharge for non-violent drug offenders upon completion of 50 percent of the sentence;
15. *Review of probation terms.* Adopt legislation that includes the provisions of 2019 HB 2052, including amendments proposed by the Office of Judicial Administration, concerning judicial review of probation terms and conditions once 50 percent of the sentence has been served;
16. *Data collection.* Adopt a requirement that law enforcement agencies collect additional data related to the race of citizens with whom they have contact;
17. *Legislative commission.* Establish a standing legislative commission on racial equity in the criminal justice system and identify specific representative membership groups.
18. *Data - housing.* Adopt legislation that requires a consistent method of tracking persons in jails and prisons who are experiencing housing instability or are at risk of homelessness;
19. *Supplemental Nutrition Assistance Program (SNAP).* Adopt legislation to amend KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of the SNAP program; and
20. *Drivers license reinstatement.* Adopt legislation that includes the provisions of 2020 HB 2547 and 2020 SB 275 relating to driver's license reinstatement fees, and provide substitute or alternative funding to offset lost fee revenue.

**Recommendations to the Legislature or Other Appropriate Authority:**

The Legislature or other appropriate authority should consider or implement the following:

1. *Data sharing.* Consider issuing a request for proposal for a comprehensive assessment relating to the current state of data sharing across Kansas agencies;
2. *Required diversion.* Consider examining the use of diversion across the state and determine whether the public policy of the State should require diversion to be offered in each jurisdiction and, if so, determine whether diversion should be mandated for certain types of crimes for people with certain criminal history;

3. *Pre-charging diversion.* Consider a less-stringent diversion option, or even the possibility of a pre-charging diversion;
4. *Diversion agreements sealed.* Consider the modification of expungement statutes or other approaches to address whether diversion agreements should be sealed from public view;
5. *Indigent divertees.* Consider methods of ensuring indigent diversion applicants have the same access to the process as non-indigent applicants;
6. *Deferred adjudication.* Consider a mechanism for deferred adjudication such that a court could require a plea as a condition of diversion;
7. *Geriatric and cognitive care for inmates (KDOC).* Consider authorizing funding and authority for the modification of an existing facility to provide approximately 200-250 male beds for geriatric and cognitive care;
8. *Substance abuse treatment center (KDOC).* Consider authorizing funding and authority for a substance abuse treatment center within the correctional facility system including funding and authority to build a substance abuse treatment center to provide 240 additional male beds for treatment; and funding and authority to allow the KDOC to continue repurposing and renovating an existing building to provide approximately 200-250 male beds for treatment;
9. *Inpatient capacity.* Consider adopting the recommendations of the Mental Health Task Force to the 2018 and 2019 Legislatures to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings;
10. *Mental health services.* Consider making access to local and regional community mental health services a legislative priority;
11. *Co-occurring disorders.* Consider the Council of State Governments (CSG) Justice Center recommendations listed on pages 43 through 47 of the Appendix, concerning support of people with co-occurring disorders, cross-system coordination, data collection, and training and education for providers to support persons with co-occurring disorders;
12. *Co-responder program.* Implement and fund a statewide co-responder program, with consideration given to funding pilot programs initially;
13. *Protective factors.* Implement programs that offer “protective factors” such as safe, affordable, and decent housing; gainful employment; and positive family and social relationships to emphasize prevention of crime;
14. *Sequential Intercept Model.* Consider implementation of the Sequential Intercept Model;
15. *Liaisons.* Consider creation of a behavioral health liaison position within local jails and a corrections liaison position within each community mental health center, with consideration given to funding pilot programs initially;
16. *Detox and evidence-based treatment.* Consider support of access to detox and evidence-based treatment;

17. *On-site behavior services.* Consider establishing on-site behavioral health services in jails, with consideration given to funding pilot programs initially;
18. *Cost-avoidance studies.* Consider cost-avoidance studies such as those conducted by Wichita State University when comparing incarceration versus treatment alternatives;
19. *Waiver.* Consider an application for a Centers for Medicare and Medicaid Services waiver for reimbursement for mental health services in residential psychiatric facilities and treatment centers;
20. *Mobile evaluators.* Consider support of trained mobile competency evaluation and restoration providers, especially in rural and frontier areas of the state;
21. *Workforce development.* Consider placing an emphasis on mental health and substance abuse workforce development, especially in rural and frontier areas of the state;
22. *Interagency collaboration.* The Kansas Criminal Justice Reform Commission (or a successor entity) should implement the following:
  - Develop an interagency re-engagement unit;
  - Formalize interagency collaboration;
  - Support interagency collaboration; and
  - Formalize the use of Effective Responses to Behavior.
23. *Violent crime, sentencing, and victims.* Consider the CSG Justice Center recommendations listed on pages 53 through 56 of the Appendix adopted by the Proportionality/Sentencing Subcommittee concerning violent crime, sentencing, and victims assessment.
24. *Racial equity and justice data collection.* Strongly consider the December 2020 recommendations of the Governor’s Commission on Racial Equity and Justice (CREJ) related to data collection, maintenance, and analysis;
25. *Pretrial Justice Task Force.* Strongly consider the November 2020 Pretrial Justice Task Force recommendations;
26. *State Board of Indigents' Defense Services (BIDS) budget and statewide public defender offices.* Identify revenue sources to increase the BIDS budget and to specifically create stand-alone public defender offices statewide;
27. *CREJ-public defender system.* Strongly consider the December 2020 recommendations of the CREJ related to the state public defender system;
28. *Consideration of BIDS report.* Strongly consider the September 2020 BIDS report titled “A Report on the Status of Public Defense in Kansas”;
29. *Housing and homelessness.* Current efforts to review and address housing and homelessness in Kansas should include people involved in the criminal justice system in existing housing review entities; and expand existing lists of housing opportunities available through KDOC, the Kansas Housing Resources Corporation, and the Kansas Department for Aging and Disability Services;
30. *Justice-involved housing.* Consider establishing policies that require an ongoing collaboration among state agencies to address housing for people in the justice system;



31. *Housing data.* Prioritize collecting data to guide housing policy improvements;
32. *Housing training.* Focus on training and coordination for housing providers, continuum-of-care providers, housing authorities, landlords, and community supervision officers;
33. *Master leases.* Fund additional KDOC master leases;
34. *Housing coordinators.* Increase the number of coordinators for the Kansas Supportive Housing for Offenders program;
35. *Special needs unit.* Create a forensic unit in the KDOC to house persons released with special needs;
36. *Housing data tracking.* Create a position within KDOC to track housing for persons released from prison;
37. *KDOC administrative changes.* Consider administrative changes within KDOC regarding the intake process, Pell Pilot programs, employment specialists, marketing KDOC's education programs to employers, programming, and funding for education and employment programming;
38. *KDOC employment changes.* Consider employment-related KDOC administrative changes relating to the KANSASWORKS State Board, workforce development models, Rehabilitation Services screening, the Governor's Workforce Innovation and Opportunity Act Reserve Obligation, shared positions between state agencies and all local workforce boards, and creation of a Legislative Liaison position at KDOC; and
39. *Occupational licensing.* Consider the CSG Justice Center recommendations, listed on pages 124 through 125 of the Appendix, concerning occupational licensing.

### **Topics for Further Study**

Due to the COVID-19 pandemic, the Commission could not complete all areas of study. The Commission will request an extension of at least one additional year to allow further study of:

1. *Sanctions and incentives.* Ensuring the statewide availability of robust sanctions and incentives for persons on supervision;
2. *Data integration.* Data integration to merge siloed data;
3. *Supervision best practices.* Supervision entity mission and vision statements, which should be aligned with implemented best practices and goals of supervision;
4. *Drug possession charge levels.* Amending the severity level of all personal use drug possession charges from felony to misdemeanor, similar to that for marijuana;
5. *Sentencing grid combination.* Combining both sentencing grids into a single grid;
6. *Debt collections.* Review the practice of using warrants and bonds for debt collections court proceedings;

7. *Access to medical care.* Provide access to medical care during the reentry process;
8. *Access to treatment.* Provide access to mental health and substance abuse treatment during the reentry process;
9. *Temporary Assistance to Needy Families (TANF).* Amend KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of the TANF program;
10. *Traffic fines and fees.* Adopt legislation relating to the failure to pay traffic fines and fees, including the provisions of 2020 HB 2434 as introduced;
11. *Drivers license points.* Implement a points-based system for driver's licenses; and
12. *Occupational licensing.* Adopt targeted amendments to the licensing requirements of occupational licensing boards concerning criminal history.

## BACKGROUND

In 2019, enacted HB 2290, codified at KSA 2019 Supp. 21-6902, established the Kansas Criminal Justice Reform Commission (Commission) and directed the Commission to address various specified issues involving the Kansas criminal justice system. The bill required the Commission to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and 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 (KDOC) 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.

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.

## ORGANIZATION

HB 2290 established the following voting members and appointing authorities for the Commission:

- One member of the Senate, appointed by the President of the Senate;
- One member of the Senate, appointed by the Minority Leader of the Senate;
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- One member of the House of Representatives, appointed by the Minority Leader of the House of Representatives;
- One member of the Judicial Branch Court Services, appointed by the Chief Justice of the Supreme Court;
- One criminal defense attorney or public defender, appointed by the Governor;
- One county or district attorney from an urban area and one county attorney from a rural area, appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, appointed by the Attorney General;
- One professor of law from the University of Kansas School of Law and one professor of law from Washburn University School of Law, appointed by the deans of such schools;
- One drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program, appointed by the Kansas Sentencing Commission;
- One district judge, appointed by the Kansas District Judges Association;
- One district magistrate judge, appointed by the Kansas District Magistrate Judges Association;
- One member representative of the faith-based community, appointed by the Governor;
- One member of a criminal justice reform advocacy organization, appointed by the Legislative Coordinating Council (LCC);
- One mental health professional, appointed by the Kansas Community Mental Health Association; and
- One member representative of community corrections, appointed by the Secretary of Corrections.

The bill established the following non-voting members of the Commission:

- The Attorney General, or the Attorney General's designee;
- The Secretary of Corrections, or the Secretary's designee; and
- The Executive Director of the Kansas Sentencing Commission, or the Executive Director's designee.

The bill also required the Governor to appoint a facilitator to assist the Commission in developing a project plan and carrying out the duties of the Commission in an orderly fashion.

The initial appointments to the Commission were completed by August 1, 2019. Community corrections member 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 officer 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.

Pursuant to 2019 HB 2290, staff and meeting support for the Commission was provided by the Office of Revisor of Statutes, the Kansas Legislative Research Department (KLRD), and the Division of Legislative Administrative Services.

## SUBCOMMITTEES

HB 2290 authorized 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 August 28, 2019, meeting, the Commission voted to establish five subcommittees and directed each subcommittee to study specific topics assigned by HB 2290. An additional subcommittee was established during the June 8, 2020, meeting to study topics related to race and the criminal justice system. The subcommittees are as follows:

- Data Management;
- Diversion/Specialty Courts/Specialty Prisons/Supervision;
- Mental Health and Drug Treatment;
- Proportionality/Guidelines;
- Race and the Criminal Justice System; and
- Reentry.

After each subcommittee was established, Commission members volunteered to serve on specific subcommittees. Two subcommittees, the Mental Health and Drug Treatment and Race and the Criminal Justice System subcommittees, also chose to add ex-officio non-voting members.

From November 2019 through November 2020, each subcommittee met multiple times, usually *via* teleconference or videoconferencing with access provided to the public. In November 2019, the LCC approved two meeting days (including use of Statehouse facilities and technology) for each subcommittee for the remainder of fiscal year (FY) 2020. In July 2020, the LCC approved two meeting days for each subcommittee through the end of calendar year 2020.

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 9 and November 23, 2020, meetings, as discussed below. The final reports produced by each subcommittee are attached to this report in the Appendix.

## COMMISSION MEETINGS

The LCC approved seven meeting days for the Commission during fiscal year (FY) 2020. The Commission met four times before submission of the preliminary report in December 2019, and a summary of three of those meetings may be found in the preliminary report. [*Note:* Due to the timing of report submission, the summary for the November 25, 2019, meeting is included in this report.]

The Commission met an additional three times during FY 2020:

- January 6, 2020;
- April 13, 2020; and
- June 8, 2020.

On July 9, 2020, the LCC approved six meeting days for the Commission for the remainder of calendar year 2020. The Commission met six times prior to submission of this report:

- July 13, 2020;
- August 10, 2020;

- September 14, 2020;
- October 12, 2020;
- November 9, 2020; and
- November 23, 2020.

### **November 25, 2019**

At the meeting on November 25, 2019, the subcommittees presented their preliminary recommendations. The Commission discussed each recommendation, adjusted the language of some recommendations, and voted to endorse a total of 17 preliminary recommendations, which may be found in the [December 2019 Preliminary Report](#).

### **January 6, 2020**

#### ***Presentation—Council of State Governments (CSG)***

Representatives of the CSG Justice Center gave a presentation on the Kansas Criminal Justice Support for New Administrations Project, including an overview of the project, the Governor's priorities, CSG findings and potential policy options, and project deliverables and next steps.

Celine Villongco stated CSG had conducted intensive, on-site assessments of the Kansas criminal justice system and analyzed the state's systems, policies, and data. She discussed the development of reform strategies and stated CSG identified ways to break down barriers to public safety. She stated CSG staff looked at prison capacity and the pressure on the prison and jail systems across the state. Ms. Villongco also discussed the return to prison by probation violators and stated CSG staff found a need to make the system as a whole more effective. She stated CSG specifically examined post-release housing, education, and strategies to increase cognitive behavioral treatment and core correctional practices. The priorities they identified included reentry and ways to reduce recidivism, examining behavioral health in the justice system, identifying paths to successful employment, and coordinating and aligning state and federal resources.

Ms. Villongco said CSG staff had been working in Kansas for about six months. Most of their on-site assessments were conducted in September and October 2019. In November and December 2019, they worked on the analysis and refined potential policy options for the final report. The goals are to reduce recidivism and increase public safety among those on community corrections, expand policies that increase participation in programs to reduce recidivism among people sentenced to prison, reduce the rate of growth in the number of inmates in the women's correctional facility, and quantify the behavioral health needs of people in the criminal justice system.

Patrick Armstrong discussed the stakeholders CSG staff had visited. He stated CSG's focus is to reduce recidivism due to current pressures on prisons due to overcrowding and staff shortages. Their recommendations for the Governor were to establish a goal of reducing revocations by 30 percent by 2030 and to put more resources into community resources.

Mr. Armstrong stated they discussed at length the women's population in particular because it is growing at a higher rate than in other states. He stated women return to prison on supervision violations at a higher rate than men.

Commission members discussed 2013 HB 2170 and asked questions concerning supervision and programming. In response to a question, Mr. Armstrong stated CSG staff had not specifically talked to any court services officers in the three jurisdictions they visited but were focusing on what the executive branch can do.

#### ***Remarks Concerning the CSG Report***

The Acting Secretary of Corrections commended the CSG staff for their work on the report and noted the limited time available. He stated he believes CSG staff have a good sense of what many of the issues are with the criminal justice system in Kansas. He stated CSG has the ability to see what is working and what is not on a national basis. The Acting Secretary discussed recidivism, good-time credit, and program credit. Members further discussed the CSG recommendations and statistics presented.

### ***Commission Discussion—Goals for 2020***

Chairperson Marc Bennett stated a number of goals and priorities were set out at the previous meeting. Since that time, he had met with staff from the Office of Revisor of Statutes, Representative Stephen Owens, and Representative Russ Jennings, the Chairperson of the House Committee on Corrections and Juvenile Justice. The Chairperson expected to present the recommendations from the preliminary report to the House Committee on Corrections and Juvenile Justice on January 23, 2020.

**April 13, 2020 (via Zoom)**

### ***Update on Commission Recommendations***

An Assistant Revisor of Statutes provided an update on bills introduced or considered during the 2020 Session that were related to Commission recommendations contained in the Preliminary Report.

**HB 2429.** The Assistant Revisor stated HB 2429 would require the Governor to appoint two criminal defense attorneys to the Commission, one of them a public defender, and reviewed amendments and legislative consideration of it. The bill passed out of the House, and the Senate Committee on Judiciary had scheduled a hearing for it on March 18, but that hearing was canceled due to the COVID-19 pandemic.

**HB 2496.** The Assistant Revisor stated HB 2496 would allow court services officers and community corrections officers to issue certificates of identification. She further stated the bill would allow an identification certificate to be issued to an offender on probation supervision by court services or community corrections, which would count as a document that can be used as proof of identity to obtain a replacement driver's license. The bill passed the House and also was scheduled for hearing on March 18 in the Senate Committee on Judiciary.

**HB 2518.** The Assistant Revisor stated HB 2518 would amend law to count crimes designated as domestic violence offenses as prior convictions for purposes of defining domestic battery. She stated current law provides that domestic battery is a class B person misdemeanor, or a class A person misdemeanor on a second conviction, and is a

nongrid person felony on a third or subsequent conviction. Current law requires those convictions to be for domestic battery. She stated this bill would count any criminal offense that includes a domestic violence designation as a prior conviction for the purpose of escalating the penalty. The bill passed out of the House and was referred to the Senate Committee on Judiciary.

**HB 2708.** The Assistant Revisor stated HB 2708 would create a certified drug abuse treatment program for offenders on diversion and would allow county and district attorneys to enter into agreements with court services or community corrections for supervision of such persons. Treatment would last for no more than 18 months, and the participant would have to meet the criteria set out by the Kansas Sentencing Commission to participate. She stated the bill would also allow the county or district attorney to enter into a memorandum of understanding (MOU) with the Office of Judicial Administration (OJA) or community corrections services to assist with supervision of people on diversion. She stated the bill would require the MOU to cover provisions relating to the level of supervision and costs for supervision, and to include an agreement by each party. The bill passed the House and was referred to the Senate Committee on Judiciary. It also had been scheduled for hearing on March 18, 2020.

**HB 2547.** The Assistant Revisor stated HB 2547 would make changes to suspended driver's license requirements. She stated, when the Division of Vehicles receives a record of conviction for driving while suspended, current law requires the Division to extend the period of suspension for an additional 90 days. She stated the bill would change that to 30 days. She stated HB 2547 passed the House and was referred to the Senate Committee on Transportation. She noted 2020 SB 275, which contained similar provisions, had been passed by the Senate and was recommended by the House Transportation Committee.

A member noted the Judicial Branch had some concerns because of the fiscal note and the loss of revenue and wondered whether that fiscal impact had been addressed. The Assistant Revisor stated the Judicial Branch had presented testimony on HB 2547 relating to the fiscal impact. She stated the Committee did not make any changes that

would address the fiscal impact, but SB 275, which contains similar provisions, would change the \$100 reinstatement fee to be per case instead of per charge prospectively only. Members further discussed the potential fiscal effects of the bill, and potential effects experienced by municipalities.

**HB 2434.** The Assistant Revisor stated HB 2434 was not requested by the Commission, but was prefiled by Representative Gail Finney. She stated the bill would remove the authority to suspend driving privileges for nonpayment of fines from traffic citations. She stated the House Judiciary Committee heard the bill on February 18, 2020, but did not take any action on the bill.

**Audit request.** Asked about the options for a records-management systems audit, the Assistant Revisor stated Representative Owens had contacted the Legislative Post Auditor to discuss making a formal request for an audit to the Legislative Post Audit Committee (LPAC). She stated the LPAC had been scheduled to meet on April 29, but that meeting had been postponed and a new date had not been set yet. Representative Owens stated the request had been made.

### *Update from Subcommittees*

Spence Koehn presented on behalf of the Diversion/Specialty Courts/Specialty Prisons/Supervision Subcommittee, which had met April 10. He noted the Diversion work group did not provide an update during the meeting due to pending legislation. Mr. Koehn stated that Judge Glenn Braun provided an update on the Specialty Courts Work Group, which sent a questionnaire to drug court coordinators throughout the state regarding enhancements, and they also requested assistance from CSG.

Mr. Koehn stated the Secretary of Corrections provided an update on the Specialty Prisons Work Group regarding potential funding for a 240-bed facility adjacent to the Winfield Correctional Facility (Winfield), which would provide a cognitive care geriatric facility for males with 100 beds for substance abuse treatment. He stated the tentative budget also requested funding to renovate the east unit of Lansing Correctional Facility (Lansing), which would provide 200 beds for substance abuse treatment. Amy Raymond

provided an update on the Supervision Work Group; she stated the work group planned to expand its membership.

Shelly Williams stated the Supervision Work Group planned to survey all the supervision entities in Kansas, and they want to look at what is driving revocations and the gaps in services. The gaps in services would include living environments and mental health and substance abuse services.

In response to a question about adding additional persons to a subcommittee or work group, KLRD staff stated the language of KSA 2019 Supp. 21-6902 allows the Commission to add ex-officio, non-voting members to subcommittees. The statute does not specify a procedure for adding such members, so the Commission can make that determination. Members discussed the potential of bringing in subcommittee members from different regions of the state.

Representative Owens, presenting on behalf of the Mental Health/Substance Abuse Subcommittee, stated the subcommittee specifically discussed HB 2708, the substance abuse treatment and diversion bill, during its last meeting.

Representative Owens stated the subcommittee also reviewed the co-responder system in Shawnee County, and he has also worked with the Legislative Division of Post Audit (Post Audit) to request a study of mental health resources. He discussed the appropriations process, specifically noting funding for Osawatimie State Hospital (OSH) and funding for the Kansas Department for Aging and Disability Services (KDADS) to create additional privately contracted regional beds throughout the state.

Chief Todd Ackerman, on behalf of the Proportionality/Sentencing Subcommittee, stated the subcommittee would await further action by the Legislature before holding its next meeting.

Jennifer Baysinger stated the Data Management Subcommittee was waiting to learn whether the records management systems audit will be approved. An Assistant Revisor discussed

the possible option of a limited scope audit, which takes fewer than 100 hours, and can be approved by the Chairperson of LPAC instead of the full Committee.

Professor Jean Phillips stated the Reentry subcommittee met on April 10 and discussed two driver's license bills. They had a meeting with the stakeholders who would be fiscally impacted by that legislation. With that in mind, the subcommittee is trying to work with the Office of the Governor to find other ways to cover those funds. She stated the subcommittee was also tasked with issues relating to housing; employment; and access to medical care needed for physical health, mental health, or substance abuse treatment.

Professor Phillips also discussed debt issues some people face upon release from prison. She stated a significant number of inmates have outstanding fines and fees, and often those debts get turned over to debt collection, which then increases, by up to double, the amount owed.

Professor Phillips also discussed the possibility of early release for nonviolent drug offenders and stated the subcommittee had also discussed post-release employment issues. She stated the subcommittee is specifically examining potential licensing barriers.

The Chairperson suggested review of an American Bar Association nationwide study of collateral consequences in 2014 or 2015, which listed tens of thousands of licensure restrictions based upon criminal history. Members also discussed whether certification training in KDOC facilities could be implemented in local jails.

## **June 8, 2020 (via Zoom)**

### ***Updates from Subcommittees***

Mr. Koehn presented on behalf of the Diversion/Specialty Courts/Specialty Prisons/Supervision Subcommittee. He stated he facilitated the most recent meeting of this subcommittee and was elected the new Chairperson.

Ms. Williams stated the Diversion Work Group had not met since the Interim Report was

submitted to the Legislature in December 2019 but had received input from public members on certain topics they plan to explore and possibly recommend for the December 2020 report.

Judge Braun, on behalf of the Specialty Courts Work Group, stated he had worked with CSG staff to put together some proposals. Judge Braun also discussed federal grant moneys available for specialty courts. He stated he would be working with the Chief Justice of the Kansas Supreme Court to also consider enhancing existing specialty courts and to promote the use and institution of those types of courts in areas of the state that do not have any specialty courts.

The Secretary of Corrections stated the Specialty Prisons Work Group had recommended two projects for specialty prisons that would involve renovating existing buildings to create specialized housing for the prison population, and the recommendations were included in the KDOC budget. He stated his belief that the projects would remain in the KDOC budget during the current fiscal year and carry over into the next fiscal year.

Ms. Williams stated the Supervision Work Group had met twice and had been expanded to include six additional members. She noted Sheriff Bill Carr had also recently joined this work group. She stated the group was in the process of conducting in-depth data collection regarding substance abuse, mental health, housing, and employment services as it pertains to individuals on supervision. She stated the ultimate goal is to map these services that are key to risk reduction and recidivism and see where the gaps are in the different communities across the state.

On behalf of the Mental Health/Substance Abuse Subcommittee, Representative Owens stated the subcommittee had not met since April 13, 2020, but had agreed to recruit additional ex-officio members from communities across the state.

Representative Owens stated many pieces of legislation were not passed during the 2020 legislative session due to the COVID-19 pandemic. He stated he helped introduce legislation during the special session that would have extended this Commission [2020 Special



Session HB 2001] and created a substance abuse treatment program for diverted offenders [2020 Special Session HB 2002].

Representative Owens stated one of the recommendations of this subcommittee was for a comprehensive audit examining the work groups and different committees and commissions on substance abuse and mental health across the state. This audit topic is being considered by the LPAC.

Chief Ackerman, on behalf of the Proportionality/Sentencing Subcommittee, stated the subcommittee had not met since the previous Commission meeting but would meet to discuss the legislation that was not passed during the 2020 legislative session, and would also meet with the Sentencing Commission to discuss further recommendations.

The Chairperson stated the Data Management Subcommittee also requested an audit. Representative Owens stated he submitted the request for an audit on the data management systems around the state to the LPAC, but he was informed the proposal was not selected for study.

Professor Phillips, new chairperson of the Reentry Subcommittee, stated this subcommittee had not met since April, but work has been done. She provided an update on legislation relating to driver's licenses, stating two bills related to Commission recommendations were not enacted during the legislative session.

Professor Phillips stated one of the subcommittee's goals was to deal with the collateral consequences of finding employment following a felony conviction. She stated the subcommittee is continuing to look into the debt collection issue, and members had discussed reentry programs. Professor Phillips stated the subcommittee would coordinate with the supervision and substance abuse subcommittees.

### ***Discussion of Potential Legislation and Goals for December 2020 Final Report***

Commission members discussed legislation related to Commission recommendations. The Chairperson stated due to the impact of the COVID-19 pandemic on both the work of this Commission and the Legislature this year, he

believed it would also be appropriate to ask the Legislature for a one-year extension of the Commission. He stated that members who cannot serve for another year should advise their appointing authorities so a replacement can be appointed.

### ***Subcommittee Establishment***

In light of recent events in Minneapolis, Minnesota, and the resulting protests across the country, the Chairperson requested discussion of whether to add a subcommittee on the issue of racial impact in the criminal justice system.

Members discussed the possible composition of the subcommittee, including the inclusion of *ad hoc* members from various communities throughout the state; the work that could be completed by a subcommittee before the next legislative session; the potential creation of a similar executive commission; and racial impact statements.

After further discussion, the Commission voted to establish a new subcommittee on race and the criminal justice system. Members also discussed possible organization of the subcommittee, including potential working groups.

### ***July 13, 2020 (via Zoom)***

#### ***CSG Justice Center***

Mr. Armstrong, CSG Justice Center, provided an update on the status of the work that group had done, and stated CSG has been approved by the U.S. Department of Justice's Bureau of Justice Assistance and The Pew Charitable Trusts to work with the Commission.

Mr. Armstrong stated CSG staff would initially focus on information gathering and would analyze sentencing data, review laws and policies, and work with the relevant subcommittees. He stated CSG would submit a report for each subcommittee's review at that subcommittee's next meeting, and will provide a monthly update to each subcommittee. Mr. Armstrong stated CSG would make a presentation to the Commission in September about CSG's data summaries, assessment findings, and stakeholder feedback, and another presentation will be made in October or November that would include recommendations

for the final report due to the Legislature on December 1, 2020.

### ***Updates from Subcommittees***

On behalf of the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee, Mr. Koehn stated the full subcommittee met on July 8, 2020, and each work group chairperson would provide a progress report.

Mr. Koehn stated Chairperson Bennett agreed to become chairperson for the Diversion Work Group. Chairperson Bennett stated a diversion bill passed the House, but the Senate never had a chance to vote on it due to the shortened session, so a diversion bill will be at the top of the work group's recommendations for the 2021 Legislature in the December report.

Judge Braun, on behalf of the Specialty Courts Work Group, stated the work group was preparing rough drafts of proposed legislation for specialty courts and planned to have a finished product ready for review by the Commission prior to the December final report.

Mr. Koehn presented on behalf of the Specialty Prisons Work Group. He asked a KDOC representative to summarize for the Commission a presentation provided to the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee the week prior. The KDOC representative stated there had been some changes since he gave his presentation to the subcommittee and there had been discussion about the allotment process for FY 2020. Mr. Bowman stated, in the latter part of June 2020, the funding for the Lansing substance abuse project and the Winfield project relating to the older inmate population was stricken from the budget for FY 2020. He stated since then, the agency has learned the 2021 money remains in the KDOC budget allocation amount and it has been built into the agency's 2022 allocation.

Ms. Williams stated the Supervision Work Group had recently distributed an employment and housing survey to the directors of the three supervision entities: community corrections, court services, and parole. She stated the group is working with CSG, and the subcommittee was

reviewing several policy issues relating to violations and revocations.

Representative Owens presented on behalf of the Mental Health/Substance Abuse Subcommittee. He stated the subcommittee would hear a presentation from Professor John Francis's assistant at its meeting the subsequent week. He stated the subcommittee was working with CSG to gather information, and was trying to recruit new ex-officio members. He stated he planned to get an update from Post Audit on its audit process and hoped to provide additional information at the next Commission meeting.

On behalf of the Proportionality/Sentencing Subcommittee, Chief Ackerman stated the subcommittee had held two recent meetings and members had discussed their long-term and short-term goals and recommendations of the Sentencing Commission for the final report. The subcommittee also discussed distributing a survey to the associations representing judges, prosecutors, sheriffs, and police chiefs, concerning the sentencing guidelines as they relate to proportionality. Members discussed survey topics, including combining the sentencing guidelines, proportionality of specific crimes, and downward departure.

The Chairperson, on behalf of the Data Management Subcommittee, stated Ms. Baysinger advised the subcommittee was still waiting on Post Audit to identify data systems in use across the state.

Professor Phillips stated the Reentry Subcommittee discussed potential recommendations related to driver's license issues, debt and detainers, and a recommendation to have legislation drafted that would toll collections or turning people over to collections if they have been incarcerated, so the fees do not continue to accumulate while they are in prison.

Professor Phillips stated she and Representative Finney agreed to develop another work group with CSG relating to housing issues. She stated the subcommittee has also discussed reentry programs, noting the subcommittee will consider employment barriers, such as the licensing statutes and the statutes prohibiting

offenders from working in restaurants where alcohol is served.

Chairperson Bennett noted he had agreed to be the interim chairperson of the Race and Criminal Justice System Subcommittee. He stated the primary discussion during the first meeting was the membership of the subcommittee. He stated the group discussed the addition of specific persons and members of specific organizations.

### ***Discussion of Goals for December 2020 Final Report to the Legislature***

The Chairperson stated the Legislature was not able to pass any of the bills that were recommended by the Commission due to the COVID-19 shutdown during the 2020 session. He stated the Commission intends to ask the Legislature for one more year. Representative Owens stated the legislators on the Commission intend to make sure the legislation that was introduced last year is reintroduced and considered during the 2021 Session.

There was discussion about whether CSG would be able to continue its work with the Commission if the Commission does not get an extension. Mr. Armstrong stated CSG would make an effort to complete its work for the December report in case the Commission is not granted an extension.

### ***August 10, 2020 (via Zoom)***

#### ***Update from Subcommittees***

Mr. Koehn, on behalf of the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee, stated he has asked all the work groups to submit their recommendations ahead of the next subcommittee meeting for review by the full subcommittee prior to submitting recommendations to the full Commission. Mr. Koehn asked the chairperson of each work group to provide a progress report.

The Chairperson, on behalf of the Diversion Work Group, stated it would meet the following week regarding statutory recommendations.

Mr. Koehn presented on behalf of the Specialty Courts Work Group. He stated the work

group continued its work with the OJA and members had not yet discussed funding of specialty courts.

On behalf of the Specialty Prisons Work Group, the Secretary of Corrections said KDOC started two projects to convert buildings at two different sites for specialty beds. He stated the projects were funded partly in the previous fiscal year and partly in the current fiscal year. The Secretary further discussed proposed projects at Winfield and Lansing.

Ms. Williams reported the Supervision Work Group had received the final version of the community supervision assessment plan from the CSG. She stated the work group had begun to receive responses to a survey on employment and housing opportunities. She stated the work group continued to review other states' supervision policies and would also study responses from various community corrections agencies concerning their conditions of probation.

Representative Owens presented on behalf of the Mental Health/Substance Abuse Subcommittee. He stated the subcommittee met on July 24 and added ex-officio members. He stated CSG staff made a presentation at the meeting relating to the justice reinvestment process in Kansas and Professor Francis's assistant provided an overview of drug reform legislation. He stated the presentation also included recommendations relating to drug possessions and some of the collateral consequences of felony convictions and provided a comparison of drug reform legislation in regional states. Members discussed possibly including recommendations related to a KDADS report on mental health and jails, and the topic of deferred adjudication.

Chief Ackerman stated the Proportionality/Sentencing Subcommittee met with CSG staff on July 23 and reviewed the sentencing guidelines used in Kansas and other states. He stated the subcommittee discussed taking the top five or ten crimes and modifying the current sentence ranges, rather than modifying the entire sentencing grid. He stated the subcommittee has also developed a questionnaire concerning the current sentencing guidelines and sentencing

proportionality, which the subcommittee planned to send to judges and prosecutors.

Chief Ackerman also stated the subcommittee was given a presentation by the Douglas County District Attorney concerning mandatory minimum sentences for certain misdemeanors. He stated the presentation focused on recidivism rates and reducing jail time. He stated the subcommittee had also discussed downward departures, which would also be a long-term issue.

On behalf of the Data Management Subcommittee, the Chairperson stated the subcommittee was waiting to learn whether Post Audit will be directed to conduct an audit concerning data management systems across the state.

Professor Phillips stated the Reentry Subcommittee met to discuss education and employment issues. She stated the work group was also provided a report by CSG regarding housing and employment issues. She stated CSG made a presentation on education and employment and its assessment plan during the subcommittee's August meeting.

Professor Phillips discussed CSG's plans to study occupational licensing law and its impact on the ability of individuals to gain employment. She also discussed the study of housing and driver's license issues by the subcommittee. Members discussed the housing and driver's license issues, including inviting stakeholders who might have additional information for the subcommittee.

The Chairperson presented on behalf of the Race and the Criminal Justice System Subcommittee. He stated the subcommittee met on July 30 to identify potential members for the subcommittee. He stated an email then was distributed to all those on the call, and the subcommittee members are making their best effort to notify the people who were nominated to be on the subcommittee. He stated another meeting would be held on August 13, during which the subcommittee planned to identify its goals.

## ***Discussion of Goals for the December 2020 Final Report***

Members discussed the recommendations made in 2019 and the potential fiscal impact of some recommendations. Members also discussed potential recommendations related to drug possession crimes.

The Chairperson asked subcommittees to submit their recommendations by the October Commission meeting, if possible, to allow enough time to work on all of them. He stated he would like to have robust discussions at both the October and November Commission meetings, and planned to finalize the report in November.

## ***September 14, 2020 (via Zoom)***

### ***CSG Justice Center***

The Chairperson stated CSG staff had gathered information from stakeholders across the state and provided that information to the various subcommittees. This information is designed to help the Commission in making its recommendations in the December final report.

Mr. Armstrong stated CSG is aware public safety is at the forefront of the goals of this Commission. CSG has been exploring ways to help Kansas better manage its prison population, increase support for victims of crime, strengthen community supervision and resources to change behavior and reduce recidivism, and break the cycle of recidivism with the necessary resources, including access to mental health and substance abuse treatment and employment and housing support.

Mr. Armstrong stated the subcommittees have been very helpful to CSG in assembling the necessary data and connecting CSG with practitioners across the state. The previous week, CSG had met with the subcommittees and reviewed some of the assessment findings.

Mr. Armstrong stated although the focus of this Commission is to reduce recidivism and maintain public safety, the State was faced with a projected budget shortfall of \$1.37 billion.

Mr. Armstrong stated violent crimes in Kansas increased 14 percent from 2008 to 2018. He further stated that since the beginning of the COVID-19 pandemic, police departments and sheriffs statewide report increased calls relating to violent and person crimes. Domestic violence calls doubled or tripled in some areas. Those increases are tied to a lack of substance abuse services and mental health services. The pandemic has also made the issue more challenging.

Carl Reynolds, CSG, discussed changes that have been made regarding parole release and revocation decisions and use of video conferencing for many day-to-day activities due to the pandemic. He stated there were fewer prison admissions in Kansas during the period of March through July 2020 compared to those months in 2019, and there were also fewer releases from prison. He also discussed cost savings that could be realized from lower admissions. Mr. Reynolds further discussed increases in arrests for drug-related crimes and related increases in admissions for drug offenses, noting the associated costs.

Members and CSG staff discussed violent crimes in Wyandotte County, Kansas, violent crime trends across the country, and prison population projections.

Mr. Armstrong stated the majority of admissions to prison each year are for supervision condition violations. He stated in FY 2019, condition violation admissions were up 58 percent, and parole revocations for condition violations increased 78 percent for women between 2010 and 2019, but decreased by 5 percent for men.

Members discussed their experiences with parole violators and discussed resources such as mental health or drug treatment that may help lower the number of violations.

Mr. Armstrong stated one important issue is the mental health needs of incarcerated persons. David D'Amora, CSG, stated many incarcerated persons have co-occurring mental health and substance use issues.

Mr. Armstrong stated employment is another important issue. He discussed the higher rate of unemployed parolees compared to the statewide

unemployment rate. Erica Nelson, CSG, stated CSG staff have been looking at structural barriers to career pathways to find ways to mitigate those barriers. They have looked at increasing work force development programs for the reentry population. She further discussed education requirements for jobs, noting that a large proportion of the people incarcerated within the KDOC do not have a high school diploma or a GED. Ms. Nelson also discussed programming issues within KDOC and licensing issues.

Members and staff discussed programming available to persons leaving incarceration who have mental health issues. Staff noted some specific programs that had been examined, and discussed master leases and federal funding available for such persons.

Mr. Armstrong stated the Supervision Work Group had been very helpful in pulling together information and helping CSG staff connect with others in the community and KDOC. With regard to supervision issues, CSG staff were trying to find ways to address the inefficiencies or duplication of efforts. He further discussed persons being supervised by more than one agency and stated that such arrangements can strain resources.

Mr. Armstrong and Ms. Villongco, CSG, discussed crime victims and stated the infrastructure must also include increasing crime victim access to available support and resources. The State has various ways to do that, including looking at federal funding through block grants or increasing awareness of or access to the victim compensation program.

### *Updates from Subcommittees*

Mr. Koehn, on behalf of the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee, stated CSG made a presentation to the subcommittee during its more recent meeting.

The Chairperson stated the Diversion Work Group had met but had nothing new to report.

Ms. Williams stated the Supervision Work Group would have weekly meetings until the next CSG presentation to the work group and would be looking at how to strengthen community

supervision and resources to change behavior and reduce recidivism.

Mr. Armstrong, on behalf of the Specialty Courts Work Group, stated Judge Braun and an OJA representative were taking the lead on drafting some recommendations for legislative changes and for providing more support to the jurisdictions around the state that are interested in starting specialty courts.

On behalf of the Mental Health/ Substance Abuse Subcommittee, Representative Owens stated CSG staff had made recommendations to the subcommittee regarding leveraging access to telehealth. Representative Owens stated the subcommittee also discussed KDOC policies regarding co-occurring disorders, community mental health centers and their role in the process, and the mobile crisis team approach. He stated the group also discussed the increase in substance abuse in the criminal justice system and increases in crime.

Ms. Baysinger presented on behalf of the Data Management Subcommittee. She stated Sheriff Carr had agreed to be the chairperson of this subcommittee. Representative Owens stated the LPAC did not choose to study the data management audit topic but could take up the request again next year.

Chief Ackerman stated the Proportionality/Sentencing Subcommittee had just received the results of its surveys and had not yet reviewed the results. He stated the subcommittee received 275 responses with more than 100 respondents providing additional comments.

Professor Phillips stated CSG presented to the Reentry Subcommittee during its most recent meeting. She stated 20 percent of the people leaving KDOC do not have stable housing, so the subcommittee has been able to identify some items to work on, one of which is to create a screening process and some policies on tracking housing. Professor Phillips stated the subcommittee will coordinate with the Mental Health Subcommittee because mental health and substance use issues greatly affect a person's ability to obtain and keep housing, as well as obtain and keep a job. She stated the subcommittee had also discussed

education barriers and employment barriers, and might further look into Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits.

On behalf of the Race and the Criminal Justice System Subcommittee, the Chairperson stated the subcommittee discussed how cities collect data, how cities monitor contacts by law enforcement, what it means to contact someone, and whether there is a mechanism by which better data can be collected to get a better overview of law enforcement interactions with citizens by race, gender, and other demographics.

The Chairperson also stated the subcommittee believed bail reform was a significant issue. He noted the subcommittee discussed the report of the Judicial Branch's Pretrial Justice Task Force, the public defender system, and post-incarceration fines.

#### **October 12, 2020 (via Zoom)**

#### ***Update on the Health of the Kansas Public Defense System***

The Executive Director of the State Board of Indigents' Defense Services (BIDS) (Executive Director) appeared before the Commission to discuss the status of BIDS, as well as some of its budget requests. She stated some of the agency's issues include high caseloads for both the public defenders and assigned counsel, a lack of pay parity and other compensation issues, and a lack of sufficient staffing and other other basic infrastructure resources, all of which have been exacerbated by the COVID-19 pandemic.

The Executive Director stated the most immediate problem is caseloads. The standard set by the National Advisory Commission on Criminal Justice Standards and Goals is to have no more than 150 felony cases, 400 misdemeanor cases, or 25 appeals per year per attorney. She noted the problem with high caseloads is that it deters people from becoming public defenders or joining the assigned counsel appointment list, and high caseloads drive mission-driven employees away.

The Executive Director stated in FY 2020, the public defender offices had to turn down new cases in order to maintain a caseload of 150 felony

cases per attorney per year. The cases that are turned down are given to assigned counsel attorneys, who are paid \$80 per hour, a rate that was implemented in 2006. At that time, the average market rate for attorney services in Kansas was \$150 per hour, making the BIDS rate 53 percent of the market rate. She stated the current average hourly market rate in Kansas is \$225 per hour, making the BIDS rate only 36 percent of the market rate. She stated the low hourly rate makes it difficult to recruit enough assigned counsel, particularly in rural areas where attorneys must drive long distances between county jails, district courts, and their offices.

The Executive Director stated pay issues also affect BIDS. She stated the top prosecutors in Kansas are paid 23 to 50 percent more than the top public defenders and the pay of top state public defenders is similar to that of entry-level federal public defenders. She stated the agency also lacks a formal training division to teach ongoing defense-specific continuing legal education, sufficient information technology infrastructure and office support staff, and support personnel in its administrative office.

The Executive Director discussed implementation of a three-phase holistic defense model, defined as a strategy for aggressive legal advocacy that recognizes most poor people arrested and charged with crimes are struggling with many other issues beyond just their criminal case, which further complicates their ability to navigate an appropriate outcome in their case and avoid additional contact with the criminal justice system. She stated a holistic defense model will help alleviate some of those other issues, and it is a proven way to cost-effectively meet clients where they are in a way that significantly benefits clients and the criminal justice system in general without endangering public safety.

The Executive Director discussed phases of a plan proposed by BIDS. She stated the most immediate and emergency needs, such as staffing adjustments aimed at addressing high caseloads, are addressed in Phase I of the BIDS proposed plan, which also includes a pay scale adjustment.

The Executive Director stated Phase II will continue adding staffing adjustments, including

additional pay scale adjustments for the public defenders and additional hourly rate adjustments for assigned counsel, and assessments and possible funding for needed expansions of the public defender system.

She stated Phase III will include ongoing pay adjustments as well as program and infrastructure development to support the ongoing retention and recruitment efforts; additional staffing adjustments; and infrastructure plans to move the public defense system into a far more cost-effective and public-safety-friendly, client-centered, holistic defense model.

The Executive Director and members discussed the cost of Phase I and the need for additional social workers, localized pay, and ways for attorneys to be compensated above the statutory rate.

### ***Council of State Governments Justice Team***

On behalf of the CSG Justice Center, Mr. Armstrong stated, based on the goals of this Commission, CSG had begun exploring ways to prioritize prison for people who pose a threat to public safety, increase support for victims of crime, strengthen community supervision and resources to change behavior and reduce recidivism and revocations, and break the cycle of recidivism by ensuring criminal justice system practitioners have the resources they need in facilities and the community to help people succeed.

Mr. Armstrong stated due to the COVID-19 pandemic, the State is facing an unprecedented budget deficit, making it necessary to find efficient ways to use and prioritize the limited resources available in a way that keeps Kansans safe. He noted the prison population had decreased as a result of the pandemic, but it is projected to increase once conditions return to normal.

Mr. Reynolds, CSG, stated he would provide the Commission with a recent report by the National Legal Aid and Defender Association about the importance of defense counsel being assigned at the first appearance hearing. Mr. Reynolds discussed drug possession crimes and supervision violations, stating both account for a growing proportion of prison admissions. He

further discussed data from certain counties and associated costs.

Mr. Reynolds stated CSG staff were exploring a number of sentencing policy options in order to reduce recidivism. He stated 12 policy options were under consideration in the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee.

Mr. Armstrong stated CSG Justice Center team members had connected with stakeholders from 99 counties and had spoken with more than 180 people since mid-July.

Jennifer Kisela, CSG, stated, with regard to supervision policies, CSG had been looking at strategies to improve public safety and reduce recidivism for those on supervision by considering budgets and resources while recognizing that resources are constrained. She also discussed the number of persons subject to supervision by multiple entities, common reasons for revocation, and recommendations considered by the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee.

Ms. Williams discussed the work of the Supervision Work Group, noting specific recommendations considered by the work group, including creation of an inter-agency work group to determine referrals and programming processes for those high-risk and high-need people.

Sarah Wurzburg, CSG, stated 58 percent of inmates admitted for new nonviolent offenses and 53 percent of those admitted for new violent offenses scored moderate to very high on the Level of Service Inventory-Revised (LSI-R) domain for drugs or alcohol. She noted almost all the counties in Kansas offer some level of mental health services, such as medication or identification of suicidal inmates, but only a quarter of the jails have discharge planning.

A Commission member stated the focus of the Mental Health/Substance Abuse Subcommittee is on prevention, early intervention, jail, diversion, the courts, behavioral health providers, and a greater connectedness between law enforcement and corrections. He said the Subcommittee wants to look at programs and processes that are

available before, during, and after incarceration, as well as policies and programs that divert people when appropriate from being incarcerated.

Ms. Wurzburg stated much of what the CSG staff considered involves making sure a person receiving services in a correctional facility will have a direct transition to the community mental health center or substance use treatment provider so there is coordination of care upon reentry into the community. She stated one of the key topics discussed was the use of telehealth services and the opportunity for telehealth to be expanded to support people in correctional facilities by making sure there are community-based providers available to help with the diversion and reentry processes.

Ms. Nelson, CSG, stated research shows connecting a person to the right combination of services at the appropriate level of intensity during the reentry planning process can reduce the chance of recidivism. She further discussed statistics related to LSI-R scores for newly incarcerated persons and stated KDOC has not been able to meet the demand for programming related to education and employment.

Ms. Nelson stated the Reentry Subcommittee and CSG staff had developed 19 policy option recommendations for reentry, education, and employment. She stated the recommendations relate to SNAP, TANF, Pell Pilot Programs, and marketing the skills of those who have completed KDOC vocational education programming.

Joshua Gaines, CSG, stated one of the barriers to employment that can be addressed without significant cost is the licensure process for occupational and professional licenses that may result in persons with certain criminal convictions being denied a license. He said most of the professional and occupational licensing boards in the state have broad discretion in denying licenses for people with felony convictions, which includes licenses for skin care specialists, emergency medical technicians, health care providers, and cosmetologists.

Ms. Wurzburg stated approximately 15 percent of the people annually admitted to jail report experiencing homelessness in the year prior to



arrest, and people in jail with behavioral health symptoms are 150 percent more likely to experience homelessness than other incarcerated people. She said 20 percent of people leaving KDOC facilities each year do not have stable housing. She noted the Reentry Subcommittee has considered policy options to address housing needs.

Laura van der Lugt, CSG, said statewide victimization surveys have helped states understand the scope of victimization and identify vulnerable populations that systems may not be serving. She stated the Proportionality/Sentencing Subcommittee was considering how to utilize tools such as victim surveys and statewide needs assessments conducted by the Kansas Governor's Grants Program to understand the full range of victims' needs across the state. The Subcommittee was also considering how to bolster existing crime victim resources, such as victim-witness coordinators and supervised critical assistance to victims, as they participate in the criminal justice system. Ms. van der Lugt discussed statistics related to violent crime, noting that such crimes have increased in the past several years. She further discussed issues related to the increase in domestic violence.

Mr. Armstrong stated CSG would continue working with the various subcommittees to help them prepare for the submission of the final report in December.

### ***Updates from Subcommittees***

Mr. Koehn, on behalf of the Diversion/ Specialty Courts/ Specialty Prisons/ Supervision Subcommittee, stated the presentation given at this meeting by CSG, as well as the concerns Ms. Williams identified, covered most of what the Subcommittee had been doing.

On behalf of the Mental Health/Substance Abuse Subcommittee, Representative Owens stated the Subcommittee would review more than 20 proposals at its next meeting. Several members discussed the funding of the co-responder and mental health programs.

The Chairperson stated the full Commission, for the final report, would need to prioritize the issues identified by each of the subcommittees,

identify recommendations that could be acted upon immediately at little or no cost, and devise a phased-in approach for accomplishing some of the proposals, such as the proposals regarding the public defender system.

Chief Ackerman stated the Proportionality/Sentencing Subcommittee would include recommendations similar to those in the December 2019 report and add some new recommendations.

The Chairperson stated the Data Management Subcommittee had nothing new to report and noted several of the subcommittees have addressed data management.

Professor Phillips, on behalf of the Reentry Subcommittee, stated the Subcommittee had an outline for the report, delineating the items with no cost as opposed to those that do have a cost. She stated due to a lack of available housing, more master leases are needed. In addition, KDOC has expressed a need to have someone who can monitor the master leases longer than 90 days. Professor Phillips further discussed needs of people with disabilities and enhancements that could be made to the evaluation and assessment process within KDOC, and stated the Subcommittee continued to work on the driver's license proposals that were offered but not passed during the 2020 Legislative Session.

The Chairperson stated the draft report of the Race and the Criminal Justice System Subcommittee had been written and was in the process of being edited. He noted this Subcommittee would address additional more substantial issues in 2021 if the Commission is extended.

### **November 9, 2020 (via Zoom)**

#### ***Presentation of Subcommittee Reports and Finalization of Recommendations***

The Chairperson announced 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* e-mail a week prior to this meeting. He stated the Commission would review the

subcommittee recommendations and then vote on which recommendations to approve as a Commission. Due to the number of subcommittee recommendations, the recommendations from three of the subcommittees would be considered at the November 9 meeting, and the recommendations from the other three subcommittees would be considered at the November 23 meeting.

The chairpersons and other members of the Data Management, Diversion/ Specialty Courts/ Specialty Prisons/ Supervision, and Mental Health/Substance Abuse Subcommittees briefly summarized the recommendations from their subcommittees' reports. Following these presentations and discussion by the Commission, the Commission voted to approve some recommendations and to recommend other topics be studied further, as detailed in the "Conclusions and Recommendations" section of this report, below.

#### **November 23, 2020 (via Zoom)**

##### ***Presentation of Subcommittee Reports and Finalization of Recommendations***

The Chairperson announced a draft final report including the recommendations adopted at the November 9 meeting, as well as a listing of all submitted subcommittee recommendations, had been distributed to Commission members *via* email and had been posted for public access prior to this meeting. He stated the Commission would review the remaining subcommittee recommendations and then vote on which recommendations to approve as a Commission.

The chairpersons and other members of the Proportionality/Sentencing, Race and Criminal Justice System, and Reentry Subcommittees briefly summarized the recommendations from their subcommittees' reports. Following these presentations and discussion by the Commission, the Commission voted to approve some recommendations and to recommend other topics be studied further, as detailed in the "Conclusions and Recommendations" section of this report, below.

## **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 9 and 23, 2020, meetings, the Commission discussed and approved, except as noted, 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 Appendix page numbers.]

#### **Data Management Subcommittee (Appendix pages 2-5)**

- Issue, as soon as possible, a request for proposal for a comprehensive assessment relating to the current state of data sharing across Kansas agencies.

#### **Diversion/Specialty Courts/Specialty Prisons/Supervision Subcommittee (Appendix pages 6-41)**

##### ***Diversion Work Group (Appendix pages 7-8)***

- The Commission supports the introduction of legislation that would include the provisions of 2020 HB 2708, as passed by the House, relating to drug abuse treatment for people on diversion [*Note:* This recommendation is similar to a recommendation of the Mental Health/Substance Abuse Subcommittee];
- Examine the use of diversion across the state and determine whether the public policy of the State should require diversion to be offered in each jurisdiction and, if so, whether diversion should be mandated for certain types of crimes for people with certain criminal history;

- Consider a less-stringent diversion option, or even the possibility of a pre-charging diversion;
- Consider the modification of expungement statutes or other approaches to address whether diversion agreements should be sealed from public view;
- Consider methods of ensuring indigent diversion applicants have the same access to the process as non-indigent applicants; and
- Consider a mechanism for deferred adjudication such that a court could require a plea as a condition of diversion.

***Specialty Courts Work Group*** (Appendix pages 8-9)

- The Commission supports the introduction of specialty courts legislation that would require the Kansas Supreme Court to adopt rules for the establishment and operation of one or more specialty court programs within the state, provide mechanisms for funding specialty courts, allow for expungement of certain conviction and arrest records, and allow for the reduction or modification of a sentence upon completion of a specialty court program.

***Specialty Prisons Work Group*** (Appendix pages 9-10)

- Authorize funding and authority for a substance abuse treatment center within the correctional facility system in order to give effect to statutory provisions adopted as part of the Recodification, Rehabilitation, and Restoration Project (3Rs) report, including:
  - Funding and authority to build a substance abuse treatment center to provide 240 additional male beds for treatment; and
  - Funding and authority to allow the KDOC to continue repurposing and renovating an existing building to

provide approximately 200-250 male beds for treatment.

- Authorize funding and authority for the modification of an existing facility to provide approximately 200-250 male beds for geriatric and cognitive care; and
- Adopt the recommendations of the Mental Health Task Force to the 2018 and 2019 Legislatures to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.

***Supervision Work Group*** (Appendix pages 10-12)

- The following supervision-related legislative initiatives should be adopted or supported:
  - Adopt the Kansas Association of Court Services Officers' legislative initiative to amend KSA 8-246 to add Court Services and Community Corrections agencies as entities authorized to provide an identification certificate, to be presented as one form of identification for obtaining a replacement driver's license, to offenders under their supervision;
  - Adopt the Kansas Sentencing Commission's legislative initiative in support of earned compliance credit and the strengthening of early discharge mechanisms for people on supervision;
  - Support the creation of a work group to create standardized conditions of supervision;
  - Support the creation of a work group to examine policy to consolidate concurrent supervision cases; and
  - Support the formalization of KDOC's approach to parole and post-release supervision violations, including implementation of Effective Responses to Behavior.

- The following recommendations should be implemented by the Commission (or a successor entity):
  - Develop an interagency re-engagement unit;
  - Formalize interagency collaboration; and
  - Support interagency collaboration.

#### **Mental Health/Substance Abuse Subcommittee** (Appendix pages 42-50)

- The Commission supports the introduction of legislation with the same provisions as 2020 HB 2708, which would have expanded 2003 SB 123 money to diverted defendants, instead of authorizing its use only for convicted offenders, to allow them to enter state-paid substance abuse treatment. The 2020 legislation passed the House 125 – 0, but died in the Senate due to the shortened session [*Note: This recommendation is similar to a recommendation of the Diversion Work Group*];
- Make access to local and regional community mental health services a legislative priority;
- Consider the CSG Justice Center recommendations listed on pages 43 through 47 of the Appendix, concerning support of people with co-occurring disorders, cross-system coordination, data collection, and training and education for providers to support persons with co-occurring disorders;
- Support statewide implementation and funding of a co-responder program, with consideration given to funding pilot programs initially;
- Emphasize prevention of crime through programs that offer “protective factors” such as safe, affordable, and decent housing; gainful employment; and positive family and social relationships;
- Consider implementation of the Sequential Intercept Model;
- Create a behavioral health liaison position within local jails and a corrections liaison position within each community mental health center, with consideration given to funding pilot programs initially;
- Support access to detox and evidence-based treatment;
- Support the use of specialty courts within the criminal justice system;
- Consider establishing on-site behavioral health services in jails, with consideration given to funding pilot programs initially;
- When comparing incarceration versus treatment alternatives, the Legislature should consider cost-avoidance studies such as those conducted by Wichita State University;
- Consider an application for a Centers for Medicare and Medicaid Services waiver for reimbursement for mental health services in residential psychiatric facilities and treatment centers;
- Consider support of trained mobile competency evaluation and restoration providers, especially in rural and frontier areas of the state; and
- Emphasize mental health and substance abuse workforce development, especially in rural and frontier areas of the state.

#### **Proportionality/Sentencing Subcommittee** (Appendix pages 51-110)

- The Commission supports the introduction of legislation that would include the provisions of the following sentencing-related legislative initiatives:
  - 2019 HB 2047, as introduced, concerning decreasing the penalties in

- drug grid level 5 to be similar to those for nondrug grid level 8;
- 2020 HB 2494, as recommended by the House Committee on Corrections and Juvenile Justice, concerning unlawful tampering with an electronic monitoring device, and lowering the severity level from a level 6 nonperson felony to a level 8 nonperson felony;
- 2020 HB 2485, as recommended by the House Committee on Corrections and Juvenile Justice, concerning increasing the felony loss threshold from \$1,000 to \$1,500 on certain property crimes;
- 2020 HB 2518, as passed by the House 125 – 0, concerning including prior convictions with a domestic violence designation as qualifying prior convictions with regard to domestic battery sentencing;
- 2020 HB 2708, as passed by the House 125 – 0, concerning the implementation of pretrial substance abuse programs;
- 2020 HB 2469, as passed by the House 120 – 5, concerning implementation of an expanded compassionate release program;
- 2020 HB 2484, as amended by the House Committee on Corrections and Juvenile Justice, concerning early discharge for non-violent drug offenders upon completion of 50 percent of the sentence; and
- 2019 HB 2052, including amendments proposed by the OJA, concerning judicial review of probation terms and conditions once 50 percent of the sentence has been served.
- The CSG Justice Center recommendations listed on pages 53 through 56 of the Appendix, concerning violent crime, sentencing, and victims assessment, should be considered by the Legislature.

## **Race and the Criminal Justice System**

### **Subcommittee (Appendix pages 107-109)**

- Adopt a requirement that law enforcement agencies collect additional data related to

the race of citizens with whom they have contact, including but not limited to contacts that are arrests, and require such data be made available;

- Strongly consider the December 2020 recommendations of the Governor’s Commission on Racial Equity and Justice (CREJ) related to data collection, maintenance, and analysis;
- Strongly consider the November 2020 Pretrial Justice Task Force recommendations;
- Identify revenue sources to increase the BIDS budget and to specifically create stand-alone public defender offices statewide;
- Strongly consider the December 2020 recommendations of the CREJ related to the state public defender system, specifically the recommendation regarding establishment of a public defender office in communities exceeding 100,000 in population;
- Strongly consider the September 2020 BIDS report titled “A Report on the Status of Public Defense in Kansas”; and
- Establish a standing legislative commission on racial equity in the criminal justice system, and identify specific representative membership groups, including residents of urban areas, residents of rural areas, public defenders, criminal defense attorneys, and K-12 public education representatives, and include a person with a history of involvement with the justice system in Kansas.

### **Reentry Subcommittee (Appendix pages 110-135)**

- Current efforts to review and address housing and homelessness in Kansas should be leveraged by:

- The incorporation of people involved in the criminal justice system into existing work groups and task forces with a priority on homelessness and housing; and
- Expanding existing lists of housing opportunities available through KDOC, the Kansas Housing Resources Corporation, and KDADS to provide information on which housing programs support access for people in the justice system.
- Provide opportunities and develop policy on cross-system coordination by establishing policies that require an ongoing collaboration among state agencies to address housing for people in the justice system;
- Prioritize collecting data to guide policy improvements, including by:
  - Adopting legislation that requires a consistent method of tracking persons in jails and prisons who are experiencing housing instability or are at risk of homelessness; and
  - Taking administrative action to identify common data metrics that should be collected across the criminal justice, mental illness, substance use disorder, and housing systems.
- To help people in the justice system get access to housing, provide administrative action to focus on training and coordination for housing providers, continuum-of-care providers, housing authorities, landlords, and community supervision officers regarding working with people in the justice system and how to coordinate related services;
- Fund additional KDOC master leases;
- Increase the number of coordinators for the Kansas Supportive Housing for Offenders program;
- Create a forensic unit in the KDOC to house persons released with special needs;
- Create a position within KDOC to track housing for persons released from prison;
- Adopt legislation to amend KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of the SNAP program;
- The Commission recommends the following administrative changes within KDOC:
  - Develop a streamlined process during intake for using assessment results and other information gathered during intake to assign people to a facility based on programming needs, availability, interest, and anticipated release date, as well as security risk;
  - Develop a sustainability plan for the Second Chance Pell Pilot Programs to continue educational and vocational programming;
  - Standardize KDOC's roles and responsibilities for employment specialists to include job development, or invest in job development specialists to form relationships with businesses in the community to promote hiring people who are reentering the community;
  - Develop a plan for marketing KDOC Vocational/Career and Technical Education to businesses and legislators;
  - Develop additional partnerships with community-based agencies to provide more programming, such as Adult Basic Education and GED courses each day of the week; and
  - Increase funding for education and employment programming and space within KDOC facilities.
- The Commission recommends the following employment-related administrative changes:

- Appoint a representative from KDOC to the KANSASWORKS State Board;
  - Develop formal partnerships among KDOC, the Kansas Consortium on Correctional Higher Education, businesses, and all local Workforce Boards to leverage funding and resources to bring intensive workforce development models to scale;
  - Develop formal partnerships and information-sharing agreements between KDOC and Rehabilitation Services of the Department for Children and Families (DCF) to screen people for services prior to release from KDOC or at the start of community supervision;
  - Utilize the Governor's Workforce Innovation and Opportunity Act Reserve Obligation;
  - Develop shared positions between KDOC, DCF, and all local Workforce Boards; and
  - Create a Legislative Liaison position at KDOC.
- Consider the CSG Justice Center recommendations listed on pages 124 through 125 of the Appendix, concerning occupational licensing; and
  - The Commission supports the introduction of legislation relating to driver's license reinstatement fees, including the provisions of 2020 HB 2547 as passed by the House 120 – 5 and 2020 SB 275 as amended by the House Committee on Transportation. The Commission would also ask that the Legislature consider making the statutory changes regarding reinstatement fees apply retroactively and provide substitute or alternative funding for the Judicial Branch due to the potential loss of fee-based revenue.

### **Topics for Further Study**

Due to the COVID-19 pandemic, the Commission could not complete all areas of study. The Commission will ask for an extension of at least one additional year to allow further study of:

- Ensuring the statewide availability of robust sanctions and incentives for persons on supervision;
- Data integration to merge siloed data;
- Supervision entity mission and vision statements, which should be aligned with implemented best practices and goals of supervision;
- Amending the severity level of all personal use drug possession charges from felony to misdemeanor, similar to that for marijuana;
- Combining both sentencing grids into a single grid;
- Reviewing the practice of using warrants and bonds for debt collections court proceedings;
- Providing access to medical care during the reentry process;
- Providing access to mental health and substance abuse treatment during the reentry process;
- Amending KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of the TANF program;
- Passing legislation relating to the failure to pay traffic fines and fees, including the provisions of 2020 HB 2434 as introduced;
- Implementing a points-based system for driver's licenses; and
- Adopting targeted amendments to the licensing requirements of occupational licensing boards concerning criminal history.

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# Appendix

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**Kansas Criminal Justice Reform Commission**  
**Sub-Committee: Data Management**  
**Final Report**

October 26, 2020

To: Criminal Justice Reform Commission

Re: Final Report

Members of the Criminal Justice Reform Commission,

**Background**

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Data Management Sub-Committee was established. Jennifer Baysinger was selected to the Chair the sub-committee. On September 14, 2020, Sheriff Bill Carr was appointed to take over as Chair of the sub-committee.

Pursuant to K.S.A. 21-6902 (a)(b)(8):

Evaluate existing information management data systems and make recommendations for improvements to data systems that will enhance the ability of criminal justice agencies to evaluate and monitor the efficacy of the criminal justice system at all points in the criminal justice process.

**Goals**

As a sub-committee, we have identified the following statement and feel it most clearly identifies our goals:

To identify an integrated data management system which will assist stakeholders in obtaining records and analytical data to better identify crucial needs of Kansans.

## **Observations**

The urgent need for comprehensive data integration has been discussed among departments throughout the state for many years with multiple efforts, yet little success. These needs apply at the city/county levels, too.

Major barriers identified include:

- IT departments, where they exist, are already stretched thin
- Different platforms and operational systems are already in place
- Rural and small agencies lack modern technology

Various rules and perceptions about what data can and can't be shared (HIPPA) Health Insurance Portability and Accountability Act.

Situational successes are limited, but include examples such as:

- Data dumping information available for cross referencing
- Data Integration (Merging)
- Embedding bridge positions; using employees of other agencies to office in KDOC and access data for case management of offenders
  - Example: For several years, a DCF employee was housed in the Wichita Parole Office and accessed all data systems relating to TANF, child support, benefits...etc. providing it to case managers, as needed and allowed.
  - Example: A similar position existed at El Dorado Correctional Facility's admissions unit. Incoming offenders were assessed on issues relating to child support in these instances was increased by 10%.

These hodge-podge efforts do not constitute a long term, effective solution. To support accurate, evidence-based decisions, Kansas needs an end-to-end platform that enables a broader adoption of advanced data management, analytics and data visualization. This framework should incorporate data elements from different sources to develop a comprehensive picture of an individual in the criminal justice system – not only involving their history with the criminal justice system, but also social services, economic and education data, health information (as allowed), and more.

## **Sub-Committee Recommendations**

The Data Management Subcommittee quickly agreed a full overview of the current data systems in Kansas is imperative. In line with the current administration's commitment to transparency, an RFP should be issued as soon as possible for a comprehensive assessment relating to the current state of data sharing across Kansas agencies.

The RFP should specify either independent academic, and/or independent non-profit technical assistance be sought to work alongside existing state agencies and systems. The only way to accurately assess, map, and evaluate the current state of data in Kansas is to seek independent review and concurrent comparison to those states which have already begun grappling with this problem.

It's time for action. Cross-jurisdictional information is not always shared. As a result, information from an individual's prior contact(s) with one component of the criminal justice system that may be relevant to the individual's culpability, drug or mental health treatment needs, family history, affect bond conditions, charging decision, restitution or child support payments, conditions of probation and parole, officer safety and the decision made by DCF, law enforcement and the court-system related to the welfare of children.

### **Conclusion**

After monitoring and participating in many of the sub-committee and working group meetings it's become apparent we need legislative action to obtain funding for a post-audit review of our state, county and city data management systems.

The subcommittee fully supports the work of The Council of State Governments.

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



Sheriff Bill Carr, Ford County Sheriff  
Chair Data Management SubCommittee

Jennifer Baysinger,  
VP Political Affairs for the Kansas Chamber

Marc Bennett, District Attorney  
KCJRC Chairman

Senator Rick Wilborn  
35<sup>th</sup> District

Scott Schultz (ex officio)  
Kansas Sentencing Commission

**Diversion, Specialty Courts, Specialty Prisons, and Supervision Subcommittee  
Report to the Kansas Criminal Justice Commission  
Marc Bennett, Chairperson  
Representative Stephen Owens, Vice-chairperson**

**I. Introduction**

The Diversion, Specialty Courts, Specialty Prisons, Supervision subcommittee was appointed by Criminal Justice Reform Commission (CJRC) Chairman Marc Bennett to address specific issues identified in section 2(b) of 2019 HB 2290. The Subcommittee held meetings on April 9, 2020; May 28, 2020; June 8, 2020; July 8, 2020; August 5, 2020; September 21, 2020; October 12, 2020; and October 23, 2020.

**II. Subcommittee Members**

Spence Koehn, Chair (Judicial Branch Court Services)  
Chief Todd Ackerman (Police Chief Representative)  
Honorable Glenn Braun (District Judge)  
Honorable Marty Clark (District Magistrate Judge)  
Tabitha Owen (County Attorney from a Rural Area)  
Shelly Williams (Community Corrections Representative)  
Representative Gail Finney (Legislative Member)  
Attorney General Derek Schmidt (Agency Ex-Officio)  
Secretary Jeff Zmuda (Department of Corrections) (Agency Ex-Officio)

**III. Organization and membership of Working Groups**

The subcommittee decided to divide the tasks into working groups as detailed below. Each working group held regular meetings to discuss the individual topic area. The working group reports are attached to this report.

**A. Diversion: 2019 HB 2290 Section 2(b)(3)**

Members: Marc Bennett (Chair); Honorable Marty Clark; Attorney General Derek Schmidt; Shelly Williams

Topic: Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards.

**B. Specialty Courts: 2019 HB 2290 Section 2(b)(5)**

Members: Honorable Glenn Braun, Chair; Tabitha Owen

Topic: Study specialty courts and make recommendations for the use of specialty courts throughout the state.

**C. Specialty Prisons: 2019 HB 2290 Section 2(b)(7)**

Members: Attorney General Derek Schmidt, (Chair); Chief Todd Ackerman; Secretary Jeff Zmuda

Topic: Study the policies of the Department of Corrections for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare and substance abuse facilities.

**D. Supervision: 2019 HB 2290 Section 2(b)(4) and (5)**

Members: Shelly Williams, (Chair); Honorable Glenn Braun; Honorable Marty Clark; Hope Cooper; Nassir Hadaegh; Audrey Cress; Hope Cooper; Erin Geist; Brian Seidler; Spence Koehn; Bill Carr

Topic: Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision; and survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming.

**IV. Recommendations for legislative action in the 2021 session**

The subcommittee workgroups have identified a number of issues and topics for additional study and consideration in the 2021 Legislative Session. Here are those recommendations:

**A. The Diversion Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. HB 2708 be re-introduced (HB 2292 from the 2019 session). The proposal is included with the diversion workgroup report.
2. Uniformity: The legislature may need to examine the use of diversion across the state, and whether the public policy of the state should, (1) require diversion be

offered in each jurisdiction; and if so, (2) whether diversion should be mandated for certain types of crimes for people with certain criminal history.

3. Less stringent diversion: Per Kansas Attorney General's Opinion, 97-34, if a county or district attorney uses any method whereby a defendant can have charges dismissed 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. As a result, pursuant to K.S.A. 22-2909, any agreement to resolve a charge requires the person to waive certain rights, sign a stipulation of facts, et cetera. The legislature may want to consider a less-stringent diversion option or even the possibility of a pre-charging diversion.
4. "Sealing" of Diversion. The question as to whether diversions should be "sealed" from public view has been discussed. Diversion agreements are reduced to writing and filed in the charged case to memorialize the terms of the agreement which, if complied with, serve as the basis for dismissal of the action. As such, they are part of the public record – though a successfully completed diversion does not count toward one's criminal history score. Rather than "sealing" diversions, the expungement statutes could be modified.
5. Indigency. Diversion application fees are often critical to running diversion programs. Further, an applicant's ability to pay back restitution is a relevant factor for decisions to grant diversion. How to ensure that indigent diversion applicants have the same access to the process is an issue. While prosecutors often accept payments for application fees, there is no independent funding stream to assist applicants. No simple solutions to this issue have been identified but the working group felt it was important to note the discussion.
6. Deferred Adjudication: should the State of Kansas consider creating a mechanism for "deferred adjudication"? For instance, in Oklahoma, Title 22, Chapter 16, Section 991c, the court can accept a plea, ". . . before a judgement of guilt, without entering a judgement of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a seven year period. . ." K.S.A. 22-2910 explicitly prohibits requiring a defendant to plea as a condition of diversion, so this would be a wholly new concept in Kansas.

**B. The Specialty Courts Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. Introduce the attached "Specialty Courts" proposed legislation which includes;
  - a. The Kansas Supreme Court shall adopt rules for the establishment and operation of one or more specialty court programs within the state.
  - b. Establish a Kansas Specialty Court funding advisory committee in the judicial branch of government. This committee shall:



- Evaluate resources available for assessment and treatment of persons assigned to specialty courts or for the operation of specialty courts.
  - Secure grants, funds and other property and services necessary or desirable to facilitate specialty court operations.
  - Recommend to the judicial administrator the allocation of such resources among the various specialty courts operating within the state.
  - Recommend amendments to statutes and rules to aid the development of specialty courts.
- c. Create the Specialty Courts Resources Fund in the state treasury which shall be administered by the state judicial administrator.
  - d. Amend K.S.A. 21-6614 as listed in Attachment B, Section 4.
  - e. If a participant in a specialty court program successfully completes the program as part of a sentence imposed by the court, the sentence of the specialty court participant may be reduced or modified.

**C. The Specialty Prisons Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. Authorize funding necessary for a "substance abuse treatment center" within the correctional facility system in order to give effect to statutory provisions adopted as part of the 3Rs report.
  - a. Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment.
    - Estimated cost of building \$20.7 Million.
  - b. Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
    - Estimated cost of renovations: \$3,501,432
2. Authorize funding for modification of a facility to address the needs of the geriatric prison population.
  - a. Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
    - Estimated cost of renovations: \$9,795,978
3. Support the recommendations of the Mental Health Task Force as provided to the 2018 and 2019 Legislatures as the Mental Health Task Force Report (MHTFR). Specifically;

- a. Adopt the recommendations of the MHTFR, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.
- b. Maintain at least the current number of beds in Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) and add 36 to 60 additional regional or state hospital beds within 24 months.
  - Budget: Assuming full occupancy. With all-funds costs of \$407 to \$936 per bed per day: \$5.3 million to \$12.3 million a year for 36 beds, up to \$8.9 million to \$20.5 million for 60 beds. (Based on FY2018 OSH and Adair Acute Care per diem rates.)
- c. Within five years, add up to a total of 221 new regional or state hospital beds, including those added in the first 24 months.
  - Budget: Up to an additional \$23.9 million to \$55 million a year, all funds, assuming full occupancy and 60 beds added in first two years. (Based on FY2018 OSH and Adair Acute Care per diem rates.)
- d. Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and the number of licensed beds.
  - Budget: Addressing staffing, shrinkage and contract labor will cost between \$10.8 million and \$11.3 million a year, all funds. (Based on FY2018 OSH and Adair Acute Care per diem rates.)
- e. End the moratorium on admissions to OSH that has been in place since June 2015.
  - Budget: \$764 to \$936 per bed per day. (Estimate provided in FY2020 and may need revised.)

**D. The Supervision Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. Support the Kansas Court Service Officer's Association's legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a *Certification of ID* to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver's license (December 2019).
  - (b)(17) an identification certificate issued by a court services or community corrections agency to an offender under the probation supervision of the community corrections agency.
2. Support the work of the Kansas State Sentencing Commission to propose legislation for earned compliance credit and/or strengthen early discharge mechanisms for people on supervision. (See 2019 HB 2052.)
3. Support the creation of a Workgroup to create Standardized Conditions of Supervision. The Workgroup shall have adequate representation from supervision

agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation to establish a standard set of conditions of supervision based on best practices. (See K.S.A. 21-6607.) Best practice dictates that standard conditions of supervision be *realistic, relevant and research-supported*. In addition, they should address behaviors associated with risk and only include conditions that benefit public safety.

4. Support the creation of a Workgroup to examine policy to consolidate concurrent supervision cases to one agency in one location so people on supervision are not supervised by multiple supervision officers simultaneously. Policy recommendations would include whether or not it is based on risk, the controlling sentence or the longest sentence. The Workgroup shall have adequate representation from supervision agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation.
5. Formalize the use of Effective Responses to Behavior: Formalize KDOC approach to responding to violations of parole supervision. Ensure that KDOCs strategy is maintained and supported. Track and monitor outcomes of this approach and modify the strategy as needed to adhere to evidence-based practices and increase public safety.

The Supervision Workgroup makes the follow recommendations for the Criminal Justice Reform Commission:

1. Develop an Interagency Re-Engagement Unit: The Interagency Re-Engagement Unit (REU) would target people who fail to report, are on absconder status or who are at-risk of revocation to become connected to resources and successfully re-engage in supervision. The REU would be a non-arresting unit that would attempt to re-engage clients for success. KDOC IMPP 14-131A could help guide the conversation. It would further be the recommendation to pilot an REU in one rural and one urban district.
2. Formalize Interagency Collaboration (Information Sharing, Training, Quality Assurance & Continuous Quality Improvement): Formalize interagency collaboration to increase information sharing, create efficiencies, and leverage agency expertise. This MOA should include a mechanism for sharing information across agencies to reduce inconsistencies and ensure adequate knowledge of existing resources. Additionally, supervision entities would leverage expertise across agencies to meet training needs of staff and share quality assurance and continuous quality improvement documents and processes. There would need to be universal data collection that could track state-wide proficiency levels, and a process developed for inter-rater reliability and fidelity monitoring across agencies.
3. Support Interagency Collaboration (Access to Programming): Support interagency collaboration to leverage resources to promote success on supervision and reductions in recidivism in the form of an MOA. This collaboration would enable access to programming for all people assessed as high risk and high need by developing a statewide coordinated effort to allow people supervised by one agency to receive programming facilitated by another agency. (Cognitive behavioral intervention classes, Batterers

Intervention Program (BIP), Offender Workforce Development Specialist (OWDS) classes, parenting classes, Substance Abuse Program (SAP), Seeking Safety, Strengthening Families Program, etc.)

In addition, the Supervision Workgroup presents the following identified issues that need further exploration by the Criminal Justice Reform Commission:

1. Help to ensure robust sanctions and incentives are available statewide. This includes developing strategies to expand sanction and incentive options and monitoring the implementation of the 4:1 Behavior Management System with Community Corrections and Parole with the Kansas Department of Corrections.
2. Explore data integration to merge siloed data in a way that is actionable at the agency, judicial, executive, and legislative levels. This includes exploring how to provide consistent data collection, sharing, and reporting on sanctions and incentives between KDOC and OJA data systems.
3. Work with supervision entities to update mission and vision statements across agencies to ensure alignment with implemented best practices and the goals of supervision in Kansas.

Attachments:

- A. Diversion Workgroup Report
- B. Specialty Courts Workgroup Proposed Legislation
- C. Specialty Prisons Workgroup Report
- D. Supervision Workgroup Report

## Attachment A

### Diversion Workgroup Report

October 13, 2020

#### Diversion Workgroup:

- Marc Bennett (Chair)
- Honorable Marty Clark
- Attorney General Derek Schmidt
- Shelly Williams

**Kansas Criminal Justice Reform Commission  
Diversion Working Group**

October 13, 2020

To: Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee of the Criminal Justice Reform Commission

Re: Diversion Working Group 2020 Report

**Background**

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee was created. The subcommittee then established various working groups including the Diversion Working Group.

The Diversion Working Group was asked to examine the current statutory authority for diversion and consider opportunities to improve and expand the use of diversion in a consistent manner.

The Diversion Working Group met September 26, 2019, October 1, 2019, October 23, 2019. The COVID pandemic then prevented in-person meetings throughout the spring, summer and fall of 2020. In late the summer of 2020, Marc Bennett assumed the chair of the Diversion Working Group to allow Shelly Williams to devote her time to the Supervision Working Group. The Diversion Working Group then met by zoom on July 8, 2020, August 20, 2020 and October 6, 2020.

**Goals**

The Working Group examined the scope of the diversion statutes, guidance from Attorney General opinions, had access to the results of a 2017 survey of over 20 prosecutor's offices statewide as well as the Center for Health and Justice 2013 Survey of Diversion programs, and the Community Supervision Report issued by the Pew Charitable Trust in April of 2020.

The questions posed by the Working Group were as follows:

1. How to expand the availability of resources for diversion programs?
2. Whether there should be statutory standards mandating who "shall" be offered diversion (KSA 22-2908 says who cannot get diversion but not who must be offered diversion); or do the lack of consistent resources across regions of the state make that unworkable?
3. Whether we should examine the limits of KSA 22-2908?
4. Indigence. How can we address to ensure financial resources do not bar access?

**Working Group Recommendations**

## I. Legislation

The working group makes the following legislative recommendation to the Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee for submission to the Criminal Justice Reform Commission:

1. We recommend the Criminal Justice Reform Commission recommend that HB 2708, which was introduced in the 2020 legislative session (see HB 2292 from the 2019 session) be re-introduced in the 2021 Kansas legislative session. This bill would have accomplished two primary goals: First, it sought to expand SB 123 money to diverted defendants, rather than reserving these funds until post-conviction. This would allow diverted individuals to enter state-paid substance abuse treatment without the collateral consequences associated with conviction. Second, the bill explicitly authorized county and district attorneys to sign a memorandum of understanding (M.O.U.) with their respective probation department to supervise persons placed on diversion. This would allow jurisdictions without the resources to run a diversion program through their local prosecutor's office, to offer diversion. It would also be possible for jurisdictions with an existing diversion program to expand the availability to individuals with issues (namely, drug addiction) the current diversion program is not equipped to address.

This legislation passed the 2020 House 125-0 and was expected to receive a positive response in the Senate when the session came to halt due to COVID. It is the recommendation of this working group that the bill be re-introduced as it represents the best plan thus far identified to expand the availability of diversion and to afford diverted individuals access the resources to take advantage of treatment, so often necessary to success on supervision. Furthermore, the Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee recommends a SASSI assessment be completed for all individuals that may be SB 123 eligible.

## II. Discussion

In addition, the working group recommends that the Criminal Justice Reform Commission include in its final report of December 1, 2020, discussion of the following:

1. Uniformity: Assuming the passage of a HB 2708-styled bill in the 2021 session, the legislature may need to examine the use of diversion across the state, and whether the public policy of the state should, (1) require diversion be offered in each jurisdiction; and if so, (2) whether diversion should be mandated for certain types of crimes for people with certain criminal history?
2. Less stringent diversion: Per Kansas Attorney General's Opinion, 97-34, if a county or district attorney uses any method whereby a defendant can have charges dismissed 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. As a result, pursuant to K.S.A. 22-2909, any agreement to resolve a charge requires the person to waive certain rights, sign a stipulation of facts, et cetera.

The legislature may want to consider a less-stringent diversion option or even the possibility of a pre-charging diversion. For instance, a group of 18-20 year olds could be issued citations for

being in possession of alcohol at a party. The 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 also, K.S.A. 22-2907(1). For nonperson, non-violent misdemeanors for instance, that may be unnecessarily burdensome. The legislature could allow a diversion with fewer “hoops” once a case is charged for nonperson misdemeanors.

Alternatively, if the prosecutor just wanted to agree not to charge the matter and “divert” it without the necessity of formal charges, the concept of a pre-charging diversion is not explicitly recognized currently in Kansas. K.S.A. 22-2907(1) outlines diversions “after a complaint has been filed charging a defendant with commission of a crime. . .” but the law is silent on the notion of a pre-charging diversion). See similar discussion at *Dearborne v. State* (1978 Tenn.) 575 S.W.2d 259, and 4 ALR4th 138. Additionally, if the prosecutor offers a pre-charging agreement, there is no record of the disposition – which causes a problem for the KBI in their record’s keeping responsibilities to the F.B.I.—and no transparency to the public.

If this concept is one the legislature wants to explore, these two hurdles—records keeping and transparency--could be overcome.

First, with regard to records keeping, it could be made clear at K.S.A. 21-2501, which governs fingerprinting requirements, that pre-charging diversion programs require the divertee to be processed by the local sheriff. See also, K.S.A. 12-16,119 which governs booking/processing fees.

Second, transparency would be achieved in situations where the pre-charging divertee was unsuccessful, because the “diversion” would be rescinded and the criminal case then filed in a publicly accessible complaint/information. But if the person successfully completed the pre-charging diversion there would be no case number and no transparency.

K.S.A. 22-2302 could be amended to allow a criminal case to be filed simply to memorialize the pre-trial diversion agreement. See also, K.S.A. 8-2106 (regarding traffic infractions) and K.S.A. 32-1049 (regarding wildlife and parks). Another option would be to allow the filing of a miscellaneous “MR” case to file such a pleading.

Finally, note that K.S.A. 22-2912 allows exemption from the provisions of the diversion statutes if the judicial district adopts rules for court diversion. However, there is no identifiable state-wide funding stream for such a program.

3. “Sealing” of Diversion. The question as to whether diversions should be “sealed” from public view has been discussed. Diversion agreements are reduced to writing, and filed in the charged case to memorialize the terms of the agreement which, if complied with, serve as the basis for dismissal of the action. As such, they are part of the public record—though a successfully completed diversion does not count toward one’s criminal history score. See *State v. Hodgden*, 29 Kan.App.2d 36 (2001).

Competing interests are involved in this public policy question. If a defendant successfully completes a diversion, he or she now has a right to expunge the conviction (a change in the law



that took place in 1998). But if that person is later a witness in a criminal case there is an apparent obligation on the part of the state to inform the defendant that the witness had been previously granted diversion, if the crime was a “crime of dishonesty,” such as theft. See *State v. Sanders*, 263 Kan. 317 (1997).

After discussion, the working group suggests that rather than “sealing” diversions, the expungement statutes could be modified. For instance, decreasing the time frame for expungement eligibility following a successful diversion and ensuring that when expungement is granted that the order used statewide uniformly grants expungement of both the arrest and the diversion (or conviction, for that matter) under K.S.A. 22-2410.

4. Indigency. Diversion application fees are often critical to running diversion programs. Further, an applicant’s ability to pay back restitution is a relevant factor for decisions to grant diversion. How to ensure that indigent diversion applicants have the same access to the process is an issue. While prosecutors often accept payments for application fees, there is no independent funding stream to assist applicants. No simple solutions to this issue have been identified but the working group felt it was important to note the discussion.
5. Deferred Adjudication: should the State of Kansas consider creating a mechanism for “deferred adjudication”? For instance, in Oklahoma, Title 22, Chapter 16, Section 991c, the court can accept a plea, “. . . before a judgement of guilt, without entering a judgement of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a seven year period. . .” K.S.A. 22-2910 explicitly prohibits requiring a defendant to plea as a condition of diversion, so this would be a wholly new concept in Kansas.

The advantage of such a construct is that the state is able to resolve the case, release witnesses and achieve some degree of finality while the defendant can accept responsibility without being saddled with the collateral consequences of a plea.

The working group felt that enhancing the existing diversion construct in Kansas rather than trying to cobble together a new deferred adjudication statute was the better practice for Kansas at this time.

### Conclusions

This report represents the recommendations of the Diversion Working Group. We are aware that funding for any program set up as an alternative to probation or incarceration will be an issue. But if we are to find alternatives to keep people out prison—and the consequent \$29,000 annual cost per inmate—enhancing the availability of diversion offers a means to hold people accountable, require payment of restitution, and completion of treatment, without the damaging collateral consequences of a conviction. We believe this investment will pay dividends in the following years through decreasing jail and prison bed space and enhancing success on supervision.

Respectfully Submitted this 13th day of October 2020.

Marc Bennett, District Attorney  
Chair Diversion Working Group

Judge Marty Clark  
District Magistrate Judge

Tabitha Owens  
Smith County Attorney

Shelly Williams  
Riley County Community Corrections

## Attachment B

### Specialty Courts Workgroup Bill Proposal

October 26, 2020

#### Specialty Courts Workgroup

- Honorable Glenn Braun, Chair
- Tabitha Owen

## **New Sec. 1**

- (a) The Kansas supreme court shall adopt rules for the establishment and operation of one or more specialty court programs within the state.
- (b) The chief judge in a judicial district of the state may establish a specialty court program in accordance with rules adopted by the Kansas supreme court.
- (c) For purposes of Sections 1-5, "Specialty court" is defined as a district court program that uses therapeutic or problem-solving procedures to address underlying factors that may be contributing to a party's involvement in the state judicial system, i.e. mental illness or drug, alcohol, or other addiction. Procedures may include treatment, mandatory periodic testing for a prohibited drug or other substance, community supervision, and appropriate sanctions and incentives.

## **New Sec. 2**

- (a) There is hereby established a Kansas specialty court funding advisory committee in the judicial branch of government.
- (b) The committee shall:
  - 1) Evaluate resources available for assessment and treatment of persons assigned to specialty courts or for the operation of specialty courts;
  - 2) secure grants, funds and other property and services necessary or desirable to facilitate specialty court operation;
  - 3) recommend to the judicial administrator the allocation of such resources among the various specialty courts operating within the state; and
  - 4) recommend amendments to statutes and rules to aid the development of specialty courts.
- (c) The committee shall be made of the following members:
  - (1) The chair of the judiciary committee of the house of representatives or the chair's designee;
  - (2) The chair of the judiciary committee of the senate or the chair's designee;
  - (3) The chair of the legislative budget committee established pursuant to K.S.A. 46-1208 or the chair's designee;

- (4) One member of the minority party jointly appointed by the minority leader of the house of representatives and the minority leader of the senate;
  - (5) Five members appointed by the chief justice of the Kansas supreme court, one of which shall be a representative of the prosecuting attorneys of the state and one of which shall be a representative of the criminal defense bar of the state; and
  - (6) One member appointed by the secretary of corrections, one member appointed by the secretary of the department for aging and disability services, and a drug and alcohol addiction treatment provider appointed by the Kansas sentencing commission shall serve as ex officio, nonvoting members of the committee.
- (d) The chief justice of the Kansas supreme court shall designate the chair of the committee.
- (e)
- (1) Three members appointed by the chief justice shall be appointed for a term of three years. Two members appointed by the chief justice shall be appointed for a term of two years. All ex-officio members shall be appointed for a term of two years.
  - (2) The terms of all members shall continue until a successor is appointed and qualified, but shall terminate upon the member ceasing to belong to the class from which the member was appointed.
  - (3) Vacancies of members appointed pursuant to New Sec. 2(c)(4)-(6) shall be filled by appointment by the named appointing authority for the unexpired term. Upon vacancy, the places of the members of the legislature appointed pursuant to New Sec. 2(c)(1)-(3) shall be filled by their successors.
- (f) Committee members shall be appointed by August 1, 2021.
- (g) The office of judicial administration may provide technical assistance to the committee established under this section.
- (h) All members of the committee except judicial members shall receive compensation and travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto. Reimbursement for travel expenses and subsistence expenses or allowances of judicial members shall be paid as provided in K.S.A. 75-3212, and amendments thereto.
- (i) All moneys secured for the operation of specialty courts under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the specialty court resources fund established in New Sec. 3.

- (j) Nothing in this section shall preclude any judicial district, unit of local government, or the state judicial branch from directly applying for, receiving, and retaining funding to facilitate specialty court operations. Funds received by a judicial district or unit of local government under this subsection shall not be remitted to the state treasurer.

### **New Sec. 3**

- (a) There is hereby created the specialty court resources fund in the state treasury which shall be administered by the state judicial administrator.
- (b) All expenditures from the specialty court resources fund shall be for the purpose of operating specialty court programs established pursuant to New Sec. 1, including administrative costs related to such programs.
- (c) Funds acquired through appropriations, grants, gifts, contributions, and other public or private sources that are designated for specialty court operations, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the specialty court resources fund. All expenditures from the specialty court resources 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 state judicial administrator or the judicial administrator's designee.

### **Sec. 4**

K.S.A. 21-6614 is hereby amended to read as follows:

21-6614. Expungement of certain convictions, arrest records and diversion agreements. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(3) Notwithstanding subsection (a)(1), and except as provided in subsections (b), (c), (d), (e) and (f), any person who has completed the requirements of a specialty court program established

under Sec. 1 may petition the district court for the expungement of the conviction and related arrest records upon completion of the specialty court program. The court may waive all or part of the docket fee imposed for filing a petition pursuant to this subsection.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2019 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2019 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(d) (1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2019 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2019 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2019 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2019 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2019 Supp. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 2019 Supp. 21-5514, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2019 Supp. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2019 Supp. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2019 Supp. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2019 Supp. 21-5401, and amendments thereto;



(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2019 Supp. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2019 Supp. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(g) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or

records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) If the petition is filed under subsection (a)(1) or (a)(2), tThe petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner. If the petition is filed under subsection (a)(3), the court must find that no proceeding involving a felony is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

(K) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or

(L) to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(j) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k) (1) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection (k)(1), and except as provided in K.S.A. 2019 Supp. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:

(A) Carry a concealed weapon pursuant to the personal and family protection act; or

(B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto; or

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(m) The provisions of subsection (l)(17) shall apply to records created prior to, on and after July 1, 2011.

## **New Sec. 5**

- (a) If a participant in a specialty court program established pursuant to New Sec. 1 successfully completes the specialty court program as part of a sentence imposed by the court, the sentence of the specialty court participant may be reduced or modified.
- (b) Nothing contained in this section shall be construed to permit a judge to impose, modify, or reduce a sentence below the minimum sentence required by law.

## Attachment C

### Specialty Prisons Workgroup Report

October 26, 2020

#### Specialty Prisons Workgroup

- Attorney General Derek Schmidt (Chair)
- Chief Todd Ackerman
- Secretary Jeff Zmuda

## Specialty Prisons Workgroup Report

Held regular meetings:

September 1, 2020

The Specialty Prisons Workgroup (Workgroup), a workgroup of the Diversion/Supervision/Specialty Courts/Specialty Prisons Subcommittee (Subcommittee), met one time during the interim. The Workgroup was guided by the statutory duties of the Commission to study the policies of the Department of Corrections (DOC) for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities. The Subcommittee provided the Workgroup with direction to identify the current status of specialty prisons in Kansas, any issues, concerns or gaps impeding progress, any resources needed to move forward, and goals to address any identified issues. The Specialty Prisons Workgroup members were Attorney General Derek Schmidt, Chief Todd Ackerman, Marysville Police Department, and Acting Secretary Jeff Zmuda, DOC.

The Workgroup noted the FY2021 Budget provided partial funding for:

- KDOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
- KDOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.

The Workgroup renewed their commitment to support the following legislative initiatives previously provided:

- Authorize funding necessary for a “substance abuse treatment center” within the correctional facility system in order to give effect to statutory provisions adopted as part of the 3Rs Report;
- Authorize funding for modification of a facility to address the needs of the geriatric prison population; and
- Support the recommendations of the Mental Health Task Force as provided to the 2018 and 2019 Legislatures as the Mental Health Task Force Report (MHTFR).

Specifically, the Workgroup recommends the 2021 Legislature:

- Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
  - Estimated cost of renovations: \$9,795,978
- Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
  - Estimated cost of renovations: \$3,501,432
- Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment.

- Estimated cost of building \$20.7 Million.<sup>1</sup>
- Adopt the recommendations of the MHTFR, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.
  - Maintain at least the current number of beds in Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) and add 36 to 60 additional regional or state hospital beds within 24 months.
    - Budget: Assuming full occupancy. With all-funds costs of \$407 to \$936 per bed per day: \$5.3 million to \$12.3 million a year for 36 beds, up to \$8.9 million to \$20.5 million for 60 beds.<sup>2</sup>
  - Within five years, add up to a total of 221 new regional or state hospital beds, including those added in the first 24 months.
    - Budget: Up to an additional \$23.9 million to \$55 million a year, all funds, assuming full occupancy and 60 beds added in first two years.<sup>2</sup>
  - Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and the number of licensed beds.
    - Budget: Addressing staffing, shrinkage and contract labor will cost between \$10.8 million and \$11.3 million a year, all funds.<sup>2</sup>
  - End the moratorium on admissions to OSH that has been in place since June 2015.
    - Budget: \$764 to \$936 per bed per day.<sup>2</sup>

<sup>1</sup> Estimate provided in FY2020 and may need revised.

<sup>2</sup> Based on FY2018 OSH and Adair Acute Care per diem rates.



## Attachment D

### Supervision Workgroup Report October 20, 2020

#### Supervision Workgroup Members

- Shelly Williams (Chair)
- Honorable Marty Clark
- Honorable Glenn Braun
- Spence Koehn
- Sheriff Bill Carr
- Hope Cooper
- Brian Seidler
- Erin Geist
- Audrey Cress
- Nassir “Matt” Hadaegh

Kansas Criminal Justice Reform Commission  
Diversion/Specialty Courts/Specialty Prisons/Supervision Sub-Committee  
Supervision Workgroup Interim Report

**October 20, 2020**

To: Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee of the Criminal Justice Reform Commission

Re: Supervision Workgroup Interim Report

Members of the Criminal Justice Reform Commission,

***Background***

During the first meeting of the Kansas Criminal Justice Reform Commission on August 28, 2019, the Diversion/Supervision/Specialty Courts/Specialty Prison Sub-Committee was established. The Subcommittee then established various working groups including the Supervision Workgroup. Since its creation, the Supervision Workgroup met 20 times, worked closely with the Council of State Governments, examined policy initiatives in Michigan, Missouri, Ohio, Oregon and Vermont, and heard from various stakeholders. In addition, the Supervision Workgroup reviewed “Policy Reforms Can Strengthen Community Supervision: *A Framework to Improve Probation and Parole Report*,” by the Pew Charitable Trusts (April 2020), as a starting point to research how to strengthen community supervision and resources to change offender behavior and reduce recidivism.

The Supervision Workgroup was charged with reviewing supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision, surveying the availability of evidence-based programming for offenders in the community and for making recommendations for changes in available programming. Given the unique structure of community supervision in Kansas, with three separate entities overseeing offenders in the community, more questions were raised than answers given. Some of the questions the Workgroup sought to answer included:

1. What is community supervision in Kansas?
2. What is driving revocations in Kansas?
3. How do we address dual and sometimes triple supervision of offenders?
4. How do we get resources, both access to and funding, for mental health and substance

use treatment, and employment and housing support to all supervision agencies?

To answer these questions and more, the Workgroup reviewed the KDOC offender database for Community Corrections and Parole regarding the Risk Domains of Accommodations, Emotional/Personal, Alcohol/Drug and Education/Employment, conducted an employment and housing survey, collected Batterers Intervention Program (BIP) capacity information, and examined literature reviews. The Supervision Workgroup also reviewed broad policy initiatives including: *Good Time Credit or Compliance Credit* (with presumptive discharge), *Program Credit* (dosage to be included in this credit with presumptive discharge), *Consistent and Reduced Conditions of Supervision*, *Early Discharge*, *Eliminate or Allow Prison Review Board to Modify Lifetime Supervision and/or Lifetime GPS*, and *Mandatory Consolidation of Dual Supervision*.

Parallel to the Supervision Workgroup's process, the Council of State Governments was conducting assessments to better understand community supervision challenges and procedures across the state; developing and vetting potential policy and procedure options for improvement of community supervision practices, policies and outcomes; and confirming stakeholder agreement on recommendations at the legislative and administrative levels.

### ***Findings***

❖ People who commit condition violations account for a substantial and growing proportion of prison admissions.

- From FY2010 to FY2019, there was a 31% growth in prison admissions for condition violations & sanctions<sup>3</sup>
- 58% of prison admissions in FY2019 were for condition violations & sanctions<sup>4</sup>
  - ◆ It cost an estimated \$43 million to incarcerate people who violate supervision conditions in FY2019 (Cost estimates are based on the FY2019 year-end prison population and the FY2019 operating cost expenditures per inmate for KDOC facilities.)
- Failure to report is the most cited reason at revocation followed by failure of drug test and failure of program/treatment<sup>5</sup>
- Approximately 20-25% of the Community Corrections population is on absconder status<sup>6</sup>

<sup>3</sup> [CSG Justice Center analysis of KDOC prison admission data, May 2020.](#)

<sup>4</sup> [CSG Justice Center analysis of KDOC prison admission data, May 2020.](#)

<sup>5</sup> [CSG Justice Center analysis of Kansas Sentencing Commission probation revocation hearings data, August 2020.](#)

<sup>6</sup> [Kansas Department of Corrections, Statistical Summary FY 2019 Community Corrections Adult Offender Population Report](#)

- Revocation rates are higher in some rural counties<sup>7</sup>
- ❖ There are inconsistencies between supervision agencies in regards to conditions of supervision, dual supervision and resources for programming.
  - Standard Conditions of Supervision vary by jurisdiction in the number, type, length and complexity across the state and do not meet best practice standards<sup>8</sup>
    - ◆ They range in length from 1 to 7 pages, with one area having as many as 55 different conditions of supervision
      - Of the 66 submitted conditions of supervision, the majority of the standard conditions ranged between 15 – 25 conditions
  - The estimated number of people on dual supervision (Community Corrections & Parole) in Kansas is 5% or approximately 1,200 offenders<sup>9</sup>
    - ◆ Individuals may be on active supervision with Community Corrections, Court Services, and/or the Kansas Department of Corrections simultaneously
    - ◆ Coordination across agencies is not standardized for dual supervision cases causing duplicative appointments, assessments, drug tests, supervision fees, and sanctions
    - ◆ Conflicting conditions exist when someone is supervised by more than one supervision entity, thus a net widening of revocations may occur
    - ◆ Siloed criminal justice system data does not allow for dual supervision cases to be easily identified across the state
  - Programming and resources for programming are inconsistent state-wide
    - ◆ Access and cost of programming varies between agencies and supervision entities
      - Programming is insufficient statewide, however it is especially scarce in western Kansas
    - ◆ People on supervision with Court Services who are high risk do not have the same access to programming
      - There is a lack of state-wide funding for programming for Court Services
    - ◆ Community resources are not consistently known across agencies
    - ◆ BIP Program Providers are unable to access full criminal history for the purpose of evaluating offenders and referring them to appropriate services

<sup>7</sup> [CSG Justice Center analysis of Kansas Sentencing Commission probation revocation hearings data, August 2020.](#)

<sup>8</sup> [CSG Justice Center analysis of 66 conditions of supervision submitted by the Supervision Workgroup, August 2020.](#)

<sup>9</sup> [Kansas Department of Corrections analysis of TOADS data system, July 2020.](#)

- ◆ Pay discrepancies exist across Court Services, Community Corrections and Parole
- ◆ Trainings are siloed between agencies causing inefficiencies and inconsistent practices across agencies
- ◆ The use of quality assurance and continuous quality improvement practices vary from supervision entity to supervision entity and across the state

### ***Working Group Recommendations***

#### ***Legislation***

The Supervision Workgroup makes the following legislative recommendations to the Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee for submission to the Criminal Justice Reform Commission:

1. Support the Kansas Court Service Officer's Association's legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a *Certification of ID* to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver's license (December 2019).
 

(b)(17) an identification certificate issued by a court services or community corrections agency to an offender under the probation supervision of the community corrections agency.
2. Support the work of the Kansas State Sentencing Commission to propose legislation for earned compliance credit and/or strengthen early discharge mechanisms for people on supervision. (See 2019 HB 2052.)
3. Support the creation of a Workgroup to create Standardized Conditions of Supervision. The Workgroup shall have adequate representation from supervision agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation to establish a standard set of conditions of supervision based on best practices. (See K.S.A. 21-6607.) Best practice dictates that standard conditions of supervision be *realistic, relevant and research-supported*. In addition, they should address behaviors associated with risk and only include conditions that benefit public safety.
4. Support the creation of a Workgroup to examine policy to consolidate concurrent supervision cases to one agency in one location so people on supervision are not

supervised by multiple supervision officers simultaneously. Policy recommendations would include whether or not it is based on risk, the controlling sentence or the longest sentence. The Workgroup shall have adequate representation from supervision agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation.

5. Formalize the use of Effective Responses to Behavior: Formalize KDOC approach to responding to violations of parole supervision. Ensure that KDOC's strategy is maintained and supported. Track and monitor outcomes of this approach and modify the strategy as needed to adhere to evidence-based practices and increase public safety. See attached proposed legislative language.

### ***Interagency Collaboration***

The Supervision Workgroup makes the following recommendations to the Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee for submission to the Criminal Justice Reform Commission:

1. Develop an Interagency Re-Engagement Unit: The Interagency Re-Engagement Unit (REU) would target people who fail to report, are on absconder status or who are at-risk of revocation to become connected to resources and successfully re-engage in supervision. The REU would be a non-arresting unit that would attempt to re-engage clients for success. KDOC IMPP 14-131A could help guide the conversation. It would further be the recommendation to pilot an REU in one rural and one urban district.
2. Formalize Interagency Collaboration (Information Sharing, Training, Quality Assurance & Continuous Quality Improvement): Formalize interagency collaboration to increase information sharing, create efficiencies, and leverage agency expertise. This MOA should include a mechanism for sharing information across agencies to reduce inconsistencies and ensure adequate knowledge of existing resources. Additionally, supervision entities would leverage expertise across agencies to meet training needs of staff and share quality assurance and continuous quality improvement documents and processes. There would need to be universal data collection that could track state-wide proficiency levels, and a process developed for inter-rater reliability and fidelity monitoring across agencies.
3. Support Interagency Collaboration (Access to Programming): Support interagency collaboration to leverage resources to promote success on supervision and reductions in

recidivism in the form of an MOA. This collaboration would enable access to programming for all people assessed as high risk and high need by developing a statewide coordinated effort to allow people supervised by one agency to receive programming facilitated by another agency. (Cognitive behavioral intervention classes, Batterers Intervention Program (BIP), Offender Workforce Development Specialist (OWDS) classes, parenting classes, Substance Abuse Program (SAP), Seeking Safety, Strengthening Families Program, etc.)

### ***Continued Work***

In addition, the Supervision Workgroup presents to the Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee the following identified issues that need further exploration for the submission to the Criminal Justice Reform Commission:

1. Help to ensure robust sanctions and incentives are available statewide. This includes developing strategies to expand sanction and incentive options, and monitoring the implementation of the 4:1 Behavior Management System with Community Corrections and Parole with the Kansas Department of Corrections.
2. Explore data integration to merge siloed data in a way that is actionable at the agency, judicial, executive, and legislative levels. This includes exploring how to provide consistent data collection, sharing, and reporting on sanctions and incentives between KDOC and OJA data systems.
3. Work with supervision entities to update mission and vision statements across agencies to ensure alignment with implemented best practices and the goals of supervision in Kansas.

### ***Conclusions***

This report represents the recommendations of the Supervision Workgroup. 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 quantitative and qualitative data analysis 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.

1   **Kansas Parole Violation Response Legislation**

2   Amend KSA 75-5216 to read as follows:

3   **75-5216. Parole officers; duties.** Parole officers shall investigate all persons referred to them  
4   for investigation by the secretary of corrections. Parole officers shall furnish to each person  
5   released under their supervision a written statement of the conditions of parole or postrelease  
6   supervision and shall give instructions regarding these conditions. Parole officers shall keep  
7   informed of the conduct and condition of a parolee or inmate on postrelease supervision and  
8   use all suitable methods to aid, encourage and bring about improvement in the conduct and  
9   condition of such parolee or inmate or [on] postrelease supervision. Parole officers shall keep  
10   detailed records of their work and shall make such reports in writing and perform such other  
11   duties as may be incidental to those above enumerated or as the secretary may require. Parole  
12   officers shall coordinate their work with that of social welfare agencies. Parole officers shall  
13   adhere to departmental guidance for intervention responses to violation behavior and  
14   incentive responses to compliant behavior and pro-social achievements.



Respectfully Submitted this 26<sup>th</sup> Day of October 2020

Kansas Criminal Justice Reform Commission Members:

Shelly Williams, Riley County Community Corrections Director  
Chair Supervision Workgroup

Honorable Marty Clark, District Magistrate Judge  
20<sup>th</sup> Judicial District

Honorable Glenn Braun, District Court Chief Judge  
23<sup>rd</sup> Judicial District

Spence Koehn, Court Services Specialist  
Office of Judicial Administration

Sheriff Bill Carr, Ford County Sheriff  
Ford County, Kansas

Other Members:

Hope Cooper, Deputy Secretary of Juvenile & Adult Community-Based Services  
Kansas Department of Corrections

Brian Seidler, Senior Business Intelligence Analyst  
Johnson County Department of Corrections

Erin Geist (Stand-in for Judge Braun), Adult Intensive Supervision Officer II  
North West Kansas Community Corrections

Audrey Cress, Director of Victim Services  
Kansas Department of Corrections

Nassir “Matt” Hadaegh, Adult Intensive Supervision Officer  
11<sup>th</sup> Judicial District Community Corrections

**Kansas Criminal Justice Reform Commission**  
**Sub-Committee: Mental Health / Substance Abuse**  
**Final Report**

**December 1, 2020**

To: Criminal Justice Reform Commission

Re: Final Report

Members of the Criminal Justice Reform Commission,

***Background***

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Mental Health / Substance Abuse Sub-Committee was established. Rep. Stephen Owens was selected to chair the sub-committee. On December 1, 2019, the sub-committee presented the full committee with an interim report. During the 2020 legislative session, legislation was introduced based on our recommendations, but unfortunately, with a shortened session, we didn't see any of the bills pass. We continued our work during a very challenging 2020 pandemic as we reviewed the KDADS Mental Health Task Force recommendations, added a number of new members to our committee, engaged the Council of State Governments Justice Reinvestment Team and developed final recommendations for this report.

***Goals***

As a sub-committee, we have identified the following statement and feel it most clearly identifies our goals as a working group:

*To create an integrated system between mental health, substance abuse and criminal justice at the county, regional and state levels that can provide prompt, appropriate treatment and interventions to break the cycles of decompensation and incarceration to successfully*

*reduce the number of individuals with mental illness, substance use disorders or dually diagnosed individuals entering into, residing in and reentering the criminal justice system.*

The majority of this language comes from the KDADS 3R's report developed back in 2005; specifically, the Mental Health / Substance Abuse sub-committee work.

### ***Sub-Committee Recommendations***

The sub-committee believes the following recommendations warrant action by the legislature during the 2021 session and beyond:

1. HB 2708 was introduced to the House Judiciary Committee during the 2020 Legislative Session. This bill would create a new program similar to SB 123 (which set aside funding for drug treatment for certain defendants convicted of drug offenses.) This program would set money to certain diverted defendants, instead of only convicted offenders; to allow them to enter state paid substance abuse treatment. This legislation passed the House 125 – 0 but died in the Senate due to the shortened session. It is the recommendation of this committee that this bill be re-introduced.
2. Mental health issues are prevalent in our communities. The lack of access to treatment, both the result of regional inaccessibility and a lack of insurance or a payment source, is an issue that must be addressed. With this in mind, we highly encourage the legislature to continue to make access to regional mental health services a priority in the 2021 session.
3. The Council of State Governments (CSG) Justice Center Recommendations adopted by the sub-committee:

### **Overview & Context**

- Effective treatment for people in the criminal justice system addresses both criminogenic and behavioral health needs.
- Nationally, the rates of mental illnesses and substance use disorders in the justice system are higher than in the adult general population.
- Most admissions to prison for drug offenses are people with high-medium Level of Service Inventory-Revised (LSI-R) scores.

- 58 percent of admissions for new nonviolent offenses and 53 percent of admissions for new violent offenses scored “moderate” to “very high” in the LSI-R domain for alcohol/drugs.
- Over a quarter of the people released from prison each year have mental health needs requiring some level of treatment or services.
- People with co-occurring mental illnesses and substance use disorders have complex needs that require integrated responses across the criminal justice system.

This document includes policy options to reduce barriers for people in the criminal justice system with behavioral health needs. These policies are broken down into four priorities.

1. **Leverage current efforts** to support people with mental illnesses and substance use disorders in the justice system.
2. Provide opportunities and develop policy on **cross-system coordination**.
3. Prioritize collecting **data to guide policy improvements**.
4. Focus on **training and education for providers** to support people with mental illnesses and substance use disorders in the justice system.

### **Additional Detail on the Policy Priority Areas**

1. **Leverage current efforts** to support people with mental illnesses and substance use disorders in the justice system.  
*While there is a well-developed structure to ensure effective transitions from prison to the community, insufficient staffing levels result in poor implementation of the processes in place.*

#### **Short-Term Opportunities**

- a. *Administrative:* Modify policies and procedures to require a formal transition package for all people leaving prison that includes:
  - i. Requirements for coordination with probation and parole agencies and KDOC contractors for people with mental illnesses and substance use disorders (SUDs)
  - ii. Written policies and procedures about coordination between KDOC transition planners, Community Mental Health Centers (CMHCs), and community-based SUD treatment providers

#### **Long-Term Opportunities**

- b. *Administrative:* Modify policies and procedures to require case plans developed by parole officers to follow the transition plan.
  - i. Additional guidance should be given to parole officers for people who have mental illness and substance use disorder (SUD) treatment as part of their conditions of release.

- c. *Administrative:* Modify policies and procedures to ensure that parole officers receive a copy of the transition plan developed for people while in KDOC custody as part of reentering the community. Develop a process to monitor follow-up on the transition plans.

*Support integrated co-occurring mental illness and substance use disorder treatment in the prison system.*

### **Immediate Action**

- d. *Administrative:* Modify contracts to ensure that mental health and substance use providers create a coordinated care team to support people with co-occurring mental illnesses and substance use disorders.

### **Long-Term Opportunities**

- e. *Administrative:* Modify policies and procedures to support matching people with co-occurring mental illnesses and substance use disorders to services.
- f. *Administrative:* Modify policies and procedures for transition planning for people with co-occurring mental illnesses and substance use disorders to support integrated treatment when possible.
- g. *Administrative:* Modify policies and procedures to ensure connection to and coordination with CMHCs and SUD treatment providers for people with co-occurring mental illnesses and substance use disorders as they reenter the community.

### **Utilize the opportunity for the planned launch of a Stepping Up Technical Assistance Center to support cross-system coordination.**

Stepping Up is a national initiative focused on counties committing to pass a public resolution to reduce the number of people with mental illnesses in jails. Over 500 counties across 43 states have Stepped Up to reduce the prevalence of mental illness in jail. The initiative calls for no-nonsense, data-driven public management, which includes the use of validated screening and assessments, common definitions of SMI and substance use, and tracking and reviewing key measures.

### **Immediate Action**

- h. *Administrative:* Use feedback and lessons learned from cross-system coordination for mental health and jails to inform opportunities in other areas of the justice system, including best practices, and address housing instability and substance use disorders.
  - i. Coordinate with the Governor's Behavioral Health Services Planning Council's Justice Involved Youth and Adults (JIYA) Subcommittee to make sure that priorities are aligned.

*Update contracts, policies, and procedures to support additional guidance for substance use disorder interventions in the prison system.*

### ***Immediate Action***

- i. *Administrative*: Modify policies and procedures to create standard guidance for all contracted providers on intake and reentry support for people receiving the University of Cincinnati Substance Abuse curriculum.
- j. *Administrative*: Develop guidance for transition specialists and contracted substance use curriculum providers on how to coordinate with community-based substance use disorder treatment and recovery support service providers.
- k. *Administrative*: Develop guidelines and information-sharing protocols for KDOC to communicate completion of cognitive behavioral interventions with community-based providers as people reenter the community.

### ***Long-Term Opportunities***

- l. *Administrative*: Consider expanding options for substance use disorder treatment in prisons.
2. Provide opportunities and develop policy on **cross-system coordination**.  
*Develop policies to improve access to mental illness and substance use disorder treatment in correctional facilities and the community.*

### ***Immediate Action***

- a. *Administrative or Statutory*: Leverage access to telehealth services through Medicaid and insurance to assist with connections to care for people in the justice system. Identify funding for telehealth consultations while people are in jail or prison prior to reentering the community.

### ***Long-Term Opportunity***

- b. *Statutory*: Develop policy and provide funding to support correctional facility liaisons for the CMHCs and/or substance use treatment to support warm handoffs to community-based care.  
*Increase diversion opportunities for people with mental illnesses and substance use disorders.*
  - c. *Administrative*: Develop mobile crisis teams through CMHCs and SUD treatment providers to increase service accessibility in rural and frontier counties and support crisis response.
  - d. *Statutory*: Amend SB 123 funding to allow for the provision of support for substance use treatment when people are diverted from prosecution and have completion of treatment as a condition of diversion.
3. Prioritize collecting **data to guide policy improvements**.  
*Prioritize cross-system data collection through a comprehensive statewide data collection process, standard metrics, or management information systems (MIS).*

### ***Immediate Action***

- a. *Administrative*: Create a subcommittee or leverage the data subcommittee to identify common data metrics that should be collected across the criminal justice, mental illness, substance use disorder, and housing systems. This group will develop recommended legislation regarding what data should be collected.

### ***Long-Term Opportunity***

- b. *Administrative*: Provide guidance and/or technical assistance on the use of the data metrics and how to share across the relevant state and local agencies, with a particular focus on data sharing between county jails, the state prison system, and the community supervision agencies in Kansas.

4. Focus on **training and education for providers** to support people with mental illnesses and substance use disorders in the justice system.

*Develop education and training on mental illnesses, substance use disorders, housing, and working with people in the justice system.*

### ***Immediate Actions***

- a. *Administrative*: Require the Behavioral Science Regulatory Board to provide additional training on how to work with people in the justice system as part of state licensure.
- b. *Administrative*: Provide training for community supervision officers on mental illnesses and substance use disorders, treatment options, and strategies to better coordinate with treatment and recovery support service providers.

4. Currently, the first and second possessions of marijuana charges are misdemeanors. The sub-committee recommends the legislature amend the severity level of all personal use drug possession charges from felony to misdemeanor similar to marijuana. The long-term challenges of having a felony record include housing and employment issues. The initial focus should be on treatment versus punishment.
5. Sending mental health workers along with law enforcement to certain calls continues to make positive impacts by decreasing arrests and saving jail bed space. We recommend that a co-responder program be implemented throughout the state and that adequate funding follow. This program has already proven beneficial in a few cities in Kansas. In one program, as many as 98% of interactions resulted in the diversion from the jail system. While we recognize some inherent challenges in rural Kansas, emphasis should be put on treatment over incarceration.

6. We recommend that emphasis should be placed on prevention of crime through programs that offer “protective factors” such as safe, affordable, and decent housing (e.g., the Housing First Model), gainful employment (e.g., supported employment programs in the CMHCs), and positive family and social relationships. (CMHC = Community Mental Health Center)
7. Consideration should be given to the employment of the Sequential Intercept Model (SIM). This model can be the framework of community based services and the collaborations needed to divert justice involved individuals to appropriate resources in lieu of jail. This mapping process will help identify critical points upstream to promote recovery and where to apply resources.
8. This committee recognizes the importance of inter-agency communication; especially as it relates to behavioral health and incarceration. As such, the committee recommends the creation of a **Behavioral Health Liaison** position within each jail to specifically communicate with local mental health care facilities and / or CMHC’s (aka “Jail Liaison”). This would create a “single point of contact” within each correctional facility to promote seamlessness in service delivery. A **Corrections Liaison** within each CMHC could work collaboratively with persons released from jail and the behavioral health liaison to ensure all partner agencies involved (Community Corrections, Probation, Court Services, etc.) communicate effectively to ensure a seamless transition. There should be consideration given to the use of Peer Support services to assist in the transition.
9. The methamphetamine abuse and addiction crisis, affecting frontier, rural, and urban Kansas counties, is a driver of crime and incarceration, and is a major, ongoing threat to public safety and the safety of law enforcement officers. **Expanded access to detox and evidenced based treatment** is required if we are get in front of the effects of addiction.
10. Specialty Courts: Family Court, Drug Court, Mental Health Court singly or in combination allow for the specific application of the law based on factors a typical court may not be



experienced in. These courts have shown to produce better out comes for those involved.

This committee fully supports the use of specialty courts within the criminal justice system.

11. Consideration should be given to the establishment in each jail on-site behavioral health services, such as counseling, peer support, and psychiatric medication prescribing, and discharge planning; scaled to size and resources available.
12. Studies of cost-avoidance should be included, such as those produced out of Wichita State University, in decision making plans to compare incarceration versus treatment alternatives.
13. A major driver of the high incidence of mental illness in jails and correctional systems is the lack of access to acute care in psychiatric hospitals and residential programs created by the Medicaid Institutions of Mental Disease (IMD) exclusion, which prohibits federal reimbursement for care provided to most patients between the age of 21 and 64 in mental health facilities with more than 16 beds. Consideration should be given to applying for a waiver from CMS for reimbursement for mental health services in residential psychiatric facility and treatment centers. This could create a pathway for the expansion of certain community-based programs that could be alternatives to jail time (such as crisis residential programs, transitional living programs, etc.) as well as expand access to services that may divert individuals with mental illness from the justice system.
14. Competency Evaluations and Restoration services continue to be a bottleneck in the court system. This committee recommends the **support of trained mobile competency evaluation and restoration providers**. The current wait time to get into Larned Hospital for an evaluation is approximately 9 months. Mobile providers would be able to come to the facility to provide the needed evaluation or restoration services. The possibility of providing competency evaluation and restoration on an out-patient basis for those defendants that don't pose a risk to public safety should be considered. This position could exist with the CHMC framework possibly. In addition, behavioral health treatment and medication for defendants returning to local facilities should be provided to prevent decompensation that

may necessitate further delay in case processing. KDADS is currently looking at options for this as well.

15. Work force retention and recruitment continues to be a challenge within the mental health and substance abuse field, particularly in rural and frontier areas of the state where it is not uncommon for counselor or psychiatry positions to remain open for months or years. It is imperative that emphasis be placed on work force development in these areas by the Kansas Legislature.

### *Conclusions*

The mental health / substance abuse sub-committee has made multiple recommendations that we believe the legislature can take meaningful action on during the 2021 session. These items represent recommendations researched and evaluated over the last year and a half of sub-committee work. We attempted to be as inclusive as possible in making recommendations based on best practices utilizing all available resources.

The sub-committee recognizes the budgetary challenges faced by the state legislature. While the budget was always top of mind, we made recommendations we knew would create positive change in the criminal justice system recognizing funding limitations would not allow the full implementation of each item. While we constantly strive to look for options that are funding neutral, the reality is to effect change in the criminal justice system, it will take a significant initial investment. This investment will pay significant dividends in the following years through decreased jail and prison bed space.

Respectfully Submitted this 1<sup>st</sup> Day of December, 2020.

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Rep. Stephen Owens  
Chairman

## KCJRC Proportionality Committee

With the creation of the Kansas Criminal Justice Reform Commission, we have been charged with review of the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses. Listed are our immediate and long-term recommendations for the preliminary report. We have also kept in mind the financial and bed space constrictions of the Department of Corrections for the State of Kansas.

### Immediate (short term)

1. Decrease the penalties from drug grid level five to level eight for proportionality to nondrug grid level eight for proportionality reasons. HB 2047 (Attachment)

Explanation: This is in support of 2019 HB 2047. The subcommittee reviewed and concurred with the Sentencing Commission that sentences for severity level 5 drug crimes should be comparable to those of severity level 8 nondrug crimes. The proposal would lower drug grid severity level 5 sentences to be consistent or proportional with crimes on the nondrug grid at severity level 8.

2. Change unlawful tampering with electronic monitoring device from a level six crime to a level eight crime. HB 2494 (Attachment)

Explanation: Support for HB 2494 a proportionality bill coming from the Sentencing Commission. It is a minimal cost to damage an ankle strap. Currently, the offense is a severity level 6 nonperson felony. If a defendant is charged with a class A Misdemeanor and placed on monitoring during the course of their case, he or she could receive more time for this violation than the original sentence. The proposal also provides that if the offender is being monitored for an underlying misdemeanor offense, the tampering penalty would be a class A misdemeanor. Finally, lowering the penalty to a severity level 8 crime is also proportional and consistent with the penalty for escape from custody.

3. Increase felony loss threshold from \$1,000 to \$1,500 on 11 property crimes. HB 2485 (Attachment)

Explanation: This is in support of HB 2485. It is for proportionality reasons only. In 2016, the felony theft threshold was raised from \$1,000 to \$1,500. The same was accomplished for mistreatment of a dependent adult or elder person in 2018. We believe not including the rest of the property crimes was just an oversight when the original threshold was moved and support raising the threshold on these crimes.

4. Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation HB2518 (Attachment).

Explanation: This is in support of HB 2518. Currently, the domestic violence statute only counts domestic battery convictions as prior convictions to determine

class severity for sentencing. We suggest a language change that would include prior convictions of a crime with a “domestic violence designation” under KSA 22-4616. As it stands currently, a defendant that has two prior convictions of aggravated battery under KSA 21-5413 with a DV designation, would not qualify as “prior convictions” if convicted of domestic battery under KSA 21-5414. This change would ensure that the legislative intent of counting prior crimes against family members and intimate partners are used to determine the appropriate crime severity level at sentencing.

5. Implementation of pre-trial substance abuse programs. HB 2708 (Attachment)

Explanation: This is in support of HB 2708, 2019 HB 2292. Similar to the 2003 SB 123 substance abuse treatment program administered post-conviction by the Sentencing Commission, the bill would provide for substance abuse treatment funding for divertees. The subcommittee agrees that diverting nonviolent drug offenders from the criminal justice system is a key to better utilizing current resources and incentivizing offenders to be successful by avoiding a felony conviction, which could result in decreased opportunities in obtaining employment and housing.

Long term (1 Year or More)

1. Proposing the combining of both sentencing grids instead of utilizing drug and non-drug grids. (Survey Results Attached)

Explanation: Examination of the drug grid sentence ranges disclose that there is a need to explore proportionality with the nondrug grid. Those crimes currently on the drug grid are all nonperson and the subcommittee will seek to determine whether they can be incorporated into the nondrug grid.

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.

We also asked if the top five drug and non-drug offenses have the incarceration ranges be re-worked. All ten offenses were overwhelmingly answered with a yes.

The survey is attached.

2. Implement a more open and expanded compassionate release program. HB2469 (Attachment)

Explanation: The subcommittee recognizes that the cost of corrections is expensive and continues to increase over time. Nationally, compassionate release programs for terminally ill or functionally incapacitated inmates is underutilized. Kansas is possibly the most stringent in the country in its criteria for release. The current statute requires a physician to certify that the inmate has a terminal medical condition likely to cause death within 30 days of release. In consultation with the KDOC, it was disclosed that only a handful of inmates have been released in the last 10 years under this provision. Moreover, it takes on an average of 30 days just to do the

paperwork and get all the approvals finished. Changes to K.S.A. 22-3728 and 22-3729 would assist in allowing more inmates to be eligible for release to save taxpayer dollars and allow for inmates to be with their families in their last days.

3. Early discharge from prison of 50% for non-violent drug offenders. HB2484 (Attachment)

Explanation: A referral has been made from the Sentencing Commission to determine the effectiveness of all drug offenders being placed on community corrections after 50% of their time is served in prison. The proposal in its current form is estimated to save 61 beds in FY 2021 and 370 in FY 2030. If it would be applied retroactively, the savings increase to 291 beds in FY 2021 and 402 in FY 2030.

4. Judicial review of probation time at 50% served. HB2052 (Attachment)

Explanation: This is in support of 2019 HB 2052, including the Office of Judicial Administration balloon amendments proposed last legislative session. This is a review of the probation to see if all terms have been met. This would include all terms and conditions that were set by the court such as fines, restitution, treatment, or other programs. If satisfactory, the offender would be terminated from probation. The bill would serve to incentivize offenders to successfully complete probation early and allow probation officers to allocate scarce resources to higher risk/needs offenders.

The Council for State Government Justice Center was contracted to do a Kansas Justice Reinvestment – Violent Crime, Sentencing, and Victims Assessment. The options for the Proportionality/Sentencing Sub Committee in their report are as follows.

## **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 (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 (Batterer's Intervention Program) 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.

### **Sentencing**

**Policy Objective 1:** Prioritize prison space for the most serious crimes by amending drug crime sentencing.

- 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.

## **Victims**

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

### **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 specialized 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.

Attachments:

1. House Bills or Summaries when applicable
2. Combination of Sentencing Grids Survey results.



## **HOUSE BILL No. 2047**

By Committee on Corrections and Juvenile Justice

1-22

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing; drug severity level 5 crimes; amending K.S.A. 2018  
3 Supp. 21-6805 and repealing the existing section.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 21-6805 is hereby amended to read as  
7 follows: 21-6805. (a) The provisions of this section shall be applicable to  
8 the sentencing guidelines grid for drug crimes. The following sentencing  
9 guidelines grid for drug crimes shall be applicable to felony crimes under  
10 K.S.A. 2018 Supp. 21-5701 through 21-5717, and amendments thereto,  
11 except as otherwise provided by law:

SENTENCING RANGE - DRUG OFFENSES

Catagory	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144	137	130	124	116	113	110	108	103
III	83	77	72	66	62	59	57	54	51
IV	51	47	42	36	32	29	26	23	20
V	42	36	32	26	22	19	16	14	12

LEGEND
Preventive Pardon
Preventive Imprisonment
Preventive Imprisonment

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level I	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	29 26 24	25 22 20	20 18 17	16 15 14
V	23 21 19	20 19 18	19 17 16	17 16 15	15 14 13	13 12 11	13 12 11	13 12 11	13 12 11

LEGEND
Presumptive Probation
Presumptive Probation
Presumptive Probation
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H, 4-I, 5-C or 5-D, the court may impose an optional nonprison sentence as provided in subsection (q) of K.S.A. 2018 Supp. 21-6804(q), and amendments thereto.

(e) The sentence for a second or subsequent conviction for unlawful manufacturing of a controlled substance, K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, K.S.A. 2018 Supp. 21-5703, and amendments thereto, or a substantially similar offense from another jurisdiction, if the controlled substance in any prior conviction was methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog thereof, shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 2018 Supp. 21-6815, and amendments thereto, justify such a

1 reduction in sentence. Any decision made by the court regarding the  
2 reduction in such sentence shall not be considered a departure and shall  
3 not be subject to appeal.

4 (f) (1) The sentence for a third or subsequent felony conviction of  
5 K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-  
6 36a06, prior to its transfer, or K.S.A. 2018 Supp. 21-5706, and  
7 amendments thereto, shall be a presumptive term of imprisonment and the  
8 defendant shall be sentenced to prison as provided by this section. The  
9 defendant's term of imprisonment shall be served in the custody of the  
10 secretary of corrections in a facility designated by the secretary. Subject to  
11 appropriations therefore, the defendant shall participate in an intensive  
12 substance abuse treatment program, of at least four months duration,  
13 selected by the secretary of corrections. If the secretary determines that  
14 substance abuse treatment resources are otherwise available, such term of  
15 imprisonment may be served in a facility designated by the secretary of  
16 corrections in the custody of the secretary of corrections to participate in  
17 an intensive substance abuse treatment program. The secretary's  
18 determination regarding the availability of treatment resources shall not be  
19 subject to review. Upon the successful completion of such intensive  
20 treatment program, the offender shall be returned to the court and the court  
21 may modify the sentence by directing that a less severe penalty be  
22 imposed in lieu of that originally adjudged. If the offender's term of  
23 imprisonment expires, the offender shall be placed under the applicable  
24 period of postrelease supervision.

25 (2) Such defendant's term of imprisonment shall not be subject to  
26 modification under paragraph (1) if:

27 (A) The defendant has previously completed a certified drug abuse  
28 treatment program, as provided in K.S.A. 2018 Supp. 75-52,144, and  
29 amendments thereto;

30 (B) has been discharged or refused to participate in a certified drug  
31 abuse treatment program, as provided in K.S.A. 2018 Supp. 75-52,144,  
32 and amendments thereto;

33 (C) has completed an intensive substance abuse treatment program  
34 under paragraph (1); or

35 (D) has been discharged or refused to participate in an intensive  
36 substance abuse treatment program under paragraph (1).

37 The sentence under this subsection shall not be considered a departure  
38 and shall not be subject to appeal.

39 (g) (1) Except as provided further, if the trier of fact makes a finding  
40 that an offender carried a firearm to commit a drug felony, or in  
41 furtherance of a drug felony, possessed a firearm, in addition to the  
42 sentence imposed pursuant to K.S.A. 2018 Supp. 21-6801 through 21-  
43 6824, and amendments thereto, the offender shall be sentenced to:

1       (A) Except as provided in subsection (g)(1)(B), an additional 6  
2 months' imprisonment; and  
3       (B) if the trier of fact makes a finding that the firearm was  
4 discharged, an additional 18 months' imprisonment.  
5       (2) The sentence imposed pursuant to subsection (g)(1) shall be  
6 presumptive imprisonment. Such sentence shall not be considered a  
7 departure and shall not be subject to appeal.  
8       (3) The provisions of this subsection shall not apply to violations of  
9 K.S.A. 2018 Supp. 21-5706 or 21-5713, and amendments thereto.  
10      Sec. 2. K.S.A. 2018 Supp. 21-6805 is hereby repealed.  
11      Sec. 3. This act shall take effect and be in force from and after its  
12 publication in the statute book.

SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2494**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2494 would lower the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6, nonperson felony in all cases to a severity level 8, nonperson felony when the equipment is used for court-ordered supervision, post-release supervision, or parole in relation to a felony, and to a class A nonperson misdemeanor when the equipment is used for court-ordered supervision, post-release supervision, or parole in relation to a misdemeanor or for court-ordered supervision in a civil case.

**Background**

This bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission.

In the House Committee hearing, representatives of the Kansas Sentencing Commission and the Kansas Association of Criminal Defense Lawyers testified in support of the bill, stating the bill would make violations more proportional with the underlying offenses.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates enactment of the bill would result in additional offenders being supervised by court services officers, but the

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

fiscal effect could be absorbed within existing resources. The Kansas Sentencing Commission estimates enactment of this bill would reduce six prison admissions each year during the ten-year forecasting period. Additionally, the bill would save nine prison beds in FY 2021 and ten prison beds in FY 2030. This bill would result in no additional workload of the Commission. The Department of Corrections indicates a reduction in the prison population is beneficial toward avoiding future costs but is not sufficient to reduce current prison expenditures. The Department of Corrections also notes any person who is convicted and not sent to prison would still be supervised in the community, which could require an increase in community supervision resources in the future. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.



SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2485**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2485 would amend the penalty provisions of various crimes where the penalty level depends on monetary value to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floors for the lowest felony penalties and floors or ceilings for applicable exceptions would be changed to \$1,500. The crimes that would be affected by the bill are:

- Theft of property lost, mislaid, or delivered by mistake;
- Criminal damage to property;
- Giving a worthless check;
- Counterfeiting;
- Criminal use of a financial card;
- Impairing a security interest;
- Medicaid fraud;
- Official misconduct;
- Presenting or permitting a false claim;
- Misuse of public funds; and
- Criminal desecration.

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## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission (KSSC). In the House Committee hearing, representatives of the KSSC, Kansas County and District Attorneys Association, and the Kansas Association of Criminal Defense Lawyers testified in support of the bill. Proponents testified the bill would allow for more uniform punishments for crimes resulting in economic losses and allow cost savings for prosecution offices. No other testimony was provided.

According to the bed impact statement prepared by the KSSC, the bill is estimated to result in a decrease of prison beds by two prison beds and four prison admissions needed each year and would reduce the workload of the KSSC by four journal entries each year of the ten-year forecasting period.

According to the fiscal note prepared by the Division of the Budget on the bill, the Department of Corrections (Department) states a reduction in the prison population would be beneficial to avoiding future costs, but is not sufficient to reduce current prison expenditures. The Department also notes any person who is convicted and not sent to prison would still be supervised in the community, which could require an increase in community supervision resources in the future. The Office of Judicial Administration (OJA) indicates the bill would result in additional offenders being supervised by court services, but any additional expenditures could be absorbed within existing resources. The OJA estimates the bill would decrease revenues to the Correctional Supervision Fund and the State General Fund, but a fiscal effect could not be determined. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2518**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2518 would amend law related to the calculation of criminal history for purposes of sentencing a person convicted of domestic battery.

The bill would amend the current definition of “conviction” that is found in the domestic battery statute in the Kansas Criminal Code by adding a provision that would require a sentencing court to consider any criminal offense that includes a domestic violence designation as a prior conviction for the purposes of escalating the penalty.

Current law provides that a first conviction of domestic battery is a class B person misdemeanor, a second conviction within five years is a Class A person misdemeanor, and a third or subsequent conviction in the immediately preceding five years is a nongrid person felony.

The bill would make technical amendments to remove outdated language regarding previously required consideration of crimes for criminal history purposes and to ensure consistency in statutory phrasing.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Kansas Criminal Justice Reform Commission.

In the House Committee hearing, written-only proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association, and a representative of the Kansas Coalition Against Sexual and Domestic Violence. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill. No other testimony was provided.

According to the fiscal note prepared by the Division of Budget on the bill, the Kansas Sentencing Commission indicates the bill could have an effect on prison admissions, bed space, and the workload of the Commission. The Department of Corrections states, due to the capacity challenges facing the Department, if the bill did increase prison utilization, it would house any additional inmates in a combination of county jails and out-of-state contract beds depending on the custody level and gender. The Department cannot estimate a fiscal effect because the effect on prison admissions and bed space cannot be estimated. The Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on the agency. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2708**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2708 would establish a certified drug treatment program (program) for certain persons who have entered into a diversion agreement (divertees) pursuant to a memorandum of understanding (MOU).

The bill would allow eligibility for participation in a program for offenders who have entered into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2020, for persons who have been charged with felony possession of a controlled substance and whose criminal history score is C or lower with no prior felony drug convictions.

[*Note:* Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense. Felony drug possession is currently classified as a drug severity level 5 felony. An offender is classified as criminal history C if the offender has one person and at least one nonperson felony.]

The bill would also provide that, as part of the consideration of whether to allow a person to enter into such a diversion agreement, a person who meets the criminal charge and history requirements shall be subject to:

- A drug abuse assessment that would be required to include a clinical interview with a mental health

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

professional and a recommendation concerning drug abuse treatment for the divertee; and

- A standardized criminal risk-need assessment specified by the Kansas Sentencing Commission (Commission).

The bill would further require the diversion agreement to include provisions that require the divertee to comply with and participate in a program if the divertee meets the assessment criteria set by the Commission, with a term of treatment not to exceed 18 months.

### ***Supervision***

The bill would provide that divertees who are committed to a program could be supervised by community correctional services or court services pursuant to a MOU. A divertee would be discharged from the program if the divertee:

- Is convicted of a new felony; or
- Has a pattern of intentional conduct that demonstrates the divertee's refusal to comply with or participate in the program, in the opinion of the county or district attorney.

If a divertee is discharged, such person would be subject to the revocation provisions of the respective diversion agreement.

### ***Definitions***

The bill would define "mental health professional" for this purpose to include:

- Licensed social workers;
- Persons licensed to practice medicine and surgery;
- Licensed psychologists;
- Licensed professional counselors; or

- Registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the Secretary of Corrections (Secretary) to treat persons pursuant to continuing law.

The bill would define “divertee” to mean a person who has entered into a diversion agreement pursuant to continuing law and amendments made by the bill.

### ***MOU***

The bill would amend law related to diversion agreements by adding provisions related to an MOU.

The bill would allow a county or district attorney to enter into an MOU with the judicial administrator or community correctional services to assist with the supervision and monitoring of persons who have entered into a diversion agreement. The county or district attorney would retain authority over whether a particular defendant may enter into a diversion agreement or whether such agreement would be revoked.

The bill would require an MOU to include provisions related to:

- Determining the level of supervision needed for a defendant;
- Use of a criminal-risk needs assessment; and
- Payment of costs for supervision.

The bill would authorize the Kansas Supreme Court to adopt rules regarding the content of an MOU between a county or district attorney and the judicial administrator and the administration of a supervision program operating pursuant to such MOU.

The bill would amend law regarding the contents of diversion agreements to specify that such agreements may include provisions related to the MOU.

### ***Supervision Fees***

The bill would provide that diverttees who are supervised pursuant to an MOU would be required to pay a supervision fee in the amount established in continuing law for misdemeanor or felony post-conviction supervision, as appropriate for the crime charged. The bill would allow a supervision officer to reduce or waive the supervision fee.

The bill would require the district court to collect supervision fees and the clerk of the district court to remit all diversion supervision fees to the State Treasurer. The State Treasurer would be required to deposit the entire amount in the State Treasury and credit the following amounts:

- 41.67 percent to the State General Fund; and
- 58.33 percent to the Correctional Supervision Fund.

The bill would also require diverttees who are supervised pursuant to an MOU to pay the actual costs of urinalysis testing required as a term of supervision. Payments for such testing would be required to be remitted to the county treasurer for deposit in the county general fund, and the cost of such testing could be reduced or waived by the county or district attorney.

The bill would further require county or district attorneys to determine the extent, if any, that a diverttee is able to pay for assessment and treatment and the bill would require such payments to be used by the supervising agency to offset costs to the State or county. If such financial obligations are not met or cannot be met, the county or district attorney would be required to be notified for the purpose of collection or review and further action on the diversion agreement.



### ***Conforming and Technical Changes***

The bill would make conforming amendments to statutes regarding community correctional services and certified drug abuse treatment programs to allow for implementation of the bill's provisions.

The bill would make technical amendments to ensure consistency in statutory phrasing and to remove outdated language related to a previously allowed supervision of certain adult offenders in Johnson County by court services or community corrections, which expired on July 1, 2013.

### **Background**

SB 123(2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the "Senate Bill 123 Program," this program is administered by the Kansas Sentencing Commission. HB 2708 would establish a similar treatment program for divertees.

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Owens on behalf of the Kansas Criminal Justice Reform Commission.

In the House Committee hearing, representatives of the Kansas Criminal Justice Reform Commission and the Kansas Sentencing Commission testified in support of the bill. Proponents generally indicated the bill would expand the availability of drug abuse treatment options across the state for persons on diversion.

Written-only proponent testimony was provided by a representative of the Kansas County and District Attorneys Association and by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

Written-only neutral testimony was provided by a representative of the Office of Judicial Administration (OJA).

Written-only opponent testimony was provided by a private citizen.

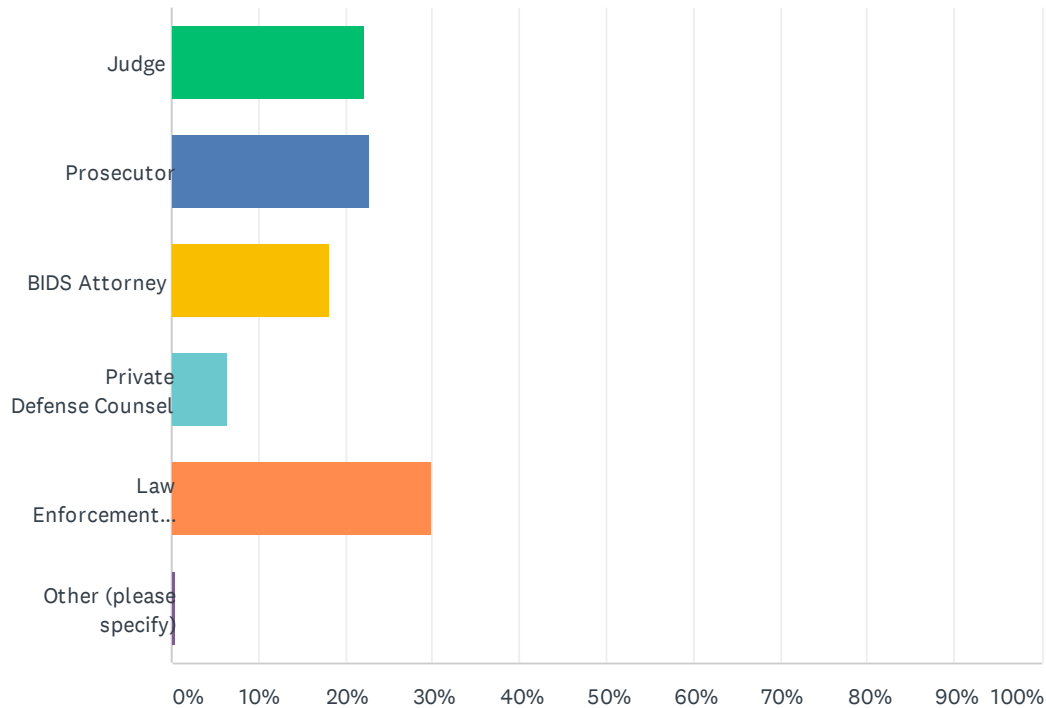
According to the fiscal note prepared by the Division of Budget on the bill, OJA indicates enactment of the bill could have a fiscal effect on the Judicial Branch operations to monitor the agreement process and for court services to supervise more offenders; however, a fiscal effect cannot be estimated. The bill could increase revenues from supervision fees to the Judicial Branch Correctional Supervision Fund and the State General Fund. OJA estimates the bill could also increase revenues from testing fees to county general funds.

The Commission estimates enactment of the bill would have no effect on prison admissions or prison beds; however, the Commission estimates, based on three different scenarios, the bill could increase the number of Senate Bill 123 Program offenders by either 50, 100, or 150 persons in FY 2021. Because of the potential increase of Senate Bill 123 Program drug treatment offenders, the Commission estimates additional State General Fund expenditures of \$157,150, \$314,300, or \$471,450 in FY 2021, depending on which scenario occurs. The Commission reports the average cost of treatment in the Senate Bill 123 Program was \$3,143 per offender in FY 2019. The Department of Corrections indicates it cannot estimate the number of divertees that may require community corrections supervision.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

## Q1 What best describes your role?

Answered: 297 Skipped: 0

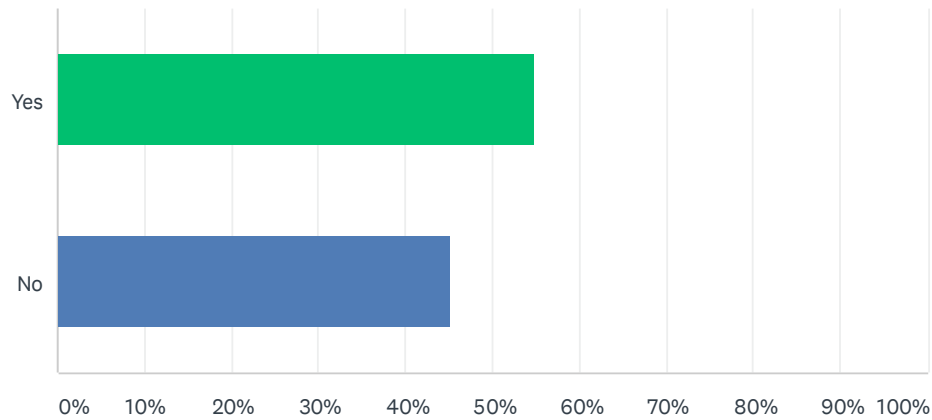


ANSWER CHOICES	RESPONSES	
Judge	22.22%	66
Prosecutor	22.90%	68
BIDS Attorney	18.18%	54
Private Defense Counsel	6.40%	19
Law Enforcement Officer	29.97%	89
Other (please specify)	0.34%	1
<b>TOTAL</b>		<b>297</b>

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

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

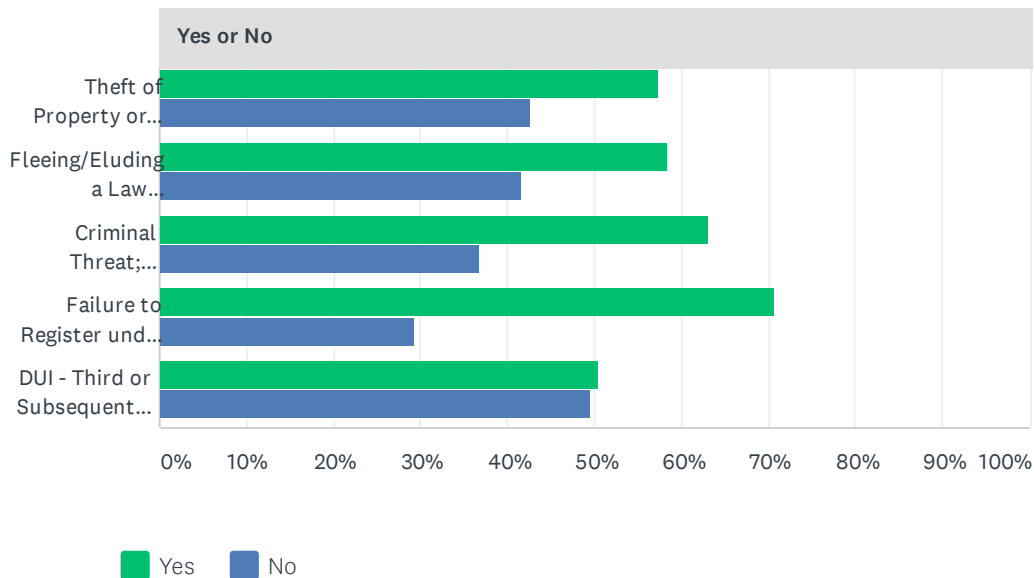
Answered: 292 Skipped: 5



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?

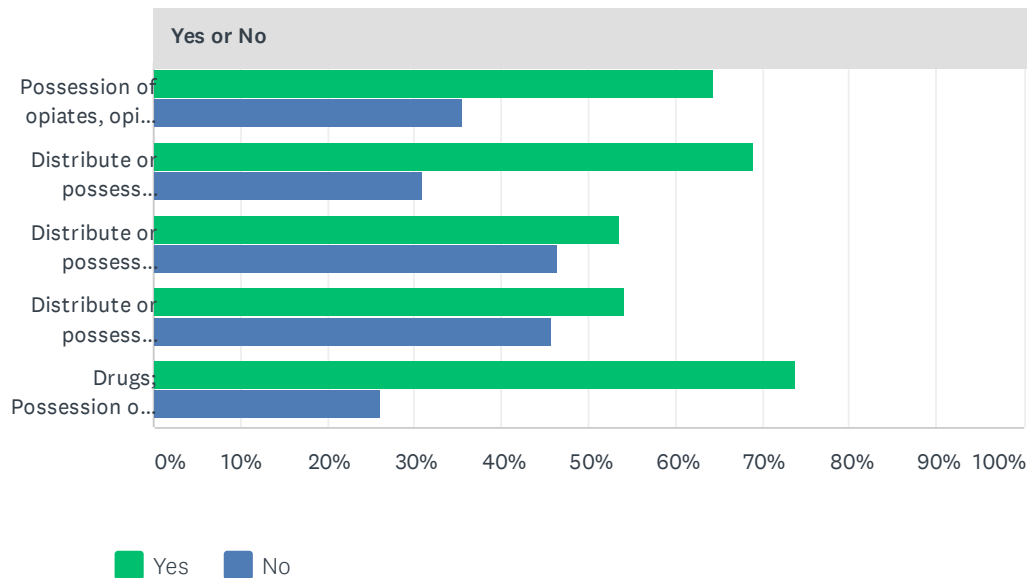
Answered: 293 Skipped: 4



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?

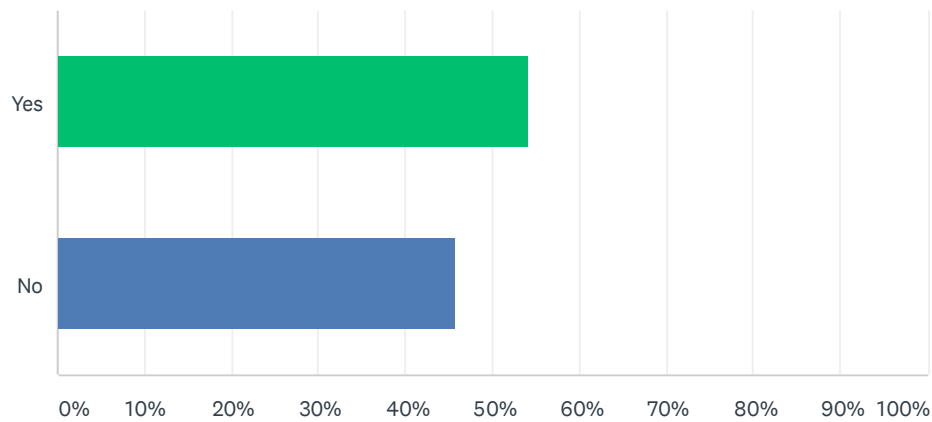
Answered: 295 Skipped: 2



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?

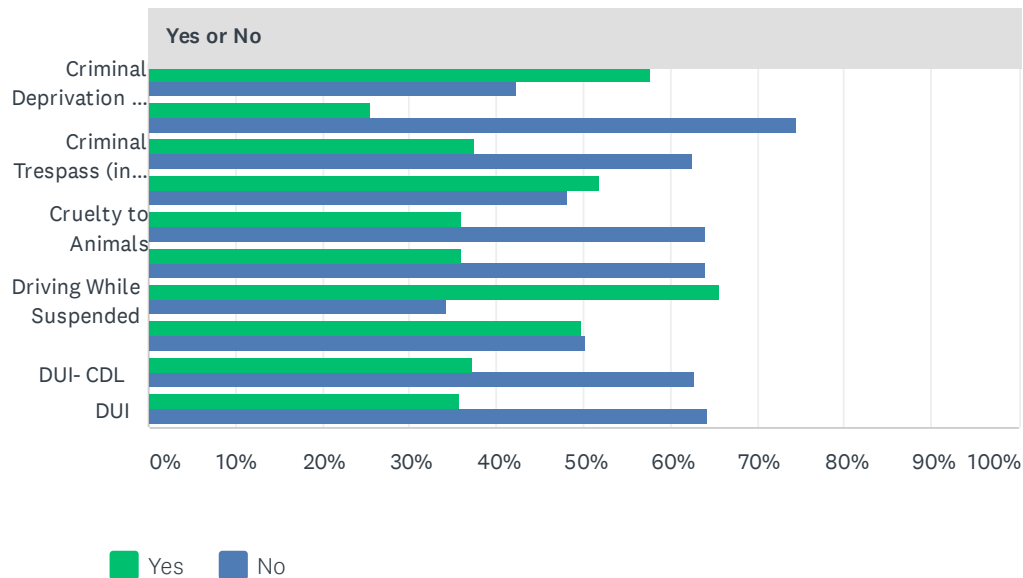
Answered: 293 Skipped: 4



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 blank 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



SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2469**

As Amended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2469, as amended, would raise the allowed release of inmates by the Kansas Department of Corrections (KDOC) for a terminal medical condition from 30 days to 120 days.

Current law allows the Prisoner Review Board (Board) to approve the release of an inmate if a doctor determines the inmate has a terminal medical condition likely to cause death within 30 days and does not represent a future risk to public safety. Release of an inmate is conditional and may be revoked if the:

- Person's illness or condition significantly improves;
- Person does not die within 30 days of release;
- Person fails to comply with conditions of release; or
- Board otherwise concludes the person presents a threat or risk to public safety.

The bill would replace references to 30 days with 120 days, and would allow release if an inmate's terminal medical condition is likely to cause death within 120 days, or revocation of release if the person does not die within 120 days of release.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission.

In the House Committee hearing, Representative Highberger; and representatives of the American Civil Liberties Union, Kansas Association of Criminal Defense Lawyers, and Kansas Sentencing Commission testified in support of the bill. Written neutral testimony was provided by a representative of the KDOC.

The House Committee amended the bill by raising the allowed release for a terminal medical condition to 120 days. [Note: Current law allows release if the terminal medical condition is likely to cause death within 30 days. The bill, as introduced, would have increased this time limitation to 90 days.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDOC indicates that it has released one inmate under the current process since 2013 and states that expanding the window to 90 days would likely increase the number of potential candidates for release. However, KDOC anticipates that the number of individuals who would be eligible for consideration and release would be minimal, and any fiscal impact could be absorbed within existing resources.

The Kansas Sentencing Commission indicates enactment of the bill would have no effect on prison admissions, but the bill could affect prison bed space depending on the number of individuals released.

The Office of Judicial Administration indicates enactment of the bill would have no fiscal effect. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

**REVISED**  
**SESSION OF 2020**

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2484**

As Amended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2484, as amended, would amend law related to the amount of good time incarceration credit and program credit allowed by the Kansas Department of Corrections (KDOC) for persons convicted of certain crimes.

- The bill would specify the current good time incarceration credits would be limited to crimes committed between the dates in current law and June 30, 2020. The bill would also allow the following good time incarceration credit for crimes committed after July 1, 2020:
  - 25.0 percent of the prison part of the sentence for a person felony; and
  - 40.0 percent of the prison part of the sentence for a nonperson felony.

Current law allows the following good time incarceration credit:

- 15.0 percent:
  - Crimes committed on or after July 1, 1993; and
- 20.0 percent:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Non-drug severity level 7 through 10 crimes committed on or before January 1, 2008;
- Drug severity level 3 or 4 crimes committed on or after January 1, 2008, but prior to July 1, 2012; or
- Drug severity levels 3 through 5 crimes committed on or after July 1, 2012.

Current law provides that the State of Kansas, the Secretary of Corrections, and the Secretary's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission in making good time and program credit calculations. The bill would remove "wrongful" from this immunity provision.

Further, the bill would allow up to 150 days of program credit, which may be awarded based upon the completion of certain KDOC programs while a person is incarcerated. Current law allows for up to 120 days of such program credit.

Finally, the bill would also make technical amendments to remove outdated language regarding previously required good time and program credit calculations by the Secretary of Corrections and to ensure consistency in statutory phrasing.

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission (Commission).

In the House Committee hearing, representatives of the American Civil Liberties Union, the Commission, and the Kansas Association of Criminal Defense Lawyers testified in support of the bill, stating the bill would help incentivize good behavior of inmates while also reducing the number of prison beds needed. Opponent testimony was provided by representatives of the Kansas Association of Chiefs of Police, Kansas County and District Attorneys Association, Kansas

Peace Officers Association; and the Kansas Sheriffs Association, stating the bill, as introduced, would not consider the seriousness of underlying offenses and would not account for crime victims. Written-only neutral testimony was provided by KDOC.

The House Committee amended the bill by inserting provisions that base available good time incarceration credit on the underlying offense, amending the liability for damages caused by acts or omissions in credit calculation, and raising the amount of program credit available.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Commission indicates enactment of the bill would result in a decrease of 150 adult prison beds needed by the end of FY 2021 and a decrease of 2,020 adult prison beds needed by the end of FY 2030. The Commission indicates the bill would have no effect on prison admissions. KDOC indicates enactment of the bill could help the State avoid millions of dollars in costs for future construction, operations, and contract beds between FY 2022 and FY 2029. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.



## HOUSE BILL No. 2052

By Committee on Corrections and Juvenile Justice

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to probation; hearing; credit toward early discharge; amending K.S.A.  
3 2018 Supp. 21-6608 and repealing the existing section.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 21-6608 is hereby amended to read as  
7 follows: 21-6608. (a) The period of suspension of sentence, probation or  
8 assignment to community corrections fixed by the court shall not exceed  
9 two years in misdemeanor cases, subject to renewal and extension for  
10 additional fixed periods of two years. Probation, suspension of sentence or  
11 assignment to community corrections may be terminated by the court at  
12 any time and upon such termination or upon termination by expiration of  
13 the term of probation, suspension of sentence or assignment to community  
14 corrections, an order to this effect shall be entered by the court.

15 (b) The district court having jurisdiction of the offender may parole  
16 any misdemeanant sentenced to confinement in the county jail. The period  
17 of such parole shall be fixed by the court and shall not exceed two years  
18 and shall be terminated in the manner provided for termination of  
19 suspended sentence and probation.

20 (c) For all crimes committed on or after July 1, 1993, the duration of  
21 probation in felony cases sentenced for the following severity levels on the  
22 sentencing guidelines grid for nondrug crimes and the sentencing  
23 guidelines grid for drug crimes is as follows:

24 (1) For nondrug crimes the recommended duration of probation is:

25 (A) 36 months for crimes in crime severity levels 1 through 5; and

26 (B) 24 months for crimes in crime severity levels 6 and 7;

27 (2) for drug crimes the recommended duration of probation is 36  
28 months for crimes in crime severity levels 1 and 2 committed prior to July  
29 1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or  
30 after July 1, 2012;

31 (3) except as provided further, in felony cases sentenced at severity  
32 levels 9 and 10 on the sentencing guidelines grid for nondrug crimes,  
33 severity level 4 on the sentencing guidelines grid for drug crimes  
34 committed prior to July 1, 2012, and severity level 5 of the sentencing  
35 guidelines grid for drug crimes committed on or after July 1, 2012, if a  
36 nonprison sanction is imposed, the court shall order the defendant to serve

1 a period of probation of up to 12 months in length;

2 (4) in felony cases sentenced at severity level 8 on the sentencing  
3 guidelines grid for nondrug crimes, severity level 3 on the sentencing  
4 guidelines grid for drug crimes committed prior to July 1, 2012, and  
5 severity level 4 of the sentencing guidelines grid for drug crimes  
6 committed on or after July 1, 2012, and felony cases sentenced pursuant to  
7 K.S.A. 2018 Supp. 21-6824, and amendments thereto, if a nonprison  
8 sanction is imposed, the court shall order the defendant to serve a period of  
9 probation, or assignment to a community correctional services program, as  
10 provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to  
11 18 months in length;

12 (5) if the court finds and sets forth with particularity the reasons for  
13 finding that the safety of the members of the public will be jeopardized or  
14 that the welfare of the inmate will not be served by the length of the  
15 probation terms provided in subsections (c)(3) and (c)(4), the court may  
16 impose a longer period of probation. Such an increase shall not be  
17 considered a departure and shall not be subject to appeal;

18 (6) except as provided in subsections (c)(7) and (c)(8), the total  
19 period in all cases shall not exceed 60 months, or the maximum period of  
20 the prison sentence that could be imposed whichever is longer. Nonprison  
21 sentences may be terminated by the court at any time;

22 (7) if the defendant is convicted of nonsupport of a child, the period  
23 may be continued as long as the responsibility for support continues. If the  
24 defendant is ordered to pay full or partial restitution, the period may be  
25 continued as long as the amount of restitution ordered has not been paid;  
26 and

27 (8) the court may modify or extend the offender's period of  
28 supervision, pursuant to a modification hearing and a judicial finding of  
29 necessity. Such extensions may be made for a maximum period of five  
30 years or the maximum period of the prison sentence that could be imposed,  
31 whichever is longer, inclusive of the original supervision term.

32 (d) In addition to the provisions of subsection (a), a defendant ~~who~~  
33 ~~has a risk assessment of low risk, has paid all restitution and has been~~  
34 ~~compliant with the terms of~~ *may be discharged early from probation,*  
35 *assignment to a community correctional services program, suspension of*  
36 *sentence or nonprison sanction for a period of 12 months shall be eligible*  
37 *for discharge from such period of supervision by the court if such*  
38 *defendant is found to be in substantial compliance with the conditions of*  
39 *such supervision. The court shall set a hearing at sentencing for the date*  
40 *when the defendant will have served 50% of such defendant's term of*  
41 *supervision to determine if a defendant has been in substantial compliance*  
42 *with the defendant's term of supervision.* The court shall grant such  
43 discharge unless the court finds by clear and convincing evidence that

1 denial of such discharge will serve community safety interests.

2 (e) *A defendant shall earn credit to reduce such defendant's term of*  
3 *probation, assignment to a community correctional services program,*  
4 *suspension of sentence or nonprison sanction when the defendant has*  
5 *substantially complied with the conditions of such defendant's supervision.*  
6 *A defendant shall be awarded seven days earned discharge credit for each*  
7 *full calendar month of substantial compliance with the conditions of such*  
8 *defendant's supervision.*

9 (f) *The Kansas sentencing commission shall adopt procedures and*  
10 *forms to standardize the process for calculating earned discharge credit*  
11 *pursuant to this section.*

12 (g) *For the purposes of this section, "substantial compliance" means:*  
13 (1) *The defendant has made significant progress in meeting the*  
14 *conditions of probation, assignment to a community correctional services*  
15 *program, suspension of sentence or nonprison sanction; and*  
16 (2) *the defendant has no violations of conditions of probation,*  
17 *assignment to a community correctional services program, suspension of*  
18 *sentence or nonprison sanction filed with the court pursuant to K.S.A. 22-*  
19 *3716, and amendments thereto.*

20 (h) *The state of Kansas or any agents or employees of the state shall*  
21 *not be liable for damages caused by any negligent or wrongful act or*  
22 *omission in making the earned discharge calculations authorized by this*  
23 *section.*

24 Sec. 2. K.S.A. 2018 Supp. 21-6608 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its  
26 publication in the statute book.

## 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.

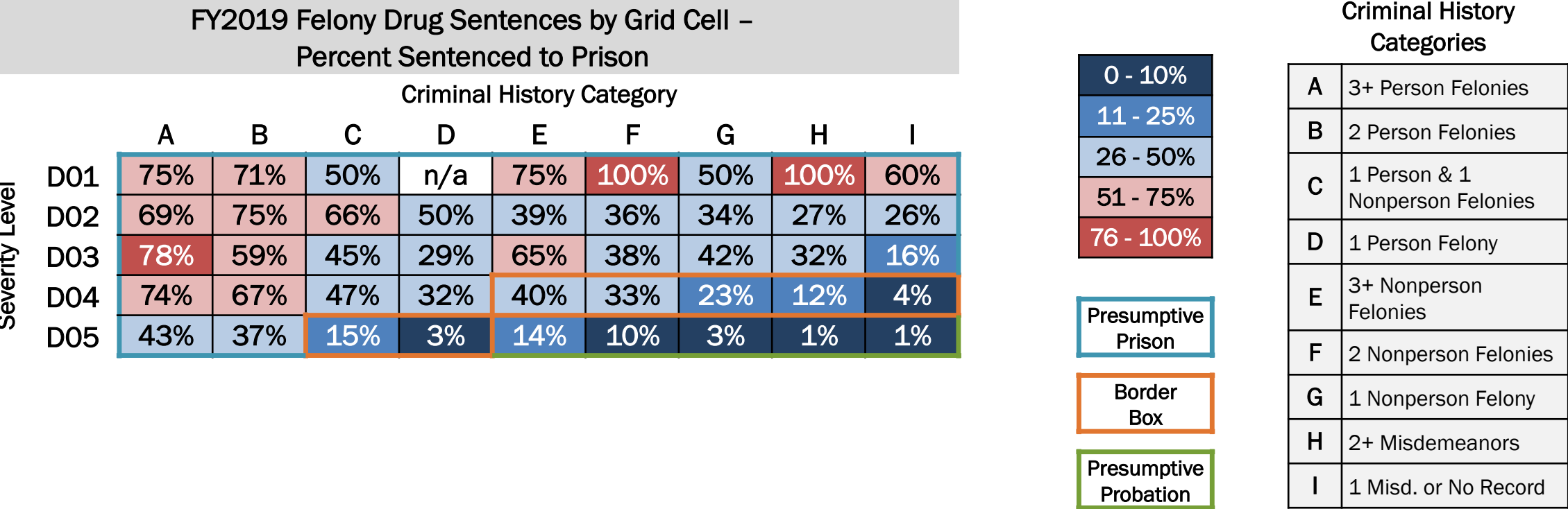
##### **Supervision Workgroup Policy Objectives:** Strengthen supervision for a sentencing system that depends upon supervision to reduce recidivism.

- 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.

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




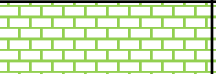
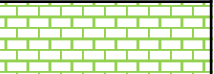














The grid cell for 5 drug grid sentences could not be determined due to missing criminal history information.

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.

FY2019 Felony Nondrug Sentences by Grid Cell – Percent Sentenced to Prison									
Severity Level	Criminal History Category								
	A	B	C	D	E	F	G	H	I
	N01	100%	100%	100%	88%	100%	100%	100%	88%
	N02	100%	100%	100%	100%	50%	n/a	100%	100%
	N03	87%	87%	63%	94%	87%	92%	67%	63%
	N04	69%	71%	72%	69%	79%	29%	60%	53%
	N05	80%	79%	57%	52%	65%	68%	47%	38%
	N06	69%	59%	41%	38%	40%	33%	18%	15%
	N07	77%	56%	27%	11%	30%	8%	13%	5%
	N08	66%	56%	27%	14%	24%	15%	9%	8%
	N09	74%	55%	23%	13%	26%	13%	7%	6%
	N10	71%	67%	30%	20%	19%	8%	14%	18%

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

Presumptive  
Prison

Border  
Box

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

Current and Proposed Nondrug Grid Designations

 Current Probation  
  New Border  
  Current Border to Probation  
  Current Border Retained

SL	A	B	C	D	E	F	G	H	I
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

# Kansas Criminal Justice Reform Commission

## Race in the Criminal Justice System Sub-Committee

October 26, 2020

To: Race in the Criminal Justice System Sub-Committee of the Criminal Justice Reform Commission

Re: 2020 Update

### *Background*

During the June 2020 meeting of the Kansas Criminal Justice Reform Commission, members of the Criminal Justice Reform Commission suggested the creation of a new subcommittee specifically to address issues of race in the criminal justice system. The subcommittee was established and held its first meeting on August 13, 2020. Subsequent meetings were held on September 8, 2020 and October 20, 2020.

### *Goals*

Having identified membership of the subcommittee in August of 2020, and given the December 1, 2020 deadline for the final report from the Criminal Justice Reform Commission, the subcommittee endeavored only to identify issues which the majority of members agreed upon given the short turn around.

### *Discussion*

The Race in the Criminal Justice System subcommittee recommends that the Criminal Justice Reform Commission include the following in the Commission's December 1, 2020 report to the Kansas Legislature:

1. *Data:* That law enforcement agencies in the State of Kansas collect additional data related to the race of citizens with whom they have contact and make the data available—not limited only to arrests. Suggestions would include utilizing an existing database, like the Kansas

Criminal Justice Information System (KCJIS) which is maintained by the Kansas Bureau of Investigation.

The subcommittee recommends that the Criminal Justice Reform Commission include in its final report, a request to the legislature to give strong consideration to the recommendations of the Governor's Commission on Racial Equity and Justice in December of 2020 on the topic of data collection, maintenance and analysis.

2. *Bail Reform*: while the topic of bail reform and its impact on communities of color was discussed, the subcommittee is aware of the effort of the Pretrial Justice Task Force chaired by Judge Karen Arnold-Berger. That task force, which has met since 2019, is taking public comment after the issuance of a lengthy report. A final series of recommendations to the legislature is expected in November of 2020. The subcommittee recommends that the Criminal Justice Reform Commission include in its final report, a request to the legislature to give strong consideration to the recommendations of the Pretrial Task Force.
3. *The Public Defender*: The subcommittee discussed the negative impact on communities of color due to the underfunded public defender system in Kansas. While recognizing that state resources will be impacted by the COVID pandemic, the subcommittee recommends the legislature identify revenue sources to (1) increase the budget of the current public defender system (State Board of Indigent Defense Services), and (2) expand the public defender system to create stand-alone public defender offices statewide, to ensure access to public defenders by judicial district.

Again, the report to be issued by the Governor's Commission on Racial Equity and Justice will have specific recommendations regarding the public defender system in Kansas as does the report already issued by Board of Indigent Defense Services (B.I.D.S.) Executive Director, Heather Cessna. This subcommittee requests the legislature give strong consideration to both reports, including the specific recommendation from



the Governor's Commission that any community with more than 100,000 residents have a stand-alone public defender's office.

4. *New Commission:* The subcommittee recommends that, similar to HB 2290, new Section 2, passed by the 2019 Kansas legislature which established the Kansas criminal justice reform commission, the 2021 Kansas legislative session should establish a standing commission on racial equity in the criminal justice system.

In addition, the subcommittee suggests the legislature specifically identify the groups from which representatives on this commission would be drawn. Specifically, the subcommittee requests the legislature include members from both rural and urban areas--including public defenders; criminal defense attorneys; a representative of the public education (K-12) system; and a person with a history of involvement with the justice system in Kansas.

Respectfully Submitted this \_\_\_\_ day of October, 2020.

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Marc Bennett, District Attorney  
Chair

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Mark McCormick, Kansas ACLU  
Vice-chair

**October 26, 2020**

To: Criminal Justice Reform Commission

From: Re-Entry Subcommittee

Re: Final Report of the Subcommittee

Members of the Criminal Justice Reform Commission:

## **I. Procedural History**

During the first meeting of the Kansas Criminal Justice Reform Commission on August 28, 2019, the Re-Entry Sub-Committee was established. Rep. Gail Finney was selected to chair the sub-committee. Jean Phillips became the vice chair in January, 2020 and took over at chair of the subcommittee in March, 2020. Since its creation, the sub-committee has met 16 times, and heard presentations from Secretary Zmuda with the Kansas Department of Corrections and three presentations from the Council of State Governments. The Committee studied the report issued by the *Kansas Criminal Justice Recodification, Rehabilitation, and Restoration Project* (3Rs Report), obtained information through open records act requests, and heard from various stakeholders regarding the work of this sub-committee.

## **II. Work of the Subcommittee**

According to statistics from the Kansas Department of Corrections (KDOC), over 6,000 offenders are released from custody each year. Of these 6,000:

- 50% have issues relating to driver's licenses.
- 75% enter KDOC needing job training. KDOC reaches about 75% of these persons.
- 75% need substance abuse and recovery programming. KDOC reaches about 50% of these persons.
- 20% will leave with no stable housing.
- 25% will need some level of mental health services.
- Within three years, a third of those released will return to prison; half for supervised release violations, and the rest for new crimes.

The statistics bear out what was concluded in federally funded *Report of the Re-entry Policy Council* and the 2006 report of the *Kansas Criminal Justice Recodification, Rehabilitation, and Restoration Project* (3Rs Report): successful re-entry requires that individuals have access to transportation, employment, housing, and health services, including physical, mental, and substance abuse treatment. These areas are linked. A person must be able to drive to consistently get to work or counseling or treatment. A job provides financial stability, which is important to housing. The necessity for a holistic approach to re-entry was reaffirmed by the research presented to the subcommittee by the Council of State Governments (CSG) (Slide Presentation Update to the Re-entry Subcommittee, Oct. 7, 2020).

Successful re-entry serves the needs of the person returning to society and the rest of the citizenry. To enable successful transition from prison or jail to the community, and to decrease recidivism, the subcommittee focused on the following:

- Stable housing
- Supportive Benefits
- Job training and barriers to employment opportunities.
- Access to driver's licenses

The Kansas Department of Corrections provided the subcommittee with extensive research. (Presentation by Secretary Zmuda and Margie Phelps, both of KDOC at Sept. 16, 2019 subcommittee meeting). The CSG also conducted extensive research, contacting stakeholders in 99 of the 105 counties in Kansas and speaking with over 180 persons. (Slide Presentation Update to the Re-entry Subcommittee, Oct. 7, 2020). Based on the research from KDOC and CSG, the subcommittee provides the following information and recommendations for each of the above five target areas.

## **A. Housing**

### **1. Scope of the Problem**

There is a cyclical relationship between housing instability and a person's involvement in the criminal justice. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Sept. 9, 2020). According to the Kansas Department of Corrections, 20% of the individuals who are released from prison, leave with no stable housing. (Presentation by Secretary Zmuda and Margie Phelps, both of KDOC at Sept. 16, 2019, subcommittee meeting). Unfortunately, there is no data regarding housing security for people who leave jails in Kansas.

The CSG reached out to 99 of the 105 counties in Kansas in an effort to learn more about housing within the State. Their research revealed that there is low housing stock and a lack of housing options and funding, especially in western and rural Kansas. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). The KDOC has created multiple programs to help people find housing as they reenter the community, including master leases, housing specialists, and a Kansas Supportive Housing for Offender (KSHOP) program. Unfortunately, these programs are unable to meet the high demand for housing. The KDOC needs more housing infrastructure to meet the needs of the population leaving prisons.

Through the data gathered by the CSG, the subcommittee learned that there is a lack of consistent, formal, state-wide policies to provide for consistent and informed decision making across various agencies. In addition to the programs provided by the KDOC, the Kansas Department for Aging and Disability Services (KDADs) and Kansas Housing Resources Corporation (KHRC) provide housing support that in some cases can be accessed by people in the criminal justice system. Through the KHRC, Housing and Urban Development (HUD) provides Emergency Solutions Grants (ESG) that impact persons upon leaving prison or jail. The Catholic Charities of Northern Kansas that serve Salina has an ESG focused on people in the justice system. KDADs also fund programs through SAMSHA's Projects for Assistance in Transition from Homelessness (PATH), and one program that provides funding for a Community Mental Health Center to have a master lease for people reentering the community from jail or state hospitals.

These organizations, however, do not have statutory or administrative regulations that formally connect their goals and resources. To efficiently and consistently assist persons who are leaving prisons and jails with stable housing, the subcommittee adopted several policy recommendations of the CSG to better leverage the available resources and increase the availability of stable housing options for persons leaving prisons or jails.

## **2. Solutions**

In reviewing the data and information available across all housing agencies, there are four policy options, and four types of infrastructure for the KDOC that the subcommittee recommends. Some of the recommended changes can take place immediately and without significant additional cost to the State. The infrastructure the KDOC requires will have costs, but can be implemented over time. Additionally, by following the recommendations of the Commission as a whole to decrease the prison population, funds will become available to ensure stable housing for those being released.

### **a. Policy Changes**

First, it is critical for the state agencies to work together address homelessness, housing instability, and support the broadening of housing opportunities for people in justice system in Kansas. The following policy recommendations were presented to the subcommittee by the CSG on October 7, 2020, and ultimately, adopted by the subcommittee. The recommendations will reduce housing barriers for people in the criminal justice system and can be broken down into four priorities.

❖ *Leverage current efforts to review and address housing and homelessness in Kansas. There are local and statewide task forces currently working on reducing homelessness and increasing housing stability in Kansas.*

There are several immediate administrative actions that should be taken. First, the State should incorporate people in the criminal justice system into existing working groups and task forces with a priority on homelessness and housing. This would include:

- Cooperating with the Lieutenant Governor's Office and the Kansas Housing Resources Corporation (KHRC), work with the Rural Prosperity Task Force and the Housing and Homeless Subcommittee to include people in the criminal justice system.
- Ensuring that people in the criminal justice system are included in the upcoming housing study.
- Evaluating barriers to accessing existing shelter services, permanent supportive housing, recovery housing, and other housing options for people in the criminal justice system.

Second, the State should expand existing lists of housing opportunities available through KDOC, the Kansas Housing Resources Corporation (KHRC), and the Kansas Department for Aging and Disability Services (KDADS) to provide information on which

programs in the state support access for people in the justice system. This would include:

- Developing policies and procedures on coordination between KDOC and the regional Balance of State (BoS) Continuum of Care (CoC) coordinators, CoCs, CMHC housing specialists, recovery housing, and other housing services providers.
  - Having the regional BoS CoCs coordinators review information in the new Housing Management Information System (HMIS) to identify available properties and support people reentering the community from jails or prison.
- ❖ *Provide opportunities and develop policy on cross-system coordination. There are many agencies funding housing programs that can coordinate more effectively to support people reentering the community who need housing.*

The State should immediately establish policies that require an ongoing collaboration among state agencies, including KDOC, KDADS, and KHRC, to address housing for people in the justice system. In the process, the State should identify statutory or administrative restrictions on housing for people with criminal histories and distill those barriers that are perceived versus the restrictions that are mandatory to generate a list of restrictions that impact the most people in the criminal justice system. For example, HUD only prohibits persons who were convicted of manufacturing methamphetamine in federally subsidized housing from subsequently utilizing federally funded housing, but many Local Housing Authorities apply across the board prohibitions against person convicted of a felony drug offenses. All such perceived barriers need to be examined and removed.

- ❖ *Prioritize collecting data to guide policy improvements. There is a lack of available data and no standard way to identify people in jails and prisons who have housing instability or are at risk of homelessness.*

The subcommittee recommends that the State immediately pass legislation that requires a consistent method of tracking persons in jails and prisons who are experiencing housing instability or are at risk of homelessness. One option would be to require the use of the Vulnerability Index - Service Prioritization Decision Assistance Tool (VI-SPDAT), which is used by the BoS CoC as well as some of the other CoCs to identify people experiencing homelessness.

The subcommittee also recommends administrative action to identify common data metrics that should be collected across the criminal justice, mental illness, substance use disorder, and housing systems. This group will develop recommended legislation regarding what metrics should be included in the data framework.

- ❖ *Focus on training and education to help people in the justice system get access to housing. There is a lack of education and training for community service providers on how to work with people in the justice system.*

As stated above, there are common misperceptions about restrictions for housing offenders. To provide housing stability for those leaving prisons or jails, the fragmented approach to housing must end. Through administrative action, formal partnerships between the various housing agencies can be established to provide better training and information sharing.

The subcommittee recommends that administrative action focus on training and coordination in the following ways:

- Training for housing providers on working with people in the justice system on criminogenic risks, needs, and common misconceptions.
- Outreach and training for CoCs, housing authorities, and landlords on the housing needs of people in the justice system and how to effectively coordinate with community supervision agencies, CMHCs, and substance use disorder treatment providers.
- Training for community supervision officers on housing opportunities, the housing system, and strategies to better coordinate with CoCs, housing authorities, landlords, CMHCs, and housing support service providers.

#### **b. Infrastructure Changes**

In addition to the administrative and policy changes, an integral component to solving the housing needs of the re-entry population is simply creating more available housing. The costs of the additional infrastructure will be recouped by reducing the number of released offenders who are returned to the KDOC. According to data provided by the KDOC, the cost of housing an offender in prison is \$30,077. If the KDOC is able to prevent 162 offenders from returning to prison, it will save \$4,872,474. This savings will pay for the cost of many of the following recommendations. There will also be cost savings by decreasing the prison population as recommended by the Proportionality Subcommittee.

Based on data and research provided by the KDOC, the subcommittee recommends four infrastructure and employee changes. The subcommittee presents the recommendations in order of importance:

##### **❖ *Immediately fund additional master leases.***

Currently, the KDOC has 40 master lease housing units consisting of houses and/or apartments leased by KDOC to house people needing a transition period. The leases are primarily located in the central and eastern parts of the state. Currently, there are 4 housing specialists in the central and eastern part of the state (Kansas City, Wichita, Olathe, and Topeka) and meet the needs of 150 people. The housing specialists work to locate housing for persons leaving KDOC custody and are currently not able to support everyone with housing needs.

Because 20% of the 6000 people being released a year are housing insecure, funding must be made available to provide the KDOC with 40 additional master leases and 3

additional housing specialist (Wichita; Central; Olathe). The additions would allow provide transition housing for an additional 150 people at a cost of \$450,000.

- ❖ *Increase the number of coordinators for the Kansas Supportive Housing for Offenders program.*

Currently, the KDOC offers the Kansas Supportive Housing for Offenders Program (KSHOP), which finds and secures housing and provides additional wraparound services for offenders who are chronically homeless and institutionalized, and who have dual and triple diagnoses. Currently the KDOC is able to provide assistance for up to 18 people reentering the community in each of the following areas: Topeka, Olathe, Kansas City and Wichita. The number of persons provided services at any given time varies based on client behaviors and needs.

The offenders served by KSHOP require intense case management, but KDOC data establishes that there is a 25% return rate with this very challenging population when they work with a KSHOP Care Coordinator. Currently, the KDOC has two coordinators that can serve 12-18 offenders at a time. Because KDOC releases four times that many persons needing wraparound services per year, the subcommittee recommends that the five KSHOP Coordinators (2 in Wichita, 1 in SE Kansas, 1 in Kansas City, and 1 in Central Kansas) be added to the KDOC. The additional coordinators would be able to serve up to an additional 60-90 offenders at a cost of \$322,500.

- ❖ *Create a Forensic Unit to house persons released with special needs.*

The KDOC reports that every year it has 15-20 offenders who need structured housing. These offenders are not easily placed in the community or in existing centers. Although the expansion of KSHOP may result in a decrease in the number of persons needing a structured facility, the KDOC projects that it will still need to provide long-term care to a certain percentage of the population with special needs.

The cost for anticipated for 60-90 beds would be approximately \$10,000,000. However, by running the solicitation through KDADS, Medicaid dollars would cover about 60% of the total cost.

- ❖ *A position to track housing after release.*

Currently, the KDOC does not have the resources to track persons released from prison. Because of the number of housing insecure persons re-entering society, it is important that the KDOC be able to track persons 90 days, 180 days, or a year from release. There are currently significant challenges in getting accurate information about housing for people reentering the community. Housing is crucial to successful and long-term reintegration into society and the KDOC needs data to understand the scope of the housing problem. The cost for this position, with salary, benefits, travel, equipment, software, and training would be \$80,000.

## **B. Supportive Benefits and Training**

### **1. Scope of the Problem**

Persons re-entering the community after completion of a prison or jail sentence are more likely to be food insecure, which research suggests contributes to high-risk behavior. According to data gathered by the CSGs, public benefits, such as Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), support successful reentry and reduce recidivism by providing the essentials that reentering individuals and their families need. SNAP provides for food assistance in the form of food stamps and TANF provides temporary cash assistance to families in need. These programs also provide additional supports to beneficiaries in the form of job and skills training and a range of other services from transportation assistance to provision of job interview clothing. The research suggests that based on the current economic climate, the need for food stability, cash assistance and additional supports is only expected to rise. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

Kansas currently has a partial ban on access to SNAP benefits for people with a drug felony conviction. A person is ineligible for SNAP benefits after the first felony drug offense, unless the person participates in state-approved drug treatment program and passes drug tests in accordance with plan (or based on formal screening and or assessment it is determined that treatment is not necessary). Unless the approved drug program was completed while incarcerated, the person must pay for all treatment and testing. Any subsequent felony drug conviction results in an absolute lifetime ban. K.S.A. 39-709(b)(13). Likewise, a person is eligible for TANF benefits for five years after the first felony drug conviction, regardless of whether they have completed treatment. Any subsequent felony drug convictions result in a lifetime ban. K.S.A. 39-709(l)(5).

### **2. Proposed Solutions**

Currently, 30 states have opted out of the felony drug conviction ban on SNAP and TANF. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). The subcommittee recommends that Kansas follow suit and immediately amend K.S.A. 39-709 to fully opt out of the federal ban on both SNAP and TANF to allow persons with felony drug convictions to access the public benefits. Not only will those benefits assist persons with the successful transition from prison or jail, but SNAP and TANF benefits allows people with drug felonies to access federally funded workforce training programs and other critical services. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). As explained in the next section, job training is a critical component of successful re-entry and access to federally funded job training and employment assistance further supports the need to immediately opt out of the ban on SNAP and TANF.

Opting out of the federal ban will not be costly to the State. SNAP benefits are funded entirely by federal dollars. Although federal TANF funding is dependent upon state spending levels, those current level are unlikely to increase significantly. Additionally, fully opting out will reduce the administrative burden on Kansas agencies tasked with administering the ban and vetting applicants and their treatment progress. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). See attached legislative language.



## **C. Job Training and Employment**

### **1. Scope of the Problem**

According to the data gathered by the KDOC, nearly 3,500 people in Kansas prisons do not have a high school diploma or a GED, yet the Kansas Department of Labor reports that in 2019 nearly 80% of high-demand jobs in Kansas required a high school diploma or a higher level of education. The KDOC also reports that in 2019 the majority of new offender prison admissions were for people assessed as having a medium-high risk to reoffend and with a moderate to a high need for education and employment assistance. Specially, there were 2,587 new first time admission and 57% of whom were assessed as medium-high risk to reoffend and of those persons 98% had a moderate to very high need in education and employment domain of the LSI-r. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020)

The KDOC prioritizes educational and employment programming, but it cannot meet the need and there are barriers to ensuring that all persons with an indicated need receive the training they need. In FY2019, the KDOC reported that 2,007 released offenders had a moderate to very-high education or employment need, but only about 633 or about 32% were enrolled in training prior to their release from prison. Several reasons were reported for the inability to provide education and employment assistance to those who require it:

- There isn't a streamlined process to use assessment results for assigning people to a facility based on programming needs, availability, interest, anticipated release date, and security risk.
- If a person has a short sentence, they may not be eligible to participate in programming.
- Operating procedures may inhibit the amount of programming that can be offered each day.
- Programs are not available each day of the week to maximize participation.
- People who are in work release, segregation, or other restrictive housing may be unable to participate in programming.
- Prior to the Second Chance Pell Pilot Programs, participation in post-secondary education was funded via self-pay and tribal grants.
- There is a lack of funding to increase programming and repurpose facility space in order to maximize participation in programming.

(CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

Once a person is released from custody, finding employment is challenging. According to research provided by the CSG, an estimated 46% of people on parole in 2019 were unemployed, in contrast to a statewide unemployment rate of 3.2 % at the time. Although multiple agencies in Kansas provide employment services, few provide the intensive services necessary for people upon re-entry who score high in the education and employment domain. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

Barriers to employment also exist through licensing and certification requirements. Licensure is required for a significant portion of the Kansas workforce across a range of jobs. Access to any Kansas license can be restricted by a felony conviction, and specific licenses are subject to

additional conviction-based restrictions. In 2018, the legislature amended K.S.A. 74-120 to improve access to licensing opportunities for people in the justice system, but the legislation falls short in the following ways:

- All licensing bodies retain broad discretion to deny applicants based on any felony conviction
- While the 2018 law somewhat limits discretion by authorizing disqualification only for offenses a licensing body determines to be “directly related” to the “general welfare and the duties and responsibilities” of the licensing body, it provides no standards to guide that determination and allows for potentially overbroad criminal history-based exclusions.
- Individualized consideration of applicants and their specific offenses is not required and the law provides no standards to promote consistent consideration of each applicant’s specific experience (including evidence of rehabilitation) or criminal history.
- The law creates a process for prospective applicants to request, at any time, a non-binding decision on whether their criminal history will be disqualifying. In theory, this allows applicants to invest time and resources in the pursuit of licensure without the risk that they will ultimately be denied due to a prior conviction. However, the non-binding nature of the pre-qualification decision undermines the purpose of the law by failing to provide certainty about the ultimate impact of a person’s conviction.
- 11 licensing bodies are exempt from most of the provisions of the current licensing law and retain practically unlimited discretion to deny applicants with felonies. All licenses that require a bachelor’s degree or higher are also exempt.

(CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

## **2. Solutions**

Research clearly establishes that one factor to re-entry success is employment. To address the educational and employment needs, the subcommittee relied on the research of the CSG and adopted the proposals of CSG presented at the Oct. 7, 2020, Re-Entry Subcommittee meeting. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). The subcommittee recommends those proposals to the legislature.

### **a. Administrative changes within the KDOC**

#### **❖ Immediate Action**

Develop a streamlined process during intake to KDOC facilities for using assessment results and other information gathered during intake to assign people to a facility based on programming needs, availability, interest, anticipated release date, as well as security risk.

Develop a sustainability plan for the Second Chance Pell Pilot Programs to continue educational and vocational programming.

Standardize KDOC’s roles and responsibilities for employment specialists to include job development or invest in job development specialists to form relationships with

businesses in the community to promote hiring people who are reentering the community.

Develop a plan for marketing KDOC Vocational/Career and Technical Education (CTE) to businesses and legislators to show that KDOC's untapped skilled population has what it takes to meet the needs of businesses and that Kansas stakeholders should continue to invest in programming.

❖ *Long-term Opportunities*

Develop additional partnerships with community-based agencies to provide more programming, such as Adult Basic Education (ABE) and General Educational Development (GED) courses each day of the week.

Increase funding for education and employment programming and space within KDOC facilities.

**b. Changes within the State**

❖ *Immediate Statutory Action*

Appoint a representative from KDOC to the KansasWorks state board to ensure the workforce development and supportive service needs of people with justice system involvement are taken into consideration when developing the state Workforce Innovation and Opportunity Act (WIOA) plan and other state-funded workforce development initiatives.

❖ *Immediate Administrative Action*

Develop formal partnerships between KDOC, KCCHE, businesses, and all local Workforce Boards to leverage state, federal, and private funding and resources to bring intensive workforce development models to scale within the state.

Develop formal partnerships and information-sharing agreements between KDOC and DCF's Vocational Rehabilitation department to screen people for services prior to release from KDOC and/or at the start of community supervision.

- Develop a shared administrative position between DCF and KDOC that will assist with information gathering to pre-screening people for DCF coordinated services between 180 to 90 days prior to a person's release from KDOC and facilitate a connection with DCF vocational rehabilitation counselors.
- DCF vocational rehabilitation counselors to conduct full screening, develop rehabilitative plan and conduct case management services for eligible participants starting 90 days prior to release from KDOC facilities.
- DCF vocational rehabilitation counselors to work with DCF Regional Resource Coordinators, and KDOC transitional employment specialists to form relationships

with businesses in the community to develop work experience opportunities and promote hiring people who are reentering the community.

❖ *Long-term Administrative Opportunities*

Utilize the governor's WIOA Reserve Obligation/set-aside to build on successful intensive workforce development models.

Develop shared positions between KDOC, DCF, and all local Workforce Boards to ensure a smooth handoff as a person reenters the community.

Develop a Legislative Liaison position at KDOC to ensure that the statutory and administrative policy barriers experienced by people in the justice system are communicated to policymakers.

### **c. Statutory Changes**

Research by CSG discerned that there are four licensing best practices that provide for increased employment opportunities while maintaining public safety: (1) having a direct or substantial relationship standard between denial of the license and the person's criminal history; (2) consideration for each application be on an individual basis; (3) pre-qualification requests be binding (absent new criminal behavior); and (4) written reasons for the denial of a license. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). Currently nine states have adopted all four best practices and 10 states have adopted at least three of the best practices. (50 State research by CSG provided to the subcommittee).

The subcommittee adopted the recommendations of the CSG and recommends that the legislature immediately adopt better licensing and certification standards to further promote fair, consistent, and transparent application of occupational licensing barriers. Specifically, the subcommittee adopted and recommends the following changes:

- Require that disqualifying offenses be directly related to the specific duties and responsibilities of the licensed activity.
- Require individualized consideration of applicants and their convictions guided by a consistent factor-based analysis that considers evidence of rehabilitation, time since conviction, the nature of the offense, and other relevant factors.
- Provide applicants with written reasons for conviction-based denial that address all statutory factors that must be considered.
- Make pre-application determinations binding unless new criminal history information comes to light, either in the form of new charges or convictions or past convictions that were not previously disclosed.
- Eliminate or narrowly tailor exemptions for specific licensing bodies and types of licenses.

- Expand the law to cover all state-imposed conviction-based licensing barriers so that existing mandatory barriers (those that, by law, *must* be imposed in all cases where a person has a disqualifying conviction) are essentially converted into discretionary ones that allow individuals to be considered on their merits and in the full context of their history and experience. See attached proposed legislative language.

## **D. Driver's licenses**

### **1. Scope of the Problem**

The Subcommittee filed an open records request with Kansas Department of Revenue, Division of Motor Vehicles and learned that a substantial number of people lose their licenses because they are unable to pay traffic fines and fees. Because 50% of those being released from the KDOC have difficulty obtaining a license due to outstanding fines and fees, (KDOC presentation, Sept 16, 2019), the subcommittee concluded it was important to immediately address the issues surrounding driver's licenses. Janelle Robinson, Driver Services Supervision with the Kansas Department of Revenue (KDOR), Division of Vehicles gave a presentation to the subcommittee. Currently, if a person cannot pay the fines and fees for a traffic ticket, the person's license is suspended. Although district courts have discretion to reduce court fees, they do not have the discretion to reduce statutorily mandated fines. Once a person's license is suspended, it cannot be reinstated until the person pays the underlying fines and fees and pays \$122 per each individual charge listed on the original traffic ticket. K.S.A. 8-2110b. Then the person must wait 90 days before the KDOR reinstates the license. (Robinson presentation, Oct. 14, 2019).

Because 50% of the persons being released from the KDOC have difficulty obtaining a license due to outstanding fines and fees, the subcommittee concluded it was important to immediately address the issues surrounding driver's licenses.

### **2. Proposed Solutions**

In the December 2019, interim report, the Re-Entry subcommittee recommended that the persons seeking a restricted license not be required to pay the \$25 fee unless the person was eligible for a restricted license. The Subcommittee also recommended that once a person pays the fines and fees of the underlying traffic ticket, the person pay only one reinstatement fee per case, rather than \$100 for each charge listed on the original ticket, and that the KDOR immediately reinstate the license, rather than waiting 90 days. Finally, it was recommended that a person's license not be suspended solely because the person could not pay the fines and fees for a traffic offense.

In the 2020 Legislative session, HB2547 and SB275 were submitted. Both bills removed the payment of \$25 to apply for a restricted license, and decreased the current administrative 90 day extension of a suspended license if the person drove on suspended license. HB 2547 also reduced the costs to reinstate a license to a flat \$100 per case, rather than per charge listed on the original ticket. The court fees were unchanged. Both bills passed unanimously and were set for reconciliation when COVID-19 cut the legislative session short and the bills died on the floor.

## Appendix: Information Gathered

To date, the subcommittee has met on 16 occasions. Initially, the subcommittee reviewed the charge as set out in section 2 of HB2290, and then turned to several documents to learn about the issues facing re-entry, including:

- Re-entry research provided by Natalie Nelson with the Kansas Research Department. Ms. Nelson's report provided information from clearinghouses on re-entry issues, including: <https://whatworks.csgjusticecenter.org> and <https://crimesolutions.gov>. One of the documents specifically addressed the Wichita Work Release Program.
- The conclusions reached regarding re-entry from the 2006 3Rs Report.
- The conclusions reached in the 2003 *Report of the Re-entry Policy Council*
- A report from Secretary Zmuda, who is a subcommittee member that provided detailed information about recidivism, which has decreased from 55% to 36%, and the issues facing persons released from the KDOC, including on-going issues that will need to be addressed upon re-entry. Secretary Zmuda described the strategies KDOC has in place to continue to decrease recidivism, and the barriers that still exist and impact successful re-entry.

Subcommittee members agreed to investigate driver's license reform, job training, housing, employment, and gaps in re-entry. The subcommittee first focused on driver's license issues. The following is the research conducted, presentations received, and information obtained from several stakeholders:

- A review of the current statutes, regulations, and practices with regard to driver's licenses, including issues with obtaining a license and the problems that occur when released offenders drive without a license or on a suspended license. The subcommittee soon discovered that for many a continuous cycle of license suspensions occurs that can be difficult to break and which significantly impact a person's ability to maintain employment. HB 2547 and SB275 were proposed.
- Margie Phelps, Executive Director of Programs and Risk Reduction at KDOC, provided the subcommittee with specific barriers that inmates face with driver's licenses. She also provided information about unpaid fines that inmates have which can create significant problems upon release.
- Janelle Robinson, Driver Services Supervisor with Kansas Department of Revenue Division of Vehicles, gave a presentation on *Suspended & Restricted Driver's License Process in Kansas*. Subcommittee learned about priorities with DC1020 and 1015 forms, the cost for requesting restricted licenses, and the 90-day suspension period.
- Pursuant to an Open Records Request of the Kansas Department of Revenue Division of Vehicles, the subcommittee learned that, as of October 10, 2019, there were a total of 213,055 suspended licenses in 2019. From that same request, the following are the revenues attached to driver's license fees:
  - Municipal court fees:
    - FY2018 \$901,981.12
    - FY2019 \$541,014.09
  - Driving Suspended Reinstatement fees:

- FY2018 \$3,292,273.34
  - FY2019 \$3,606,116.99
- Driver's License Reinstatement fees:
  - FY2018: \$2,663,082.50
  - FY2019: \$2,530,711.50
- Patrick Armstrong with Council of State Governments (CSG) gave a presentation on the ways the CSG can assist the subcommittee. Mr. Armstrong provided three different reports that had been created on the issue of driver's license schemes.
- Professor Meredith Schnug with the Douglas County Legal Aid Clinic at the University of Kansas School of Law provided insight into how the driver's licenses issues are addressed in Douglas County.
- Austin Spillar from the ACLU participated in a subcommittee meeting and directed the subcommittee to Fine and Fee Justice Center for more information.
- Data and information was provided by Kansas Appleseed regarding the costs of the current system and changes that could be beneficial while still collecting fees, specifically pointing to the changes made in California that have resulted in few suspensions and more compliance, including payment of fines, and the Free to Drive Coalition.
- Sarah Hoskinson, Deputy Special Counsel of the Kansas Supreme Court, discussed the *Ad Hoc Committee Report on Bonding Practices, Fines, and Fees in Municipal Court*. The report was the result of an Ad Hoc Committee created by Kansas Supreme Court Order. The report was submitted on September 6, 2018.
- Impact Assessment and Proposal for the early release of drug offenders provided by the Kansas Sentencing Commission. Based on that assessment, the Commission drafted a proposal that would permit drug offenders who have completed all KDOC programming to petition the court for early release.
- Report by Prof. John Francis of Washburn Law School on the problem of debt collection, bond, and/or incarceration. The subcommittee learned that people who have outstanding debt can be repeatedly summoned to court for nonpayment. If the debtor fails to appear, a show-cause order for contempt and eventually a warrant for non-appearance may be issued. If arrested, bond can be required to release the debtor from jail, and significantly, rather than returning the bond money when the person appears in court, bond can be forwarded to the creditor.

The subcommittee then turned to the issues of job training, housing, employment, and gaps in supportive services facing persons released from custody. The following information and presentations were the basis for the subcommittee's final recommendations on housing, supportive services, and job training and employment:

- Margie Phelps, Executive Director of Programs and Risk Reduction at KDOC, provided the subcommittee with information and data on the re-entry housing issues facing the KDOC. She also provided the committee with information on current job training programs that KDOC currently provides. She gave a presentation at the September 18, 2020, subcommittee meeting, provided input and clarification at other committee meetings, and provided the data from Attachment A to the subcommittee.
- A team from CSG provided the committee with significant data and research. The team consisted of Patrick Armstrong, Erica Nelson, Joshua Gaines, and Sarah Wurzburg. The

subcommittee heard two presentations based on their research and contact with stakeholders across the state:

- September 9, 2020, subcommittee meeting, Slide Presentation, Update to the Re-entry Subcommittee, Sept. 9, 2020.
- October 7, 2020, subcommittee meeting Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020.
- 50 State Chart prepared by the CSG on licensing and certification statutes for people with a felony record.
- Three working group phone calls with the CSG further explaining the data and research provided by the slide presentations at the subcommittee meetings: Sept. 8, 2020; Sept. 23, 2020; Sept. 30, 2020.



### **Proposed Legislation Language**

Based on the positive reception of HB2547 and SB275, the subcommittee recommends that the bill be reintroduced in the 2021 legislative session. The subcommittee also recommends that the legislature take into consideration making changes retroactive so that persons who currently owe significant fees to the KDOR have the ability to pay the flat fee and have their license reinstated. Such a provision would allow persons currently re-entering society to obtain a driver's license.

HB2434 was introduced, but did not make it out of committee. The bill provided that the failure to pay traffic fines and fees would not result in suspending a person's driver's license. Based on the fiscal report, HB2434 would have decreased the Office of Judicial Administration's (OJA) budget by nearly \$500,000. Understanding that COVID-19 has created budget difficulties, the subcommittee recognizes that it may not be feasible to pass legislation eliminating the suspension of licenses for failure to pay traffic tickets in the 2021 session. The subcommittee steadfastly maintains, however, that it is imperative that such legislation eventually be passed to increase the accessibility of driver's licenses, which are integral to job transportation for persons re-entering society upon completion of a prison or jail sentence.

1       **74-120. Licensing of occupations; applications and consideration of persons with certain**  
2 **criminal records by state agencies.** (a) (1) Notwithstanding any other provision of law, any person,  
3 board, commission or similar body that determines the qualifications of individuals for licensure,  
4 certification or registration ~~may and that is authorized or required to consider any felony criminal~~  
5 conviction of the applicant, ~~but such a conviction shall not operate as a bar to licensure, certification~~  
6 ~~or registration~~ shall do so only as provided under this section.

7       (2) Notwithstanding any other provision of law, any person, board, commission or similar  
8 body that determines the qualifications of individuals for licensure, certification or registration  
9 may consider any felony conviction of the applicant ~~subject to the provisions of this section.~~

10       (3) A criminal conviction shall not, in and of itself, operate as a bar to licensure, certification or  
11 registration. An individual shall not be denied licensure, certification, or registration because of a  
12 criminal conviction that is not directly related to the specific duties and responsibilities ordinarily  
13 required by the activity requiring licensure, certification, or registration such that it indicates a  
14 reasonable present risk to public safety as determined by an individualized evaluation of the  
15 applicant and the applicant's criminal conviction that shall include consideration of:

16       (A) The nature and seriousness of the crime for which the individual was convicted;

17       (B) The age of the individual at the time the crime was committed;

18       (C) The passage of time since the commission of the crime;

19       (D) The circumstances relative to the offense, including any aggravating and mitigating  
20 circumstances or social conditions surrounding the commission of the offense; and

21       (E) Any evidence of rehabilitation or mitigation related to present fitness for licensure,  
22 certification, or registration.

23       (b) (1) Within 180 days of the effective date of this section, any person, board, commission or  
24 similar body that determines the qualifications of individuals for licensure, certification or  
25 registration shall revise their existing requirements to list the specific civil and criminal records that  
26 could disqualify an applicant from receiving a license, certification or registration. Such person,  
27 board, commission or similar body may only list ~~any disqualifying~~ criminal records or civil court  
28 records that are directly related to ~~protecting the general welfare and the duties and responsibilities~~  
29 ~~for such entities~~ the specific duties and responsibilities ordinarily required by the activity requiring  
30 licensure, certification or registration such that they may indicate a reasonable threat to public safety  
31 and in no case shall non-specific terms, such as moral turpitude or good character, or any arrests that  
32 do not result in a conviction be used to disqualify an individual's application for licensure,  
33 certification or registration.

34       (2) If an individual has a criminal record or civil court record that would disqualify the  
35 individual from receiving a license, certification or registration, other than a conviction for a crime  
36 that is a felony or a class A misdemeanor or any conviction for which issuance of such license,  
37 certification or registration could conflict with federal law, and the individual has not been convicted  
38 of any other crime in the five years immediately preceding the application for licensure, certification  
39 or registration, such record shall not be used to disqualify the individual for licensure, certification or  
40 registration for more than five years after the person satisfied the sentence imposed.

41       (3) An individual with a civil or criminal record may petition the person, board, commission or  
42 similar body responsible for licensure, certification or registration at any time for ~~an informal, a~~  
43 ~~written advisory~~ opinion concerning whether the individual's civil or criminal record will disqualify  
44 the individual from obtaining such license, certification or registration. This petition shall include  
45 details of the individual's civil or criminal record. In response to such petition, the person, board,  
46 commission or similar body responsible for licensure, certification or registration shall issue ~~an~~  
47 ~~informal, a written advisory~~ opinion which shall ~~not~~ be binding upon such person, board, commission  
48 or similar body so long as the individual has no subsequent convictions, pending charges or

1 previously undisclosed convictions related to a potentially disqualifying criminal record. The person,  
2 board, commission or similar body responsible for licensure, certification or registration shall  
3 respond to such petition within 120 days of receiving the petition from the applicant and may charge  
4 up to \$50 for the review and issuance of ~~an informal,~~ a written advisory opinion in response to such  
5 petition.

6 (4) All persons, boards, commissions or similar licensing bodies shall adopt and publicly  
7 maintain all necessary rules and regulations for the implementation of this section.

8 (5) (A) If a person, board, commission or similar body that determines qualifications for  
9 licensure, certification or registration determines that an individual's criminal record is disqualifying,  
10 either in connection with a formal application or a petition submitted pursuant to subsection (b)(3) of  
11 this section, it shall notify the individual in writing of the following:

12 (1) the grounds and reasons for the denial or disqualification;

13 (2) findings for each of the factors specified in subsection (a)(3) of this section;

14 (3) The earliest date the individual may reapply for licensure, certification or registration or the  
15 earliest date the individual can petition the person, board, or commission for a review; and

16 (4) additional evidence of rehabilitation or mitigation may be considered upon reapplication or  
17 review.

18 (B) Any written notification that the criminal record of an individual warrants denial of  
19 licensure, certification or registration shall be documented by clear and convincing evidence.

20 (c) ~~The provisions of subsection (b)~~ This section shall not apply to the consideration of criminal  
21 records in any licensing, certification or registration determination to the extent it may conflict with  
22 the requirements of federal law.÷

23 (1) ~~Kansas commission on peace officers' standards and training;~~

24 (2) ~~Kansas highway patrol;~~

25 (3) ~~board of accountancy;~~

26 (4) ~~behavioral sciences regulatory board;~~

27 (5) ~~state board of healing arts;~~

28 (6) ~~state board of pharmacy;~~

29 (7) ~~emergency medical services board;~~

30 (8) ~~board of nursing;~~

31 (9) ~~Kansas real estate commission;~~

32 (10) ~~office of the attorney general;~~

33 (11) ~~department of insurance;~~

34 (12) ~~any municipality as defined in K.S.A. 75-6102, and amendments thereto; and~~

35 (13) ~~any profession that has an educational requirement for licensure that requires a degree~~  
36 ~~beyond a bachelor's degree.~~

1 Subsection (b)(13) of **K.S.A. § 39-709** is amended as follows:

2 (b)(13) Pursuant to the option granted by 21 U.S.C. § 862a(d)(1)(a), the State of Kansas opts out of the  
3 prohibitions contained in 21 U.S.C. § 862a(a)(2) on eligibility for benefits under the supplemental  
4 nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008) or any State  
5 program carried out under that Act.

6 ~~(A) Food assistance shall not be provided to any person convicted of a felony offense occurring on or~~  
7 ~~after July 1, 2015, which includes as an element of such offense the manufacture, cultivation,~~  
8 ~~distribution, possession or use of a controlled substance or controlled substance analog. For food~~  
9 ~~assistance, the individual shall be permanently disqualified if they have been convicted of a state or~~  
10 ~~federal felony offense occurring on or after July 1, 2015, involving possession or use of a controlled~~  
11 ~~substance or controlled substance analog.~~

12 ~~(B) Notwithstanding the provisions of subparagraph (A), an individual shall be eligible for food~~  
13 ~~assistance if the individual enrolls in and participates in a drug treatment program approved by the~~  
14 ~~secretary, submits to and passes a drug test and agrees to submit to drug testing if requested by the~~  
15 ~~department pursuant to a drug testing plan.~~

16 ~~An individual's failure to submit to testing or failure to successfully pass a drug test shall result in~~  
17 ~~ineligibility for food assistance until a drug test is successfully passed. Failure to successfully~~  
18 ~~complete a drug treatment program shall result in ineligibility for food assistance until a drug~~  
19 ~~treatment plan approved by the secretary is successfully completed, the individual passes a drug test~~  
20 ~~and agrees to submit to drug testing if requested by the department pursuant to a drug testing plan.~~

21 ~~(C) The provisions of subparagraph (B) shall not apply to any individual who has been convicted for~~  
22 ~~a second or subsequent felony offense as provided in subparagraph (A).~~

Housing Needs of KDOC Returning Citizens					
Enhancement	Current Work	Justification	Number of Positions Created	Projected Number of People Served	Annual costs
KSHOP Care Coordinators	Currently, KDOC offers the Kansas Supportive Housing for Offenders Program (KSHOP), which finds and secures housing and provides additional wraparound services for up to 18 people reentering the community in Topeka, Olathe, Kansas City and Wichita at any given time. The number varies based on client behaviors and needs.	We continue to release offenders who are chronically homeless and institutionalized, and who have dual and triple diagnoses; these cases require intense case management. We have enjoyed a 25% return rate with this very challenging population when they work with a KSHOP Care Coordinator. We have two; they can serve 12-18 offenders at a time; we have at least four times that many releasing per year with this need. The proposal is to add five KSHOP Coordinators, 2 in Wichita, 1 in SE Kansas, 1 in Kansas City, and one in Central Kansas. Cost: 5 x \$43,000 x 1.5 (50% for benefits)	5	60-90	\$ 322,500

Forensic Nursing Facility	This is a gap in the system currently.	<p>Cost anticipated for 60-90 beds; solicitation runs through KDADS; draw down Medicaid dollars for about 60%; total cost about \$10M.</p> <p>Each year we have 15-20 offenders who need this structured housing. We are not able to get them placed, but rarely, in the existing homes/centers, because they lack sufficient numbers, and more important are unwilling to take this population most of the time. How many beds we ultimately need will interplay with how many master leased units and KSHOP Coordinators we establish. Some of these folks with time could "step down" to a master leased unit, and maybe ultimately to some housing with a housing stipend if they are eligible through HUD programs.</p>	Unclear	60-90	\$ 4,000,000
Data Position	This position does not exist currently and there are significant challenges in getting accurate information about housing for people reentering the community.	<p>Position to track housing after release, as it often changes because of the rate of returning citizens who are precariously housed at release. There is no reliable resource for this data. This cost is for a position, with salary, benefits, some travel, equipment, software, and training.</p>	1	N/A	\$ 80,000

Scattered Site Housing Units (KDOC master lease) and Housing Specialists	There are about 40 master release housing units—houses and/or apartments leased by KDOC to house people needing a transition period—primarily located in the central and eastern parts of the state. Currently, there are 4 housing specialists in the central and eastern part of the state— Kansas City, Wichita, Olathe, and Topeka—and they are not able to support everyone with housing insecurity reentering the community.	<p>Master Leased Units Housing Specialists (1, Wichita; 1, Central; 1, Olathe) Cost: Average of \$750 for rent x 12 months = \$9,000 per unit x 40 more units Housing Specialists - 3 x \$48,000 x 1.5 (50% Benefits) + related costs At least 10% of the releases are no plans; and at least another 25% of the residence plans are precarious. Also as noted above, the special needs population faces significant housing challenges. We are able to serve about 150 offenders with current master leased units; we need four times that at a minimum. This proposed enhancement would double how many we can serve.</p>	3	150	\$ 450,000
					\$ 4,852,500

NOTE: If we reduced returning offenders by 162 offenders that would pay for these costs, because it costs \$30,077 on average to house one person in prison for one year. That is 162 out of 4800 releases per year and about 6000 returned citizens under supervision.

**States implementing fair chance licensing best practices identified in Kansas policy recommendations**

**Source: Statutory review by CSG Justice Center, Oct. 2020)**

<b>State</b>	<b>Citation</b>	<b>“Direct” or “substantial” relationship standard</b>	<b>Individualized consideration guided by specific factors</b>	<b>Pre-qualification (binding absent new criminal history)</b>	<b>Written reasons for denial</b>	<b>Notes</b>
<b>Arizona</b>	Ariz. Rev. Stat. § 41-1093.04	✓		✓	✓	
<b>Arkansas</b>	Ark. Code Ann. § 17-3-102		✓	✓	✓	
<b>California</b>	Cal. Bus. & Prof. Code §§ 480 & 4481	✓	✓			Guidance for individualized consideration is relatively limited
<b>Connecticut</b>	Conn. Gen. Stat. § 46a-80	✓	✓		✓	
<b>Colorado</b>	C.R.S. 24-5-101	✓	✓			
<b>Delaware</b>	74 Del. Laws 262	✓		✓		
<b>DC</b>	D.C. Code §§ 47-2853.17; 3-1205.03	✓	✓		✓	
<b>Florida</b>	Fla. Stat. § 112.011	✓				
<b>Georgia</b>	Ga. Code Ann § 43-1-19	✓	✓			
<b>Hawaii</b>	Haw. Rev. Stat. § 831-3.1	✓				
<b>Idaho</b>	Idaho Code § 67-9411		✓	✓		
<b>Iowa</b>	HF2627 (2020)	✓	✓	✓	✓	



State	Citation	“Direct” or “substantial” relationship standard	Individualized consideration guided by specific factors	Pre-qualification (binding absent new criminal history)	Written reasons for denial	Notes
Illinois	20 ILCS 2105/2105-131 (Pub. Act 100-0286)	✓	✓		✓	
Indiana	Ind. Code § 25-1-1.1-6	✓	✓	✓	✓	
Kentucky	Ky. Rev. Stat. Ann. § 335B.020	✓	✓		✓	
Louisiana	La. Rev. Stat. Ann. § 37:2950	✓			✓	
Maine	Me. Rev. Stat. Ann. tit. 5, § 5301	✓			✓	
Maryland	Md. Crim. Proc. Code § 1-209; COMAR 09.01.10.02	✓	✓			
Massachusetts	Mass. Gen. Laws ch. 6 § 172N	✓				
Michigan	Mich. Comp. Laws § 338.42	✓				
Minnesota	Minn. Stat. § 364.03	✓	✓		✓	
Mississippi	SB2781 (2019)	✓		✓	✓	
Missouri	Mo. Rev. Stat. § 324.012	✓	✓	✓	✓	

State	Citation	“Direct” or “substantial” relationship standard	Individualized consideration guided by specific factors	Pre-qualification (binding absent new criminal history)	Written reasons for denial	Notes
Montana	Mont. Code Ann § 37-1-204	✓			✓	
Nebraska	LB 299 (2018)			✓	✓	
New Hampshire	N.H. Rev. Stat. Ann. § 332-G	✓	✓	✓	✓	
New Jersey	N.J. Stat. Ann. §§ 2A:168A-1; 2A:168A-2	✓	✓			
New Mexico	N.M. Stat. Ann. § 28-2-4	✓			✓	
New York	N.Y. Correct. Law. §§ 752; 753	✓	✓		✓	
North Carolina	N.C. Gen. Stat. § 93B-8.1	✓	✓	✓	✓	
North Dakota	N.D. Cent. Code § 12.1-33-02.1	✓	✓		✓	
Ohio	Ohio Rev. Code Ann. § 4743.06	✓			✓	
Oklahoma	HB 1373 (2019)	✓		✓	✓	Statutory ambiguity about the extent to which pre-qualification determinations are binding.

State	Citation	“Direct” or “substantial” relationship standard	Individualized consideration guided by specific factors	Pre-qualification (binding absent new criminal history)	Written reasons for denial	Notes
Oregon	Or. Rev. Stat. § 670.280	✓				
Pennsylvania	SB-637 (2019)	✓	✓	✓	✓	
Rhode Island	R.I. Gen. Laws § 28-5.1-14	✓	✓		✓	
Tennessee	2018 Tenn. Acts, ch. 793 (SB-2465)	✓	✓	✓	✓	
Texas	Tex. Occupations Code Ann. §§ 53.021 to .023	✓	✓	✓	✓	
Utah	Utah Code Ann. § 58-1-501; SB-201(2020)	✓	✓	✓	✓	
Virginia	Va. Code Ann. § 54.1-204	✓	✓			
Washington	Wash. Rev. Code § 9.96A.020	✓				
West Virginia	W. Va. Code § 30-1-24			✓		
Wisconsin	Wis. Stat. § 111.335	✓	✓	✓	✓	
Wyoming	Wyo. Stat. § 33-1-304	✓				

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# **Report of the Legislative Task Force on Dyslexia to the 2021 Kansas Legislature**

**CHAIRPERSON:** Jim Porter

**VICE-CHAIRPERSON:** Representative Brenda Dietrich

**OTHER MEMBERS:** Senators Bruce Givens and Ty Masterson

**NON-LEGISLATIVE MEMBERS:** Jennifer Bettles, Sarah Brinkley, Jaime Callaghan, Tally Fleming, Dr. David Hurford, Jennifer Knight, Alisa Matteoni, Christina Middleton, Jeanine Phillips, Jeri Powers, Angie Schreiber, and Sonja Watkins

**EX OFFICIO MEMBERS:** Mike Burgess, Laura Jurgensen, and Lori McMillan

## **CHARGE**

Pursuant to 2018 Sub. for HB 2602 (KSA 72-8193), the Task Force shall advise and make recommendations to the Governor, the Legislature, and the State Board of Education regarding matters concerning the use of evidence-based practices for students with dyslexia. Specifically, the bill provides the Task Force's recommendations and resource materials shall:

- Evaluate the progress and effectiveness of the previous recommendations of the Task Force.

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# Legislative Task Force on Dyslexia

## REPORT

### Conclusions and Recommendations

The Legislative Task Force on Dyslexia restates the previous recommendations of the Task Force and specifically recommends the creation of a statewide dyslexia coordinator within the Kansas State Department of Education (KSDE).

**Proposed Legislation:** The Task Force requests legislation to appropriate sufficient additional funds to the KSDE to hire a statewide dyslexia coordinator.

### BACKGROUND

The Legislative Task Force on Dyslexia (Task Force) was created by 2018 Sub. for HB 2602, codified at KSA 72-8193, to advise and make recommendations to the Governor, Legislature, and State Board of Education (KSBE) on or before January 30, 2019, regarding matters concerning the use of evidence-based practices for students with dyslexia.

The Task Force initially reported to the Governor, Legislature, and KSBE in January 2019.

The Task Force was extended through fiscal year 2022 by 2019 House Sub. for SB 16, authorizing the Task Force to meet no more than once per year in calendar years 2019, 2020, and 2021.

### COMMITTEE ACTIVITY

The Task Force met November 9, 2020. The Task Force received updates on the progress of the implementation of recommendations made at previous meetings. To begin the meeting, a Task Force member and representative of Pittsburg State University provided a general review of the Task Force's charge, discussions and recommendations from previous meetings, and progress of such recommendations.

### Teacher Preparation

The Task Force received testimony on updates of the implementation of previous recommendations related to the training of college of education professors on the Science of Reading.

#### *State Board of Regents Universities*

Representatives of Pittsburg State University provided testimony to the Task Force on the implementation of Science of Reading training for teachers at State Board of Regents (Regents) public institutions.

In addition to a general review, the first representative provided information on the progress of colleges and universities to implement the training. He noted such progress has been slowed due to the ongoing COVID-19 pandemic, which affected every institution in Kansas.

Another representative provided information compiled from Regents institutions, focusing on three areas: professional development and scholarship for educators; curricular enhancements; and standards, new courses, and revised programs of study.

#### *Private Universities*

A conferee provided testimony to the Task Force on behalf of the Kansas Association of Private Colleges of Teachers of Education (KAPCOTE). The conferee stated KAPCOTE

member schools are preparing to implement education and teacher standards previously recommended by the Task Force after the Kansas State Department of Education (KSDE) formally adopts such standards.

## **Professional Development**

### ***Educational Service Centers***

Representatives of Keystone Learning Services, Greenbush Education Service Center, and Southwest Plains Regional Service Center provided testimony to the Task Force on the progress of educational service centers in supporting the implementation of Task Force recommendations.

The educational service center representatives described professional development opportunities available for teachers and administrators, including the six hours of training required by KSDE and specific training, such as that for Language Essentials for Teachers of Reading and Spelling (LETRS). The representatives noted thousands of teachers need to receive the initial six hours of training, and such training provided by KSDE was recorded and organized in modules for teachers to view at their convenience.

## **Dyslexia Handbook**

### ***KSDE***

A representative of KSDE provided updates on KSDE's implementation of standards modified by the KSBE and of teacher education and licensure requirements, as previously recommended by the Task Force. The representative also provided an update on the implementation of screening requirements to identify struggling readers or students with dyslexia, the Kansas Education Systems Accreditation model, evidence-based reading instruction, and the dyslexia coordinator position within KSDE.

The representative distributed the KSDE Dyslexia Handbook created as a result of a previous Task Force recommendation.

## **CONCLUSIONS AND RECOMMENDATIONS**

The Task Force restates its previous recommendation for a statewide dyslexia coordinator position to be created within KSDE and the Legislature to appropriate sufficient funds to fill the position.