

Approved: 3-18-10  
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on January 13, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Randy Hearrell, Kansas Judicial Council

Others attending:

See attached list.

Chairperson Colloton called the meeting to order and opened the floor for bill requests. She recognized Randy Hearrell with the Kansas Judicial Council. Mr. Hearrell stated he had a bill request relating to evaluation at sentencing of a defendant's liability to pay costs and fees. Mr. Hearrell presented written copy of his request. (Attachment 1)

**Representative Spalding made a motion to adopt the bill request regarding evaluation at sentencing of a defendant's liability to pay costs and fees as a committee bill. Representative Brookens seconded.**

A short discussion followed. Chairperson Colloton called for a vote. **Motion carried.**

Chairperson Colloton introduced State Representative Virgil Peck and he stated he would like to request the introduction of two bills. The first is a bill increasing the penalty for wearing body armor while committing a felony.

**Representative Patton made a motion to accept the bill request on a bill to increase the penalty for wearing body armor while committing a felony as a committee bill. Representative McCray-Miller seconded. Motion carried.**

The second bill request is a bill to modify the statute regarding increased penalty for selling drugs within 1000 feet of a school. He wants to add within a 1000 feet of a daycare.

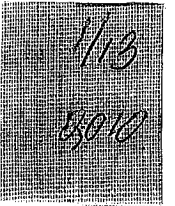
**Representative Patton made a motion to accept the bill request and make it a committee bill to add daycares to the statute. Representative Roth seconded. Motion carried.**

Chairperson Colloton called on Representative McCray-Miller to request a bill. Representative McCray-Miller asked for a conceptual bill to be introduced by the Committee. She stated the bill would amend the current statute to create an automatic expungement of juvenile records that meet a very specific criteria.

**Representative Frownfelter made a motion to accept the bill as a conceptual committee bill. Representative Spalding seconded. Motion carried.**

Chairperson Colloton called for anyone else to request a bill introduction; being none, the Chair introduced Athena Andaya, Legislative Research, to give a briefing on the *Corrections and Juvenile Justice Oversight Interim Report*. Ms. Andaya presented written copy to the Committee and staff (Attachment 2) and began her briefing by stating the copy she distributed to the Committee is a draft copy because the report has not been formally approved. She called the Committee's attention to the "Conclusions and Recommendations" on the first page of the report. Ms. Andaya highlighted on the following conclusions and recommendations of the Joint Committee on Corrections and Juvenile Justice Committee:

Endorse the concept of taking fees for DUI alcohol treatment;



CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on January 13, 2010, in Room 144-S of the Capitol.

Introduce House bill which would change the district court fine allocations to fund the therapeutic Communities in prison;

Encompass the visions that the Kansas Sentencing Commission proposed and be introduced as a House bill for the 2010 Legislative Session;

Move forward with Specialty Courts for future development;

Introduce a bill in the House on early release of terminally ill inmates;

Recommend commendation of the work of community corrections and urge that community corrections be high priority of the Legislature; and acknowledge that the prison population will be impacted if funding is not available;

Introduce a Senate bill that would raise the probation fee to an amount that would cover approximately \$300,000 needed to institute risk assessment tools in court services;

Introduce a Senate bill that will prevent the transfer to a Kansas Department of Corrections facility for offenders who have 10 days or less to be served in the state prison and require the offender be retained in the county jail;

Recommend the Public Safety Budget Committee strongly consider approving the \$750,000 for the radios for the Kansas Department of Corrections to be in compliance with federal regulation;

Recommend examining ways to control offender population growth prior to running out of beds and examining what options are available to the Legislature;

Recommend further study of nonfunctioning mentally ill inmates;

Recommend the Parole Board consider pre-SB 123 offenders, and to bring them into compliance with the balance of the current guidelines of SB 123;

Support, encourage, and recommend a collaboration between the Kansas Juvenile Justice Authority (JJA) and the Kansas Supreme Court to implement the use of the Youthful Level of Service/Casement Management Inventory (YLS/CMI) at the court services level prior to disposition of juvenile offender;

Support and encourage the JJA to implement a contract condition for all YRCII providers that require participation in the Community Based standards (CbS) facility evaluation process and acknowledge that there will be a cost associated with it; and

Support JJA's move away from the one size fits all approach to move toward what is described as best practices of the three tier system of level of risk in order to contain the problem described and to keep the contract between the juvenile offenders.

There were questions from the Committee and discussion during Ms. Anday's briefing; Helen Pedigo, Executive Director, Kansas Sentencing Commission and Representative McCray-Miller and the Chair joining the discussion addressing some of the questions of the Committee. During the briefing it was noted by Chairperson Colloton that the Committee would be following up on the recommendations of the Joint Committee for Corrections and Juvenile Justice.

Upon the conclusion of Ms. Anday's briefing, Chairperson Colloton adjourned the meeting at 2:30 p.m. with the next meeting scheduled for January 14, 2010 at 1:30 p.m. in room 144 S.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on January 13, 2010, in Room 144-S of the Capitol.





## KANSAS JUDICIAL COUNCIL

JUSTICE LAWTON R. NUSS, CHAIR, SALINA  
JUDGE JERRY G. ELLIOTT, WICHITA  
JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. THOMAS C. (TIM) OWENS, OVERLAND PARK  
REP. LANCE Y. KINZER, OLATHE  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR  
RANDY M. HEARRELL  
STAFF ATTORNEYS  
NANCY J. STROUSE  
CHRISTY R. MOLZEN  
NATALIE F. GIBSON  
ADMINISTRATIVE ASSISTANTS  
JANELLE L. WILLIAMS  
MARIAN L. CLINKENBEARD  
BRANDY M. WHEELER

### MEMORANDUM

**TO:** House Corrections and Juvenile Justice Committee

**FROM:** Kansas Judicial Council - Randy M. Hearrell

**DATE:** January 13, 2010

**RE:** 2010 Bill Request

The Judicial Council respectfully requests introduction of a bill relating to evaluation at sentencing of a defendant's ability to pay costs and fees. The proposed legislation amends K.S.A. 21-4603d, 21-4610, 22-4507, and 22-4513. A copy of the proposed amendments is attached.

Corrections and Juvenile Justice  
Date: 1-13-10  
Attachment # 1

**21-4603d. Authorized dispositions, crimes committed on or after July 1, 1993.**

(a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809, and amendments thereto, or aggravated escape, as defined in K.S.A. 21-3810, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under K.S.A. 21-3718 or 21-3719, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire

1 company or any public funds utilized by a law enforcement agency shall be deposited  
2 and credited to the same fund from which the public funds were credited to prior to  
3 use by the county, law enforcement agency, fire district, fire department or fire  
4 company;

5 (9) order the defendant to pay the administrative fee authorized by K.S.A. 22-  
6 4529, and amendments thereto, unless waived by the court;

7 (10) order the defendant to pay a domestic violence special program fee  
8 authorized by K.S.A. 20-369, and amendments thereto;

9 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9)  
10 and (10); or

11 (12) suspend imposition of sentence in misdemeanor cases.

12 (b) (1) In addition to or in lieu of any of the above, the court shall order the  
13 defendant to pay restitution, which shall include, but not be limited to, damage or loss  
14 caused by the defendant's crime, unless the court finds compelling circumstances  
15 which would render a plan of restitution unworkable. In regard to a violation of  
16 K.S.A. 21-4018, and amendments thereto, such damage or loss shall include, but not  
17 be limited to, attorney fees and costs incurred to repair the credit history or rating of  
18 the person whose personal identification documents were obtained and used in  
19 violation of such section, and to satisfy a debt, lien or other obligation incurred by the  
20 person whose personal identification documents were obtained and used in violation  
21 of such section. If the court finds a plan of restitution unworkable, the court shall state  
22 on the record in detail the reasons therefor.

23 (2) If the court orders restitution, the restitution shall be a judgment against the  
24 defendant which may be collected by the court by garnishment or other execution as  
25 on judgments in civil cases. If, after 60 days from the date restitution is ordered by the  
26 court, a defendant is found to be in noncompliance with the plan established by the  
27 court for payment of restitution, and the victim to whom restitution is ordered paid has  
28 not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments  
29 thereto, the court shall assign an agent procured by the attorney general pursuant to  
30 K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the  
31 victim. The administrative judge of each judicial district may assign such cases to an  
32 appropriate division of the court for the conduct of civil collection proceedings.

33 (c) In addition to or in lieu of any of the above, the court shall order the  
34 defendant to submit to and complete an alcohol and drug evaluation, and pay a fee  
35 therefor, when required by subsection (4) of K.S.A. 21-4502, and amendments thereto.

36 (d) In addition to any of the above, the court shall order the defendant to  
37 reimburse the county general fund for all or a part of the expenditures by the county to  
38 provide counsel and other defense services to the defendant. Any such reimbursement  
39 to the county shall be paid only after any order for restitution has been paid in full. In  
40 determining the ~~amount and method of payment of~~ *defendant's current and future*  
41 *ability to make payments on* such sum, the court shall take account of the financial  
42 resources of the defendant and the nature of the burden that payment of such sum will  
43 impose. A defendant who has been required to pay such sum and who is not willfully  
44 in default in the payment thereof may at any time petition the court which sentenced  
45 the defendant to waive *or postpone* payment of such sum or any unpaid portion  
46 thereof. If it appears to the satisfaction of the court that payment of the amount due

1 will impose manifest hardship on the defendant or the defendant's immediate family,  
2 the court may waive payment of all or part of the amount due or modify the method *or*  
3 *time* of payment.

4 (e) In imposing a fine the court may authorize the payment thereof in  
5 installments. In releasing a defendant on probation, the court shall direct that the  
6 defendant be under the supervision of a court services officer. If the court commits the  
7 defendant to the custody of the secretary of corrections or to jail, the court may  
8 specify in its order the amount of restitution to be paid and the person to whom it shall  
9 be paid if restitution is later ordered as a condition of parole, conditional release or  
10 postrelease supervision.

11 (f) (1) When a new felony is committed while the offender is incarcerated and  
12 serving a sentence for a felony, or while the offender is on probation, assignment to a  
13 community correctional services program, parole, conditional release, or postrelease  
14 supervision for a felony, a new sentence shall be imposed pursuant to the consecutive  
15 sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court  
16 may sentence the offender to imprisonment for the new conviction, even when the  
17 new crime of conviction otherwise presumes a nonprison sentence. In this event,  
18 imposition of a prison sentence for the new crime does not constitute a departure.

19 (2) When a new felony is committed while the offender is incarcerated in a  
20 juvenile correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A.  
21 2007 Supp. 38-2373, and amendments thereto, for an offense, which if committed by  
22 an adult would constitute the commission of a felony, upon conviction, the court shall  
23 sentence the offender to imprisonment for the new conviction, even when the new  
24 crime of conviction otherwise presumes a nonprison sentence. In this event,  
25 imposition of a prison sentence for the new crime does not constitute a departure. The  
26 conviction shall operate as a full and complete discharge from any obligations, except  
27 for an order of restitution, imposed on the offender arising from the offense for which  
28 the offender was committed to a juvenile correctional facility.

29 (3) When a new felony is committed while the offender is on release for a felony  
30 pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated,  
31 or similar provisions of the laws of another jurisdiction, a new sentence may be  
32 imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and  
33 amendments thereto, and the court may sentence the offender to imprisonment for the  
34 new conviction, even when the new crime of conviction otherwise presumes a  
35 nonprison sentence. In this event, imposition of a prison sentence for the new crime  
36 does not constitute a departure.

37 (g) Prior to imposing a dispositional departure for a defendant whose offense is  
38 classified in the presumptive nonprison grid block of either sentencing guideline grid,  
39 prior to sentencing a defendant to incarceration whose offense is classified in grid  
40 blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid  
41 blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,  
42 prior to sentencing a defendant to incarceration whose offense is classified in grid  
43 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense  
44 does not meet the requirements of K.S.A. 21-4729, and amendments thereto, prior to  
45 revocation of a nonprison sanction of a defendant whose offense is classified in grid  
46 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense



1 does not meet the requirements of K.S.A. 21-4729, and amendments thereto, or prior  
2 to revocation of a nonprison sanction of a defendant whose offense is classified in the  
3 presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-  
4 H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-  
5 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court  
6 shall consider placement of the defendant in the Labette correctional conservation  
7 camp, conservation camps established by the secretary of corrections pursuant to  
8 K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction  
9 center. Pursuant to this paragraph the defendant shall not be sentenced to  
10 imprisonment if space is available in a conservation camp or a community  
11 intermediate sanction center and the defendant meets all of the conservation camp's or  
12 a community intermediate sanction center's placement criteria unless the court states  
13 on the record the reasons for not placing the defendant in a conservation camp or a  
14 community intermediate sanction center.

15 (h) The court in committing a defendant to the custody of the secretary of  
16 corrections shall fix a term of confinement within the limits provided by law. In those  
17 cases where the law does not fix a term of confinement for the crime for which the  
18 defendant was convicted, the court shall fix the term of such confinement.

19 (i) In addition to any of the above, the court shall order the defendant to  
20 reimburse the state general fund for all or a part of the expenditures by the state board  
21 of indigents' defense services to provide counsel and other defense services to the  
22 defendant. In determining the amount and method of payment of such sum, the court  
23 shall take account of the financial resources of the defendant and the nature of the  
24 burden that payment of such sum will impose. A defendant who has been required to  
25 pay such sum and who is not willfully in default in the payment thereof may at any  
26 time petition the court which sentenced the defendant to waive payment of such sum  
27 or any unpaid portion thereof. If it appears to the satisfaction of the court that payment  
28 of the amount due will impose manifest hardship on the defendant or the defendant's  
29 immediate family, the court may waive payment of all or part of the amount due or  
30 modify the method of payment. The amount of attorney fees to be included in the  
31 court order for reimbursement shall be the amount claimed by appointed counsel on  
32 the payment voucher for indigents' defense services or the amount prescribed by the  
33 board of indigents' defense services reimbursement tables as provided in K.S.A. 22-  
34 4522, and amendments thereto, whichever is less.

35 (j) This section shall not deprive the court of any authority conferred by any other  
36 Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a  
37 person from office, or impose any other civil penalty as a result of conviction of  
38 crime.

39 (k) An application for or acceptance of probation or assignment to a community  
40 correctional services program shall not constitute an acquiescence in the judgment for  
41 purpose of appeal, and any convicted person may appeal from such conviction, as  
42 provided by law, without regard to whether such person has applied for probation,  
43 suspended sentence or assignment to a community correctional services program.

44 (l) The secretary of corrections is authorized to make direct placement to the  
45 Labette correctional conservation camp or a conservation camp established by the  
46 secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate

1 sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the  
2 secretary for a probation revocation, as a departure from the presumptive  
3 nonimprisonment grid block of either sentencing grid, for an offense which is  
4 classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug  
5 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for  
6 drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the  
7 sentencing guidelines grid for drug crimes and such offense does not meet the  
8 requirements of K.S.A. 21-4729, and amendments thereto, and (2) otherwise meets  
9 admission criteria of the camp. If the inmate successfully completes a conservation  
10 camp program, the secretary of corrections shall report such completion to the  
11 sentencing court and the county or district attorney. The inmate shall then be assigned  
12 by the court to six months of follow-up supervision conducted by the appropriate  
13 community corrections services program. The court may also order that supervision  
14 continue thereafter for the length of time authorized by K.S.A. 21-4611 and  
15 amendments thereto.

16 (m) When it is provided by law that a person shall be sentenced pursuant to  
17 K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not  
18 apply.

19 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and amendments  
20 thereto, in addition to any of the above, for felony violations of K.S.A. 65-4160 or 65-  
21 4162, and amendments thereto, the court shall require the defendant who meets the  
22 requirements established in K.S.A. 21-4729, and amendments thereto, to participate in  
23 a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-  
24 52,144, and amendments thereto, including but not limited to, an approved after-care  
25 plan. If the defendant fails to participate in or has a pattern of intentional conduct that  
26 demonstrates the offender's refusal to comply with or participate in the treatment  
27 program, as established by judicial finding, the defendant shall be subject to  
28 revocation of probation and the defendant shall serve the underlying prison sentence  
29 as established in K.S.A. 21-4705, and amendments thereto. For those offenders who  
30 are convicted on or after the effective date of this act, upon completion of the  
31 underlying prison sentence, the defendant shall not be subject to a period of  
32 postrelease supervision. The amount of time spent participating in such program shall  
33 not be credited as service on the underlying prison sentence.  
34

1 **21-4610. Conditions of probation or suspended sentence.** (a) Except as  
2 required by this subsection and subsection (d), nothing in this section shall be  
3 construed to limit the authority of the court to impose or modify any general or specific  
4 conditions of probation, suspension of sentence or assignment to a community  
5 correctional services program, except that the court shall condition any order granting  
6 probation, suspension of sentence or assignment to a community correctional  
7 services program on the defendant's obedience of the laws of the United States, the  
8 state of Kansas and any other jurisdiction to the laws of which the defendant may be  
9 subject. The provisions of K.S.A. 75-5291, and amendments thereto, shall be  
10 applicable to any assignment to a community correctional services program pursuant  
11 to this section.

12 (b) The court services officer or community correctional services officer may  
13 recommend, and the court may order, the imposition of any conditions of probation,  
14 suspension of sentence or assignment to a community correctional services program.  
15 For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the  
16 court services officer or community correctional services officer may recommend, and  
17 the court may order, the imposition of any conditions of probation or assignment to a  
18 community correctional services program. The court may at any time order the  
19 modification of such conditions, after notice to the court services officer or community  
20 correctional services officer and an opportunity for such officer to be heard thereon.  
21 The court shall cause a copy of any such order to be delivered to the court services  
22 officer and the probationer or to the community correctional services officer and the  
23 community corrections participant, as the case may be. The provisions of K.S.A. 75-  
24 5291, and amendments thereto, shall be applicable to any assignment to a  
25 community correctional services program pursuant to this section.

26 (c) The court may impose any conditions of probation, suspension of sentence  
27 or assignment to a community correctional services program that the court deems  
28 proper, including but not limited to requiring that the defendant:

29 (1) Avoid such injurious or vicious habits, as directed by the court, court services  
30 officer or community correctional services officer;

31 (2) avoid such persons or places of disreputable or harmful character, as  
32 directed by the court, court services officer or community correctional services officer;

33 (3) report to the court services officer or community correctional services officer  
34 as directed;

35 (4) permit the court services officer or community correctional services officer to  
36 visit the defendant at home or elsewhere;

37 (5) work faithfully at suitable employment insofar as possible;

38 (6) remain within the state unless the court grants permission to leave;

39 (7) pay a fine or costs, applicable to the offense, in one or several sums and in  
40 the manner as directed by the court;

41 (8) support the defendant's dependents;

42 (9) reside in a residential facility located in the community and participate in  
43 educational, counseling, work and other correctional or rehabilitative programs;

44 (10) perform community or public service work for local governmental agencies,  
45 private corporations organized not for profit, or charitable or social service  
46 organizations performing services for the community;

47 (11) perform services under a system of day fines whereby the defendant is  
48 required to satisfy fines, costs or reparation or restitution obligations by performing  
49 services for a period of days determined by the court on the basis of ability to pay,  
50 standard of living, support obligations and other factors;

1 (12) participate in a house arrest program pursuant to K.S.A. 21-4603b, and  
2 amendments thereto;

3 (13) order the defendant to pay the administrative fee authorized by K.S.A. 22-  
4 4529 and amendments thereto, unless waived by the court; or

5 (14) in felony cases, except for violations of K.S.A. 8-1567 and amendments  
6 thereto, be confined in a county jail not to exceed 60 days, which need not be served  
7 consecutively.

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

11 (1) Make reparation or restitution to the aggrieved party for the damage or loss  
12 caused by the defendant's crime, in an amount and manner determined by the court  
13 and to the person specified by the court, unless the court finds compelling  
14 circumstances which would render a plan of restitution unworkable. If the court finds a  
15 plan of restitution unworkable, the court shall state on the record in detail the reasons  
16 therefor;

17 (2) pay the probation or community correctional services fee pursuant to K.S.A.  
18 21-4610a, and amendments thereto; and

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

35

1 **22-4513. Liability of defendant for expenditures by state board; judgment;**  
2 **determination of amount and method of payment; liability of others for**  
3 **expenditures.** (a) If the defendant is convicted, all expenditures made by the state  
4 board of indigents' defense services to provide counsel and other defense services to  
5 such defendant or the amount allowed by the board of indigents' defense  
6 reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto,  
7 whichever is less, shall be taxed against the defendant and shall be enforced as  
8 judgments for payment of money in civil cases.

9 (b) In determining the amount and method of payment of **defendant's current**  
10 **and future ability to make payments on** such sum, the court shall take account of  
11 the financial resources of the defendant and the nature of the burden that payment of  
12 such sum will impose. A defendant who has been required to pay such sum and who  
13 is not willfully in default in the payment thereof may at any time petition the court  
14 which sentenced the defendant to **waive or postpone** payment of such sum or of any  
15 unpaid portion thereof. If it appears to the satisfaction of the court that payment of the  
16 amount due will impose manifest hardship on the defendant or the defendant's  
17 immediate family, the court may waive payment of all or part of the amount due or  
18 modify the method **or time** of payment.

19 (c) Whenever any judgment has been entered pursuant to subsection (a) of this  
20 section, a sum equal to such judgment may be recovered by the state of Kansas for  
21 the benefit of the state general fund from any persons to whom the indigent  
22 defendant shall have transferred any of the defendant's property without adequate  
23 monetary consideration after the commission of the alleged crime, to the extent of the  
24 value of such transfer, and such persons are hereby made liable to reimburse the  
25 state of Kansas with interest at 6% per annum. Any action to recover judgment for  
26 such expenditures shall be prosecuted by the attorney general, who may require the  
27 assistance of the county attorney of the county in which the action is to be filed, and  
28 such action shall be governed by the provisions of the code of civil procedure relating  
29 to actions for the recovery of money. No action shall be brought against any person  
30 under the provisions of this section to recover for sums expended on behalf of an  
31 indigent defendant, unless such action shall have been filed within two years after the  
32 date of the expenditure by the state board of indigents' defense services.  
33  
34

1 **22-4507. Compensation and reimbursement of expenses for services to**  
2 **indigents; procedures for payment; exemption from fees for electronic access**  
3 **to court records.** (a) An attorney, other than a public defender or assistant public  
4 defender or contract counsel, who is appointed by the court to perform services for an  
5 indigent person, as provided by article 45 of chapter 22 of the Kansas Statutes  
6 Annotated, and amendments thereto, shall at the conclusion of such service or any  
7 part thereof be entitled to compensation for such services and to be reimbursed for  
8 expenses reasonably incurred by such person in performing such services.  
9 Compensation for services shall be paid in accordance with standards and guidelines  
10 contained in rules and regulations adopted by the state board of indigents' defense  
11 services under this section.

12 (b) Claims for compensation and reimbursement shall be certified by the  
13 claimant and shall be presented to the court at **not more than 90 days after**  
14 sentencing. A supplemental claim may be filed at such later time as the court may in  
15 the interest of justice determine if good cause is shown why the claim was not  
16 presented at sentencing. In accordance with standards and guidelines adopted by the  
17 state board of indigents' defense services under this section, all such claims shall be  
18 reviewed and approved by one or more judges of the district court before whom the  
19 service was performed, or, in the case of proceedings in the court of appeals, by the  
20 chief judge of the court of appeals and in the case of proceedings in the supreme  
21 court, by the departmental justice for the department in which the appeal originated.  
22 Each claim shall be supported by a written statement, specifying in detail the time  
23 expended, the services rendered, the expenses incurred in connection with the case  
24 and any other compensation or reimbursement received. When properly certified and  
25 reviewed and approved, each claim for compensation and reimbursement shall be  
26 filed in the office of the state board of indigents' defense services. If the claims meet  
27 the standards established by the board, the board shall authorize payment of the  
28 claim.

29 (c) Such attorney shall be compensated at the rate of \$80 per hour, except that:

30 (1) The chief judge of any judicial district may negotiate an hourly rate less than  
31 \$80 per hour for attorneys who voluntarily accept appointments in that district; or

32 (2) contract counsel shall be compensated at the rate or rates specified in the  
33 contract between the board and the assigned counsel.

34 If the state board of indigents' defense services determines that the  
35 appropriations for indigents' defense services or the moneys allocated by the board  
36 for a county or judicial district will be insufficient in any fiscal year to pay in full claims  
37 filed and reasonably anticipated to be filed in such year under this section, the board  
38 may adopt a formula for prorating the payment of pending and anticipated claims  
39 under this section.

40 (d) The state board of indigents' defense services may make expenditures for  
41 payment of claims filed under this section from appropriations for the current fiscal  
42 year regardless of when the services were rendered.

43 (e) The state board of indigents' defense services shall adopt rules and  
44 regulations prescribing standards and guidelines governing the filing, processing and  
45 payment of claims under this section.

46 (f) An attorney, other than a public defender, assistant public defender or  
47 contract counsel, who is appointed by the court to perform services for an indigent  
48 person and who accesses electronic court records for an indigent person, as  
49 provided by this act, shall be exempt from paying fees to access electronic court  
50 records.

51

---

---

**Report of the Joint Committee on  
Corrections and Juvenile Justice Oversight  
to the  
2010 Kansas Legislature**

**CHAIRPERSON:** Representative Pat Colloton

**VICE-CHAIRPERSON:** Senator Pete Brungardt

**OTHER MEMBERS:** Representatives Barbara Craft, Doug Gatewood, John Grange, Jerry Henry, Joe Patton, and Jim Ward; and Senators Karin Brownlee, Terry Bruce, David Haley, Richard Kelsey, Janice Lee, and Thomas C. "Tim" Owens

**STUDY TOPICS**

Statutory duties pursuant to KSA 46-2801 in which the Committee is statutorily directed to monitor the adult inmate population and study the programs, activities, plans, and operations of the Kansas Department of Corrections and the adult correctional institutions; monitor the establishment of the Juvenile Justice Authority and study its programs, activities, plans, and operations and the juvenile correctional facilities; review and study the adult correctional and juvenile offender local programs and related entities; and report annually to the Legislative Coordinating Council.

*December 2009*

---

**Corrections and Juvenile Justice**

**Date:** 1-13-10

**Attachment #** 2

# Joint Committee on Corrections and Juvenile Justice Oversight

## REPORT

### Conclusions and Recommendations

The Committee makes the following recommendations:

- Endorse the concept of taking fees for DUI alcohol treatment;
- Introduce House bill (9rs1208) which would change the district court fine allocation to fund the therapeutic communities in prison;
- Encompass the visions that the Kansas Sentencing Commission proposed and be introduced as a House bill for the 2010 Legislative Session, such as:
  - Merge the non-drug and drug sentencing grids into one grid;
  - Reduce or eliminate the number of special sentencing rules for property offenders;
  - Place as many felonies on the grid as possible;
  - Recommend changes to the drug laws;
  - Manufacturing methamphetamine is a level 3 person felony while manufacturing all other drugs would be a level 5 felony;
  - Sale, distribution, and possession with intent to sell or distribute would be based on the quantity of drugs possessed to be sold or actually sold; and
  - Make a first time domestic battery a class B person misdemeanor, a second domestic battery a class A person misdemeanor, and a third or subsequent domestic battery a level 7 person felony;
- Move forward with Specialty Courts for further development;
- Introduce a bill in the House on early release of terminally ill inmates;
- Recommend commendation of the work of community corrections and urge that community corrections be a high priority of the Legislature; and acknowledge that the prison population will be impacted if funding is not available;
- Introduce a Senate bill that would raise the probation fee to an amount that would cover approximately \$300,000 needed to institute risk assessment tools in court services;
- Introduce a Senate Bill (9rs1090) that will prevent the transfer to a KDOC facility for offenders who have 10 days or less to be served in the state prison and require the offender be retained in the county jail;
- Recommend the Public Safety Budget Committee strongly consider approving the \$750,000 for the radios for the Kansas Department of Corrections to be in compliance with federal regulation;



- Recommend examining ways to control offender population growth prior to running out of beds and examining what options are available to the Legislature;
- Recommend further study of nonfunctioning mentally ill inmates;
- Recommend the Parole Board consider pre-SB 123 offenders, and to bring them into compliance with the balance of the current guidelines of SB 123;
- Support, encourage, and recommend a collaboration between the Kansas Juvenile Justice Authority (JJA) and the Kansas Supreme Court to implement the use of the Youthful Level of Service/Case Management Inventory (YLS/CMI) at the court services level prior to disposition of juvenile offender cases;
- Support and encourage the JJA to implement a contract condition for all YRCII providers that require participation in the Community Based Standards (CbS) facility evaluation process and acknowledge that there will be a cost associated with it; and
- Support JJA's move away from the one size fits all approach to move toward what is described as best practices of the three tier system of level of risk in order to contain the problem described and to keep the contact between the juvenile offenders.

**Proposed Legislation:** The Committee recommends the introduction of five bills.

#### BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight (Committee hereinafter) to provide Legislative oversight of two executive agencies: the Kansas Department of Corrections and the Juvenile Justice Authority.

The Kansas Department of Corrections (KDOC) is a cabinet-level criminal justice agency created in 1975 to provide effective containment, risk management, and supervision of adult offenders. KDOC operates eight correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC operates parole offices located in 19 communities throughout the state. KDOC also is responsible for the administration of funding and oversight of 30 local community corrections programs. The two correctional

conservation camps, one for men and one for women in Labette County, are now closed.

The Kansas Juvenile Justice Authority (JJA) is a cabinet-level criminal justice agency that began operating on July 1, 1997. Individuals as young as ten years of age and as old as 17 years of age may be adjudicated as juvenile offenders and ordered into the custody of the Commissioner of Juvenile Justice. The JJA may retain custody of a juvenile offender in a juvenile correctional facility to the age of 22.5 and in the community to the age of 23. The JJA has four correctional facilities but only two remain operational as correctional facilities: Larned Juvenile Correctional Facility (LJCF) and Kansas Juvenile Correction Complex (KJCC), East and West. LJCF exclusively serves male offenders. KJCC is divided into two separate campuses. The west campus exclusively serves female juvenile offenders and the east campus exclusively serves male offenders. The third facility, the Atchison Juvenile Correctional Facility, suspended operations as a juvenile correctional facility on December 8, 2008. The fourth facility, Beloit Juvenile Correctional

Facility, suspended operations as a juvenile correctional facility in September, 2009.

The Committee is composed of 14 members: seven members each from the House and Senate. The Joint Committee on Corrections and Juvenile Justice Oversight is statutorily directed in KSA 46-2801 to monitor the adult inmate population and study the programs, activities, plans, and operations of the Kansas Department of Corrections and the adult correctional institutions; monitor the establishment of the Juvenile Justice Authority and study its programs, activities, plans, and operations and the juvenile correctional facilities; review and study the adult correctional and juvenile offender local programs and related entities; and report annually to the Legislative Coordinating Council.

2006 HB 2555 repealed the provision in KSA 46-2801 requiring the Committee to expire in December, 2005. There have been no further revisions to the statute to this date.

### COMMITTEE ACTIVITIES

The Committee met on four occasions: July 9 and 10; and October 28 and 29, 2009. The July meeting dates were dedicated to discharging the statutory duties of the Committee related to the adult and juvenile corrections systems. The October meetings dates were dedicated to studying or discussing specialty courts, proportionality, post release supervision, community corrections, court services, program restoration, early release of terminally ill inmates, the increase in the probation fee with offenders pay for risk assessments, and YLS/CMI and Youth residential provider issues.

All items discussed by the Joint Committee on Corrections and Juvenile Justice Oversight relating to its statutory duties are reviewed in the following material.

### July

The Joint Committee heard from Roger Werholtz, Secretary of the Kansas Department of Corrections, to receive an update on the adult inmate population and the programs, activities, plans, and operations of the Kansas Department of Corrections and the adult correctional institutions. The Joint Committee also heard from J. Russell Jennings, Commissioner of the Juvenile Justice Authority, to receive an update on programs, activities, plans, and operations and the juvenile correctional facilities.

### Kansas Department of Corrections Overview

#### *Inmate Population*

Roger Werholtz, Secretary, Kansas Department of Corrections (KDOC), provided an overview on inmate population and activities, plans for KDOC, condition and operations of correctional institutions, budgetary updates, and status of expansion projects. The Secretary updated the Committee on performance measures. The performance measures indicate the following:

- Facility population – 7 percent reduction;
- Parole population – 42.3 percent increase;
- Inmate grievances – 36 percent reduction;
- Parole revocation rate from FY 2003, 203 months, to 2009, 96 months – 53 percent reduction;
- Community Corrections (high-risk probation) revocation rate – 37 percent reduction;
- Average number of parole absconders for FY 2009 – 69 percent reduction (739 absconders on June 30, 2000; 467 absconders on June 30, 2003; and 189 absconders on March 16, 2009); and
- Felony conviction for crimes committed on parole – 36 percent reduction.

The reduction of 447 beds is a result of the closing of the following KDOC and non-KDOC

living units or treatment facilities, or both, due to budget reductions resulting from revenue shortfalls:

- January 1 – Closed 17-bed female Substance Abuse Treatment Program at Labette;
- February 6 – Closed 80-bed male minimum Therapeutic Community Program at Osawatomie (LCF-SU);
- February 27 – Closed 70-bed male minimum unit at Toronto (EDCF-EU);
- March 31 – Closed 128-bed male minimum unit at Stockton (NCF-EU);
- June 8 – Closed 50-bed male minimum unit at Labette; and
- June 12 – Closed 102-bed male minimum unit at El Dorado (EDCF-NU).

On March 6, 2009, 176-bed male living unit “B” was closed at Winfield Correctional Facility. It was reopened on June 8, 2009. This opening was for correctional reasons; inmates housed in the minimum unit provide maintenance and support work at the primary facilities, and there is a lot of pressure put on these inmates to smuggle contraband into the facility by being able to go in and out of a secure perimeter.

KDOC currently has adequate capacity to house female inmates.

Female Capacity	747 (Includes 20 beds at LSSH)
Female Population	588
Available Bed Space	159

Available bed space for male inmates has varied from 20 to 60 beds. The population tends to spike on Wednesdays and Thursdays and then decreases on Fridays due to weekend releases. On June 30, 2009, 102 beds were available (KDOC/non-KDOC) as a result of the reopening of “B” Living Unit at Winfield Correctional Facility. These numbers do not include non-general population, special-use beds such as infirmary,

disciplinary, segregation, or observation beds, which are not counted as part of the official capacity.

#### Population and Custody Distribution for Male Inmates (June 30, 2009)

	Max/ Spec	Medium	Minimum	Total
Capacity	2,326	3,653	2,144	8,123
Population	1,888	3,812	2,321	8,021
Available Bedspace	438	-159	-177	102

The 2008 Kansas Prison Population Projections issued by the Kansas Sentencing Commission indicated a male inmate population of 8,120 on June 30, 2009. The actual male inmate population was 8,023, which is 87 less than projected.

The Committee asked the Secretary about staffing levels at the facilities and whether security is at optimal levels. The Secretary addressed these issues by stating the security level is not optimal. With the number of budget reductions KDOC has lost over 300 positions.

The Secretary did state that there has not been a spike in violent incidents.

#### Population Growth Management

Secretary Werholtz provided updated information on the management of population growth. His suggestions for controlling prison population growth are as follows:

- Increase the amount of good time that can be earned and apply it retroactively to the prison portion of the sentence. Further, provide that good time credits that reduce the prison portion of the sentence not be added to extend the length of the post-release supervision period;

- Cut the length of post-release supervision for certain offenders or eliminate it completely;
- Cut off admissions to prison if the offender has less than a certain number of days remaining on his or her prison sentence, e.g. 30-60 days;
- Accelerate eligibility for release from prison for certain offenders based on severity level or type of offense;
- Have the Parole Board review all "old law" inmates subject to proportionality issues for possible early release;
- When DUI offenders are revoked from parole supervision, have them serve their revocation period in the county jail where they were convicted. If DUI offenders are to serve supervision violation penalties in the county jail, district courts rather than the KPB would be more suitable to conduct the revocation hearings; and
- Re-examine the offender registry and the penalties for failing to register.

### **Condition and Operation of Correctional Institutions**

Charles E. Simmons, Deputy Secretary, Facilities Management, provided the Committee with an update on the condition and operation of correctional institutions under the control of the Secretary of Corrections. The 2007 Legislature authorized a bond issue of \$19.25 million for facility infrastructure improvements. These bonds were issued in September 2007, and the bond funds must be fully expended by September 2010. A list of the original projects and additional projects was provided. As a result of budget reductions, operations have been suspended at four locations that impacted 85 employees and resulted in an inmate housing capacity reduction of 380.

- Osawatomie: Operations were suspended in February 2009. Seventeen employees

were offered placement in vacant positions at Lansing Correctional Facility. The capacity reduction due to this suspension of operations was 80. The building has been returned to Osawatomie State Hospital.

- Toronto: Operations were suspended in February 2009. Seventeen employees were offered placement in vacant positions at El Dorado Correctional Facility. The capacity reduction due to this suspension of operations was 70. KDOC will continue to maintain the building and grounds, which are leased, pending reoccupation at a future date.
- Stockton: Operations were suspended in March 2009. Thirty-one employees were offered placement in vacant positions at Norton Correctional Facility. The capacity reduction due to this suspension of operations was 128. The building is owned by the state and will be maintained pending reoccupation at a future date.
- El Dorado North: Operations were suspended in June 2009. In total, 20 employees were offered placement in vacant positions at the El Dorado Correctional Facility. The capacity reduction due to this suspension of operations was 102. Corrections will continue to maintain the building and grounds, which are leased, pending reoccupation at a future date.
- Operations at the conservation camps at Oswego have been suspended, the female camp on January 1, 2009, and the male camp June 30, 2009. The 60 employees at the camps were employees of Labette County and therefore lost their jobs when the camps closed. This will have a significant impact on the rate the county pays for unemployment compensation insurance. The county has indicated that this will increase the cost from approximately \$4,500 to approximately \$181,000 per year, has requested to retain some unexpended funds to pay for this

increased expense, and has been advised to submit it as a claim against the state. KDOC has leased the buildings to Labette County through December 2009, so that the county can work to identify a potential tenant.

- The Federal Communications Commission (FCC) has mandated that all non-federal public safety licensees using 25 kHz radio systems migrate to narrowband (12.5 kHz) channels by January 1, 2013, and failure to comply with this deadline will result in cancellation of license and possible loss of communication capabilities. The FCC has indicated that it will not easily grant waivers for continued wideband operation after the deadline. The total cost of replacing non-compliant radios and supporting equipment within KDOC will likely run \$750,000 or more.
- In June 2009, KDOC implemented an electronic messaging system for inmates. All expenses are paid by the users and cost 45 cents per message, with KDOC receiving a commission of five cents on each message. All messages are screened for appropriate content, and inmates do not have Internet access or general e-mail capabilities. The goal is to reduce mail volume, reduce the potential for trafficking in contraband through the mail, and enhance security through better screening than can be achieved through regular mail.
- In recent months, lightning strikes at Norton and roof damage due to high winds to several facilities require expenditure for repair. El Dorado was covered by insurance after payment of the \$10,000 deductible. At Larned, insurance coverage also was available, but only partially covered the replacement due to the age of the roof. Hutchinson and Topeka also sustained wind damage. These types of unexpected costs must be absorbed through the repair and renovation budget, and may result in delays

to other projects that have already been scheduled.

The Committee asked about replacement of services provided to the community by inmate labor. Mr. Simmons stated that KDOC is looking at replacement at the El Dorado Facility and the loss of inmate labor from the closing of the Stockton Facility. He suggested contacting Warden Shelton at the Norton Facility to utilize replacement inmate labor.

### **Budget Updates**

Secretary Werholtz provided the Committee a budgetary update. A summary was provided of cost reduction and mitigation actions, and the list of KDOC State General Fund base budget reductions for Fiscal Year 2010, the second round of budget cuts, and the Governor's allotment (as revised July 7, 2009).

The Secretary stated as a follow-up on the status and performance of offenders after they are released, all the program cuts reduce the options for offenders to succeed when released from prison. If KDOC is successful in obtaining Byrne Grant money, it will be shifting funding for special enforcement and parole officer positions.

### **Status of Expansion Projects**

Roger Haden, Deputy Secretary for Programs and Staff Development, provided the Committee the status of expansion projects. The budget reductions for FY 2009 and FY 2010 have resulted in the following offender intervention program reductions and capacity reductions by location and the capacity that will be continued in FY 2010.

### **Intervention Program: Substance Abuse Treatment Services**

- The Therapeutic Community (TC) at Hutchinson Correctional Facility was terminated, eliminating 64 slots with no

capacity remaining;

- The TC at Lansing Correctional Facility was terminated, eliminating 80 slots with no capacity remaining;
- The TC at Ellsworth Correctional Facility was terminated, eliminating 52 slots with no capacity remaining; and
- The TC at Topeka Correctional Facility was terminated, eliminating 24 slots with no capacity remaining.

These reductions resulted in a loss of 220 slots and 22.5 full-time equivalent staff positions. In addition, the initial Regional Alcohol and Drug Assessment Center assessment for treatment needs of offenders entering the system at the reception and diagnostic units was discontinued. For FY 2010 the 40-slot intensive outpatient program for males at Larned Correctional Mental Health Facility will continue, and the Department plans to implement a similar 24-slot program at Topeka Correctional Facility for females.

#### **Intervention Program: Sex Offender Treatment Program (SOTP)**

- SOTP at Norton Correctional Facility was terminated, eliminating 40 slots with no capacity remaining;
- SOTP at Hutchinson Correctional Facility was reduced by 20 slots with 60 slots remaining;
- SOTP at Lansing Correctional Facility was reduced by 40 slots with 80 slots remaining; and
- SOTP at Topeka Correctional Facility was reduced to a part-time schedule.

These reductions resulted in total reduction of 100 program slots and 12.5 full-time equivalent staff positions. The community-based sex offender treatment capacity will remain at the current level with 14 staff positions.

#### **Intervention Program: Community Transitional Housing**

- In the Northern Parole region, 58 transitional house beds were eliminated with no capacity remaining; and
- In the Southern Parole region, 46 transitional house beds were eliminated with no capacity remaining.

These reductions resulted in the total elimination of 104 transitional beds and a reduction of 30 staff positions.

#### **Inmate Health Care Services**

In addition to reduction in the offender intervention programs, the inmate health services contract also has been reduced by keeping nearly 20 full-time equivalent staff positions open for the 2010 fiscal year.

Detailed information was provided that covered state funded positions and federal grant-funded positions by facility, federal grant funded programs remaining, and other program reductions.

The Committee requested additional information on how many high-risk offenders need substance abuse treatment. Secretary Werholtz subsequently provided the following information to the Committee. Treatment program need is determined by the combination of overall Level of Services Inventory-Revised (LSI-R) scores and the alcohol and drug specific domain scores. Scores above 28 and 3, respectively, are screened for the higher intensity program levels such as the Therapeutic Community. Those with overall scores above 20 but below 28, with domain scores above 3 are screened for less intense program levels. Based on the waiting list for June 10, 2009 with a total population of 8,554, the data showed the following numbers of inmates on the waiting lists for less intensive (SA) and higher intensive treatment (TC) respectively:

Months or less to earliest release	SA	TC	TOTAL
6	146	342	488
12	278	649	927*
18	362	880	1,242
24	434	1,068	1,502
36	526	1,297	1,823

\*Note: These are cumulative numbers so the one year amount of 927 includes the 6 month amount of 488

### **Mental Illnesses Among the Inmate Population**

Secretary Roger Werholtz provided testimony on the status of mental illnesses among the inmate population. There are 28 inmates who have been placed on crisis level III and higher over the past six months at each facility, on a case-by-case basis. Several case studies were provided. Secretary Werholtz also provided definitions of the primary target population in need of mental health treatment, examples of inmates with "Behavior Disorders," and a brief description of levels of care needed by mentally ill inmates.

Secretary Werholtz stated that as of May 18, 2009, 3,841 or 44 percent of the inmates within the Kansas Correctional System have been diagnosed with a DSM-IV mental disorder. (The number does not include inmates with only a substance abuse diagnosis.) A summary and copy of the KDOC Mental Health Needs Analysis was provided to the Committee. There are essentially five types of inmates within the correctional system:

- Stable Population Inmates – 4,759 (56 percent of total population);
- MH Class II (Non-Specific) – 1,470 (17 percent of total inmate population);

- MH Class III (Medication Specific) – 1,345 (16 percent of total inmate population);
- MH Class IV (Special Needs) – 663 (7 percent of total inmate population); and
- MH Class V & VI (Mental Retardation & Severe and Persistent Mentally Ill – 363 (4 percent of total inmate population).

An overview of the mental health program and problems was provided. KDOC contracts with Correct Care Solution (CCS) to provide comprehensive mental health services to inmates in KDOC's custody. The services are provided by mental health employees of CCS, and are typically located on-site. The contract is monitored for contract compliance, community standard of care, and compliance with National Commission on Correctional Health Care (NCCHC) standards by employees of Kansas University Physicians, Inc.

The Department established a Memorandum of Agreement (MOA) with Larned State Security Hospital (LSSH) to treat those inmates requiring a hospital setting, rather than a correctional institution. The MOA and consent decree require and delineate criteria for acceptance, although the established criteria are not always followed during the staffing process.

Recommendations of the Secretary are as follows:

- Create an appropriate therapeutic environment for the aggressive, mentally ill inmates;
- Open two additional housing units (male and female) servicing this high acuity, difficult to treat inmate population; and
- Account for increase in the classification of mentally ill or special needs beds, there has been an increase of 24 percent over the past three years.

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services (SRS), spoke

on observations from the SRS perspective, but did agree with Secretary Werholtz that there is a problem, and the situation needs to be studied to find a solution.

### **Update on the Information Technology Enterprise Architecture Project**

Secretary Werholtz stated that before the budget cuts, the top priority was replacement of KDOC Management Information System, and the agency has actively been engaged in developing a plan for about three years. The Joint Committee on Information Technology asked KDOC to insert an additional step in the process; the information presented was the result of that analysis of the KDOC system.

Ken Orr, Chief Scientist, UmmelGroup, provided a PowerPoint presentation on the Information Technology Enterprise Architecture Project. Mr. Orr stated that Kansas has the second oldest offender management system in the U.S., and provided a ten-year roadmap of project planning to replace the system. The project would cost between \$6 million and \$12 million and three to five years to complete.

### **Juvenile Justice Authority Overview**

J. Russell Jennings, Commissioner, Juvenile Justice Authority (JJA), provided the Committee an overview of the Juvenile Justice Authority. JJA is made up of four system components:

- Community services – core programs;
- Community residential placements;
- Juvenile corrections facilities; and
- JJA Central Office – System Administration.

Community Services consists of prevention programs (secondary and tertiary), intake and assessment, intensive supervision probation and community case management. Prevention and intervention programs target at-risk youth and at risk of offending behavior. Intake and assessment are evaluation instruments. Two approved

currently for use are the Massachusetts Youth Screening Instrument (MAYSI-2) and Problem Oriented Screening Instrument for Teens (POSIT). Intensive supervision probation uses the Youthful Level of Service/Case Management Inventory (YLS/CMI), for determining level of supervision and program referral based on risk of reoffending and programs to address identified needs. Other tools are training on evidenced-based practices relating to offender supervision, and working toward success, not simply focusing on failure. Community case management supervises youth placed in the custody of the Commissioner, manages placement of youths who are in need of out-of-home placement, works with youth and family on reintegration plans, supports youth and family while youth is at home, and assures youths have access to needed programs and treatment.

The Chairperson requested a memorandum from the Commissioner on the most useful models used by the JJA.

Information was provided on Medicaid transition, month end custody population FY05 – FY 09, custody/placement data, psychiatric residential treatment facility (PRTF), and Youth Residential Center I and II.

Activities supporting and enhancing residential services:

- Electronic submission of invoices (real-time payment);
- Technical assistance and training to enhance programming in residential placement – specific program training and annual program review – evaluation; and
- Community-Based Standards (CbS) – Kansas is a pilot site for development with Council of Juvenile Corrections Administrators (CJCA) to utilize a statistically sound and evaluated process to identify strengths, weaknesses, and conditions of YRC and



residential placements.

- Additionally, there has been involvement with YRC II providers with several meetings with Children's Alliance, case coordinator training, and residential summits in 2007 and 2008.

### **Community-Based Standards (CbS)**

CJCA developed CbS to help community residential programs establish and sustain systems for continuous improvement and accountability. CbS models CJCA's award-winning Performance-based Standards (PbS) program, which provides a blueprint of best practices for secure facilities based on national standards and regular collection review of outcomes tracking performance.

- Charts and graph were provided, looking at several domains reflecting the field average;
- Safety 10 - percent of youths who report they fear for their safety at the program;
- Mental Health 01 - percent of youths released during the data collection period with suicide screening completed at intake;
- Programming 02 - percent of youths released during the data collection period with individual service plans developed within the first 30 days at the program;
- Health 01 - percent of youths released during the data collection period who had a complete medical intake screening conducted by a trained and qualified staff member;
- Order 02 - percent of youths reporting they understand the program's behavior management level system;
- Safety 12 - percent of family members who report they fear for their child's safety at the program;
- Justice 01 - percent of youths responding they understand program rules; and
- Safety 15 - percent of youths reporting staff is fair about discipline issues.

The benefits of CbS is it is a research-based and statistically sound evaluation process for residential providers. To the state, it validates third-party monitoring and evaluation, brings provider accountability, and is an early warning system.

### **Juvenile Justice Authority FY 2010 Budget Management Plan**

Commissioner Jennings provided the Committee several spreadsheets with the FY 2009 and FY 2010 budget information.

### **Update on Beloit Juvenile Correctional Facility**

Commissioner Jennings updated the Committee on the closing of the Beloit Juvenile Correction Facility. The facility will close on August 28, 2009, and the female offenders will move to the Kansas Juvenile Correctional Complex (KJCC) West Campus in Topeka, Kansas. The Beloit suspension of operations fiscal impact:

- July 2 allotment by the Governor;
- Suspend operations August 28;
- Transfer \$.72 million to KJCC for girls operations;
- \$1.46 million SGF savings FY 2010, 2.95 percent agency reduction; and
- \$19 million SGF savings FY 2011, 3.75 percent agency reduction.

The operations at KJCC West Campus (female) will have 25 funded positions, there will be a 53 funded-position reduction at Beloit. The goal is to have a seamless transition of the residents from Beloit to KJCC – West Campus, where the youth residents experience nothing but a change in location with improved services and opportunities to change their lives, and the employees of Beloit are treated with the utmost dignity and respect.

The operations at KJCC West Campus will have two living units on the west end of KJCC campus (Capacity 30 youths). A third unit is available if needed. There will be a separation of male and female residents through an installation of an interior campus fence; separate dedicated direct supervision staff; and shared administration, health services, program, education, food service, and maintenance staff.

The JJA public website is [www.jja.ks.gov](http://www.jja.ks.gov). Judicial District Performance Indicators information is being updated and provided to the public. There are 12 performance indicators. The reporting period will examine only data for the most recent six-month time period and will run January 1 to June 30 and from July 1 to December 31. A report will then be sent to Judicial Districts ACs and Director on or about the 20th day following the end of the reporting period, and then JDs will have an additional ten days to review and work through any discrepancies in the data with JJA central office staff, at which time the report will be considered final. Final data will be posted to the JJA website under the MAPIT application.

### October

The Chairperson stated for background information that the Sentencing Commission was looking at ways to reduce prison population due to the closing of several prison facilities. She further stated they are looking at prison reentry, specialty courts, treatment, probation, and parole sanctions.

### Overview of Specialty Courts

The Hon. Ernest L. Johnson, Judge of the 29th Judicial District (Wyandotte County) and Chairperson of the Kansas Sentencing Commission, provided an overview on specialty courts. Judge Johnson provided a packet of information containing:

- Definitions of Problem-Solving Courts;

- National Association of Drug Court Professionals – Facts;
- Ten Key Components of Drug Courts;
- New Supreme Court Rule 109A;
- Missouri Drug Court Revised Statutes;
- The Guiding Principles of DWI Courts;
- Logic Model for DWI Courts;
- An Excerpt from Evidence Based Sentencing;
- The Abstract from Treatment to Drug-Involved Offenders; and
- The face page from the Mental Health Court publication.

The Kansas Sentencing Commission (KSC) has been studying these courts. The KSC currently is in the application process for a grant to study how best to enable and implement specialty courts in Kansas.

Examples of specialty courts, also known as problem-solving courts, include: Adult Drug Court, Back on TRAC: Treatment, Community Court, Domestic Violence Court, Driving While Intoxicated Court, Family Dependency Treatment Court, Federal District Drug Court, Gambling Court, Juvenile Drug Court, Reentry Drug Court, and Tribal Healing to Wellness Court.

### Drug Court Facts:

- Drug courts reduce crime;
- Drug courts save money;
- Drug courts ensure compliance;
- Drug courts combat methamphetamine addiction; and
- Drug courts restore families.

### An Example of a Specialty Court in Kansas

The Hon. Steven Hornbaker, Judge of the 8th Judicial District (Geary County), provided

the Committee information on the specialty court in his county. Judge Hornbaker stated that drug courts save money and save people. Drug courts were established with a team approach between the criminal justice system and the drug treatment organizations. The partnership structures treatment intervention around the influence and personal involvement of a single drug court judge. The judge and a dedicated team of professionals work together toward a similar goal of stopping the cycle of drug abuse and criminal behavior. The Geary County Drug Court Program consists of three phases:

- Phase I – Assessment and Primary Treatment phase is a minimum of 30 days and a maximum of 90 days;
- Phase II – Treatment phase is a minimum of six months; and
- Phase III – Continuing Care and Graduation will last at least six months.

A critical component of successful drug court participation involves intensive supervision and random testing to determine compliance with the rules of the Drug Court Program. Recognition of progress also is very important as is prompt response to negative behaviors. Imposition of sanctions and consequences for non-compliance of drug court conditions will ensure participants learn that immediate consequences will occur for failure to comply with conditions.

### **Recommendations of the Kansas Sentencing Commission**

#### **Subcommittee on Proportionality**

Tom Drees, Member of the Kansas Sentencing Commission (KSC) and Chairperson of the Subcommittee on Proportionality, provided the Committee with a summary of 2010 proportionality recommendations by the Kansas Sentencing Commission Proportionality Committee. Information and graphs on the sentencing range for nondrug and drug offenses,

a comparison of FY 2006 versus FY 2009 admissions, and why new court commitments are increasing was provided to the Committee. The recommendation from the KSC will be to improve the administration of justice and keeping under the 50-bed impact increase.

The KSC has been notified by Secretary Werholtz that the prisons are within 3 percent of full capacity. By statute, the KSC has to start making recommendations on how to correct this situation; options include more money to the Kansas Department of Corrections for additional prison beds, or looking at ways to decrease the rate of offenders going into prison, or increase the rate of offenders coming out of prison. Two options could be to look at increasing good time credits and making adjustments on sentencing for crimes that have high departure rates.

#### **Discussion of KSC Recommendations Regarding Proportionality Recommendations**

Helen Pedigo, KSC, reviewed the recommendations regarding proportionality recommendations provided by the Kansas Sentencing Commission Proportionality Subcommittee.

An overview of the Subcommittee recommendations:

- Sex Crimes – no changes to Article 35 will be considered during the 2010 Legislative Session.
- Sentencing Grids – merge the non-drug and drug sentencing grids into one Kansas Sentencing Grid, increase presumptive imprisonment border boxes from 3 to 16. Decrease the presumptive probation boxes from 30 to 17, increase aggravated/mitigated sentences from 5 percent to 10 percent, and minimum felony prison sentence is increased to 12 months in length.
- Sentencing Statutes – sentencing statutes

amended to place as many felonies on the grid as possible (FY 2007 felony sentences: 57 percent guidelines, 43 percent off-grid/non-grid). designate drug manufacture and distribution felonies as person offenses, Court Services should supervise persons convicted of all class A misdemeanors who are not sentenced to jail.

- Drug Laws – manufacturing methamphetamine would be a level 3 person felony. Manufacturing all other drugs would be a level 5 felony; sale, distribution, and possession with intent to distribute are set at 4 levels based on quantity of drugs possessed to be sold or actually sold [FY 2007 sentencing data shows departure rates of 88 percent on current level 1 drug grid, 66 percent on current level 2 drug grid and 80 percent of current level 3 drug sentences (border box)] are placed on probation, sale designated as person felony, weight to be determined by the products as packaged for distribution, mandatory treatment program for personal use possession (SB 123) remains intact.
- Property Offenses—a large number of special sentencing rules for property offenders are reduced or eliminated, standardization of all theft statutes so that theft, no matter how it is committed, has a uniform and proportional punishment.
- Domestic battery – a first domestic battery remains a class B person misdemeanor, a second domestic battery is a class A person misdemeanor, and a third or subsequent domestic battery is a level 7 person felony with mandatory jail sanctions as a condition of probation (third violation - 30 days jail, fourth violation – 90 days jail, and fifth violation – 1 year incarceration in prison).

Based on FY 2008 data, implementation of all recommendations would result in utilization of 265 to 458 additional beds in the first year

of implementation, with a need for 430 to 719 additional prison beds in the next 10 years. Passage of this proposal would further the goals of proportional sentences, based upon the degree of harm to the victim and to the public, reserve prison for violent offenders and repeat non-violent offenders, and promote offender reformation through appropriate community sanctions.

The Committee voted in favor of encompassing the visions that the Kansas Sentencing Commission proposed and be introduced as a House bill for the 2010 Legislative Session. Additionally, the Committee voted in favor of recommending the Legislature move forward with Specialty Courts for further development.

#### **Post Release Supervision of High Maintenance or Mentally Ill Parolees**

Missy Woodward and Andrea Bright, Risk Reduction and Reentry, Kansas Department of Corrections (KDOC), provided a PowerPoint presentation on changing systems in KDOC. Ms. Woodward stated that due to recent budget cuts in Kansas, vital services and programs have ended and resources are now more limited:

- KDOC community residential beds closed April 1, 2009;
- State officials have notified more than 1,500 adults, effective July 1, 2009, they will no longer be eligible for MediKan or cash assistance;
- Another 3,000 have been told to expect deep cuts in their cash-assistance checks; receiving \$100 compared to \$142-190; and
- Most of those affected by the cuts are homeless or nearly homeless.

#### **Characteristics of this population include:**

- Mental illness;
- Alcohol and drug addiction;
- Homelessness;

- Mental retardation/development disabilities;
- Traumatic brain injury;
- Physical health problems;
- Limited education;
- Limited family support;
- Poor work history; or
- Fetal alcohol syndrome.

A detailed case study of a real offender, referred to by a fictional name "Jack," was provided to the Committee. The case study described the effect on this population when Mirror, Inc. closed; KDOC had 47 offenders to place in the community without that resource. Ms. Woodward stated that multi-agency collaboration can change outcomes on these offenders. Services can be continuous rather than interrupted or repetitive.

Roger Werholtz, Secretary, KDOC, provided the Committee with additional information on high-risk/high-need offenders suffering from Traumatic Brain Injury (TBI). During calendar year 2008, the Department of Corrections had 66 inmates that had head injuries severe enough that it required monitoring as "special needs"; 6 of those were severe enough to require total care. Of the 60 that are vulnerable but not infirm, the Department provides one-on-one, restrictive housing care within its general population. The four facilities that contain these 60 inmates are specific units of Lansing Correctional Facility (LCF), Topeka Correctional Facility (TCF), Larned Correctional Mental Health Facility (LCMHF), and El Dorado Correctional Facility (EDCF). Of the six inmates that were "total care," KDOC houses the majority at LCMHF but does not have enough specialized care providers to distribute the other three amongst the infirmary unit at EDCF and the Treatment Reintegration Unit (TRU) at LCF.

#### **Discussion of Possible Legislation**

Jarod Waltner, Legislative Research Department, provided a table to the Committee

on approximate remittances of District Court Fines, Penalties, and Forfeitures pursuant to KSA 74-7336. There are nine funds that receive a portion of these fines.

Sean Ostrow, Revisor of Statutes Office, provided the Committee with two bill drafts at the request of the Chairperson. The bill drafts show the changes in district court fine allocation required to fund the therapeutic communities in prison, 7.83 percent, and DUI alcohol treatment, 8.51 percent. Based on these increases, it would raise roughly \$1,163,646 to fund the therapeutic communities, and \$1.3 million to fund the DUI alcohol treatment program.

The Committee voted in favor of endorsing the concept of taking fees for DUI alcohol treatment. Additionally, the Committee voted in favor of pre-filing bill draft 9rs1208 as a House bill to change the district court fine allocation to fund the therapeutic communities in prison.

#### **Population Projections**

Helen Pedigo, Executive Director, Kansas Sentencing Commission (KSC), provided the Committee with an update on adult inmate prison population projections. Ms. Pedigo stated this is the fourth consecutive year that releases have gone down. Comparison graphs and spreadsheets were provided:

- Guideline on New Commitment Admission Characteristics – FY 2009;
- Prison Population Characteristics;
- Comparison of Guideline New Commitments by Severity Level and average length of sentence;
- Parole/post release supervision condition violators between FY 2008 and FY 2009;
- Kansas Prison Population Trends;
- Admissions versus releases;
- Admission Trends;
- Prison Admission Trends – Probation Condition Violators, Parole/Post release Condition Violators, Admissions by Type,

- Comparison between Probation and Parole/  
Post release Violators with New Sentence,  
Trends by type FY 1996 thru FY 2009;
- FY 2010 adult inmate prison population projections, actual and projected, male prison population trends actual and projected, female prison population trend actual and projected; and
  - Projected Drug Inmate Prison Population, Projected Violent Inmate Prison Population, Projected N4 – N6 Inmate Prison Population, Projected Nonviolent Inmate Prison Population.

### Community Corrections Update

Keven Pellant, Deputy Secretary of Field and Community Services, KDOC, provided testimony on community and field services.

FY 2008 Community Corrections Risk Reduction Activities:

- Directors Conference and Training;
- Stakeholders Conferences;
- Competitive Grant Application;
- Off hours across the state;
- Two resource workshops;
- Case management staff conferences; and
- Targeted skills development implementation.

In parole services, the primary focus is risk reduction. The number of offenders supervised by parole staff as of September 28, 2009 is 5,999. This is an increase of 242 offenders since September 2008. Of the 5,999, there are 1,932 offenders from other states being supervised in Kansas. The breakdown of the 5,999 offenders is:

- 730 are being supervised for a 4th or greater DUI offense;
- 5,195 male offenders;
- 804 female offenders;
- Not included in the 5,999 are 311 DUI

offenders who have not yet reached post release supervision, but are in county jails, making the actual supervised total at 6,310; and

- 2,375 Kansas offenders being supervised out of state, of these 1,468 are probationers and 907 are parolees.

The supervision level for offenders supervised in Kansas is:

- High Level – 468 males and 53 females - Total 521;
- Moderate Level – 2,840 males and 364 females - Total 3,204;
- Reduced or Low Level – 1,585 males and 357 females - Total 1,942; and
- Offenders not yet assessed for risk - 331.

There is electronic monitoring GPS of offenders with two or more counts of sex offenses against children at a cost of \$7.00 a day. About 300 offenders are being monitored across the state.

Discussion points for Community Corrections update:

- Discuss success rate from 2006;
- Current success rate in 2009;
- Discuss unsuccessful closure since 2006;
- Rate of revocation and risk re-education initiative of 20 percent; and
- What were some of the challenges.

Dina Pennington, Director, Shawnee County and 2nd District Community Corrections, provided information on the success rate for Shawnee County and the 2nd district. The mission statement is to enhance public safety and promote client success through the use of evidence-based supervision. An overview of data:

- Success rate increased from 58.7 percent in FY 2006 to 77.5 percent in FY 2009;

- Unsuccessful closures decreased from 5.9 percent in FY 2006 to 2 percent in FY 2009;
- Revocation rate decreased from 32.9 percent in FY 2006 to 20.3 percent in FY 2009; and
- FY 2009 was the first year the 20 percent revocation reduction was met.

High caseloads are a challenge to community corrections officers (about 42 last year for each officer). Additionally, judges and prosecutors get frustrated seeing offenders with multiple appearances before the court on the same case.

Phillip L. Lockman, Director of Community Corrections, Unified Government of Wyandotte County and KCKS, spoke on the implementation of evidence based practices (EBP) in the local criminal justice system in Wyandotte County. A summary of the data includes:

- 32.3 percent increase in successful completion rate;
- 9.7 percent decrease in unsuccessful completion rate;
- 24 percent reduction in overall revocation rate; and
- The agency met the 20 percent reduction goal in FY 2008 and FY 2009.

Mr. Lockman strongly urged that funds should be reinstated to parole services and community corrections agencies so that the gains made in reducing the prison population and decreasing the risk to public safety will not be lost. The Office of Judicial Administration should be encouraged and adequately funded by the Legislature to implement a uniform standardized risk instrument prior to sentencing across the state. Additionally, drug, mental health, and problem solving courts should be proposed and funded in geographic areas where there are none and expanded in the areas where they currently exist.

William R. "Dick" Beasley, Director, 25th Judicial District Community Corrections (Finney County), provided graphs to support the update on community corrections.

Jay Holmes, Administrator, Sedgwick County Department of Corrections, provided testimony on the progress and challenges of implementing the risk reduction initiative funded through 2008 SB 14. Sedgwick County clients have achieved a 29 percent reduction in revocations in FY 2008 and a 16 percent reduction in FY 2009 from the baseline year of 2006. Successful completions increased by 17 percent and 12 percent, respectively. During this two-year period, the population of clients increased 13 percent, from 1,446 to 1,634. Mr. Holmes stated major challenges that were high-risk clients spent an average of 435 days on supervision before experiencing revocation to prison. He stated 29 percent of assigned clients are either presumptive prison or border box sentences.

The Committee recommended commendation of the work of Community Corrections and urged that Community Corrections be a high priority of the Legislature and acknowledge that the prison population will be impacted if funding is not available.

### **Discussion of Early Release of a Terminally Ill Inmate**

Representative Bill Feuerborn provided testimony on the possibility of an early release for terminally ill inmates. Representative Feuerborn also provided to the Committee a list of statutes from other states with an early release procedure based upon an exceptional circumstance such as a medical condition. Current law requires a lengthy process and he believes, in some clearly defined cases, there should be an expedited process. Representative Feuerborn provided a letter from Secretary Werholtz, KDOC, on Functional Incapacitation Releases/Imminent Death, and stated the Department has identified several factors that should be taken into consideration in

deliberating a release statute for inmates facing imminent death:

- Length of time to process release applications;
- Provision for release supervision in lieu of custodial type supervision;
- Issues of responsibility for continued medical care costs;
- Whether there should be requirements for having served a minimum amount of time and custody level; and
- Whether there should be limitations regarding type of conviction offenses.

The Secretary stated that the Department is not endorsing or proposing any particular position with regard to statutory early release authority. He noted that Kansas has adopted a functional incapacitation release statute (KSA 22-3728), and he informed the Committee of the process involved in requesting release under this statute.

Mr. Carrol Droddy, Ottawa, Kansas, stated that his daughter was dying of cancer while incarcerated in prison. He stated that in the last three to four weeks of her life, she could hardly stand and was not a threat. He felt all the attempts to get her released so she could be at home when she died were in vain. When she was finally released, she was so close to death that the family was not sure she knew she was home. Mr. Droddy stated that it serves no purpose to hold a dying person in prison when they cannot even stand alone.

The Committee voted in favor of recommending introduction of a bill in the House on early release of terminally ill inmates.

#### **Program Restoration**

Roger Haden, Deputy Secretary of Programs and Staff Development, KDOC, updated the

Committee on KDOC health care services and food service contracts. He also provided an update on restoration of funding for offender treatment, education, and supportive services. The funding restrictions in the last quarter of FY 2009 and FY 2010 resulted in the elimination of many program service areas and significantly reduced any remaining programs or services. These reductions significantly restrict the resources available to corrections case managers to effectively carry out their supervision and risk reduction duties. He said it is fair to predict that the lack of resources will result in increasing revocations as options for release preparation and transition decrease. More importantly, an inverse relationship exists between the availability of intervention and support resources and the risk to staff and public safety.

Deputy Secretary Haden provided the following information on offender program cuts:

- Reduction in FY 2010 State General Fund budget compared to FY 2009 budget before reductions (including \$40.5 million of federal stimulus moneys) : 7.9 percent ;
- Reduction in FY 2010 State General Fund budget compared to FY 2009 budget before reductions (excluding \$40.5 million of federal stimulus moneys) : 22.6 percent;
- Reduction in FY 2010 State General Fund financing for offender programs, including DUI treatment services, compared to FY 2009 budget before reductions : 91 percent; and
- Reduction in FY 2010 total financing (excluding federal funds) for offender programs, including DUI treatment services, compared to FY 2009 budget before reductions : 64 percent.

Major resource areas to be restored include:

- Community Transitional Housing;



- Substance Abuse Treatment Services;
- Sex Offender Treatment Services;
- Academic and Vocational Education Program;
- Miscellaneous Programs and Specific Services; and
- DUI Treatment Funding (This enhancement request funds the DUI treatment funding at the currently projected amount to meet actual demand for these treatment services).

Secretary Werholtz, KDOC, provided an updated FY 2010 Budget Adjustment for the Department revised on October 12, 2009. These requests have been sent as an enhancement request to the Governor's budget.

The Committee stated that failure to fund some of the enhancement budget programs results in additional cost to public safety and prison bed costs.

### **Overview of Court Services Operations and Programs**

Mark Gleeson, Family and Children Program Coordinator, provided an overview of court services operations and programs. Currently, there are 351 FTE Court Services positions, all of which are funded from the State General Fund. These positions are supported by state dollars for personnel costs only; and all other operating expenses are provided by counties. Statewide, each judicial district has a court services division. A court services officer may not be located in each of the 105 counties, however, services are provided to each county by a court services officer located somewhere within each judicial district.

The primary role of court services is to assist the district courts by performing investigations and supervision. Kansas statutes provide a general definition of responsibilities of court services officers. Chief judges, within the limits

of fiscal resources, in individual judicial districts are able to emphasize certain roles of court services officers from district to district in order to best serve each individual judicial district. Duties performed by court services officers are governed by statute, administrative rule, and court policy; detailed duties and data tables were provided.

Donna Hoener-Queal, Chief Court Services Officer, 30th Judicial District (Barber, Harper, Kingman, Pratt, and Sumner), provided testimony on Court Services in rural areas of Kansas. In rural areas, the lack of available resources for the offenders can present a unique set of problems:

- Each of the five counties is served by a mental health provider and a substance abuse provider; and
- In two counties, the services provided are limited to between one and three days per week, which can make long waiting lists, and does not allow for flexibility to schedule appointments with offenders on their days off from work.

These resources provide an excellent service to the courts and the community. However, if an offender is not compatible with a particular counselor, referrals to other resources are made. The other resources may be up to 70 miles away. Court services officers cannot relieve an offender from a condition of probation imposed by the court because of inconvenience.

Kathleen Rieth, Chief Court Services Officer, 10th Judicial District (Johnson), provided a detailed description of the multiple roles a court services officer has and the many services that the judges have come to expect. Ms. Rieth stated that the job is helping people to make positive changes so that they can reclaim their lives as well as keeping the community safe.

### **Discussion on Increasing the Probation Fee to Pay for Risk Assessment of Offenders**

Chris Mechler, Courts Services Officer Specialist, Office of Judicial Administration, provided testimony on increasing the probation fee to pay for risk assessments of offenders. Statewide mandatory use of the Level of Service Inventory-Revised (LSI-R) has been an issue for several years in Kansas. The Kansas Sentencing Commission has chosen the LSI-R as the standardized risk assessment tool or instrument to use for sentencing purposes to determine offender risks and needs. Ms. Mechler stated the LSI-R has been determined to be an effective risk assessment tool and the Kansas Judicial Branch and its court services officers would like to use it; however, funding has been a roadblock in this process for several years.

Ms. Mechler stated the Department of Corrections used state funds and some grant funding to provide the necessary training and other costs for community corrections personnel. The Judicial Branch has not been provided with funding for the LSI-R implementation costs. The Judicial Branch has included a request for State General Fund financing of this project for several years. The approved budget each year allocates resources for implementation of this program. The Judicial Branch has applied for Byrne Grant funding on three occasions, but grant funding was not awarded by the Criminal Justice Coordinating Council.

Ms. Mechler advised that the Kansas Sentencing Commission has proposed an increase in probation fees to fund the LSI-R for the Judicial Branch. The recommendation would increase the current \$25 misdemeanor probation fee to \$125, and would increase the current felony probation fee from \$50 to \$250. The current probation fee amounts are set in KSA 21-4610a, and were provided. The Supreme Court is open to considering the use of probation fees to fund the LSI-R, as mandated by the Legislature. The Judicial Branch's FY 2011 maintenance budget includes a total of \$229,338 from the State General Fund for first-year LSI-R training and implementation costs. Two requests

for proposal (RFPs) will be issued as soon as funding has been obtained.

She further stated the Judicial Branch's current budget underfunding must be considered; due to which the Judicial Branch began a hiring freeze at the beginning of FY 2009, which is still in effect. Some positions have been held open for over one year, which means each time an employee quits or retires, no one is hired to replace them. If the Judicial Branch does not receive supplemental funding early in the 2010 Legislative Session, it will be forced to begin a series of as many as 27 furlough days for all non-judicial employees; on those days, Judicial Branch employees will not be paid, and court offices will be closed statewide.

Doug Taylor, Revisor of Statutes Office, provided a bill draft and the statute on probation services fee and community correctional services fee as requested by the Chairperson. The bill draft provided has the lesser amount than that proposed by the Kansas Sentencing Commission. The bill draft provides for a change in probation service fee from \$25 to \$50, and community corrections services fee from \$50 to \$100.

The Committee voted in favor of introducing a Senate bill that would raise the probation fee to an amount that would cover approximately \$300,000 needed to institute risk assessment tools in Court Services.

#### **Discussion of Possible Additional Legislation**

Jason Thompson, Revisor of Statutes Office, provided a bill draft concerning the Department of Corrections relating to the transfer of certain offenders, as requested by the Chairperson. The bill draft provides that offenders who have 10 days or less to be served in the state prison would not be transferred and would be retained in the county jail.

The Committee requested information on what the cost would be for a one-day turnaround

processing. Secretary Werholtz subsequently provided the following information.

The KDOC estimated the cost to process and admit these offenders to serve a sentence of 10 days is \$1,692 per offender, the details of which are attached (Attachment 1). Of this amount, \$942 is an estimated KDOC cost and \$750 is the estimated cost that a county might incur from transporting the offender to the Reception and Diagnostic Unit. Approximately \$1,352 of the \$1,692 is a "soft dollar" cost in that it represents the dollar value of the time and effort required of staff to process the offender. Only approximately \$340 (gate money, bus ticket, bed cost per day, and county mileage expense) is an actual "hard dollar" cost, *i.e.* this cost would not be incurred if the offender were not admitted to KDOC custody.

In FY 2009, there were 106 offenders with sentences ranging from one to 10 days that were admitted to KDOC custody, resulting in a maximum total cost of \$179,352 (\$1,692 x 106). In addition, there were 194 offenders with sentences of 10 days or less who local officials agreed could serve their sentence in the county jail in lieu of transferring them to KDOC custody. If these offenders had been transferred to KDOC custody, the maximum total cost would have been increased by \$328,248 to \$507,600 (\$1,692 x 300).

Under either scenario, the actual cost would have been lower since an unknown number of offenders would have served sentences of less than 10 days. However, information that would indicate the number of such offenders and the actual sentence each offender served is not available.

The Committee voted in favor of recommending introduction of a Senate bill (9rs1090) that will prevent the transfer to a KDOC facility for offenders who have 10 days or less to be served in the state prison and require the offender be retained in the county jail.

## **Discussion of Recommendations on Topics from the July Meeting for the Final Report**

### **KDOC Equipment**

The Federal Communications Commission (FCC) has mandated that all non-federal public safety licensees using 25 kHz radio systems migrate to narrowband (12.5 kHz) channels by January 1, 2013, and failure to comply with this deadline will result in cancellation of license and possible loss of communication capabilities. The FCC has indicated that it will not easily grant waivers for continued wideband operation after the deadline. The total cost of replacing non-compliant radios and supporting equipment will likely run \$750,000 or more.

The Committee voted in favor of recommending the Public Safety Budget Committee strongly consider approving the \$750,000 for the radios for the Kansas Department of Corrections to be in compliance with federal regulation.

### **Population Growth**

The Committee discussed the Secretary of KDOC suggestions for controlling prison population growth which are as follows:

- Increase the amount of good time credit that can be earned and apply it retroactively to the prison portion of the sentence, and provide that good time credits that reduce the prison portion of the sentence not be added to extend the length of the post release supervision period;
- Cut the length of post release supervision for certain offenders or eliminate it completely;
- Cut off admissions to prison if the offender has less than a certain number of days remaining on his/her prison sentence, e.g., 30-60 days;
- Accelerate release from prison eligibility

for release from prison for certain offenders based on severity level or type of offense;

- Review all “old law” inmates subject to proportionality issues for possible early release;
- When DUI offenders are revoked from parole supervision, have them serve their revocation period in the county jail where they were convicted. If DUI offenders are to serve supervision violation penalties in the county jail, district courts rather than the KPB would be more suitable to conduct the revocation hearings; and
- Reexamine the offender registry and the penalties for failing to register.

The Committee voted in favor of recommending examining ways to control offender population growth prior to running out of beds and examining what options are available to the Legislature.

#### **Special Needs or Mentally Ill Inmates**

The Committee discussed recommendations of the Secretary of KDOC regarding special needs or mentally ill inmates which included:

- Creating an appropriate therapeutic environment for aggressive or mentally ill inmates;
- Adding two additional housing units (male and female) servicing this high acuity, difficult to treat, inmate population are needed; and
- Accounting for increase in the classification of mentally ill or special needs beds, there has been an increase of 24 percent over the past three years.

The Committee voted in favor of recommending further study of nonfunctioning mentally ill inmates.

#### **Pre-2003 SB 123**

The purpose of the 2003 SB 123 is to provide community supervision and drug treatment to offenders with drug abuse problems in order to reserve correctional facility capacity for more serious, violent offenders. The Committee voted in favor of recommending the Parole Board consider pre-2003 SB 123 offenders, and to bring them into compliance with the balance of the current guidelines of 2003 SB 123.

The Committee requested that the Kansas Sentencing Commission respond on how many offenders are affected by this policy recommendation. Helen Pedigo, Executive Director of the Kansas Sentencing Commission, subsequently provided this information. She believes there may be 50 to 80 of these possession offenders, some sentenced at drug severity level 2 or 1 for which the Committee would be looking at for some form of retroactivity with the 2003 SB 123 program.

#### **YLS/CMI and Youth Residential Provider Issues**

J. Russell Jennings, Commissioner, Juvenile Justice Authority (JJA), provided the Committee with an update on YLS/CMI and Youth Residential Provider issues. The YLS/CMI is a research based risk/needs assessment. It is the juvenile equivalent of the Level of Service Inventory Revised (LSI-R) used for adult offenders. The YLS/CMI can provide:

- A basis for making decisions – reduces biases – standardization across the state;
- Help to identify targets for change to determine case plan – examines known risk factors – streamlines programming for youth;
- Help to track changes in the youth;
- Economy of resources – identify which youth should be targeted and what they need

to reduce risk; and

- Inspire confidence in public safety.

Four districts have implemented the YLS/CMI with Court Services. Information from the YLS/CMI is incorporated into pre-disposition investigations to help provide standardization and to assist judges in determining:

- Which youth is more likely to reoffend;
- Which youth require more structure/supervision; and
- What criminogenic needs should be addressed to reduce risk and increase public safety.

Commissioner Jennings stated that Community Based Standards (CbS) provide a blueprint of best practices for secure facilities based on national standards and regular collection and review of outcomes tracking performance. CbS is a research based and statistically sound evaluation process for residential providers, and to the state it validates third-party monitoring and evaluation, provider accountability, and functions as an early warning system. Based on this criteria, there will be a residential system study and reorganization to evaluate offender population needs, YLS/CMI data based on risk and needs of youth in YRCIIs, determine the levels of service and programs components, capacity needs, and engage providers in dialogue.

#### **The proposed changes:**

- Moving away from a “one size fits all” model to best practices to separate low/moderate/high risk juvenile offenders to prevent contamination of low risk juvenile offenders;
- Require evidence based practices such as Cognitive Based Treatment (CBT) groups to address needs and staff training on “what works”;

- Length of stay stabilization be tied to risk level to allow time for behavioral change and stability; and
- Intensity of interventions varies by risk level to ensure that higher risk youth receive more interventions to adequately change the risk of recidivism.

#### **The benefits for youth:**

- Prevent contamination of low risk youth;
- Require groups to match the criminogenic needs of the youth, therefore appropriately allocating resources;
- Reduce the instability of placements via adequate initial length; and
- Reduce the risk levels via appropriate intensity.

The benefit for staff is a more streamlined operation. The benefit for society is it is economical while providing for public safety by reducing the known risk of the juvenile offender.

The Committee voted in favor of supporting, encouraging, and recommending collaboration between the Kansas Juvenile Justice Authority (JJA) and the Kansas Supreme Court to implement the use of the Youthful Level of Service/Case Management Inventory (YLS/CMI) at the court services level prior to disposition of juvenile offender cases. The Chairperson of the Joint Committee on Corrections and Juvenile Justice was authorized by the Committee to send the Chief Justice of the Kansas Supreme Court a letter requesting such collaboration.

The Committee discussed supporting JJA in the reorganization of Youth Residential Center II (YRCII) services to provide for multiple levels of service that will strengthen the services provided to youth placed in YRCIIs. The Committee believes the reorganization of the

YRCII service level will reduce the instances of movement of youth from one placement to another, provide for stronger and more intense program opportunities for youth, and will provide for an adequate length of stay to achieve beneficial outcomes. JJA will begin working towards YRCII reorganization by July 1, 2010. JJA will involve stakeholders in the discussion while developing a model for Kansas YRCIIs. JJA will provide periodic updates on its progress to the Committee. Therefore, the Committee voted in favor of supporting and encouraging the JJA to implement a contract condition for all YRCII providers that require participation in the Community Based Standards (CbS) facility evaluation process and acknowledge that there will be a cost associated with it.

Finally, the Committee voted in favor of supporting JJA's move away from the one size fits all approach to move toward what is described as best practices of the three tier system of level of risk in order to contain the problem described and to keep the contact between the juvenile offenders.

#### COMMITTEE RECOMMENDATIONS

The Committee makes the following recommendations:

- Endorse the concept of taking fees for DUI alcohol treatment;
- Introduce House bill (9rs1208) which would change the district court fine allocation to fund the therapeutic communities in prisons;
- Encompass the visions that the Kansas Sentencing Commission proposed and be introduced as a House bill for the 2010 Legislative Sessions, such as:
  - Merge the non-drug and drug sentencing grids into one grid;
  - Reduce or eliminate the number of special sentencing rules for property offenders;
  - Place as many felonies on the grid as possible;
  - Recommend changes to the drug laws:
  - Manufacturing methamphetamine is a level 3 person felony while manufacturing all other drugs would be a level 5 felony;
  - Sale, distribution, and possession with intent to sell or distribute would be based on the quantity of drugs possessed to be sold or actually sold; and
  - Make a first time domestic battery a class B person misdemeanor, a second domestic battery a class A person misdemeanor, and a third or subsequent domestic battery a level 7, person felony.
- Move forward with Specialty Courts for further development;
- Introduce a bill in the House on early release of terminally ill inmates;
- Recommend commendation of the work of Community Corrections and urge that Community Corrections be a high priority of the Legislature; and acknowledge that the prison population will be impacted if funding is not available;
- Introduce a Senate bill that would raise the probation fee to an amount that would cover approximately \$300,000 needed to institute risk assessment tools in Court Services;
- Introduce a Senate Bill (9rs1090) that will prevent the transfer to a KDOC facility for offenders who have 10 days or less to be served in the state prison and require the

offender be retained in the county jail;

- Recommend the Public Safety Budget Committee strongly consider approving the \$750,000 for the radios for the Kansas Department of Corrections to be in compliance with federal regulation;
- Recommend examining ways to control offender population growth prior to running out of beds and examining what options are available to the Legislature;
- Recommend further study of nonfunctioning mentally ill inmates;
- Recommend the Parole Board consider pre-SB 123 offenders, and to bring them into compliance with the balance of the current guidelines of SB 123;
- Support, encourage, and recommend a collaboration between the Kansas Juvenile Justice Authority (JJA) and the Kansas

Supreme Court to implement the use of the Youthful Level of Service/Case Management Inventory (YLS/CMI) at the court services level prior to disposition of juvenile offender cases;

- Support and encourage the JJA to implement a contract condition for all YRCII providers that require participation in the Community Based Standards (CbS) facility evaluation process and acknowledge that there will be a cost associated with it; and
- Support JJA's move away from the one size fits all approach to move toward what is described as best practices of the three tier system of level of risk in order to contain the problem described and to keep the contact between the juvenile offenders.

**COSTS OF PROCESSING AN OFFENDER WITH A SENTENCE OF 10 DAYS**

<u>Activity</u>	<u>KDOC/ County</u>	<u>Time for Activity</u>	<u>Estimated Cost</u>	
Scheduling admission	KDOC	Captain - 30 minutes	14.90	
Review journal entry and compute sentence	KDOC	Adm Asst - 20 minutes UTM - 20 minutes CCII - 20 minutes	6.09 10.25 8.65	Adm Asst = Administrative Assistant UTM = Unit Team Manager CCII = Corrections Counselor II
Imaging documents	KDOC	Adm Asst - 60 minutes	18.27	
Security processing (finger printing; photo; tatoo inventory; property inventory; shower; give clothing; collect/analyze/enter intelligence and investigation information)	KDOC	COII - 60 minutes CSI - 90 minutes	21.15 35.34	COII = Corrections Officer II CSI = Corrections Supervisor I
Initial intake forms and data entry of demographics	KDOC	Adm Asst - 60 minutes	18.27	
Initial medical and mental health screening	KDOC	Nurse (contract) - 30 minutes	17.11	
Physical (eye exam; weight; general physical; EKG on 40+, etc.)	KDOC	Nurse (contract) - 90 minutes	51.33	
Medical costs (medicine, equipment, diagnostics, etc.)	KDOC		127.25	

**Attachment 1**



2-27

**COSTS OF PROCESSING AN OFFENDER WITH A SENTENCE OF 10 DAYS**

Kansas Legislative Research Department

1-28

2009 CJO

<u>Activity</u>	<u>KDOC/ County</u>	<u>Time for Activity</u>	<u>Estimated Cost</u>	
Mental health follow up (for the RDU stay; if screening has flags) and crisis follow up during RDU stay; appx. one-third of admissions	KDOC	LMSW - 5 hours	147.50	LMSW = Licensed Master Social Worker
Orientation	KDOC	CCII - 60 minutes	25.96	
NCIC check/review and detainer follow up (phone calls, logging, etc.)	KDOC	CCI (Intake Investig) - 120 minutes	46.15	CCI = Corrections Counselor I
Custody classification	KDOC	CCI - 30 minutes	11.54	
		CCII - 30 minutes	12.98	
		UTM - 30 minutes	15.38	
Release planning	KDOC	Reentry Specialist - 240 minutes	123.08	
Gate money	KDOC		100.00	
Transportation -- most go out on bus	KDOC		65.00	
Bed cost per day (marginal cost of \$6.58 per day x 10 days = \$65.80)	KDOC		65.80	
Cost sending two officers to transport offender to RDU	County	Average pay = \$20 per hour x 2 officers for ranging distances; estimate average of 200 miles round trip and full shift per officer = 16 hours x \$40 plus \$.55 per mile for 200 miles	750.00	
<b>Total</b>			<u>\$ 1,692.00</u>	