

## MINUTES

### KANSAS CRIMINAL JUSTICE REFORM COMMISSION

November 23, 2020  
Remote Meeting

#### Members Present

Marc Bennett, Chairperson  
Representative Stephen Owens, Vice-chairperson  
Senator David Haley  
Representative Gail Finney  
Chief Todd Ackerman  
Jennifer Baysinger  
Honorable Glenn Braun  
Honorable Marty Clark  
Professor John Francis  
Chad Harmon  
Spence Koehn  
Tabitha Owen  
Sylvia Penner  
Bill Persinger  
Professor Jean Phillips  
Shelly Williams  
Derek Schmidt, Attorney General, Ex Officio  
Scott Schultz, Executive Director, Kansas Sentencing Commission, Ex Officio  
Jeff Zmuda, Secretary of Corrections, Ex Officio

#### Members Absent

Senator Rick Wilborn  
Sheriff Bill Carr  
Pastor Adrion Roberson

#### Staff Present

Jordan Milholland, Kansas Legislative Research Department (KLRD)  
Robert Gallimore, KLRD  
Mileshea Segun, KLRD  
Jason Thompson, Office of Revisor of Statutes  
Natalie Scott, Office of Revisor of Statutes  
Connie Bahner, Committee Assistant

#### Others Attending

Patrick Armstrong, The Council of State Governments Justice Center (CSG)  
Celine Villongco, CSG

Josh Gaines, CSG  
Erica Nelson, CSG  
Laura van der Lugt, CSG  
Carl Reynolds, CSG  
Greg Hall, CSG  
Sarah Wurzburg, CSG  
Jennifer Kisela, CSG  
Rachael Druckhammer, CSG

## **AFTERNOON SESSION**

[*Note:* The Commission recommendations listed in these minutes are summarized based on the Commission's discussion. Please refer to the Report of the Kansas Criminal Justice Reform Commission to the 2021 Kansas Legislature for the official approved recommendation text.]

### **Call to Order and Approval of Minutes**

Chairperson Marc Bennett called the meeting to order at 1:30 p.m. Natalie Scott, Office of Revisor of Statutes, gave a review of the Kansas Open Meetings Act as it applied to this Commission meeting when public access was limited due to the COVID-19 pandemic. She stated the meeting could be listened to remotely *via* the Kansas Legislature's website and on YouTube.

Chairperson Bennett stated the minutes of the meetings of September 14 and October 12, 2020, had been submitted for approval.

*Bill Persinger moved that the minutes of September 14 and October 12, 2020, be approved, which was seconded by Jennifer Baysinger. The minutes were approved following a roll call vote.*

### **Presentation of Subcommittee Reports**

Chairperson Bennett stated that to give some background information for people who may be watching this meeting online for the first time, this Commission formed subcommittees a year ago. Some of the subcommittees then formed smaller work groups to take up individual issues. Each of the subcommittees and the various work groups have put together their recommendations and have submitted them for consideration and approval by the Commission ([Attachment 1](#)). At the November 9, 2020, meeting, the Commission discussed and voted on the recommendations of the Data Management; Diversion/Specialty Courts/Specialty Prisons/Supervision; and Mental Health/Substance Abuse Subcommittees. Chairperson Bennett said the rest of the subcommittees' recommendations would be discussed in this meeting.

### ***Proportionality/Sentencing Subcommittee***

Chairperson Bennett recognized Chief Todd Ackerman, Chairperson of the Proportionality/Sentencing Subcommittee. Chief Ackerman stated the subcommittee met

several times in 2019 and came up with the following recommendations both for the short term and long term:

- To pass legislation similar to 2019 HB 2047, as introduced, concerning decreasing the penalties in drug grid level 5 to be similar to those for nondrug grid level 8;
- To pass legislation similar to 2020 HB 2494, as recommended by the House Committee on Corrections and Juvenile Justice, concerning unlawful tampering with an electronic monitoring device and lowering the severity level from a level 6 nonperson felony to a level 8 nonperson felony;
- To pass legislation similar to 2020 HB 2485, as recommended by the House Committee on Corrections and Juvenile Justice, concerning increasing the felony loss threshold from \$1,000 to \$1,500 on certain property crimes;
- To pass legislation similar to 2020 HB 2518, as passed by the House 125-0, concerning including prior convictions with a domestic violence designation as domestic battery qualifying prior convictions;
- To pass legislation similar to 2020 HB 2708, as passed by the House 125-0, concerning the implementation of pretrial substance abuse programs;
- To pass legislation similar to 2020 HB 2469, as passed by the House 120-5, concerning implementation of an expanded compassionate release program;
- To pass legislation similar to 2020 HB 2484, as amended by the House Committee on Corrections and Juvenile Justice, concerning early discharge for nonviolent drug offenders upon completion of 50 percent of the sentence;
- To pass legislation similar to 2019 HB 2052, including amendments proposed by the Office of Judicial Administration, concerning judicial review of probation terms and conditions once 50 percent of the sentence has been served; and
- That the Legislature consider combining both sentencing grids into a single grid.

With regard to the judicial review recommendation, Chief Ackerman stated the procedure has been that a person would have to apply for and fulfill a list of terms before the terms of probation would be reviewed. Chairperson Bennett stated that was accurate, and stated the idea was that there would be some mechanism where the person could get in front of a judge and there would be some objective criteria that had to be met, such as paying restitution and fees. The problem is if a hearing is granted, it will create a great burden on the court system for a while, especially because of the backlog from the COVID-19 pandemic. This could lead to 2,000 or 3,000 more hearings per year, so there needs to be some type of mechanism where it could be done more informally than triggering a hearing, such as allowing an in-camera review by the judge who could sign off on it. Scott Schultz stated and Chairperson Bennett agreed that the Supervision Subcommittee had the same proposal that was already passed at the Commission's last meeting.

The Commission also discussed the sentencing grid combination recommendation. Commission members discussed whether separate grids would be more proportional, or whether drug crimes by their nature need to have a separate sentencing grid. Chairperson Bennett stated this topic would be another good reason they could give the Legislature for extending the Commission for another year. Chief Ackerman agreed and said that if the Legislature adopts two new sentencing grids this year, and if the Commission is extended another year, the Commission would then know if those new grids would effectively address the issue.

Chairperson Bennett stated that after the last recommendation of this Subcommittee is reviewed, there should be a motion for the Commission to adopt everything except the one combining the sentencing grids, and that topic should be included in the final paragraph concerning the basis for the Commission to request an extension of time.

Chief Ackerman stated the final subcommittee recommendation is:

The Council of State Governments (CSG) Justice Center recommendations adopted by the Proportionality/Sentencing Subcommittee concerning violent crime, sentencing, and victims assessment should be considered by the Legislature.

Chief Ackerman and Patrick Armstrong of CSG discussed the CSG recommendations. [Note: The CSG recommendations presented by the subcommittee may be found on pages 53-56 of the Report of the Kansas Criminal Justice Reform Commission to the 2021 Kansas Legislature.]

Chief Ackerman stated there were more objectives, but the Subcommittee did not have time at the committee meeting to add them. Mr. Armstrong stated three of the items listed under Sentencing need further discussion and work, so they should be long-term goals. The items are:

- “Provide for ‘decay’ of old criminal history”;
- “Provide for jail or SB 123 treatment for marijuana sentences that currently are eligible for prison”; and
- Under Policy Objective 2, “Adopt ‘deferred adjudication,’ providing a judicial diversion option.”

Chairperson Bennett stated other recommendations from the Commission regarding violent crime would then include Policy Objective 1—generally more data being collected and made available and Policy Objective 2—battery intervention programs, more funding for same, and treatment options for people who commit crimes. The recommendations also included expanding the 2003 SB 123 drug abuse treatment program.

Chairperson Bennett stated the Commission would be voting in the meeting on all of the recommendations of the Proportionality/Sentencing Subcommittee, as well as the recommendations of CSG. He said the recommendation that the Legislature consider combining both sentencing grids would not be voted on today, and a recommendation would be made to the Legislature that the topic be worked on further in 2021.

*Chief Ackerman moved to endorse the recommendations from the Proportionality/Sentencing Subcommittee with the caveat that the recommendation to consider combining both sentencing grids into a single grid be tabled until 2021, which was seconded by Mr. Persinger. A roll call vote was taken by Jordan Milholland, Kansas Legislative Research Department. Senator David Haley and Spence Koehn abstained. The motion passed.*

Chairperson Bennett summarized the recommendations of CSG concerning violent crime, sentencing, and victims assessment, and noted certain topics will be studied further in 2021.

*Chief Ackerman moved to approve the recommendations from the CSG as stated by Chairperson Bennett, which was seconded by Tabitha Owen.*

Discussion followed concerning the anger management program and the Batterer's Intervention Program.

*Mr. Milholland took a roll call vote on the Ackerman motion. The motion was approved unanimously.*

### ***Race and the Criminal Justice System Subcommittee***

Chairperson Bennett stated the Race and the Criminal Justice System Subcommittee's recommendations are to:

- Adopt a requirement that law enforcement agencies collect additional data related to the race of citizens with whom they have contact, including but not limited to arrests, and require such data be made available;
- Strongly consider the December 2020 recommendations of the Governor's Commission on Racial Equity and Justice related to data collection, maintenance, and analysis;
- Strongly consider the November 2020 Pretrial Justice Task Force recommendations;
- Identify revenue sources to increase the budget of the Board of Indigents' Defense Services (BIDS), and to specifically create standalone public defender offices statewide;
- Strongly consider the December 2020 recommendations of the Governor's Commission on Racial Equity and Justice related to the state public defender system, specifically the recommendation regarding establishment of a public defender office in communities exceeding 100,000 in population;
- Strongly consider the September 2020 BIDS report titled, "A Report on the Status of Public Defense in Kansas"; and
- Establish a standing legislative commission on racial equity in the criminal justice system, and identify specific representative membership groups, including

residents of urban areas, residents of rural areas, public defenders, criminal defense attorneys, and K-12 public education representatives, and include a person with a history of involvement with the justice system in Kansas.

Chief Ackerman stated a concern with the recommendation on data collection. He stated concerns were expressed in some of the subcommittee meetings about officer harassment.

*Professor John Francis moved to endorse the seven recommendations of the Race and the Criminal Justice System Subcommittee, which was seconded by Chief Ackerman. Following a roll call vote, the motion was approved. Senator Haley abstained.*

### **Reentry Subcommittee**

Chairperson Bennett recognized Professor Jean Phillips as the chairperson of the Reentry Subcommittee to state its recommendations. Professor Phillips stated the subcommittee broke its recommendations down into four basic areas of housing, supportive benefits, job training and employment, and driver's licenses. There are 15 recommendations and some of those recommendations have subparts. She stated the subcommittee recognized that there is a cyclical relationship with housing and stability, reentry, and recidivism. Professor Phillips listed the following subcommittee recommendations, to:

- Conduct a review of housing and homelessness in Kansas, leveraged by:
  - The incorporation of people involved in the criminal justice system into existing work groups and task forces that already exist, with a priority on homelessness and housing; and
  - Expanding lists of housing opportunities available through the Kansas Department of Corrections (KDOC), the Kansas Housing Resources Corporation, and the Kansas Department for Aging and Disability Services to provide information on which housing programs support access for people in the justice system;
- Provide opportunities and develop policy on cross-system coordination by establishing policies that require an ongoing collaboration among state agencies to address housing for people in the justice system. Up to 20 percent of people who are released from KDOC custody are leaving with no stable housing. There is also no consistent data tracking by KDOC once someone is released;
- Prioritize collecting data to guide policy improvements, including:
  - Adopting legislation requiring a consistent method of tracking persons in jails and prisons who are experiencing housing instability or are at risk of homelessness; and
  - Taking administrative action to identify common data metrics that should be collected across the criminal justice system;
- Help people in the justice system get access to housing and provide administrative action to focus on training and coordination for housing providers, continuum-of-care providers, housing authorities, landlords, and community

supervision officers regarding working with people in the justice system and how to coordinate related services;

- Fund additional KDOC master leases;
- Increase the number of coordinators for the Kansas Supportive Housing for Offenders Program (KSHOP);
- Create a forensic unit to house persons released with special needs;
- Create a position within KDOC to track housing for persons released from prison. The subcommittee strongly recommends this to reduce recidivism; and
- Adopt legislation to amend KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of both the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance for Needy Families (TANF) program.

In response to a question by Chairperson Bennett as to whether there is a consequence to a state for opting out of the federal ban on allowing persons with felony drug convictions to access both SNAP and TANF, Professor Phillips stated, and Josh Gaines with CSG confirmed, that there is no penalty for opting out and there is no reduction in funding.

Professor Phillips continued her discussion of subcommittee recommendations by listing the following:

- The Commission should recommend the following administrative changes within KDOC:
  - Develop a streamlined process during intake for using assessment results and other information gathered during intake to assign people to a facility based on programming needs, availability, interest, and anticipated release date, as well as security risk;
  - Develop a sustainability plan for the Second Chance Pell Pilot Programs to continue educational and vocational programming;
  - Standardize KDOC's roles and responsibilities for employment specialists to include job development, or invest in job development specialists to form relationships with businesses in the community to promote hiring people who are reentering the community;
  - Develop a plan for marketing KDOC Vocational/Career and Technical Education to businesses and legislators;
  - Develop additional partnerships with community-based agencies to provide more programming such as Adult Basic Education and General Educational Development courses each day of the week; and
  - Increase funding for education and employment programming and space within KDOC facilities.

- The Commission should recommend the following employment-related administrative changes:
  - Appoint a representative from KDOC to the KANSASWORKS State Board;
  - Develop formal partnerships between KDOC, the Kansas Consortium for Correctional Higher Education, businesses, and all local workforce boards to leverage funding and resources to bring intensive workforce development models to scale;
  - Develop formal partnerships and information sharing agreements between KDOC and the Department for Children and Families' (DCF) Vocational Rehabilitation Department to screen people for services prior to release from KDOC or at the start of community supervision;
  - Utilize the Governor's Workforce Innovation and Opportunity Act Reserve Obligation;
  - Develop shared positions between KDOC, DCF. and all local workforce boards; and
  - Create a Legislative Liaison position at KDOC.
  
- The Commission recommends the Legislature consider the CSG Justice Center recommendations adopted by the Reentry Subcommittee concerning occupational licensing [Note: The CSG recommendations presented by the subcommittee may be found on pages 120-121 of the Report of the Kansas Criminal Justice Reform Commission to the 2021 Kansas Legislature];
  
- The Commission supports the introduction of legislation relating to driver's license reinstatement fees, including the provisions of 2020 HB 2547 as passed by the House 120-5 and 2020 SB 275 as amended by the House Committee on Transportation, and the Legislature should consider making the statutory changes regarding reinstatement fees apply retroactively; and
  
- The Commission supports the introduction of legislation relating to the failure to pay traffic fines and fees, including the provisions of 2020 HB 2434 as introduced.

Professor Phillips stated the subcommittee did not discuss the topics of collections and access to medical care due to a lack of time. She stated that if the Commission is granted another year, the subcommittee would want to include collections and access to medical care and specifically mental health and substance abuse treatment issues in the context of reentry. She said the subcommittee also did not have time to work on determining which agencies are prohibiting people from getting licenses.

Commission members discussed their concerns with potential revenue losses of the Judicial Branch if certain driver's license fees are lowered or removed. Members also discussed the recommendation to opt out of the federal ban on allowing persons with felony drug convictions to access benefits of SNAP and TANF, with CSG staff providing additional clarification.



Chairperson Bennett stated there are a couple of options. As to the recommendation regarding the SNAP/TANF issue, the Commission could remove it from the vote they will be conducting on these other recommendations, or an amendment could be made so that the recommendation states the Commission recommends the State consider opting out but leaving protections in with respect to the TANF expenditures. Professor Phillips stated this only applies to felony drug convictions. She stated a friendly amendment could include that the State will opt out of the SNAP ban, but not the TANF ban; TANF benefits could then be explored in 2021.

*Professor Phillips moved to amend the recommendation to adopt legislation to amend KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of SNAP, but remove the TANF portion and add it to the list of recommendations for further consideration by the Commission in 2021; the motion was seconded by Representative Stephen Owens.*

Representative Gail Finney asked for clarification on what the Commission would be doing with regard to the recommendations relating to the suspension of driver's licenses. Following discussion, Representative Finney stated that the Commission would keep the recommendation related to 2020 HB 2547, but the recommendation relating to 2020 HB 2434 would be put on the list for further consideration in 2021. Chairperson Bennett stated that he thinks that a friendly amendment should be added to the recommendation concerning 2020 HB 2547 to state strong consideration needs to be given for finding alternative revenue streams to supplant that lost revenue.

Following discussion among Mr. Milholland, Chairperson Bennett, and Professor Phillips, it was determined that the KANSASWORKS recommendation should be moved from a request for legislation to a recommendation for an administrative change and should read as follows: "Recommend that a representative from KDOC be appointed to the KANSASWORKS State Board."

*Professor Phillips moved that the driver's license reinstatement fee recommendation of the Reentry Subcommittee be amended to read, "The Commission supports the introduction of legislation relating to driver's license reinstatement fees, including the provisions of 2020 HB 2547, as passed by the House 120-5, and 2020 SB 275, as amended by the House Committee on Transportation, and consider making the statutory changes regarding reinstatement fees apply retroactively, but that any loss of revenue to the Office of Judicial Administration be replaced by an alternate source of revenue," which was seconded by Judge Glenn Braun. Following a roll call vote, the motion was approved. Senator Haley abstained from voting.*

Mr. Milholland reviewed the list of recommendations to be studied further in 2021. Professor Phillips had initially listed three topics—debt collection, access to medical care and treatment within the context of reentry, and HB 2434 relating to traffic fines and fees. Chairperson Bennett stated the recommendation regarding TANF should be added to that list. Professor Phillips stated the subcommittee also wanted to further study the licensing board issues.

Chairperson Bennett stated the Commission still needed to vote on the balance of the recommendations of the Reentry Subcommittee.

*Chief Ackerman moved that the recommendations of the Reentry Subcommittee be endorsed by the Commission, which was seconded by Shelly Williams. Following a roll call vote, the motion was approved unanimously.*

Chairperson Bennett stated there should be a final motion to approve the final report while allowing staff to make necessary changes to reflect the Commission's actions at its meetings on November 9 and November 23, 2020, as well as to make nonsubstantive edits for clarity and consistency, and to give authority to Chairperson Bennett to approve the report subject to final review.

*Representative Owens moved to approve the final report while allowing staff to make necessary changes to reflect the Commission's actions at its meeting on November 23, 2020, as well as to make nonsubstantive edits for clarity and consistency, and to give authority to Chairperson Bennett to approve the report subject to final review, which was seconded by Ms. Williams. Following a roll call vote, the motion was approved unanimously.*

Chairperson Bennett thanked everyone on the Commission for their work over the past year and a half. He said he hopes the Legislature will grant the Commission another year so it can study some of these other issues further, but the Commission has given the Legislature a framework for a better justice system in the state and he is proud to have his name associated with it. He said the fact that they have been able to accomplish all this during a pandemic underscores how much effort went into it.

Representative Owens expressed his appreciation for each person on the Commission. Interim committee meetings were held last week by the Joint Committee on Corrections and Juvenile Justice Oversight and Chairperson Russ Jennings asked that his thanks be expressed for the work this Commission has done. Representative Jennings was the author of the bill that created this Commission. The interim committee will create a bundle of bills with all the legislation that was introduced last year that did not get passed as a result of the early closing of the Legislature to fast-track those through the system. He said he has also talked to the Office of Revisor of Statutes to draft a bill to request an extension of time for this Commission to do additional work.

Chairperson Bennett also expressed thanks to Mr. Armstrong and the other people at the CSG Justice Center for the work they did. He said the Commission could not have gotten as much done as it did without their help. He also expressed thanks to the legislative staff.

## **Adjourn**

The meeting was adjourned at 4:25 p.m.

Prepared by Connie Bahner

Edited by Jordan Milholland

Approved by the Committee on:

June 28, 2021  
(Date)