



November 2, 2020

**To:** Kansas Criminal Justice Reform Commission  
**From:** Jordan Milholland, Senior Research Analyst  
**Re:** Preliminary Subcommittee Recommendations for Final Report

The Kansas Criminal Justice Reform Commission (KCJRC) will meet on Monday, November 9, 2020, to consider and approve recommendations for its final report to the 2021 Kansas Legislature. The recommendations contained in this memorandum were submitted by the six KCJRC subcommittees as part of their final reports, which will be attached to the final report of the KCJRC. Submitted recommendations are listed below, organized by subcommittee. Please note: Some recommendations have been summarized or slightly modified for clarity and consistency. The full text of submitted recommendations may be found in the attached subcommittee reports.

### **DATA MANAGEMENT SUBCOMMITTEE**

- Issue, as soon as possible, a request for proposal for a comprehensive assessment relating to the current state of data sharing across Kansas agencies.

### **DIVERSION/SPECIALTY COURTS/SPECIALTY PRISONS/SUPERVISION SUBCOMMITTEE**

#### **Diversions Work Group**

- The Commission supports the introduction of legislation that would include the provisions of 2020 HB 2708, as passed by the House, relating to drug abuse treatment for people on diversion;
- Examine the use of diversion across the state and determine whether the public policy of the State should require diversion to be offered in each jurisdiction and, if so, determine whether diversion should be mandated for certain types of crimes for people with certain criminal history;
- Consider a less-stringent diversion option, or even the possibility of a pre-charging diversion;

- Consider the modification of expungement statutes or other approaches to address whether diversion agreements should be sealed from public view;
- Consider methods of ensuring indigent diversion applicants have the same access to the process as non-indigent applicants; and
- Consider a mechanism for deferred adjudication such that a court could require a plea as a condition of diversion.

### **Specialty Courts Work Group**

- The Commission supports the introduction of specialty courts legislation that would require the Kansas Supreme Court to adopt rules for the establishment and operation of one or more specialty court programs within the state, provide mechanisms for funding specialty courts, allow for expungement of certain conviction and arrest records, and allow for the reduction or modification of a sentence upon completion of a specialty court program.

### **Specialty Prisons Work Group**

- Authorize funding and authority for a substance abuse treatment center within the correctional facility system in order to give effect to statutory provisions adopted as part of the Recodification, Rehabilitation, and Restoration Project (3Rs) report, including:
  - Funding and authority to build a substance abuse treatment center to provide 240 additional male beds for treatment; and
  - Funding and authority to allow the Kansas Department of Corrections (KDOC) to continue repurposing and renovating an existing building to provide approximately 200-250 male beds for treatment.
- Authorize funding and authority for the modification of an existing facility to provide approximately 200-250 male beds for geriatric and cognitive care; and
- Adopt the recommendations of the Mental Health Task Force to the 2018 and 2019 Legislatures to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.

## **Supervision Work Group**

- The following supervision-related legislative initiatives should be adopted or supported:
  - Adopt the Kansas Association of Court Services Officers' legislative initiative to amend KSA 8-246 that would add Court Services and Community Corrections agencies as authorized entities able to provide an identification certificate, to be presented as one form of identification for obtaining a replacement driver's license, to offenders under their supervision;
  - Adopt the Kansas Sentencing Commission's legislative initiative in support of earned compliance credit and the strengthening of early discharge mechanisms for people on supervision;
  - Support the creation of a work group to create standardized conditions of supervision;
  - Support the creation of a work group to examine policy to consolidate concurrent supervision cases; and
  - Support the formalization of KDOC's approach to parole supervision violations, including implementation of Effective Responses to Behavior.
- The following recommendations should be implemented by the KCJRC:
  - Develop an interagency re-engagement unit;
  - Formalize interagency collaboration;
  - Support interagency collaboration; and
  - Formalize the use of Effective Responses to Behavior.
- The following topics should be studied further by the KCJRC:
  - Ensuring the statewide availability of robust sanctions and incentives;
  - Data integration to merge siloed data; and
  - Supervision entity mission and vision statements, which should be aligned with implemented best practices and goals of supervision.

## **MENTAL HEALTH/SUBSTANCE ABUSE SUBCOMMITTEE**

- The Commission supports the introduction of legislation with the same provisions as 2020 HB 2708, which would have expanded 2003 SB 123 money to diverted defendants, instead of authorizing its use only for convicted offenders, to allow them to enter state-paid substance abuse treatment. The 2020 legislation passed the House 125 – 0, but died in the Senate due to the shortened session;

- Make access to regional mental health services a legislative priority;
- Consider the Council of State Governments Justice Center recommendations adopted by the Mental Health/Substance Abuse Subcommittee concerning support of people with co-occurring disorders, cross-system coordination, data collection, and training and education for providers to support persons with co-occurring disorders;
- Support amending the severity level of all personal use drug possession charges from felony to misdemeanor, similar to that for marijuana;
- Support statewide implementation and funding of a co-responder program;
- Emphasize prevention of crime through programs that offer “protective factors” such as safe, affordable, and decent housing; gainful employment; and positive family and social relationships;
- Consider implementation of the Sequential Intercept Model;
- Create a behavioral health liaison position within local jails and a corrections liaison position within each Community Mental Health Center;
- Support access to detox and evidence-based treatment;
- The Commission fully supports the use of specialty courts within the criminal justice system;
- Consider establishing on-site behavioral health services in jails;
- When comparing incarceration versus treatment alternatives, the Legislature should consider cost-avoidance studies such as those conducted by Wichita State University;
- Consider an application for a Centers for Medicare and Medicaid Services waiver for reimbursement for mental health services in residential psychiatric facilities and treatment centers;
- Consider support of trained mobile competency evaluation and restoration providers; and
- Emphasize mental health and substance abuse workforce development, especially in rural and frontier areas of the state.

## **PROPORTIONALITY/SENTENCING SUBCOMMITTEE**

- The Commission supports the introduction of legislation that would include the provisions of the following sentencing-related legislative initiatives:
  - 2019 HB 2047, as introduced, concerning decreasing the penalties in drug grid level 5 to be similar to those for nondrug grid level 8;
  - 2020 HB 2494, as recommended by the House Committee on Corrections and Juvenile Justice, concerning unlawful tampering with an electronic monitoring device, and lowering the severity level from a level 6 nonperson felony to a level 8 nonperson felony;
  - 2020 HB 2485, as recommended by the House Committee on Corrections and Juvenile Justice, concerning increasing the felony loss threshold from \$1,000 to \$1,500 on certain property crimes;
  - 2020 HB 2518, as passed by the House 125 – 0, concerning including prior convictions with a domestic violence designation as domestic battery qualifying prior convictions;
  - 2020 HB 2708, as passed by the House 125 – 0, concerning the implementation of pretrial substance abuse programs;
  - 2020 HB 2469, as passed by the House 120 – 5, concerning implementation of an expanded compassionate release program;
  - 2020 HB 2484, as amended by the House Committee on Corrections and Juvenile Justice, concerning early discharge for non-violent drug offenders upon completion of 50 percent of the sentence; and
  - 2019 HB 2052, including amendments proposed by the Office of Judicial Administration, concerning judicial review of probation terms and conditions once 50 percent of the sentence has been served.
- The Legislature should consider combining both sentencing grids into a single grid; and
- The Council of State Governments Justice Center recommendations adopted by the Proportionality/Sentencing Subcommittee concerning violent crime, sentencing, and victims assessment should be considered by the Legislature.

## **RACE AND THE CRIMINAL JUSTICE SYSTEM SUBCOMMITTEE**

- 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 stand-alone 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.

### **REENTRY SUBCOMMITTEE**

- Current efforts to review and address housing and homelessness in Kansas should be leveraged by:
  - The incorporation of people involved in the criminal justice system into existing work groups and task forces with a priority on homelessness and housing; and
  - Existing lists of housing opportunities available through KDOC, the Kansas Housing Resources Corporation, and the Kansas Department for Aging and Disability Services should be expanded to provide information on which housing programs support access for people in the justice system.
- Provide opportunities and develop policy on cross-system coordination by establishing policies that require an ongoing collaboration among state agencies to address housing for people in the justice system;

- Prioritize collecting data to guide policy improvements, including by:
  - Adopting legislation that requires a consistent method of tracking persons in jails and prisons who are experiencing housing instability or are at risk of homelessness; and
  - Taking administrative action to identify common data metrics that should be collected across the criminal justice, mental illness, substance use disorder, and housing systems.
- To help people in the justice system get access to housing, provide administrative action to focus on training and coordination for housing providers, continuum of care providers, housing authorities, landlords, and community supervision officers regarding working with people in the justice system and how to coordinate related services;
- Fund additional KDOC master leases;
- Increase the number of coordinators for the Kansas Supportive Housing for Offenders program;
- Create a forensic unit to house persons released with special needs;
- Create a position within KDOC to track housing for persons released from prison;
- Adopt legislation to amend KSA 39-709 to fully opt out of the federal ban on allowing persons with felony drug convictions to access benefits of both the Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families program;
- The Commission recommends the following administrative changes within KDOC:
  - Develop a streamlined process during intake for using assessment results and other information gathered during intake to assign people to a facility based on programming needs, availability, interest, and anticipated release date, as well as security risk;
  - Develop a sustainability plan for the Second Chance Pell Pilot Programs to continue educational and vocational programming;
  - Standardize KDOC's roles and responsibilities for employment specialists to include job development, or invest in job development specialists to form relationships with businesses in the community to promote hiring people who are reentering the community;
  - Develop a plan for marketing KDOC Vocational/Career and Technical Education to businesses and legislators;

- Develop additional partnerships with community-based agencies to provide more programming, such as Adult Basic Education and General Educational Development courses each day of the week; and
- Increase funding for education and employment programming and space within KDOC facilities.
- Adopt legislation to appoint a representative from KDOC to the KANSASWORKS State Board;
- The Commission recommends the following employment-related administrative changes:
  - Develop formal partnerships between KDOC, KCCHE, 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' 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.
- Consider the Council of State Governments Justice Center recommendations adopted by the Reentry Subcommittee concerning occupational licensing;
- 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; 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.



# Appendix

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**Kansas Criminal Justice Reform Commission**  
**Sub-Committee: Data Management**  
**Final Report**

October 26, 2020

To: Criminal Justice Reform Commission

Re: Final Report

Members of the Criminal Justice Reform Commission,

**Background**

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Data Management Sub-Committee was established. Jennifer Baysinger was selected to the Chair the sub-committee. On September 14, 2020, Sheriff Bill Carr was appointed to take over as Chair of the sub-committee.

Pursuant to K.S.A. 21-6902 (a)(b)(8):

Evaluate existing information management data systems and make recommendations for improvements to data systems that will enhance the ability of criminal justice agencies to evaluate and monitor the efficacy of the criminal justice system at all points in the criminal justice process.

**Goals**

As a sub-committee, we have identified the following statement and feel it most clearly identifies our goals:

To identify an integrated data management system which will assist stakeholders in obtaining records and analytical data to better identify crucial needs of Kansans.

## Observations

The urgent need for comprehensive data integration has been discussed among departments throughout the state for many years with multiple efforts, yet little success. These needs apply at the city/county levels, too.

Major barriers identified include:

- IT departments, where they exist, are already stretched thin
- Different platforms and operational systems are already in place
- Rural and small agencies lack modern technology

Various rules and perceptions about what data can and can't be shared (HIPPA) Health Insurance Portability and Accountability Act.

Situational successes are limited, but include examples such as:

- Data dumping information available for cross referencing
- Data Integration (Merging)
- Embedding bridge positions; using employees of other agencies to office in KDOC and access data for case management of offenders
  - Example: For several years, a DCF employee was housed in the Wichita Parole Office and accessed all data systems relating to TANF, child support, benefits...etc. providing it to case managers, as needed and allowed.
  - Example: A similar position existed at El Dorado Correctional Facility's admissions unit. Incoming offenders were assessed on issues relating to child support in these instances was increased by 10%.

These hodge-podge efforts do not constitute a long term, effective solution. To support accurate, evidence-based decisions, Kansas needs an end-to-end platform that enables a broader adoption of advanced data management, analytics and data visualization. This framework should incorporate data elements from different sources to develop a comprehensive picture of an individual in the criminal justice system – not only involving their history with the criminal justice system, but also social services, economic and education data, health information (as allowed), and more.

## Sub-Committee Recommendations

The Data Management Subcommittee quickly agreed a full overview of the current data systems in Kansas is imperative. In line with the current administration's commitment to transparency, an RFP should be issued as soon as possible for a comprehensive assessment relating to the current state of data sharing across Kansas agencies.

The RFP should specify either independent academic, and/or independent non-profit technical assistance be sought to work alongside existing state agencies and systems. The only way to accurately assess, map, and evaluate the current state of data in Kansas is to seek independent review and concurrent comparison to those states which have already begun grappling with this problem.

It's time for action. Cross-jurisdictional information is not always shared. As a result, information from an individual's prior contact(s) with one component of the criminal justice system that may be relevant to the individual's culpability, drug or mental health treatment needs, family history, affect bond conditions, charging decision, restitution or child support payments, conditions of probation and parole, officer safety and the decision made by DCF, law enforcement and the court-system related to the welfare of children.

### **Conclusion**

After monitoring and participating in many of the sub-committee and working group meetings it's become apparent we need legislative action to obtain funding for a post-audit review of our state, county and city data management systems.

The subcommittee fully supports the work of The Council of State Governments.

### **Kansas Criminal Justice Reform Commission Members:**



Sheriff Bill Carr, Ford County Sheriff  
Chair Data Management SubCommittee

Jennifer Baysinger,  
VP Political Affairs for the Kansas Chamber

Marc Bennett, District Attorney  
KCJRC Chairman

Senator Rick Wilborn  
35<sup>th</sup> District

Scott Schultz (ex officio)  
Kansas Sentencing Commission

**Diversion, Specialty Courts, Specialty Prisons, and Supervision Subcommittee  
Report to the Kansas Criminal Justice Commission  
Marc Bennett, Chairperson  
Representative Stephen Owens, Vice-chairperson**

**I. Introduction**

The Diversion, Specialty Courts, Specialty Prisons, Supervision subcommittee was appointed by Criminal Justice Reform Commission (CJRC) Chairman Marc Bennett to address specific issues identified in section 2(b) of 2019 HB 2290. The Subcommittee held meetings on April 9, 2020; May 28, 2020; June 8, 2020; July 8, 2020; August 5, 2020; September 21, 2020; October 12, 2020; and October 23, 2020.

**II. Subcommittee Members**

Spence Koehn, Chair (Judicial Branch Court Services)  
Chief Todd Ackerman (Police Chief Representative)  
Honorable Glenn Braun (District Judge)  
Honorable Marty Clark (District Magistrate Judge)  
Tabitha Owen (County Attorney from a Rural Area)  
Shelly Williams (Community Corrections Representative)  
Representative Gail Finney (Legislative Member)  
Attorney General Derek Schmidt (Agency Ex-Officio)  
Secretary Jeff Zmuda (Department of Corrections) (Agency Ex-Officio)

**III. Organization and membership of Working Groups**

The subcommittee decided to divide the tasks into working groups as detailed below. Each working group held regular meetings to discuss the individual topic area. The working group reports are attached to this report.

**A. Diversion: 2019 HB 2290 Section 2(b)(3)**

Members: Marc Bennett (Chair); Honorable Marty Clark; Attorney General Derek Schmidt; Shelly Williams

Topic: Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards.

**B. Specialty Courts: 2019 HB 2290 Section 2(b)(5)**

Members: Honorable Glenn Braun, Chair; Tabitha Owen

Topic: Study specialty courts and make recommendations for the use of specialty courts throughout the state.

**C. Specialty Prisons: 2019 HB 2290 Section 2(b)(7)**

Members: Attorney General Derek Schmidt, (Chair); Chief Todd Ackerman; Secretary Jeff Zmuda

Topic: Study the policies of the Department of Corrections for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare and substance abuse facilities.

**D. Supervision: 2019 HB 2290 Section 2(b)(4) and (5)**

Members: Shelly Williams, (Chair); Honorable Glenn Braun; Honorable Marty Clark; Hope Cooper; Nassir Hadaegh; Audrey Cress; Hope Cooper; Erin Geist; Brian Seidler; Spence Koehn; Bill Carr

Topic: Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision; and survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming.

**IV. Recommendations for legislative action in the 2021 session**

The subcommittee workgroups have identified a number of issues and topics for additional study and consideration in the 2021 Legislative Session. Here are those recommendations:

**A. The Diversion Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. HB 2708 be re-introduced (HB 2292 from the 2019 session). The proposal is included with the diversion workgroup report.
2. Uniformity: The legislature may need to examine the use of diversion across the state, and whether the public policy of the state should, (1) require diversion be

offered in each jurisdiction; and if so, (2) whether diversion should be mandated for certain types of crimes for people with certain criminal history.

3. Less stringent diversion: Per Kansas Attorney General's Opinion, 97-34, if a county or district attorney uses any method whereby a defendant can have charges dismissed pursuant to specific terms, then the county or district attorney is deemed to have a diversion program and they must comply with the requirements of K.S.A. 22-2907 et. seq. As a result, pursuant to K.S.A. 22-2909, any agreement to resolve a charge requires the person to waive certain rights, sign a stipulation of facts, et cetera. The legislature may want to consider a less-stringent diversion option or even the possibility of a pre-charging diversion.
4. "Sealing" of Diversion. The question as to whether diversions should be "sealed" from public view has been discussed. Diversion agreements are reduced to writing and filed in the charged case to memorialize the terms of the agreement which, if complied with, serve as the basis for dismissal of the action. As such, they are part of the public record – though a successfully completed diversion does not count toward one's criminal history score. Rather than "sealing" diversions, the expungement statutes could be modified.
5. Indigency. Diversion application fees are often critical to running diversion programs. Further, an applicant's ability to pay back restitution is a relevant factor for decisions to grant diversion. How to ensure that indigent diversion applicants have the same access to the process is an issue. While prosecutors often accept payments for application fees, there is no independent funding stream to assist applicants. No simple solutions to this issue have been identified but the working group felt it was important to note the discussion.
6. Deferred Adjudication: should the State of Kansas consider creating a mechanism for "deferred adjudication"? For instance, in Oklahoma, Title 22, Chapter 16, Section 991c, the court can accept a plea, ". . . before a judgement of guilt, without entering a judgement of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a seven year period. . ." K.S.A. 22-2910 explicitly prohibits requiring a defendant to plea as a condition of diversion, so this would be a wholly new concept in Kansas.

**B. The Specialty Courts Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. Introduce the attached "Specialty Courts" proposed legislation which includes;
  - a. The Kansas Supreme Court shall adopt rules for the establishment and operation of one or more specialty court programs within the state.
  - b. Establish a Kansas Specialty Court funding advisory committee in the judicial branch of government. This committee shall:



- Evaluate resources available for assessment and treatment of persons assigned to specialty courts or for the operation of specialty courts.
  - Secure grants, funds and other property and services necessary or desirable to facilitate specialty court operations.
  - Recommend to the judicial administrator the allocation of such resources among the various specialty courts operating within the state.
  - Recommend amendments to statutes and rules to aid the development of specialty courts.
- c. Create the Specialty Courts Resources Fund in the state treasury which shall be administered by the state judicial administrator.
  - d. Amend K.S.A. 21-6614 as listed in Attachment B, Section 4.
  - e. If a participant in a specialty court program successfully completes the program as part of a sentence imposed by the court, the sentence of the specialty court participant may be reduced or modified.

**C. The Specialty Prisons Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. Authorize funding necessary for a "substance abuse treatment center" within the correctional facility system in order to give effect to statutory provisions adopted as part of the 3Rs report.
  - a. Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment.
    - Estimated cost of building \$20.7 Million.
  - b. Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
    - Estimated cost of renovations: \$3,501,432
2. Authorize funding for modification of a facility to address the needs of the geriatric prison population.
  - a. Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
    - Estimated cost of renovations: \$9,795,978
3. Support the recommendations of the Mental Health Task Force as provided to the 2018 and 2019 Legislatures as the Mental Health Task Force Report (MHTFR). Specifically;

- a. Adopt the recommendations of the MHTFR, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.
- b. Maintain at least the current number of beds in Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) and add 36 to 60 additional regional or state hospital beds within 24 months.
  - Budget: Assuming full occupancy. With all-funds costs of \$407 to \$936 per bed per day: \$5.3 million to \$12.3 million a year for 36 beds, up to \$8.9 million to \$20.5 million for 60 beds. (Based on FY2018 OSH and Adair Acute Care per diem rates.)
- c. Within five years, add up to a total of 221 new regional or state hospital beds, including those added in the first 24 months.
  - Budget: Up to an additional \$23.9 million to \$55 million a year, all funds, assuming full occupancy and 60 beds added in first two years. (Based on FY2018 OSH and Adair Acute Care per diem rates.)
- d. Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and the number of licensed beds.
  - Budget: Addressing staffing, shrinkage and contract labor will cost between \$10.8 million and \$11.3 million a year, all funds. (Based on FY2018 OSH and Adair Acute Care per diem rates.)
- e. End the moratorium on admissions to OSH that has been in place since June 2015.
  - Budget: \$764 to \$936 per bed per day. (Estimate provided in FY2020 and may need revised.)

**D. The Supervision Workgroup recommends the Commission endorse the following legislative initiatives during the 2021 Legislative Session:**

1. Support the Kansas Court Service Officer's Association's legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a *Certification of ID* to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver's license (December 2019).
  - (b)(17) an identification certificate issued by a court services or community corrections agency to an offender under the probation supervision of the community corrections agency.
2. Support the work of the Kansas State Sentencing Commission to propose legislation for earned compliance credit and/or strengthen early discharge mechanisms for people on supervision. (See 2019 HB 2052.)
3. Support the creation of a Workgroup to create Standardized Conditions of Supervision. The Workgroup shall have adequate representation from supervision

agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation to establish a standard set of conditions of supervision based on best practices. (See K.S.A. 21-6607.) Best practice dictates that standard conditions of supervision be *realistic, relevant and research-supported*. In addition, they should address behaviors associated with risk and only include conditions that benefit public safety.

4. Support the creation of a Workgroup to examine policy to consolidate concurrent supervision cases to one agency in one location so people on supervision are not supervised by multiple supervision officers simultaneously. Policy recommendations would include whether or not it is based on risk, the controlling sentence or the longest sentence. The Workgroup shall have adequate representation from supervision agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation.
5. Formalize the use of Effective Responses to Behavior: Formalize KDOC approach to responding to violations of parole supervision. Ensure that KDOCs strategy is maintained and supported. Track and monitor outcomes of this approach and modify the strategy as needed to adhere to evidence-based practices and increase public safety.

The Supervision Workgroup makes the follow recommendations for the Criminal Justice Reform Commission:

1. Develop an Interagency Re-Engagement Unit: The Interagency Re-Engagement Unit (REU) would target people who fail to report, are on absconder status or who are at-risk of revocation to become connected to resources and successfully re-engage in supervision. The REU would be a non-arresting unit that would attempt to re-engage clients for success. KDOC IMPP 14-131A could help guide the conversation. It would further be the recommendation to pilot an REU in one rural and one urban district.
2. Formalize Interagency Collaboration (Information Sharing, Training, Quality Assurance & Continuous Quality Improvement): Formalize interagency collaboration to increase information sharing, create efficiencies, and leverage agency expertise. This MOA should include a mechanism for sharing information across agencies to reduce inconsistencies and ensure adequate knowledge of existing resources. Additionally, supervision entities would leverage expertise across agencies to meet training needs of staff and share quality assurance and continuous quality improvement documents and processes. There would need to be universal data collection that could track state-wide proficiency levels, and a process developed for inter-rater reliability and fidelity monitoring across agencies.
3. Support Interagency Collaboration (Access to Programming): Support interagency collaboration to leverage resources to promote success on supervision and reductions in recidivism in the form of an MOA. This collaboration would enable access to programming for all people assessed as high risk and high need by developing a statewide coordinated effort to allow people supervised by one agency to receive programming facilitated by another agency. (Cognitive behavioral intervention classes, Batterers

Intervention Program (BIP), Offender Workforce Development Specialist (OWDS) classes, parenting classes, Substance Abuse Program (SAP), Seeking Safety, Strengthening Families Program, etc.)

4. Formalize the use of Effective Responses to Behavior: Formalize KDOC approach to responding to violations of parole supervision. Ensure that KDOCs strategy is maintained and supported. Track and monitor outcomes of this approach and modify the strategy as needed to adhere to evidence-based practices and increase public safety.

In addition, the Supervision Workgroup presents the following identified issues that need further exploration by the Criminal Justice Reform Commission:

1. Help to ensure robust sanctions and incentives are available statewide. This includes developing strategies to expand sanction and incentive options and monitoring the implementation of the 4:1 Behavior Management System with Community Corrections and Parole with the Kansas Department of Corrections.
2. Explore data integration to merge siloed data in a way that is actionable at the agency, judicial, executive, and legislative levels. This includes exploring how to provide consistent data collection, sharing, and reporting on sanctions and incentives between KDOC and OJA data systems.
3. Work with supervision entities to update mission and vision statements across agencies to ensure alignment with implemented best practices and the goals of supervision in Kansas.

Attachments:

- A. Diversion Workgroup Report
- B. Specialty Courts Workgroup Proposed Legislation
- C. Specialty Prisons Workgroup Report
- D. Supervision Workgroup Report

Attachment A

Diversion Workgroup Report

October 13, 2020

Diversion Workgroup:

- Marc Bennett (Chair)
- Honorable Marty Clark
- Attorney General Derek Schmidt
- Shelly Williams

**Kansas Criminal Justice Reform Commission  
Diversion Working Group**

October 13, 2020

To: Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee of the Criminal Justice Reform Commission

Re: Diversion Working Group 2020 Report

**Background**

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee was created. The subcommittee then established various working groups including the Diversion Working Group.

The Diversion Working Group was asked to examine the current statutory authority for diversion and consider opportunities to improve and expand the use of diversion in a consistent manner.

The Diversion Working Group met September 26, 2019, October 1, 2019, October 23, 2019. The COVID pandemic then prevented in-person meetings throughout the spring, summer and fall of 2020. In late the summer of 2020, Marc Bennett assumed the chair of the Diversion Working Group to allow Shelly Williams to devote her time to the Supervision Working Group. The Diversion Working Group then met by zoom on July 8, 2020, August 20, 2020 and October 6, 2020.

**Goals**

The Working Group examined the scope of the diversion statutes, guidance from Attorney General opinions, had access to the results of a 2017 survey of over 20 prosecutor's offices statewide as well as the Center for Health and Justice 2013 Survey of Diversion programs, and the Community Supervision Report issued by the Pew Charitable Trust in April of 2020.

The questions posed by the Working Group were as follows:

1. How to expand the availability of resources for diversion programs?
2. Whether there should be statutory standards mandating who "shall" be offered diversion (KSA 22-2908 says who cannot get diversion but not who must be offered diversion); or do the lack of consistent resources across regions of the state make that unworkable?
3. Whether we should examine the limits of KSA 22-2908?
4. Indigence. How can we address to ensure financial resources do not bar access?

**Working Group Recommendations**

## I. Legislation

The working group makes the following legislative recommendation to the Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee for submission to the Criminal Justice Reform Commission:

1. We recommend the Criminal Justice Reform Commission recommend that HB 2708, which was introduced in the 2020 legislative session (see HB 2292 from the 2019 session) be re-introduced in the 2021 Kansas legislative session. This bill would have accomplished two primary goals: First, it sought to expand SB 123 money to diverted defendants, rather than reserving these funds until post-conviction. This would allow diverted individuals to enter state-paid substance abuse treatment without the collateral consequences associated with conviction. Second, the bill explicitly authorized county and district attorneys to sign a memorandum of understanding (M.O.U.) with their respective probation department to supervise persons placed on diversion. This would allow jurisdictions without the resources to run a diversion program through their local prosecutor's office, to offer diversion. It would also be possible for jurisdictions with an existing diversion program to expand the availability to individuals with issues (namely, drug addiction) the current diversion program is not equipped to address.

This legislation passed the 2020 House 125-0 and was expected to receive a positive response in the Senate when the session came to halt due to COVID. It is the recommendation of this working group that the bill be re-introduced as it represents the best plan thus far identified to expand the availability of diversion and to afford diverted individuals access the resources to take advantage of treatment, so often necessary to success on supervision. Furthermore, the Diversion/Supervision/Specialty Courts/Specialty prison Subcommittee recommends a SASSI assessment be completed for all individuals that may be SB 123 eligible.

## II. Discussion

In addition, the working group recommends that the Criminal Justice Reform Commission include in its final report of December 1, 2020, discussion of the following:

1. Uniformity: Assuming the passage of a HB 2708-styled bill in the 2021 session, the legislature may need to examine the use of diversion across the state, and whether the public policy of the state should, (1) require diversion be offered in each jurisdiction; and if so, (2) whether diversion should be mandated for certain types of crimes for people with certain criminal history?
2. Less stringent diversion: Per Kansas Attorney General's Opinion, 97-34, if a county or district attorney uses any method whereby a defendant can have charges dismissed pursuant to specific terms, then the county or district attorney is deemed to have a diversion program and they must comply with the requirements of K.S.A. 22-2907 et. seq. As a result, pursuant to K.S.A. 22-2909, any agreement to resolve a charge requires the person to waive certain rights, sign a stipulation of facts, et cetera.

The legislature may want to consider a less-stringent diversion option or even the possibility of a pre-charging diversion. For instance, a group of 18-20 year olds could be issued citations for

being in possession of alcohol at a party. The county attorney may want to offer them a chance to do community service to resolve the case. If the case is charged, formal diversion, with the attendant waivers of rights and court appearance would be required. See also, K.S.A. 22-2907(1). For nonperson, non-violent misdemeanors for instance, that may be unnecessarily burdensome. The legislature could allow a diversion with fewer “hoops” once a case is charged for nonperson misdemeanors.

Alternatively, if the prosecutor just wanted to agree not to charge the matter and “divert” it without the necessity of formal charges, the concept of a pre-charging diversion is not explicitly recognized currently in Kansas. K.S.A. 22-2907(1) outlines diversions “after a complaint has been filed charging a defendant with commission of a crime. . .” but the law is silent on the notion of a pre-charging diversion). See similar discussion at *Dearborne v. State* (1978 Tenn.) 575 S.W.2d 259, and 4 ALR4th 138. Additionally, if the prosecutor offers a pre-charging agreement, there is no record of the disposition – which causes a problem for the KBI in their record’s keeping responsibilities to the F.B.I.—and no transparency to the public.

If this concept is one the legislature wants to explore, these two hurdles—records keeping and transparency--could be overcome.

First, with regard to records keeping, it could be made clear at K.S.A. 21-2501, which governs fingerprinting requirements, that pre-charging diversion programs require the divertee to be processed by the local sheriff. See also, K.S.A. 12-16,119 which governs booking/processing fees.

Second, transparency would be achieved in situations where the pre-charging divertee was unsuccessful, because the “diversion” would be rescinded and the criminal case then filed in a publicly accessible complaint/information. But if the person successfully completed the pre-charging diversion there would be no case number and no transparency.

K.S.A. 22-2302 could be amended to allow a criminal case to be filed simply to memorialize the pre-trial diversion agreement. See also, K.S.A. 8-2106 (regarding traffic infractions) and K.S.A. 32-1049 (regarding wildlife and parks). Another option would be to allow the filing of a miscellaneous “MR” case to file such a pleading.

Finally, note that K.S.A. 22-2912 allows exemption from the provisions of the diversion statutes if the judicial district adopts rules for court diversion. However, there is no identifiable state-wide funding stream for such a program.

3. “Sealing” of Diversion. The question as to whether diversions should be “sealed” from public view has been discussed. Diversion agreements are reduced to writing, and filed in the charged case to memorialize the terms of the agreement which, if complied with, serve as the basis for dismissal of the action. As such, they are part of the public record—though a successfully completed diversion does not count toward one’s criminal history score. See *State v. Hodgden*, 29 Kan.App.2d 36 (2001).

Competing interests are involved in this public policy question. If a defendant successfully completes a diversion, he or she now has a right to expunge the conviction (a change in the law



that took place in 1998). But if that person is later a witness in a criminal case there is an apparent obligation on the part of the state to inform the defendant that the witness had been previously granted diversion, if the crime was a “crime of dishonesty,” such as theft. See *State v. Sanders*, 263 Kan. 317 (1997).

After discussion, the working group suggests that rather than “sealing” diversions, the expungement statutes could be modified. For instance, decreasing the time frame for expungement eligibility following a successful diversion and ensuring that when expungement is granted that the order used statewide uniformly grants expungement of both the arrest and the diversion (or conviction, for that matter) under K.S.A. 22-2410.

4. Indigency. Diversion application fees are often critical to running diversion programs. Further, an applicant’s ability to pay back restitution is a relevant factor for decisions to grant diversion. How to ensure that indigent diversion applicants have the same access to the process is an issue. While prosecutors often accept payments for application fees, there is no independent funding stream to assist applicants. No simple solutions to this issue have been identified but the working group felt it was important to note the discussion.
5. Deferred Adjudication: should the State of Kansas consider creating a mechanism for “deferred adjudication”? For instance, in Oklahoma, Title 22, Chapter 16, Section 991c, the court can accept a plea, “. . . before a judgement of guilt, without entering a judgement of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a seven year period. . .” K.S.A. 22-2910 explicitly prohibits requiring a defendant to plea as a condition of diversion, so this would be a wholly new concept in Kansas.

The advantage of such a construct is that the state is able to resolve the case, release witnesses and achieve some degree of finality while the defendant can accept responsibility without being saddled with the collateral consequences of a plea.

The working group felt that enhancing the existing diversion construct in Kansas rather than trying to cobble together a new deferred adjudication statute was the better practice for Kansas at this time.

### Conclusions

This report represents the recommendations of the Diversion Working Group. We are aware that funding for any program set up as an alternative to probation or incarceration will be an issue. But if we are to find alternatives to keep people out prison—and the consequent \$29,000 annual cost per inmate—enhancing the availability of diversion offers a means to hold people accountable, require payment of restitution, and completion of treatment, without the damaging collateral consequences of a conviction. We believe this investment will pay dividends in the following years through decreasing jail and prison bed space and enhancing success on supervision.

Respectfully Submitted this 13th day of October 2020.

Marc Bennett, District Attorney  
Chair Diversion Working Group

Judge Marty Clark  
District Magistrate Judge

Tabitha Owens  
Smith County Attorney

Shelly Williams  
Riley County Community Corrections

Attachment B

Specialty Courts Workgroup Bill Proposal

October 26, 2020

Specialty Courts Workgroup

- Honorable Glenn Braun, Chair
- Tabitha Owen

## **New Sec. 1**

- (a) The Kansas supreme court shall adopt rules for the establishment and operation of one or more specialty court programs within the state.
- (b) The chief judge in a judicial district of the state may establish a specialty court program in accordance with rules adopted by the Kansas supreme court.
- (c) For purposes of Sections 1-5, "Specialty court" is defined as a district court program that uses therapeutic or problem-solving procedures to address underlying factors that may be contributing to a party's involvement in the state judicial system, i.e. mental illness or drug, alcohol, or other addiction. Procedures may include treatment, mandatory periodic testing for a prohibited drug or other substance, community supervision, and appropriate sanctions and incentives.

## **New Sec. 2**

- (a) There is hereby established a Kansas specialty court funding advisory committee in the judicial branch of government.
- (b) The committee shall:
  - 1) Evaluate resources available for assessment and treatment of persons assigned to specialty courts or for the operation of specialty courts;
  - 2) secure grants, funds and other property and services necessary or desirable to facilitate specialty court operation;
  - 3) recommend to the judicial administrator the allocation of such resources among the various specialty courts operating within the state; and
  - 4) recommend amendments to statutes and rules to aid the development of specialty courts.
- (c) The committee shall be made of the following members:
  - (1) The chair of the judiciary committee of the house of representatives or the chair's designee;
  - (2) The chair of the judiciary committee of the senate or the chair's designee;
  - (3) The chair of the legislative budget committee established pursuant to K.S.A. 46-1208 or the chair's designee;

- (4) One member of the minority party jointly appointed by the minority leader of the house of representatives and the minority leader of the senate;
  - (5) Five members appointed by the chief justice of the Kansas supreme court, one of which shall be a representative of the prosecuting attorneys of the state and one of which shall be a representative of the criminal defense bar of the state; and
  - (6) One member appointed by the secretary of corrections, one member appointed by the secretary of the department for aging and disability services, and a drug and alcohol addiction treatment provider appointed by the Kansas sentencing commission shall serve as ex officio, nonvoting members of the committee.
- (d) The chief justice of the Kansas supreme court shall designate the chair of the committee.
  - (e)
    - (1) Three members appointed by the chief justice shall be appointed for a term of three years. Two members appointed by the chief justice shall be appointed for a term of two years. All ex-officio members shall be appointed for a term of two years.
    - (2) The terms of all members shall continue until a successor is appointed and qualified, but shall terminate upon the member ceasing to belong to the class from which the member was appointed.
    - (3) Vacancies of members appointed pursuant to New Sec. 2(c)(4)-(6) shall be filled by appointment by the named appointing authority for the unexpired term. Upon vacancy, the places of the members of the legislature appointed pursuant to New Sec. 2(c)(1)-(3) shall be filled by their successors.
  - (f) Committee members shall be appointed by August 1, 2021.
  - (g) The office of judicial administration may provide technical assistance to the committee established under this section.
  - (h) All members of the committee except judicial members shall receive compensation and travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto. Reimbursement for travel expenses and subsistence expenses or allowances of judicial members shall be paid as provided in K.S.A. 75-3212, and amendments thereto.
  - (i) All moneys secured for the operation of specialty courts under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the specialty court resources fund established in New Sec. 3.

- (j) Nothing in this section shall preclude any judicial district, unit of local government, or the state judicial branch from directly applying for, receiving, and retaining funding to facilitate specialty court operations. Funds received by a judicial district or unit of local government under this subsection shall not be remitted to the state treasurer.

### New Sec. 3

- (a) There is hereby created the specialty court resources fund in the state treasury which shall be administered by the state judicial administrator.
- (b) All expenditures from the specialty court resources fund shall be for the purpose of operating specialty court programs established pursuant to New Sec. 1, including administrative costs related to such programs.
- (c) Funds acquired through appropriations, grants, gifts, contributions, and other public or private sources that are designated for specialty court operations, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the specialty court resources fund. All expenditures from the specialty court resources fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state judicial administrator or the judicial administrator's designee.

### Sec. 4

K.S.A. 21-6614 is hereby amended to read as follows:

21-6614. Expungement of certain convictions, arrest records and diversion agreements. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(3) Notwithstanding subsection (a)(1), and except as provided in subsections (b), (c), (d), (e) and (f), any person who has completed the requirements of a specialty court program established

under Sec. 1 may petition the district court for the expungement of the conviction and related arrest records upon completion of the specialty court program. The court may waive all or part of the docket fee imposed for filing a petition pursuant to this subsection.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2019 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2019 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(d) (1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2019 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2019 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2019 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2019 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2019 Supp. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 2019 Supp. 21-5514, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2019 Supp. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2019 Supp. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2019 Supp. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2019 Supp. 21-5401, and amendments thereto;



(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2019 Supp. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2019 Supp. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(g) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or

records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) If the petition is filed under subsection (a)(1) or (a)(2), tThe petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner. If the petition is filed under subsection (a)(3), the court must find that no proceeding involving a felony is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

(K) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or

(L) to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(j) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k) (1) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection (k)(1), and except as provided in K.S.A. 2019 Supp. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:

(A) Carry a concealed weapon pursuant to the personal and family protection act; or

(B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto; or

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(m) The provisions of subsection (l)(17) shall apply to records created prior to, on and after July 1, 2011.

## **New Sec. 5**

- (a) If a participant in a specialty court program established pursuant to New Sec. 1 successfully completes the specialty court program as part of a sentence imposed by the court, the sentence of the specialty court participant may be reduced or modified.
- (b) Nothing contained in this section shall be construed to permit a judge to impose, modify, or reduce a sentence below the minimum sentence required by law.

Attachment C

Specialty Prisons Workgroup Report

October 26, 2020

Specialty Prisons Workgroup

- Attorney General Derek Schmidt (Chair)
- Chief Todd Ackerman
- Secretary Jeff Zmuda

## Specialty Prisons Workgroup Report

Held regular meetings:

September 1, 2020

The Specialty Prisons Workgroup (Workgroup), a workgroup of the Diversion/Supervision/Specialty Courts/Specialty Prisons Subcommittee (Subcommittee), met one time during the interim. The Workgroup was guided by the statutory duties of the Commission to study the policies of the Department of Corrections (DOC) for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities. The Subcommittee provided the Workgroup with direction to identify the current status of specialty prisons in Kansas, any issues, concerns or gaps impeding progress, any resources needed to move forward, and goals to address any identified issues. The Specialty Prisons Workgroup members were Attorney General Derek Schmidt, Chief Todd Ackerman, Marysville Police Department, and Acting Secretary Jeff Zmuda, DOC.

The Workgroup noted the FY2021 Budget provided partial funding for:

- KDOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
- KDOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.

The Workgroup renewed their commitment to support the following legislative initiatives previously provided:

- Authorize funding necessary for a “substance abuse treatment center” within the correctional facility system in order to give effect to statutory provisions adopted as part of the 3Rs Report;
- Authorize funding for modification of a facility to address the needs of the geriatric prison population; and
- Support the recommendations of the Mental Health Task Force as provided to the 2018 and 2019 Legislatures as the Mental Health Task Force Report (MHTFR).

Specifically, the Workgroup recommends the 2021 Legislature:

- Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for geriatric/cognitive care within the correctional facility system.
  - Estimated cost of renovations: \$9,795,978
- Fully fund and provide the authority for DOC to continue to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment.
  - Estimated cost of renovations: \$3,501,432
- Authorize the funding and authority for DOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment.

- Estimated cost of building \$20.7 Million.<sup>1</sup>
- Adopt the recommendations of the MHTFR, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.
  - Maintain at least the current number of beds in Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) and add 36 to 60 additional regional or state hospital beds within 24 months.
    - Budget: Assuming full occupancy. With all-funds costs of \$407 to \$936 per bed per day: \$5.3 million to \$12.3 million a year for 36 beds, up to \$8.9 million to \$20.5 million for 60 beds.<sup>2</sup>
  - Within five years, add up to a total of 221 new regional or state hospital beds, including those added in the first 24 months.
    - Budget: Up to an additional \$23.9 million to \$55 million a year, all funds, assuming full occupancy and 60 beds added in first two years.<sup>2</sup>
  - Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and the number of licensed beds.
    - Budget: Addressing staffing, shrinkage an contract labor will cost between \$10.8 million and \$11.3 million a year, all funds.<sup>2</sup>
  - End the moratorium on admissions to OSH that has been in place since June 2015.
    - Budget: \$764 to \$936 per bed per day.<sup>2</sup>

<sup>1</sup> Estimate provided in FY2020 and may need revised.

<sup>2</sup> Based on FY2018 OSH and Adair Acute Care per diem rates.



Attachment D

Supervision Workgroup Report  
October 20, 2020

Supervision Workgroup Members

- Shelly Williams (Chair)
- Honorable Marty Clark
- Honorable Glenn Braun
- Spence Koehn
- Sheriff Bill Carr
- Hope Cooper
- Brian Seidler
- Erin Geist
- Audrey Cress
- Nassir “Matt” Hadaegh

Kansas Criminal Justice Reform Commission  
Diversion/Specialty Courts/Specialty Prisons/Supervision Sub-Committee  
Supervision Workgroup Interim Report

**October 20, 2020**

To: Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee of the Criminal Justice Reform Commission

Re: Supervision Workgroup Interim Report

Members of the Criminal Justice Reform Commission,

***Background***

During the first meeting of the Kansas Criminal Justice Reform Commission on August 28, 2019, the Diversion/Supervision/Specialty Courts/Specialty Prison Sub-Committee was established. The Subcommittee then established various working groups including the Supervision Workgroup. Since its creation, the Supervision Workgroup met 20 times, worked closely with the Council of State Governments, examined policy initiatives in Michigan, Missouri, Ohio, Oregon and Vermont, and heard from various stakeholders. In addition, the Supervision Workgroup reviewed “Policy Reforms Can Strengthen Community Supervision: *A Framework to Improve Probation and Parole Report*,” by the Pew Charitable Trusts (April 2020), as a starting point to research how to strengthen community supervision and resources to change offender behavior and reduce recidivism.

The Supervision Workgroup was charged with reviewing supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision, surveying the availability of evidence-based programming for offenders in the community and for making recommendations for changes in available programming. Given the unique structure of community supervision in Kansas, with three separate entities overseeing offenders in the community, more questions were raised than answers given. Some of the questions the Workgroup sought to answer included:

1. What is community supervision in Kansas?
2. What is driving revocations in Kansas?
3. How do we address dual and sometimes triple supervision of offenders?
4. How do we get resources, both access to and funding, for mental health and substance

use treatment, and employment and housing support to all supervision agencies?

To answer these questions and more, the Workgroup reviewed the KDOC offender database for Community Corrections and Parole regarding the Risk Domains of Accommodations, Emotional/Personal, Alcohol/Drug and Education/Employment, conducted an employment and housing survey, collected Batterers Intervention Program (BIP) capacity information, and examined literature reviews. The Supervision Workgroup also reviewed broad policy initiatives including: *Good Time Credit or Compliance Credit* (with presumptive discharge), *Program Credit* (dosage to be included in this credit with presumptive discharge), *Consistent and Reduced Conditions of Supervision*, *Early Discharge*, *Eliminate or Allow Prison Review Board to Modify Lifetime Supervision and/or Lifetime GPS*, and *Mandatory Consolidation of Dual Supervision*.

Parallel to the Supervision Workgroup's process, the Council of State Governments was conducting assessments to better understand community supervision challenges and procedures across the state; developing and vetting potential policy and procedure options for improvement of community supervision practices, policies and outcomes; and confirming stakeholder agreement on recommendations at the legislative and administrative levels.

### ***Findings***

❖ People who commit condition violations account for a substantial and growing proportion of prison admissions.

- From FY2010 to FY2019, there was a 31% growth in prison admissions for condition violations & sanctions<sup>3</sup>
- 58% of prison admissions in FY2019 were for condition violations & sanctions<sup>4</sup>
  - ◆ It cost an estimated \$43 million to incarcerate people who violate supervision conditions in FY2019 (Cost estimates are based on the FY2019 year-end prison population and the FY2019 operating cost expenditures per inmate for KDOC facilities.)
- Failure to report is the most cited reason at revocation followed by failure of drug test and failure of program/treatment<sup>5</sup>
- Approximately 20-25% of the Community Corrections population is on absconder status<sup>6</sup>

<sup>3</sup> [CSG Justice Center analysis of KDOC prison admission data, May 2020.](#)

<sup>4</sup> [CSG Justice Center analysis of KDOC prison admission data, May 2020.](#)

<sup>5</sup> [CSG Justice Center analysis of Kansas Sentencing Commission probation revocation hearings data, August 2020.](#)

<sup>6</sup> [Kansas Department of Corrections, Statistical Summary FY 2019 Community Corrections Adult Offender Population Report](#)

- Revocation rates are higher in some rural counties<sup>7</sup>
- ❖ There are inconsistencies between supervision agencies in regards to conditions of supervision, dual supervision and resources for programming.
  - Standard Conditions of Supervision vary by jurisdiction in the number, type, length and complexity across the state and do not meet best practice standards<sup>8</sup>
    - ◆ They range in length from 1 to 7 pages, with one area having as many as 55 different conditions of supervision
      - Of the 66 submitted conditions of supervision, the majority of the standard conditions ranged between 15 – 25 conditions
  - The estimated number of people on dual supervision (Community Corrections & Parole) in Kansas is 5% or approximately 1,200 offenders<sup>9</sup>
    - ◆ Individuals may be on active supervision with Community Corrections, Court Services, and/or the Kansas Department of Corrections simultaneously
    - ◆ Coordination across agencies is not standardized for dual supervision cases causing duplicative appointments, assessments, drug tests, supervision fees, and sanctions
    - ◆ Conflicting conditions exist when someone is supervised by more than one supervision entity, thus a net widening of revocations may occur
    - ◆ Siloed criminal justice system data does not allow for dual supervision cases to be easily identified across the state
  - Programming and resources for programming are inconsistent state-wide
    - ◆ Access and cost of programming varies between agencies and supervision entities
      - Programming is insufficient statewide, however it is especially scarce in western Kansas
    - ◆ People on supervision with Court Services who are high risk do not have the same access to programming
      - There is a lack of state-wide funding for programming for Court Services
    - ◆ Community resources are not consistently known across agencies
    - ◆ BIP Program Providers are unable to access full criminal history for the purpose of evaluating offenders and referring them to appropriate services

<sup>7</sup> [CSG Justice Center analysis of Kansas Sentencing Commission probation revocation hearings data, August 2020.](#)

<sup>8</sup> [CSG Justice Center analysis of 66 conditions of supervision submitted by the Supervision Workgroup, August 2020.](#)

<sup>9</sup> [Kansas Department of Corrections analysis of TOADS data system, July 2020.](#)

- ◆ Pay discrepancies exist across Court Services, Community Corrections and Parole
- ◆ Trainings are siloed between agencies causing inefficiencies and inconsistent practices across agencies
- ◆ The use of quality assurance and continuous quality improvement practices vary from supervision entity to supervision entity and across the state

### ***Working Group Recommendations***

#### ***Legislation***

The Supervision Workgroup makes the following legislative recommendations to the Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee for submission to the Criminal Justice Reform Commission:

1. Support the Kansas Court Service Officer's Association's legislative initiative to amend K.S.A. 8-246, adding Court Services and Community Corrections agencies as authorized entities to provide a *Certification of ID* to offenders under their supervision, to be presented as one form of identification for obtaining a replacement driver's license (December 2019).
 

(b)(17) an identification certificate issued by a *court services or community corrections agency* to an offender under the probation supervision of the community corrections agency.
2. Support the work of the Kansas State Sentencing Commission to propose legislation for earned compliance credit and/or strengthen early discharge mechanisms for people on supervision. (See 2019 HB 2052.)
3. Support the creation of a Workgroup to create Standardized Conditions of Supervision. The Workgroup shall have adequate representation from supervision agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation to establish a standard set of conditions of supervision based on best practices. (See K.S.A. 21-6607.) Best practice dictates that standard conditions of supervision be *realistic, relevant and research-supported*. In addition, they should address behaviors associated with risk and only include conditions that benefit public safety.
4. Support the creation of a Workgroup to examine policy to consolidate concurrent supervision cases to one agency in one location so people on supervision are not

supervised by multiple supervision officers simultaneously. Policy recommendations would include whether or not it is based on risk, the controlling sentence or the longest sentence. The Workgroup shall have adequate representation from supervision agencies, judges, the Prison Review Board, KDOC, OJA, prosecutors, defense attorneys, and victim representation.

5. Formalize the use of Effective Responses to Behavior: Formalize KDOC approach to responding to violations of parole supervision. Ensure that KDOCs strategy is maintained and supported. Track and monitor outcomes of this approach and modify the strategy as needed to adhere to evidence-based practices and increase public safety.

### ***Interagency Collaboration***

The Supervision Workgroup makes the following recommendations to the Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee for submission to the Criminal Justice Reform Commission:

1. Develop an Interagency Re-Engagement Unit: The Interagency Re-Engagement Unit (REU) would target people who fail to report, are on absconder status or who are at-risk of revocation to become connected to resources and successfully re-engage in supervision. The REU would be a non-arresting unit that would attempt to re-engage clients for success. KDOC IMPP 14-131A could help guide the conversation. It would further be the recommendation to pilot an REU in one rural and one urban district.
2. Formalize Interagency Collaboration (Information Sharing, Training, Quality Assurance & Continuous Quality Improvement): Formalize interagency collaboration to increase information sharing, create efficiencies, and leverage agency expertise. This MOA should include a mechanism for sharing information across agencies to reduce inconsistencies and ensure adequate knowledge of existing resources. Additionally, supervision entities would leverage expertise across agencies to meet training needs of staff and share quality assurance and continuous quality improvement documents and processes. There would need to be universal data collection that could track state-wide proficiency levels, and a process developed for inter-rater reliability and fidelity monitoring across agencies.
3. Support Interagency Collaboration (Access to Programming): Support interagency collaboration to leverage resources to promote success on supervision and reductions in

recidivism in the form of an MOA. This collaboration would enable access to programming for all people assessed as high risk and high need by developing a statewide coordinated effort to allow people supervised by one agency to receive programming facilitated by another agency. (Cognitive behavioral intervention classes, Batterers Intervention Program (BIP), Offender Workforce Development Specialist (OWDS) classes, parenting classes, Substance Abuse Program (SAP), Seeking Safety, Strengthening Families Program, etc.)

### *Continued Work*

In addition, the Supervision Workgroup presents to the Diversion/Supervision/Specialty Courts/Specialty Prison Subcommittee the following identified issues that need further exploration for the submission to the Criminal Justice Reform Commission:

1. Help to ensure robust sanctions and incentives are available statewide. This includes developing strategies to expand sanction and incentive options, and monitoring the implementation of the 4:1 Behavior Management System with Community Corrections and Parole with the Kansas Department of Corrections.
2. Explore data integration to merge siloed data in a way that is actionable at the agency, judicial, executive, and legislative levels. This includes exploring how to provide consistent data collection, sharing, and reporting on sanctions and incentives between KDOC and OJA data systems.
3. Work with supervision entities to update mission and vision statements across agencies to ensure alignment with implemented best practices and the goals of supervision in Kansas.

### *Conclusions*

This report represents the recommendations of the Supervision Workgroup. We support the continued work of the Kansas Criminal Justice Reform Commission. We support the continued assistance of the CSG Justice Center. We support the continued quantitative and qualitative data analysis by the CSG Justice Center on relevant areas. Further we believe there is opportunity for the development of specific administrative and/or legislative policies to strengthen community supervision in Kansas.

Respectfully Submitted this 26<sup>th</sup> Day of October 2020

Kansas Criminal Justice Reform Commission Members:

Shelly Williams, Riley County Community Corrections Director  
Chair Supervision Workgroup

Honorable Marty Clark, District Magistrate Judge  
20<sup>th</sup> Judicial District

Honorable Glenn Braun, District Court Chief Judge  
23<sup>rd</sup> Judicial District

Spence Koehn, Court Services Specialist  
Office of Judicial Administration

Sheriff Bill Carr, Ford County Sheriff  
Ford County, Kansas

Other Members:

Hope Cooper, Deputy Secretary of Juvenile & Adult Community-Based Services  
Kansas Department of Corrections

Brian Seidler, Senior Business Intelligence Analyst  
Johnson County Department of Corrections

Erin Geist (Stand-in for Judge Braun), Adult Intensive Supervision Officer II  
North West Kansas Community Corrections

Audrey Cress, Director of Victim Services  
Kansas Department of Corrections

Nassir “Matt” Hadaegh, Adult Intensive Supervision Officer  
11<sup>th</sup> Judicial District Community Corrections



**Kansas Criminal Justice Reform Commission**  
**Sub-Committee: Mental Health / Substance Abuse**  
**Final Report**

**December 1, 2020**

To: Criminal Justice Reform Commission

Re: Final Report

Members of the Criminal Justice Reform Commission,

***Background***

During the first meeting of the Kansas Criminal Justice Reform Commission, dated August 28, 2019, the Mental Health / Substance Abuse Sub-Committee was established. Rep. Stephen Owens was selected to chair the sub-committee. On December 1, 2019, the sub-committee presented the full committee with an interim report. During the 2020 legislative session, legislation was introduced based on our recommendations, but unfortunately, with a shortened session, we didn't see any of the bills pass. We continued our work during a very challenging 2020 pandemic as we reviewed the KDADS Mental Health Task Force recommendations, added a number of new members to our committee, engaged the Council of State Governments Justice Reinvestment Team and developed final recommendations for this report.

***Goals***

As a sub-committee, we have identified the following statement and feel it most clearly identifies our goals as a working group:

*To create an integrated system between mental health, substance abuse and criminal justice at the county, regional and state levels that can provide prompt, appropriate treatment and interventions to break the cycles of decompensation and incarceration to successfully*

*reduce the number of individuals with mental illness, substance use disorders or dually diagnosed individuals entering into, residing in and reentering the criminal justice system.*

The majority of this language comes from the KDADS 3R's report developed back in 2005; specifically, the Mental Health / Substance Abuse sub-committee work.

### ***Sub-Committee Recommendations***

The sub-committee believes the following recommendations warrant action by the legislature during the 2021 session and beyond:

1. HB 2708 was introduced to the House Judiciary Committee during the 2020 Legislative Session. This bill would create a new program similar to SB 123 (which set aside funding for drug treatment for certain defendants convicted of drug offenses.) This program would set money to certain diverted defendants, instead of only convicted offenders; to allow them to enter state paid substance abuse treatment. This legislation passed the House 125 – 0 but died in the Senate due to the shortened session. It is the recommendation of this committee that this bill be re-introduced.
2. Mental health issues are prevalent in our communities. The lack of access to treatment, both the result of regional inaccessibility and a lack of insurance or a payment source, is an issue that must be addressed. With this in mind, we highly encourage the legislature to continue to make access to regional mental health services a priority in the 2021 session.
3. The Council of State Governments (CSG) Justice Center Recommendations adopted by the sub-committee:

### **Overview & Context**

- Effective treatment for people in the criminal justice system addresses both criminogenic and behavioral health needs.
- Nationally, the rates of mental illnesses and substance use disorders in the justice system are higher than in the adult general population.
- Most admissions to prison for drug offenses are people with high-medium Level of Service Inventory-Revised (LSI-R) scores.

- 58 percent of admissions for new nonviolent offenses and 53 percent of admissions for new violent offenses scored “moderate” to “very high” in the LSI-R domain for alcohol/drugs.
- Over a quarter of the people released from prison each year have mental health needs requiring some level of treatment or services.
- People with co-occurring mental illnesses and substance use disorders have complex needs that require integrated responses across the criminal justice system.

This document includes policy options to reduce barriers for people in the criminal justice system with behavioral health needs. These policies are broken down into four priorities.

1. **Leverage current efforts** to support people with mental illnesses and substance use disorders in the justice system.
2. Provide opportunities and develop policy on **cross-system coordination**.
3. Prioritize collecting **data to guide policy improvements**.
4. Focus on **training and education for providers** to support people with mental illnesses and substance use disorders in the justice system.

### **Additional Detail on the Policy Priority Areas**

1. **Leverage current efforts** to support people with mental illnesses and substance use disorders in the justice system.  
*While there is a well-developed structure to ensure effective transitions from prison to the community, insufficient staffing levels result in poor implementation of the processes in place.*

#### **Short-Term Opportunities**

- a. *Administrative:* Modify policies and procedures to require a formal transition package for all people leaving prison that includes:
  - i. Requirements for coordination with probation and parole agencies and KDOC contractors for people with mental illnesses and substance use disorders (SUDs)
  - ii. Written policies and procedures about coordination between KDOC transition planners, Community Mental Health Centers (CMHCs), and community-based SUD treatment providers

#### **Long-Term Opportunities**

- b. *Administrative:* Modify policies and procedures to require case plans developed by parole officers to follow the transition plan.
  - i. Additional guidance should be given to parole officers for people who have mental illness and substance use disorder (SUD) treatment as part of their conditions of release.

- c. *Administrative:* Modify policies and procedures to ensure that parole officers receive a copy of the transition plan developed for people while in KDOC custody as part of reentering the community. Develop a process to monitor follow-up on the transition plans.

*Support integrated co-occurring mental illness and substance use disorder treatment in the prison system.*

### ***Immediate Action***

- d. *Administrative:* Modify contracts to ensure that mental health and substance use providers create a coordinated care team to support people with co-occurring mental illnesses and substance use disorders.

### ***Long-Term Opportunities***

- e. *Administrative:* Modify policies and procedures to support matching people with co-occurring mental illnesses and substance use disorders to services.
- f. *Administrative:* Modify policies and procedures for transition planning for people with co-occurring mental illnesses and substance use disorders to support integrated treatment when possible.
- g. *Administrative:* Modify policies and procedures to ensure connection to and coordination with CMHCs and SUD treatment providers for people with co-occurring mental illnesses and substance use disorders as they reenter the community.

### ***Utilize the opportunity for the planned launch of a Stepping Up Technical Assistance Center to support cross-system coordination.***

Stepping Up is a national initiative focused on counties committing to pass a public resolution to reduce the number of people with mental illnesses in jails. Over 500 counties across 43 states have Stepped Up to reduce the prevalence of mental illness in jail. The initiative calls for no-nonsense, data-driven public management, which includes the use of validated screening and assessments, common definitions of SMI and substance use, and tracking and reviewing key measures.

### ***Immediate Action***

- h. *Administrative:* Use feedback and lessons learned from cross-system coordination for mental health and jails to inform opportunities in other areas of the justice system, including best practices, and address housing instability and substance use disorders.
  - i. Coordinate with the Governor's Behavioral Health Services Planning Council's Justice Involved Youth and Adults (JIYA) Subcommittee to make sure that priorities are aligned.

*Update contracts, policies, and procedures to support additional guidance for substance use disorder interventions in the prison system.*

### **Immediate Action**

- i. *Administrative*: Modify policies and procedures to create standard guidance for all contracted providers on intake and reentry support for people receiving the University of Cincinnati Substance Abuse curriculum.
- j. *Administrative*: Develop guidance for transition specialists and contracted substance use curriculum providers on how to coordinate with community-based substance use disorder treatment and recovery support service providers.
- k. *Administrative*: Develop guidelines and information-sharing protocols for KDOC to communicate completion of cognitive behavioral interventions with community-based providers as people reenter the community.

### **Long-Term Opportunities**

- l. *Administrative*: Consider expanding options for substance use disorder treatment in prisons.
2. Provide opportunities and develop policy on **cross-system coordination**.  
*Develop policies to improve access to mental illness and substance use disorder treatment in correctional facilities and the community.*

### **Immediate Action**

- a. *Administrative or Statutory*: Leverage access to telehealth services through Medicaid and insurance to assist with connections to care for people in the justice system. Identify funding for telehealth consultations while people are in jail or prison prior to reentering the community.

### **Long-Term Opportunity**

- b. *Statutory*: Develop policy and provide funding to support correctional facility liaisons for the CMHCs and/or substance use treatment to support warm handoffs to community-based care.  
*Increase diversion opportunities for people with mental illnesses and substance use disorders.*
  - c. *Administrative*: Develop mobile crisis teams through CMHCs and SUD treatment providers to increase service accessibility in rural and frontier counties and support crisis response.
  - d. *Statutory*: Amend SB 123 funding to allow for the provision of support for substance use treatment when people are diverted from prosecution and have completion of treatment as a condition of diversion.
3. Prioritize collecting **data to guide policy improvements**.  
*Prioritize cross-system data collection through a comprehensive statewide data collection process, standard metrics, or management information systems (MIS).*

### **Immediate Action**

- a. *Administrative*: Create a subcommittee or leverage the data subcommittee to identify common data metrics that should be collected across the criminal justice, mental illness, substance use disorder, and housing systems. This group will develop recommended legislation regarding what data should be collected.

### ***Long-Term Opportunity***

- b. *Administrative*: Provide guidance and/or technical assistance on the use of the data metrics and how to share across the relevant state and local agencies, with a particular focus on data sharing between county jails, the state prison system, and the community supervision agencies in Kansas.

4. Focus on **training and education for providers** to support people with mental illnesses and substance use disorders in the justice system.

*Develop education and training on mental illnesses, substance use disorders, housing, and working with people in the justice system.*

#### *Immediate Actions*

- a. *Administrative*: Require the Behavioral Science Regulatory Board to provide additional training on how to work with people in the justice system as part of state licensure.
- b. *Administrative*: Provide training for community supervision officers on mental illnesses and substance use disorders, treatment options, and strategies to better coordinate with treatment and recovery support service providers.

4. Currently, the first and second possessions of marijuana charges are misdemeanors. The sub-committee recommends the legislature amend the severity level of all personal use drug possession charges from felony to misdemeanor similar to marijuana. The long-term challenges of having a felony record include housing and employment issues. The initial focus should be on treatment versus punishment.
5. Sending mental health workers along with law enforcement to certain calls continues to make positive impacts by decreasing arrests and saving jail bed space. We recommend that a co-responder program be implemented throughout the state and that adequate funding follow. This program has already proven beneficial in a few cities in Kansas. In one program, as many as 98% of interactions resulted in the diversion from the jail system. While we recognize some inherent challenges in rural Kansas, emphasis should be put on treatment over incarceration.

6. We recommend that emphasis should be placed on prevention of crime through programs that offer “protective factors” such as safe, affordable, and decent housing (e.g., the Housing First Model), gainful employment (e.g., supported employment programs in the CMHCs), and positive family and social relationships. (CMHC = Community Mental Health Center)
7. Consideration should be given to the employment of the Sequential Intercept Model (SIM). This model can be the framework of community based services and the collaborations needed to divert justice involved individuals to appropriate resources in lieu of jail. This mapping process will help identify critical points upstream to promote recovery and where to apply resources.
8. This committee recognizes the importance of inter-agency communication; especially as it relates to behavioral health and incarceration. As such, the committee recommends the creation of a **Behavioral Health Liaison** position within each jail to specifically communicate with local mental health care facilities and / or CMHC’s (aka “Jail Liaison”). This would create a “single point of contact” within each correctional facility to promote seamlessness in service delivery. A **Corrections Liaison** within each CMHC could work collaboratively with persons released from jail and the behavioral health liaison to ensure all partner agencies involved (Community Corrections, Probation, Court Services, etc.) communicate effectively to ensure a seamless transition. There should be consideration given to the use of Peer Support services to assist in the transition.
9. The methamphetamine abuse and addiction crisis, affecting frontier, rural, and urban Kansas counties, is a driver of crime and incarceration, and is a major, ongoing threat to public safety and the safety of law enforcement officers. **Expanded access to detox and evidenced based treatment** is required if we are get in front of the effects of addiction.
10. Specialty Courts: Family Court, Drug Court, Mental Health Court singly or in combination allow for the specific application of the law based on factors a typical court may not be

experienced in. These courts have shown to produce better out comes for those involved.

This committee fully supports the use of specialty courts within the criminal justice system.

11. Consideration should be given to the establishment in each jail on-site behavioral health services, such as counseling, peer support, and psychiatric medication prescribing, and discharge planning; scaled to size and resources available.
12. Studies of cost-avoidance should be included, such as those produced out of Wichita State University, in decision making plans to compare incarceration versus treatment alternatives.
13. A major driver of the high incidence of mental illness in jails and correctional systems is the lack of access to acute care in psychiatric hospitals and residential programs created by the Medicaid Institutions of Mental Disease (IMD) exclusion, which prohibits federal reimbursement for care provided to most patients between the age of 21 and 64 in mental health facilities with more than 16 beds. Consideration should be given to applying for a waiver from CMS for reimbursement for mental health services in residential psychiatric facility and treatment centers. This could create a pathway for the expansion of certain community-based programs that could be alternatives to jail time (such as crisis residential programs, transitional living programs, etc.) as well as expand access to services that may divert individuals with mental illness from the justice system.
14. Competency Evaluations and Restoration services continue to be a bottleneck in the court system. This committee recommends the **support of trained mobile competency evaluation and restoration providers**. The current wait time to get into Larned Hospital for an evaluation is approximately 9 months. Mobile providers would be able to come to the facility to provide the needed evaluation or restoration services. The possibility of providing competency evaluation and restoration on an out-patient basis for those defendants that don't pose a risk to public safety should be considered. This position could exist with the CHMC framework possibly. In addition, behavioral health treatment and medication for defendants returning to local facilities should be provided to prevent decompensation that



may necessitate further delay in case processing. KDADS is currently looking at options for this as well.

15. Work force retention and recruitment continues to be a challenge within the mental health and substance abuse field, particularly in rural and frontier areas of the state where it is not uncommon for counselor or psychiatry positions to remain open for months or years. It is imperative that emphasis be placed on work force development in these areas by the Kansas Legislature.

### *Conclusions*

The mental health / substance abuse sub-committee has made multiple recommendations that we believe the legislature can take meaningful action on during the 2021 session. These items represent recommendations researched and evaluated over the last year and a half of sub-committee work. We attempted to be as inclusive as possible in making recommendations based on best practices utilizing all available resources.

The sub-committee recognizes the budgetary challenges faced by the state legislature. While the budget was always top of mind, we made recommendations we knew would create positive change in the criminal justice system recognizing funding limitations would not allow the full implementation of each item. While we constantly strive to look for options that are funding neutral, the reality is to effect change in the criminal justice system, it will take a significant initial investment. This investment will pay significant dividends in the following years through decreased jail and prison bed space.

Respectfully Submitted this 1<sup>st</sup> Day of December, 2020.

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Rep. Stephen Owens  
Chairman



## KCJRC Proportionality Committee

With the creation of the Kansas Criminal Justice Reform Commission, we have been charged with review of the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses. Listed are our immediate and long-term recommendations for the preliminary report. We have also kept in mind the financial and bed space constrictions of the Department of Corrections for the State of Kansas.

### Immediate (short term)

1. Decrease the penalties from drug grid level five to level eight for proportionality to nondrug grid level eight for proportionality reasons. HB 2047 (Attachment)

Explanation: This is in support of 2019 HB 2047. The subcommittee reviewed and concurred with the Sentencing Commission that sentences for severity level 5 drug crimes should be comparable to those of severity level 8 nondrug crimes. The proposal would lower drug grid severity level 5 sentences to be consistent or proportional with crimes on the nondrug grid at severity level 8.

2. Change unlawful tampering with electronic monitoring device from a level six crime to a level eight crime. HB 2494 (Attachment)

Explanation: Support for HB 2494 a proportionality bill coming from the Sentencing Commission. It is a minimal cost to damage an ankle strap. Currently, the offense is a severity level 6 nonperson felony. If a defendant is charged with a class A Misdemeanor and placed on monitoring during the course of their case, he or she could receive more time for this violation than the original sentence. The proposal also provides that if the offender is being monitored for an underlying misdemeanor offense, the tampering penalty would be a class A misdemeanor. Finally, lowering the penalty to a severity level 8 crime is also proportional and consistent with the penalty for escape from custody.

3. Increase felony loss threshold from \$1,000 to \$1,500 on 11 property crimes. HB 2485 (Attachment)

Explanation: This is in support of HB 2485. It is for proportionality reasons only. In 2016, the felony theft threshold was raised from \$1,000 to \$1,500. The same was accomplished for mistreatment of a dependent adult or elder person in 2018. We believe not including the rest of the property crimes was just an oversight when the original threshold was moved and support raising the threshold on these crimes.

4. Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation HB2518 (Attachment).

Explanation: This is in support of HB 2518. Currently, the domestic violence statute only counts domestic battery convictions as prior convictions to determine

class severity for sentencing. We suggest a language change that would include prior convictions of a crime with a “domestic violence designation” under KSA 22-4616. As it stands currently, a defendant that has two prior convictions of aggravated battery under KSA 21-5413 with a DV designation, would not qualify as “prior convictions” if convicted of domestic battery under KSA 21-5414. This change would ensure that the legislative intent of counting prior crimes against family members and intimate partners are used to determine the appropriate crime severity level at sentencing.

5. Implementation of pre-trial substance abuse programs. HB 2708 (Attachment)

Explanation: This is in support of HB 2708, 2019 HB 2292. Similar to the 2003 SB 123 substance abuse treatment program administered post-conviction by the Sentencing Commission, the bill would provide for substance abuse treatment funding for divertees. The subcommittee agrees that diverting nonviolent drug offenders from the criminal justice system is a key to better utilizing current resources and incentivizing offenders to be successful by avoiding a felony conviction, which could result in decreased opportunities in obtaining employment and housing.

Long term (1 Year or More)

1. Proposing the combining of both sentencing grids instead of utilizing drug and non-drug grids. (Survey Results Attached)

Explanation: Examination of the drug grid sentence ranges disclose that there is a need to explore proportionality with the nondrug grid. Those crimes currently on the drug grid are all nonperson and the subcommittee will seek to determine whether they can be incorporated into the nondrug grid.

A survey was performed for this across the state of Kansas. Law Enforcement, Judges, Prosecutors, BIDS Attorneys, Private Defense Counsel were asked to participate. The survey shows 54.79% agreed they need to be combined.

We also asked if the top five drug and non-drug offenses have the incarceration ranges be re-worked. All ten offenses were overwhelmingly answered with a yes.

The survey is attached.

2. Implement a more open and expanded compassionate release program. HB2469 (Attachment)

Explanation: The subcommittee recognizes that the cost of corrections is expensive and continues to increase over time. Nationally, compassionate release programs for terminally ill or functionally incapacitated inmates is underutilized. Kansas is possibly the most stringent in the country in its criteria for release. The current statute requires a physician to certify that the inmate has a terminal medical condition likely to cause death within 30 days of release. In consultation with the KDOC, it was disclosed that only a handful of inmates have been released in the last 10 years under this provision. Moreover, it takes on an average of 30 days just to do the

paperwork and get all the approvals finished. Changes to K.S.A. 22-3728 and 22-3729 would assist in allowing more inmates to be eligible for release to save taxpayer dollars and allow for inmates to be with their families in their last days.

3. Early discharge from prison of 50% for non-violent drug offenders. HB2484 (Attachment)

Explanation: A referral has been made from the Sentencing Commission to determine the effectiveness of all drug offenders being placed on community corrections after 50% of their time is served in prison. The proposal in its current form is estimated to save 61 beds in FY 2021 and 370 in FY 2030. If it would be applied retroactively, the savings increase to 291 beds in FY 2021 and 402 in FY 2030.

4. Judicial review of probation time at 50% served. HB2052 (Attachment)

Explanation: This is in support of 2019 HB 2052, including the Office of Judicial Administration balloon amendments proposed last legislative session. This is a review of the probation to see if all terms have been met. This would include all terms and conditions that were set by the court such as fines, restitution, treatment, or other programs. If satisfactory, the offender would be terminated from probation. The bill would serve to incentivize offenders to successfully complete probation early and allow probation officers to allocate scarce resources to higher risk/needs offenders.

The Council for State Government Justice Center was contracted to do a Kansas Justice Reinvestment – Violent Crime, Sentencing, and Victims Assessment. The options for the Proportionality/Sentencing Sub Committee in their report are as follows.

## **Violent Crime**

**Policy Objective 1:** Understand violent crime in Kansas at the incident level to improve investigation and build community trust.

### **Improve statewide data collection and data transparency**

#### **Immediate Actions**

- **Prioritize the transition to an incident-based reporting system.** Support KBI's transition to Kansas Incident-Based Reporting System (KIBRS); provide technical assistance to local law enforcement agencies necessary to transition to incident-based reporting.
- **Use incident-based data to understand potential disparity.** Collect, analyze, and make publicly available incident-level crime data that breaks down crime incidents by sex, race, geography, and relationship between perpetrators and victims.

#### **Long-Term Goals**

- **Support local law enforcement.** Prioritize the ability of local and state law enforcement agencies to collect and report incident-based data through funding and technical assistance.

- **Support collaboration.** Use incident-based data to guide intervention strategies appropriate to geographic regions and to foster cross-jurisdictional collaboration.

**Policy Objective 2:** Hold people who commit crime accountable and ensure they receive interventions needed to change their behavior and not reoffend.

Hold people who commit crime accountable and ensure they receive interventions needed to change their behavior and not reoffend.

### **Immediate Actions**

- **Disallow anger management programming** in cases of intimate partner violence. Replace anger management in these cases with batterer’s intervention programming.
- **Require BIP (Batter’s Intervention Program) assessment and programming at the time of first offense.** People who perpetrate domestic violence should be sentenced to BIP. Providers of BIP should use evidence-based practices and collaborate closely with victim service providers and with parole and probation supervision agencies. Expand SB 123 to include provision of determination of need for BIP assessment and programming. Expand access to include pretrial access.
- **Fund BIP assessment and programming to alleviate cost burden on participants.** BIP must be mandatory and state subsidized. Allow domestic violence special program fees collected by judicial districts to be used to assist individuals sentenced to BIP with BIP provider fees.

Strengthen coordinated community response teams and increase local case coordination related to violent crimes, including homicide, child abuse, sexual assault, and domestic violence.

### **Immediate Actions**

- **Require use of lethality assessments.** Statutorily mandate statewide adoption of lethality assessments. Use of lethality assessments should focus on assessing the risk of a person committing abuse as well as connecting victims to resources. Statutorily mandate statewide adoption of valid, reliable assessment instrument.

## **Sentencing**

**Policy Objective 1:** Prioritize prison space for the most serious crimes by amending drug crime sentencing.

- Amend the drug grid and the nondrug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones.
- Improve the SB 123 sentencing option by expanding eligibility to nondrug crimes and counting treatment time toward the sentence.
- Provide for “decay” of old criminal history so it is not counted in guideline scoring.
- Provide for jail or SB 123 treatment for marijuana sentences that currently are eligible for prison.

**Policy Objective 2:** Expand diversion options available to prosecutors and judges.

- Build on the SB 123 infrastructure to encourage more prosecutor diversions to certified treatment and provide treatment to more people before they commit more crimes.
- Adopt “deferred adjudication,” providing a judicial diversion option as a last opportunity to resolve a case without a criminal conviction.

**Supervision Workgroup Policy Objectives:** Strengthen supervision for a sentencing system that depends upon supervision to reduce recidivism. (THESE ARE FOR THE SUPERVISION WORKGROUP, BUT THEY ARE RELATED, SO THERE ARE HERE AS AN FYI)

- Ensure timely and consistent assessment of the risks and needs of women and men under supervision.
- Enable consistently strong, evidenced-based supervision practices.
- Anticipate a substantial quantity of technical supervision relapses among the relatively large population under supervision.
- Provide suitable incentives for compliance and consistent, measured sanctions for technical relapses by people under supervision.

## **Victims**

**Policy Objective 1:** Increase the data available about victims in Kansas to ensure state funding priorities support victims’ needs.

### **Immediate Action**

- Administrative: Conduct a statewide victimization survey to understand the full scope of victimization across the state, capture polyvictimization that is occurring (people who experience multiple victimizations simultaneously), and identify survivor populations that systems may not currently be serving. This survey can inform priorities for statewide victim services funding. The victimization survey should be undertaken by a specific agency and should be conducted every five years.

**Policy Objective 2:** Strengthen victim-witness coordinator programs throughout the state.

### **Immediate Action**

- Administrative: Maximize technology to provide remote assistance to victim-witness coordinators in under-resourced areas.
- Administrative: Utilize the Kansas Academy of Victim Assistance to administer specialized training on best practices to victim-witness coordinators across the state.

### **Long-Term Goal**

- Administrative: Reinstate the Victim-Witness Coordinator Committee within the Kansas County & District Attorneys Association to increase best practices and peer support among victim-witness coordinators.

Attachments:

1. House Bills or Summaries when applicable
2. Combination of Sentencing Grids Survey results.



## HOUSE BILL No. 2047

By Committee on Corrections and Juvenile Justice

1-22

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing; drug severity level 5 crimes; amending K.S.A. 2018  
3 Supp. 21-6805 and repealing the existing section.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 21-6805 is hereby amended to read as  
7 follows: 21-6805. (a) The provisions of this section shall be applicable to  
8 the sentencing guidelines grid for drug crimes. The following sentencing  
9 guidelines grid for drug crimes shall be applicable to felony crimes under  
10 K.S.A. 2018 Supp. 21-5701 through 21-5717, and amendments thereto,  
11 except as otherwise provided by law:

SENTENCING RANGE - DRUG OFFENSES

| Category         | A                   | B                 | C                               | D               | E                      | F                    | G                  | H               | I                       |
|------------------|---------------------|-------------------|---------------------------------|-----------------|------------------------|----------------------|--------------------|-----------------|-------------------------|
| Severity Level 1 | 3 + Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3 + Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanors | 1 Misdemeanor No Record |
| I                | 204 194 185         | 196 186 176       | 187 178 160                     | 179 170 161     | 170 162 154            | 167 158 150          | 162 154 146        | 161 150 142     | 154 146 138             |
| II               | 144 136 130         | 137 130 122       | 130 123 117                     | 124 117 111     | 116 111 105            | 113 108 101          | 110 104 99         | 108 100 96      | 103 98 92               |
| III              | 83 78 74            | 77 73 68          | 72 68 65                        | 66 64 60        | 62 59 55               | 59 56 52             | 57 54 51           | 54 51 49        | 51 49 46                |
| IV               | 51 49 46            | 47 44 41          | 42 40 37                        | 36 34 32        | 32 30 28               | 30 28 26             | 28 26 24           | 26 24 22        | 24 22 20                |
| V                | 42 40 37            | 36 34 32          | 32 30 28                        | 28 26 24        | 22 20 18               | 18 17 16             | 16 15 14           | 14 13 12        | 12 11 10                |

| LEGEND   |
|--|
|  Presumptive Probation    |
|  Presumptive Imprisonment |

**SENTENCING RANGE - DRUG OFFENSES**

| Category         | A                         | B                       | C                                     | D                       | E                            | F                          | G                          | H                  | I                             |
|------------------|---------------------------|-------------------------|---------------------------------------|-------------------------|------------------------------|----------------------------|----------------------------|--------------------|-------------------------------|
| Severity Level I | 3 +<br>Person<br>Felonies | 2<br>Person<br>Felonies | 1 Person &<br>1 Nonperson<br>Felonies | 1<br>Person<br>Felonies | 3 +<br>Nonperson<br>Felonies | 2<br>Nonperson<br>Felonies | 1<br>Nonperson<br>Felonies | 2+<br>Misdemeanors | 1<br>Misdemeanor<br>No Record |
| I                | 204 194 185               | 196 186 176             | 187 178 169                           | 179 170 161             | 170 162 154                  | 167 158 150                | 162 154 146                | 161 150 142        | 154 146 138                   |
| II               | 144 136 130               | 137 130 122             | 130 123 117                           | 124 117 111             | 116 111 105                  | 113 108 101                | 110 104 99                 | 108 100 96         | 103 98 92                     |
| III              | 83 78 74                  | 77 73 68                | 72 68 65                              | 68 64 60                | 62 59 55                     | 59 56 52                   | 57 54 51                   | 54 51 49           | 51 49 46                      |
| IV               | 51 49 46                  | 47 44 41                | 42 40 37                              | 36 34 32                | 32 30 28                     | 28 26 24                   | 24 22 20                   | 20 18 17           | 18 16 14                      |
| V                | 23 21 19                  | 20 19 18                | 19 18 17                              | 17 16 15                | 15 14 13                     | 13 12 11                   | 13 12 11                   | 13 12 11           | 13 12 11                      |

| LEGEND                              |
|-------------------------------------|
| Presumptive Probation               |
| Presumptive Probation<br>with Prob. |
| Presumptive Imprisonment            |

1 (b) Sentences expressed in the sentencing guidelines grid for drug  
2 crimes in subsection (a) represent months of imprisonment.

3 (c) (1) The sentencing court has discretion to sentence at any place  
4 within the sentencing range. In the usual case it is recommended that the  
5 sentencing judge select the center of the range and reserve the upper and  
6 lower limits for aggravating and mitigating factors insufficient to warrant a  
7 departure. The sentencing court shall not distinguish between the  
8 controlled substances cocaine base (9041L000) and cocaine hydrochloride  
9 (9041L005) when sentencing within the sentencing range of the grid  
10 block.

11 (2) In presumptive imprisonment cases, the sentencing court shall  
12 pronounce the complete sentence which shall include the:

13 (A) Prison sentence;

14 (B) maximum potential reduction to such sentence as a result of good  
15 time; and

16 (C) period of postrelease supervision at the sentencing hearing.  
17 Failure to pronounce the period of postrelease supervision shall not negate  
18 the existence of such period of postrelease supervision.

19 (3) In presumptive nonprison cases, the sentencing court shall  
20 pronounce the prison sentence as well as the duration of the nonprison  
21 sanction at the sentencing hearing.

22 (d) Each grid block states the presumptive sentencing range for an  
23 offender whose crime of conviction and criminal history place such  
24 offender in that grid block. If an offense is classified in a grid block below  
25 the dispositional line, the presumptive disposition shall be  
26 nonimprisonment. If an offense is classified in a grid block above the  
27 dispositional line, the presumptive disposition shall be imprisonment. If an  
28 offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H, 4-I, 5-C or 5-D, the  
29 court may impose an optional nonprison sentence as provided in  
30 subsection (q) of K.S.A. 2018 Supp. 21-6804(q), and amendments thereto.

31 (e) The sentence for a second or subsequent conviction for unlawful  
32 manufacturing of a controlled substance, K.S.A. 65-4159, prior to its  
33 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, K.S.A. 2018  
34 Supp. 21-5703, and amendments thereto, or a substantially similar offense  
35 from another jurisdiction, if the controlled substance in any prior  
36 conviction was methamphetamine, as defined by ~~subsection (d)(3) or (f)(1)~~  
37 of K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog  
38 thereof, shall be a presumptive term of imprisonment of two times the  
39 maximum duration of the presumptive term of imprisonment. The court  
40 may impose an optional reduction in such sentence of not to exceed 50%  
41 of the mandatory increase provided by this subsection upon making a  
42 finding on the record that one or more of the mitigating factors as specified  
43 in K.S.A. 2018 Supp. 21-6815, and amendments thereto, justify such a



1 (A) Except as provided in subsection (g)(1)(B), an additional 6  
2 months' imprisonment; and

3 (B) if the trier of fact makes a finding that the firearm was  
4 discharged, an additional 18 months' imprisonment.

5 (2) The sentence imposed pursuant to subsection (g)(1) shall be  
6 presumptive imprisonment. Such sentence shall not be considered a  
7 departure and shall not be subject to appeal.

8 (3) The provisions of this subsection shall not apply to violations of  
9 K.S.A. 2018 Supp. 21-5706 or 21-5713, and amendments thereto.

10 Sec. 2. K.S.A. 2018 Supp. 21-6805 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its  
12 publication in the statute book.

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2494**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2494 would lower the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6, nonperson felony in all cases to a severity level 8, nonperson felony when the equipment is used for court-ordered supervision, post-release supervision, or parole in relation to a felony, and to a class A nonperson misdemeanor when the equipment is used for court-ordered supervision, post-release supervision, or parole in relation to a misdemeanor or for court-ordered supervision in a civil case.

**Background**

This bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission.

In the House Committee hearing, representatives of the Kansas Sentencing Commission and the Kansas Association of Criminal Defense Lawyers testified in support of the bill, stating the bill would make violations more proportional with the underlying offenses.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates enactment of the bill would result in additional offenders being supervised by court services officers, but the

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

fiscal effect could be absorbed within existing resources. The Kansas Sentencing Commission estimates enactment of this bill would reduce six prison admissions each year during the ten-year forecasting period. Additionally, the bill would save nine prison beds in FY 2021 and ten prison beds in FY 2030. This bill would result in no additional workload of the Commission. The Department of Corrections indicates a reduction in the prison population is beneficial toward avoiding future costs but is not sufficient to reduce current prison expenditures. The Department of Corrections also notes any person who is convicted and not sent to prison would still be supervised in the community, which could require an increase in community supervision resources in the future. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.



**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2485**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2485 would amend the penalty provisions of various crimes where the penalty level depends on monetary value to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floors for the lowest felony penalties and floors or ceilings for applicable exceptions would be changed to \$1,500. The crimes that would be affected by the bill are:

- Theft of property lost, mislaid, or delivered by mistake;
- Criminal damage to property;
- Giving a worthless check;
- Counterfeiting;
- Criminal use of a financial card;
- Impairing a security interest;
- Medicaid fraud;
- Official misconduct;
- Presenting or permitting a false claim;
- Misuse of public funds; and
- Criminal desecration.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission (KSSC). In the House Committee hearing, representatives of the KSSC, Kansas County and District Attorneys Association, and the Kansas Association of Criminal Defense Lawyers testified in support of the bill. Proponents testified the bill would allow for more uniform punishments for crimes resulting in economic losses and allow cost savings for prosecution offices. No other testimony was provided.

According to the bed impact statement prepared by the KSSC, the bill is estimated to result in a decrease of prison beds by two prison beds and four prison admissions needed each year and would reduce the workload of the KSSC by four journal entries each year of the ten-year forecasting period.

According to the fiscal note prepared by the Division of the Budget on the bill, the Department of Corrections (Department) states a reduction in the prison population would be beneficial to avoiding future costs, but is not sufficient to reduce current prison expenditures. The Department also notes any person who is convicted and not sent to prison would still be supervised in the community, which could require an increase in community supervision resources in the future. The Office of Judicial Administration (OJA) indicates the bill would result in additional offenders being supervised by court services, but any additional expenditures could be absorbed within existing resources. The OJA estimates the bill would decrease revenues to the Correctional Supervision Fund and the State General Fund, but a fiscal effect could not be determined. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2518**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2518 would amend law related to the calculation of criminal history for purposes of sentencing a person convicted of domestic battery.

The bill would amend the current definition of “conviction” that is found in the domestic battery statute in the Kansas Criminal Code by adding a provision that would require a sentencing court to consider any criminal offense that includes a domestic violence designation as a prior conviction for the purposes of escalating the penalty.

Current law provides that a first conviction of domestic battery is a class B person misdemeanor, a second conviction within five years is a Class A person misdemeanor, and a third or subsequent conviction in the immediately preceding five years is a nongrid person felony.

The bill would make technical amendments to remove outdated language regarding previously required consideration of crimes for criminal history purposes and to ensure consistency in statutory phrasing.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Kansas Criminal Justice Reform Commission.

In the House Committee hearing, written-only proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association, and a representative of the Kansas Coalition Against Sexual and Domestic Violence. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill. No other testimony was provided.

According to the fiscal note prepared by the Division of Budget on the bill, the Kansas Sentencing Commission indicates the bill could have an effect on prison admissions, bed space, and the workload of the Commission. The Department of Corrections states, due to the capacity challenges facing the Department, if the bill did increase prison utilization, it would house any additional inmates in a combination of county jails and out-of-state contract beds depending on the custody level and gender. The Department cannot estimate a fiscal effect because the effect on prison admissions and bed space cannot be estimated. The Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on the agency. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2708**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2708 would establish a certified drug treatment program (program) for certain persons who have entered into a diversion agreement (divertees) pursuant to a memorandum of understanding (MOU).

The bill would allow eligibility for participation in a program for offenders who have entered into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2020, for persons who have been charged with felony possession of a controlled substance and whose criminal history score is C or lower with no prior felony drug convictions.

[*Note:* Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense. Felony drug possession is currently classified as a drug severity level 5 felony. An offender is classified as criminal history C if the offender has one person and at least one nonperson felony.]

The bill would also provide that, as part of the consideration of whether to allow a person to enter into such a diversion agreement, a person who meets the criminal charge and history requirements shall be subject to:

- A drug abuse assessment that would be required to include a clinical interview with a mental health

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

professional and a recommendation concerning drug abuse treatment for the divertee; and

- A standardized criminal risk-need assessment specified by the Kansas Sentencing Commission (Commission).

The bill would further require the diversion agreement to include provisions that require the divertee to comply with and participate in a program if the divertee meets the assessment criteria set by the Commission, with a term of treatment not to exceed 18 months.

### ***Supervision***

The bill would provide that divertees who are committed to a program could be supervised by community correctional services or court services pursuant to a MOU. A divertee would be discharged from the program if the divertee:

- Is convicted of a new felony; or
- Has a pattern of intentional conduct that demonstrates the divertee's refusal to comply with or participate in the program, in the opinion of the county or district attorney.

If a divertee is discharged, such person would be subject to the revocation provisions of the respective diversion agreement.

### ***Definitions***

The bill would define "mental health professional" for this purpose to include:

- Licensed social workers;
- Persons licensed to practice medicine and surgery;
- Licensed psychologists;
- Licensed professional counselors; or

- Registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the Secretary of Corrections (Secretary) to treat persons pursuant to continuing law.

The bill would define “divertee” to mean a person who has entered into a diversion agreement pursuant to continuing law and amendments made by the bill.

### **MOU**

The bill would amend law related to diversion agreements by adding provisions related to an MOU.

The bill would allow a county or district attorney to enter into an MOU with the judicial administrator or community correctional services to assist with the supervision and monitoring of persons who have entered into a diversion agreement. The county or district attorney would retain authority over whether a particular defendant may enter into a diversion agreement or whether such agreement would be revoked.

The bill would require an MOU to include provisions related to:

- Determining the level of supervision needed for a defendant;
- Use of a criminal-risk needs assessment; and
- Payment of costs for supervision.

The bill would authorize the Kansas Supreme Court to adopt rules regarding the content of an MOU between a county or district attorney and the judicial administrator and the administration of a supervision program operating pursuant to such MOU.

The bill would amend law regarding the contents of diversion agreements to specify that such agreements may include provisions related to the MOU.

### ***Supervision Fees***

The bill would provide that divertees who are supervised pursuant to an MOU would be required to pay a supervision fee in the amount established in continuing law for misdemeanor or felony post-conviction supervision, as appropriate for the crime charged. The bill would allow a supervision officer to reduce or waive the supervision fee.

The bill would require the district court to collect supervision fees and the clerk of the district court to remit all diversion supervision fees to the State Treasurer. The State Treasurer would be required to deposit the entire amount in the State Treasury and credit the following amounts:

- 41.67 percent to the State General Fund; and
- 58.33 percent to the Correctional Supervision Fund.

The bill would also require divertees who are supervised pursuant to an MOU to pay the actual costs of urinalysis testing required as a term of supervision. Payments for such testing would be required to be remitted to the county treasurer for deposit in the county general fund, and the cost of such testing could be reduced or waived by the county or district attorney.

The bill would further require county or district attorneys to determine the extent, if any, that a divertee is able to pay for assessment and treatment and the bill would require such payments to be used by the supervising agency to offset costs to the State or county. If such financial obligations are not met or cannot be met, the county or district attorney would be required to be notified for the purpose of collection or review and further action on the diversion agreement.



### ***Conforming and Technical Changes***

The bill would make conforming amendments to statutes regarding community correctional services and certified drug abuse treatment programs to allow for implementation of the bill's provisions.

The bill would make technical amendments to ensure consistency in statutory phrasing and to remove outdated language related to a previously allowed supervision of certain adult offenders in Johnson County by court services or community corrections, which expired on July 1, 2013.

### **Background**

SB 123(2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the "Senate Bill 123 Program," this program is administered by the Kansas Sentencing Commission. HB 2708 would establish a similar treatment program for divertees.

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Owens on behalf of the Kansas Criminal Justice Reform Commission.

In the House Committee hearing, representatives of the Kansas Criminal Justice Reform Commission and the Kansas Sentencing Commission testified in support of the bill. Proponents generally indicated the bill would expand the availability of drug abuse treatment options across the state for persons on diversion.

Written-only proponent testimony was provided by a representative of the Kansas County and District Attorneys Association and by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

Written-only neutral testimony was provided by a representative of the Office of Judicial Administration (OJA).

Written-only opponent testimony was provided by a private citizen.

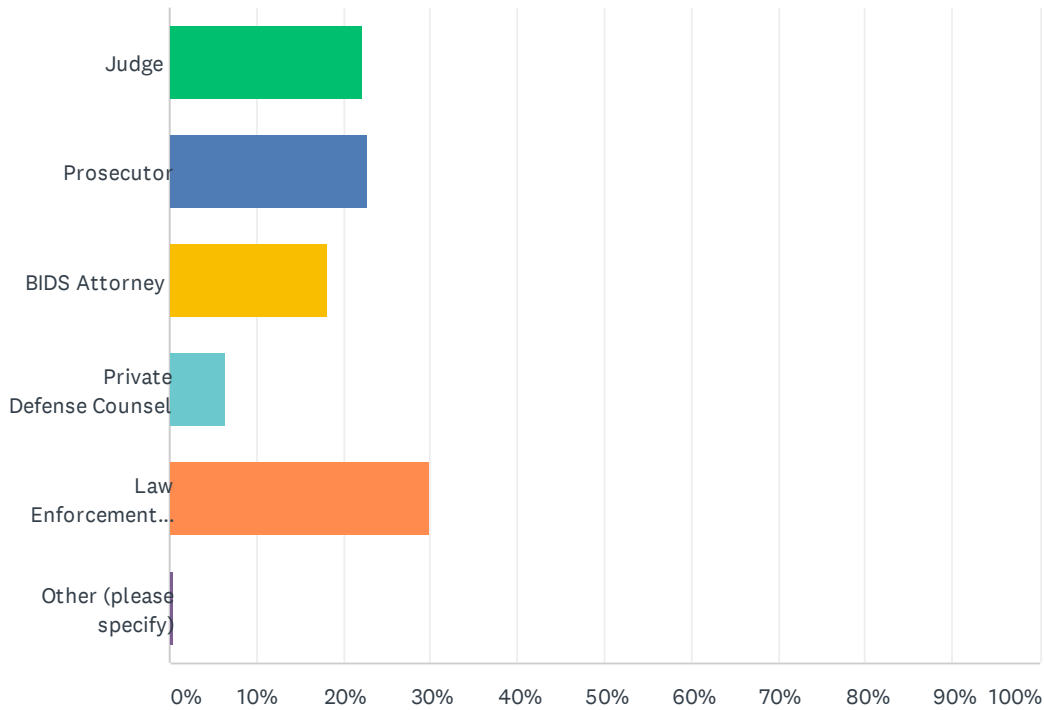
According to the fiscal note prepared by the Division of Budget on the bill, OJA indicates enactment of the bill could have a fiscal effect on the Judicial Branch operations to monitor the agreement process and for court services to supervise more offenders; however, a fiscal effect cannot be estimated. The bill could increase revenues from supervision fees to the Judicial Branch Correctional Supervision Fund and the State General Fund. OJA estimates the bill could also increase revenues from testing fees to county general funds.

The Commission estimates enactment of the bill would have no effect on prison admissions or prison beds; however, the Commission estimates, based on three different scenarios, the bill could increase the number of Senate Bill 123 Program offenders by either 50, 100, or 150 persons in FY 2021. Because of the potential increase of Senate Bill 123 Program drug treatment offenders, the Commission estimates additional State General Fund expenditures of \$157,150, \$314,300, or \$471,450 in FY 2021, depending on which scenario occurs. The Commission reports the average cost of treatment in the Senate Bill 123 Program was \$3,143 per offender in FY 2019. The Department of Corrections indicates it cannot estimate the number of divertees that may require community corrections supervision.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

### Q1 What best describes your role?

Answered: 297 Skipped: 0

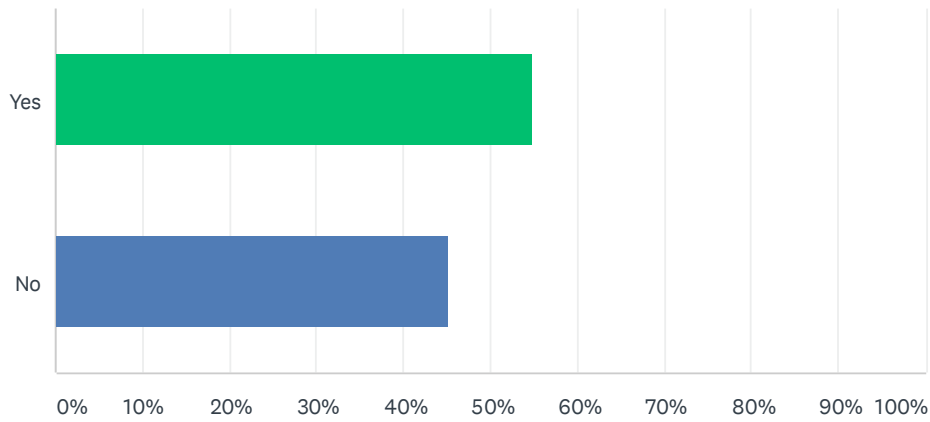


| ANSWER CHOICES          | RESPONSES  |
|-------------------------|------------|
| Judge                   | 22.22% 66  |
| Prosecutor              | 22.90% 68  |
| BIDS Attorney           | 18.18% 54  |
| Private Defense Counsel | 6.40% 19   |
| Law Enforcement Officer | 29.97% 89  |
| Other (please specify)  | 0.34% 1    |
| <b>TOTAL</b>            | <b>297</b> |

| # | OTHER (PLEASE SPECIFY) | DATE             |
|---|------------------------|------------------|
| 1 | Sheriff                | 9/1/2020 1:38 PM |

## Q2 Would you support combining the current nondrug and drug sentencing grids?

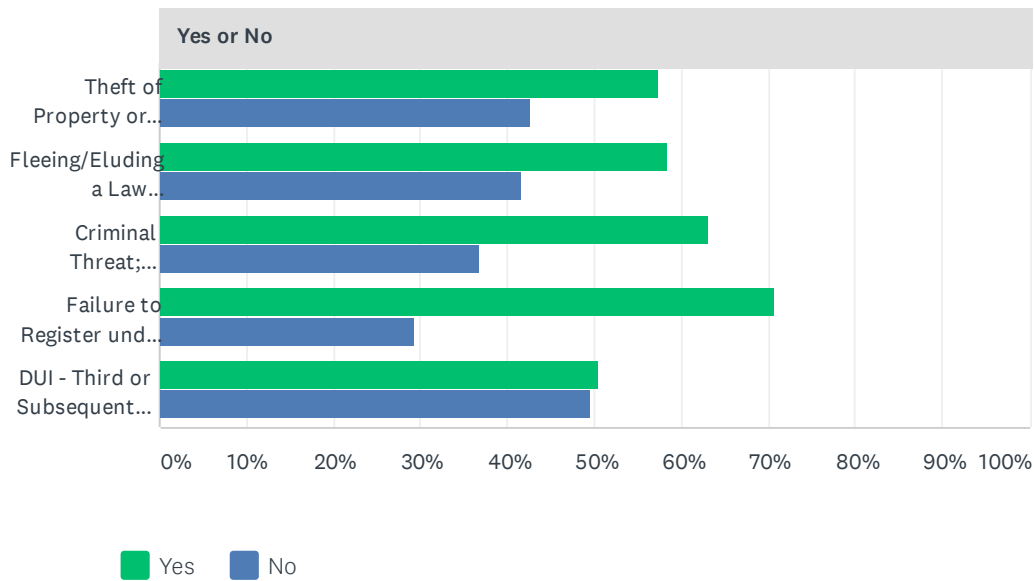
Answered: 292 Skipped: 5



| ANSWER CHOICES | RESPONSES |     |
|----------------|-----------|-----|
| Yes            | 54.79%    | 160 |
| No             | 45.21%    | 132 |
| TOTAL          |           | 292 |

### Q3 Should the top five nondrug felonies in the state as set forth below have the incarceration ranges re-worked for proportionality?

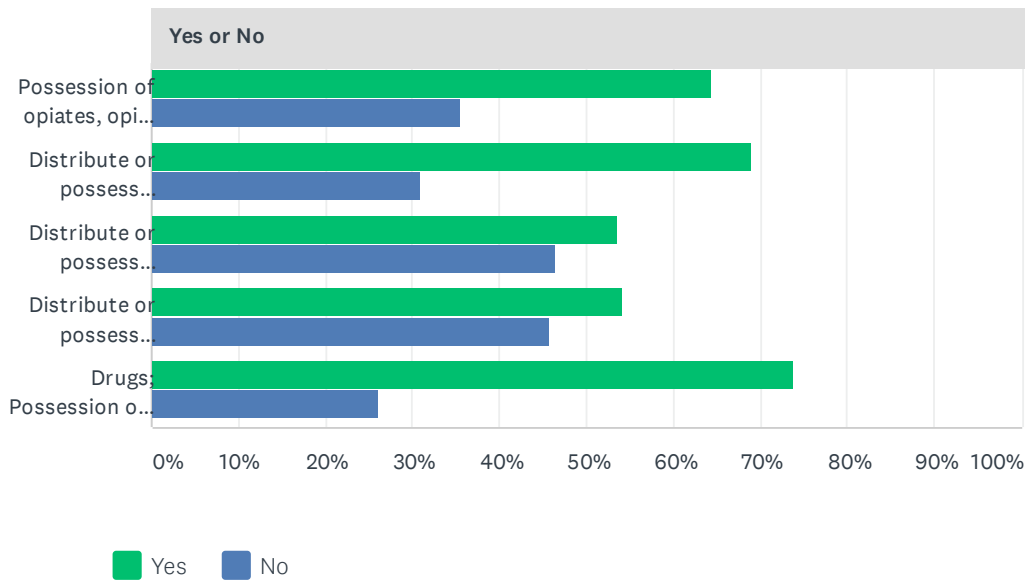
Answered: 293 Skipped: 4



| Yes or No  |               |               |       |
|--|---------------|---------------|-------|
|  | YES           | NO            | TOTAL |
| Theft of Property or Services; Obtain or exert unauthorized control at least \$1,500 but less than \$25,000    | 57.39%<br>167 | 42.61%<br>124 | 291   |
| Fleeing/Eluding a Law Enforcement Officer - 3rd or Subsequent  | 58.42%<br>170 | 41.58%<br>121 | 291   |
| Criminal Threat; Threaten to commit violence w/intent to place another in fear, to cause evacuation, lock down | 63.10%<br>183 | 36.90%<br>107 | 290   |
| Failure to Register under the Kansas Offender Registration Act   | 70.79%<br>206 | 29.21%<br>85  | 291   |
| DUI - Third or Subsequent Conviction   | 50.34%<br>146 | 49.66%<br>144 | 290   |

### Q4 Should the top five drug felonies in the state as set forth below have the incarceration ranges re-worked for proportionality?

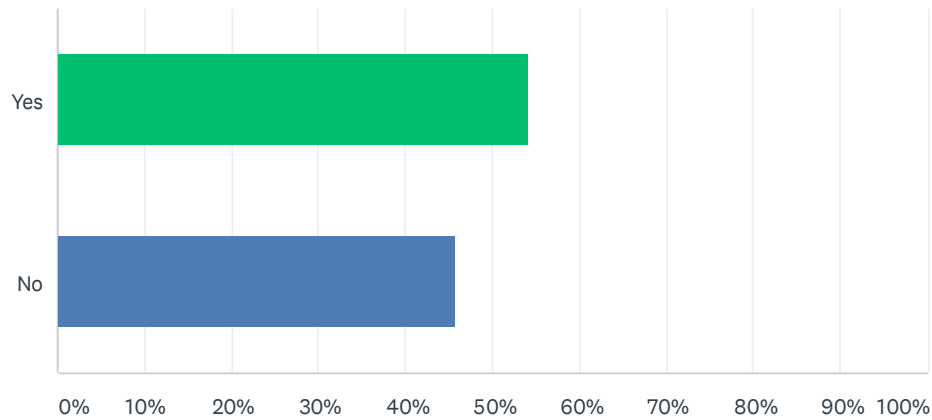
Answered: 295 Skipped: 2



| Yes or No  |               |               |       |
|--|---------------|---------------|-------|
|  | YES           | NO            | TOTAL |
| Possession of opiates, opium, narcotic, stimulant (d)(1), (d)(3) or (f)(1) of 65-4107 or controlled substance analog | 64.51%<br>189 | 35.49%<br>104 | 293   |
| Distribute or possess w/intent to distribute; Marijuana; Quantity<25 grams   | 69.05%<br>203 | 30.95%<br>91  | 294   |
| Distribute or possess w/intent to distribute; Heroin or Methamphetamine; Quantity=>1 gram<3.5 grams                  | 53.58%<br>157 | 46.42%<br>136 | 293   |
| Distribute or possess w/intent to distribute; Heroin or Methamphetamine; Quantity<1 gram                             | 54.08%<br>159 | 45.92%<br>135 | 294   |
| Drugs; Possession of hallucinogenic or analog; 3rd or Subsequent Offense-Marijuana                                   | 73.81%<br>217 | 26.19%<br>77  | 294   |

### Q5 Would you support severity level 5 drug possession crimes (not sales or distribution crimes) to be classified as nongrid, much like DUI?

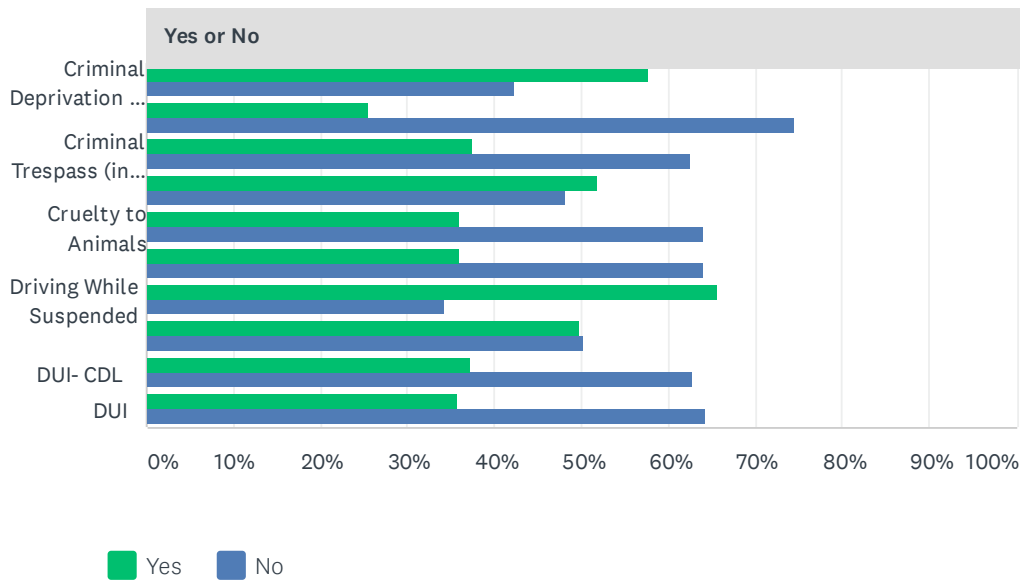
Answered: 293 Skipped: 4



| ANSWER CHOICES | RESPONSES |     |
|----------------|-----------|-----|
| Yes            | 54.27%    | 159 |
| No             | 45.73%    | 134 |
| TOTAL          |           | 293 |

## Q6 Would you support removing mandatory minimums for certain misdemeanors?

Answered: 296 Skipped: 1



| Yes or No  |               |               |       |
|--|---------------|---------------|-------|
|  | YES           | NO            | TOTAL |
| Criminal Deprivation of Property (Motor Vehicle) - 2nd | 57.68%<br>169 | 42.32%<br>124 | 293   |
| Domestic Battery - 2nd and 3rd                         | 25.51%<br>75  | 74.49%<br>219 | 294   |
| Criminal Trespass (in defiance of restraining order)   | 37.54%<br>110 | 62.46%<br>183 | 293   |
| Forgery - 2nd and Subsequent                           | 51.89%<br>151 | 48.11%<br>140 | 291   |
| Cruelty to Animals                                     | 36.08%<br>105 | 63.92%<br>186 | 291   |
| Harming or Killing Certain Dogs                        | 35.96%<br>105 | 64.04%<br>187 | 292   |
| Driving While Suspended                                | 65.76%<br>194 | 34.24%<br>101 | 295   |
| Habitual Violator                                      | 49.83%<br>145 | 50.17%<br>146 | 291   |
| DUI- CDL   | 37.29%<br>110 | 62.71%<br>185 | 295   |
| DUI  | 35.79%<br>102 | 64.21%<br>183 | 285   |



Q7 Please include comments on previous survey questions or any other proportionality concerns you would like the subcommittee to consider.

Answered: 111 Skipped: 186

| #  | RESPONSES   | DATE               |
|----|---|--------------------|
| 1  | Drugs should be decriminalized. Since this won't happen, all but the most serious should be misdemeanors or infractions. There should be no registry for drugs. We do not take person crimes as seriously as we should. Domestic battery is less serious than theft of a lawnmower. How can that be right? Which is worth more a person or a mower? Person crimes should have longer sentences. Disobeying a lawful order should have mandatory minimums with no tolerance. No client I have ever had has been rehabilitated from a drug addiction by being sent to prison.   | 9/16/2020 7:28 PM  |
| 2  | I don't see the point of making possession crimes a non-grid. Should have more treatment options and maybe make the range on all charges bigger so the judges have more discretion. DUI's third or more should possibly have harsher sentences, especially with a high BAC (Say double or more of the limit). Eluding should be a much higher crime or sentence given the overall danger to the community, especially for people with subsequent convictions or if they cause a wreck. The drug grid needs to be reworked but not combined. When a possession charge can get the same (or more) amount of time as an agg assault at some criminal history levels, there's something wrong.  | 9/16/2020 5:31 PM  |
| 3  | Mandatory minimums cannot be removed from DUI violations withing exposing the state to federal penalties. The State's current minimums comport with federal minimums and are not in excess of those requirements. Simple possession of drugs should be a level 9 or 10 felony. Get rid of the special rule that makes a third offense presumptive prison. Minimum mandatory jail sentences can be an important tool for crimes such as DV Battery so I oppose removing them from some crimes. Other violations, such as DWS, I have no problem removing the minimum mandatory. You inquire as to essentially 3rd possession of marijuana; marijuana penalties need to be scaled downwards as more and more communities choose not to enforce marijuana laws at all. These creates a significant statewide proportionality issue.  | 9/15/2020 2:20 PM  |
| 4  | Vehicular Homicide should be a felony, there should be an aggravated section for when it is done with a CDL holder. Rape should not have to prove lack of consent. Furthermore force or fear should be aggravating factors, not the standard.   | 9/15/2020 1:05 PM  |
| 5  | Some penalties should be increased, some should be decreased. This survey does not include how they should be modified.   | 9/15/2020 11:22 AM |
| 6  | We need to make sure we prioritize prison space for violent offenders.  | 9/15/2020 10:49 AM |
| 7  | I said yes to number 5 but they should in all reality be made misdemeanors.   | 9/15/2020 10:44 AM |
| 8  | It is too easy for theft and especially criminal damage to property to become a felony with the monetary limits at their current state. Most vehicles incur felony-level damage at the slightest amount of force. This should be reviewed frequently. The punishment for DUI homicide is disproportionately low. It is often hard to explain to a family why their deceased loved one's life is worth such a short sentence.  | 9/15/2020 10:43 AM |
| 9  | You can tinker with the numbers, but to get real change that helps offenders and public safety you need resources to work with them and time to allow change to happen. Inadequate resources=little likelihood of lasting change.   | 9/15/2020 10:38 AM |
| 10 | I support removal of mandatory minimum jail sentences for non-violent property crimes that do not pose a public safety risk - forgery, temp dep, ect. DUI and DV Battery are another matter, though. As for registration offenses, and possession drug crimes, making them non-grid would be fine (more thoughts on possession drug crime below). I'd be careful about making flee and elude a nonperson offense -- as the risk that crime poses to the public and LEOs is substantial. Another possibility for SL5 drug possession cases would be to create a new category -- not non-grid (which pushes responsibility back to the county jail) but maybe a range that goes up only incrementally if at all. 6-9-12 months per conviction, from criminal history E or below, with 9-12-18 for CH A or B. Get creative. Keep Crim Threat a person felony. Its a great plea negotiation tool for all parties. The Agg Assault or DV assault charges plead to that because its a PF but defendants like it because its only a SL9, not a SL7. Change that and your other, more serious PF convictions (and consequent incarceration) will go up exponentially. | 9/15/2020 10:15 AM |
| 11 | End the war on drugs, End the war on the poor   | 9/14/2020 1:01 AM  |
| 12 | Distribution of meth/heroin/opiates should not be touched. Even though touted as "non-violent" offenses they most certainly are accompanied with violence and other crimes committed in   | 9/11/2020 12:50 PM |

conjunction with it. Criminal possession of a weapon (firearm) penalties need to increase especially if the prior felony is for a person crime or for a drug crime. Our current penalty for that offense is a joke.

|    |   |                    |
|----|---|--------------------|
| 13 | I really think there needs to be a fix to Special Rule #26 (3rd or subsequent conviction for felony drug offense). The PSI writers are told to mark that the Special Rule applies when the three drug felonies are all in the same complaint. I don't think that was the legislative intent. Please look at replacing the language "third or subsequent" with "prior convictions." I think that could eliminate that issue, and actually penalize repeat offenders instead of someone who happens to possess three kinds of felony drugs at once. (Or what I usually see is that they have one prior, and then have two pending meth cases. For purposes of plea, I combine the meth cases into one complaint because the person needs treatment. Instead, they're put into the presumptive prison category.) Additionally, if you're looking at forgeries anyway, the same could be done there, which could help reduce the frequency of minimum jail penalties.   | 9/11/2020 12:47 PM |
| 14 | The drug grid is so harsh compared to other crimes. Felon in possession of a firearm is HALF the punishment of simple possession of drugs. Need to be much harsher on person crimes and need to chop level 4 and 5 drug offenses in half.   | 9/11/2020 9:54 AM  |
| 15 | With respect to the drug crimes, the jump in quantity the moves a distribution from a level 3 to a level 2 and a level 1 is HUGE. I think the drug grid would be more reasonable if the quantities were more evenly spread out. Sometimes major distributors are getting level 2's (with 50-100g) and sometimes "smaller" street level distributors are getting the same level 2 charge for having 4 - 10g. ALSO, the grid time for level 5 possessions is pretty extreme for someone who's NOT a dealer, but primarily a user. There has been discussion that the D5 possession might change to be closer to regular-grid level 8 - I think that is a great idea. Many Judges hesitate to ever impose the underlying time because it's such a long amount of time; thus, most D5 probationers know they will rarely face any type of revocation no matter how many times they violate probation.   | 9/11/2020 9:52 AM  |
| 16 | The drug grid is absolutely draconian and needs to be substantially revamped.   | 9/11/2020 9:48 AM  |
| 17 | Felony flee/elude should be higher on the grid, it usually is incredibly dangerous; the maximum penalty for 3rd and subsequent DUI should not be one year, there needs to be some proportionality to intoxication and number of priors convictions that does not exist when the maximum is the same for second and subsequent offenses; drug distribution sentences are fine where they are, felony drug possession could be reworked from "A-D" on the grid to where the maximum sentence was consistent with what is now a 5E or 5D box.  | 9/11/2020 8:45 AM  |
| 18 | No additional comments  | 9/11/2020 8:42 AM  |
| 19 | We should move away from non-grid felonies in general, but particularly felony DUI.   | 9/11/2020 8:26 AM  |
| 20 | Meth is a problem. Do not lessen the punishment. We have seen manufacturing go down, in part, because of the severe punishment. Now distribution is up (filling the demand). Lessening the consequence would be unwise. The vast majority of theft cases are tied to individuals who are involved with meth. Victims of theft feel violated by the criminal and ignored by the justice system with little punishment to the criminal other than probation requiring them to simply follow the law. This typically results in years of probation violations resulting in very little repayment to the victim. Criminal prosecution of marijuana is an inefficient use of resources unless tied to dui or what would be the equivalent of an open container charge. Criminal threat is too broad and can turn a heated argument into a felony prosecution. Driving while suspended is a vicious cycle for most and the system feels broken. People who can't pay fines, lose their right to drive which inhibits their ability to get to work to pay the fines. They drive out of desperation and it snowballs. We should re-work what can cause a suspension and limit the use of that restriction. Fleeing and alluding is an extremely dangerous crime putting officer and civilian lives in danger. It is not punished proportionately. | 9/10/2020 10:45 PM |
| 21 | None  | 9/10/2020 8:55 PM  |
| 22 | Property crimes need more severe/mandatory jail/prison. It makes no sense that you have to do 48 hours for a DUI 1st, but a Residential Burglary has no minimum   | 9/10/2020 8:02 PM  |
| 23 | It is a shame that we treat addiction so harshly. To receive the same sentence as an addict, a person must pull a deadly weapon on another (If they are an I).  | 9/10/2020 6:26 PM  |
| 24 | Nothing good comes from reducing the penalties for most of the offenses referenced above given that most involve presumptive or agreed probation by plea agreement and there is little  | 9/10/2020 5:09 PM  |

to no likelihood that prison sentence will ever be served. If prison is ordered after multiple probation violations the defendant inevitably receives a McGill modification substantially reducing prison time. I am unsure of basis for concern about "proportionality" as it strikes me as just another reason to continue going softer on crime and criminals.

|    |   |                   |
|----|---|-------------------|
| 25 | Felony DUIs need a greater range in maximum sentence. It is incomprehensible that a 7th offense DUI has the same maximum sentence of 12 months as a 3rd offense DUI (or even 2nd offense DUI). Courts should be permitted to sentence repeat felony DUI offenders to more than 12 months jail.  | 9/10/2020 4:49 PM |
| 26 | None  | 9/10/2020 4:43 PM |
| 27 | I think exit mechanisms for lifetime postrelease and parole would be advisable. Not having lifetime postrelease on lower level (6+) felonies may also be advisable. The sentence for attempts, conspiracies, and solicitations to commit offenses (especially Jessica's law offenses) should not be the same as completed offenses. Removing that would allow for better plea deals. And some Jessica's law offenses should not carry life sentences. Be careful removing low-level felonies from the grid. You may well end up with longer jail sentences if they become misdemeanors. Low-level offenses are typically mandatory probation, whereas the court has absolute discretion to impose jail time time for misdemeanors.  | 9/10/2020 4:23 PM |
| 28 | I would like the subcommittee to consider removing the 3rd or subsequent felony drug possession conviction special to requires imprisonment. I would also like the subcommittee to consider implementing a mandatory minimum imprisonment for any kind of felony domestic battery including strangulation.  | 9/10/2020 4:05 PM |
| 29 | n/a   | 9/10/2020 3:59 PM |
| 30 | Please keep marijuana illegal.  | 9/10/2020 3:57 PM |
| 31 | the juvenile sentencing matrix needs attention, including reworking the habitual violator provisions.   | 9/10/2020 3:52 PM |
| 32 | Dui should become a grid charge and come with heavy penalties, flee and elude as well   | 9/10/2020 3:50 PM |
| 33 | Place DUI - 3rd on the grid, as Level 9 offenses. put on a mandatory minimum jail sentence and fine (like we do with forgery-3rd or subsequent) if you feel that is necessary, but get rid of Post-Imprisonment Supervision and just make it post-release. On offender registration violations, remove the special rule under 21-6804(m) that requires all of these convictions to be presumptive imprisonment (but it allows for border box findings on Level 5 offenses, which are second offenses - this is not allowed on Level 6 first time offenses, which seems unjust). Allow the placement on the grid control prison/probation, not the special rule. Also, first offenses could be a level 7, second offenses could be a level 5, and third or subsequent offenses could be a 3.   | 9/10/2020 3:49 PM |
| 34 | There should be more time on severity level 3 crimes; there is a big jump from a 3 to a 2. Also should be a more gradual jump from a "C" to a "B" on level 5-1 (adjustment made to "C" and down).   | 9/10/2020 3:46 PM |
| 35 | I selected yes, but want to be sure my thoughts are understood. There are crimes I actually feel to be quite low on the underlying time with presumptive probation, that I think should be re-worked to increase the time (criminal threat and aggravated domestic battery are two that come to mind.) Likewise, there are many I find to be disproportional and should be lowered (the idea that the A history necessarily supports the time listed for simple possession offenses has always confused me.) If a kid gets a few person felonies as a teen and then at 30 has a drug problem, it's hard for me to say he deserves an A-5 drug box sentence and a person who habitually possesses and is convicted for possessing drugs routinely never gets over the "E" amount. Not to say they should be higher, but that the A person's time doesn't seem that proportional. | 9/10/2020 3:45 PM |
| 36 | There is no reason to lighten any sentences anywhere, offenders get too many chances at probation as it is. Too many departures granted.  | 9/10/2020 3:44 PM |
| 37 | On question 5, my answer would be, "It depends." I believe that the current penalties for felony drug possession offenses on the grid are disproportionate and need to be substantially reduced. But it's hard to answer that question without knowing what the penalties under the nongrid scheme would be.  | 9/4/2020 12:10 PM |
| 38 | N/A   | 9/3/2020 8:30 AM  |

|    |   |                   |
|----|---|-------------------|
| 39 | Simple drug possession crimes should all be misdemeanors. The state should fund treatment centers similar to JOCO's Residential Center for drug possession violators.   | 9/2/2020 11:27 AM |
| 40 | Failure to register should be a non-person crime, without a \$20 fee, and it should go back to a level 10 felony. There is absolutely no scientific data to back up the idea that registration makes our communities safer or that it reduces recidivism. There should be no registration for violent crimes or drug crimes at all. If anything, the registries for drug/violent crimes should be for law enforcement only. These laws on registration are Draconian. As for sex offenders, there should definitely be a way for people to apply to be removed from the registry, but again, there is no data to support the idea that registration helps anyone.   | 9/2/2020 9:19 AM  |
| 41 | The guidelines are a joke. A felony fleeing and eluding a level 9 is stupid, it should be a 5 or higher. People want people that commit crimes to be in prison, not probation all the time. The Court takes blame for this, but it is what the legislature does.  | 9/2/2020 8:09 AM  |
| 42 | I personally do not support the lessening or removal of mandatory minimums. It provides the public with a sense of "wiggle room" when it comes to committing crime. If anything I would like to see some of these options be taken more seriously rather than being diverted.   | 9/2/2020 6:28 AM  |
| 43 | Sections 3 and 4, I feel some could have the range lowered and some could be raised. But all of them should be considered for change.   | 9/2/2020 2:28 AM  |
| 44 | I believe that, if we have to prioritize measures, that modifications to the drug statutes and sentencing grid and eliminating mandatory minimums should receive the most focus. The drug statutes and distribution presumptions are based on outdated information and product costs. What used to be distribution level amounts are now commonplace and not indicative of an intent to distribute, only that they got a bonus on Friday and have some extra cash to spend. Another huge problem is the weight difference between a level II and a level III. It's illogical that someone who has 3.6 grams is going to be charged and potentially convicted at the same level as someone with 99.5 grams.  | 9/1/2020 11:37 PM |
| 45 | 25 grams of marijuana is FAR TOO SMALL an amount to be designated a Level 3 drug sales felony. The sales "presumption" is 450 grams, so a small quantity distributor is designated as a distributor in the criminal charge, but is not, by law, presumed to be a distributor. Why is meth and heroin singled out from cocaine and other drugs for harsher treatment as to levels charged based on quantity? They should be treated the same. Re Marijuana: There is no limit to how much a person can possess (just limits on sales amounts) but I find that any arrestee who possesses more than a small quantity (less than an ounce) is charged with distribution, even with no evidence of sale or possession with intent to sell. The reality is that marijuana users have increasing access to "quality" product and oftentimes will buy quantities for personal use when they find something they like. If people are arrested based on quantity, the levels should be increased. The statutes on drugs are aimed at cartel level distributors, and are too harsh for the reality of the small time Kansas weed seller, which is the majority of arrests and reflects reality. Weed should not be illegal to possess, but as long as it is illegal, the laws should be realistic. For example, I have a college age client with NO criminal history, who sold \$80.00 of "dab" and is charged with a Level 4 distribution crime! Another client sold 40 grams and no criminal history, and is charged at a Level 3. The sentences are presumptive prison in both cases, though neither client has ever been in trouble. These are 21 year old kids who make a stupid error and who are punished so disproportionately it is incredible. Both graduated from college this year and face a dismal employment future due to selling a friend a bit of weed. This hurts Kansas, it is unfair, and needs to be corrected. | 9/1/2020 7:00 PM  |
| 46 | The huge disparity in possible juvenile sentencing options for felonies needs attention, and likely closing of the gap.   | 9/1/2020 4:57 PM  |
| 47 | The survey was not well constructed! For example, what do you mean about combining the drug and non-drug grids? Does this were to mean that there would be 15 severity levels or just 10. Also, what does proportionality mean in this context? A sentence for a particular crime must be tied to some other sentence in order to consider proportionality. If the questions were intended to determine if survey members think certain sentences are too harsh then that's a different conversation.   | 9/1/2020 3:45 PM  |
| 48 | Having watched the time portion of the Grid grow and minimum sentences being added over 30 years of practicing law, it is well pass time to rethink locking people up for long periods of time, and for driving while poor.   | 9/1/2020 2:11 PM  |
| 49 | Drug offenses are very disproportionate to other offenses. Burglary of a dwelling should be   | 9/1/2020 1:57 PM  |

more severe - registration should be less so. Often times the offense for failing to register is greater than the crime for which registration is required - more drug offenses should be presumptive probation with treatment - should allow SB 123 treatment without the necessity of a conviction.

|    |   |                   |
|----|---|-------------------|
| 50 | Sentences have over the years been reduced and it seems as though few are really being held accountable for much of anything these days. The more leniency shown, the bigger joke this system of ours is becoming. Offenders already know if you have a simple drug charge nothing will happen, or if you commit a property crime, nothing much happens. There is very little accountability already. Let's not make it worse.                                  | 9/1/2020 1:57 PM  |
| 51 | I'm not sure it matters much how crimes are classified, as counsel will simply craft plea agreements and amend charges (even with no factual basis) to obtain the sentence they agree on.   | 9/1/2020 1:41 PM  |
| 52 | I would like a definition of proportionality!!  | 9/1/2020 1:38 PM  |
| 53 | I think we need to rethink the length of incarceration on all of our guidelines. There should be some factor for how old the prior convictions are that are increasing the criminal history. All the math is used to increase sentences and that should no longer be the norm. Supervision is cheaper than incarceration and more effective. Parole is underfunded and overworked and too many people are a in the revolving door of violation, back to prison. | 9/1/2020 1:36 PM  |
| 54 | Please change (lower) the sentencing range for Level 5 possession and mandatory prison for third offense. Prison does very little to address the underlying issue of addiction. We also need a better mental health system so folks don't self-medicate with illegal substances and could instead get the mental health treatment they often need.  | 9/1/2020 1:26 PM  |
| 55 | The penalties should be more harsh. Anyone having been convicted of two or more felonies should not be eligible for probation. After you have been convicted of possession of CDS three times you should go to prison and not fall into a probation box. Defendants know the grid and they know what they can do and not do to fall into a prison box.  | 9/1/2020 1:21 PM  |
| 56 | Mandatory minimums on misdemeanors are a bad idea. Also, we should allow diversions for 1st time DUI's for people with CDL's.   | 9/1/2020 1:18 PM  |
| 57 | The Sentencing "Special Rules" like mandatory imprisonment for drug crimes, etc. need to be changed.  | 9/1/2020 1:15 PM  |
| 58 | drug felonies should have weight increased in each offense to reduce penalties  | 9/1/2020 1:09 PM  |
| 59 | A felony should be prison, not jail. Possession of drugs should be less severe, distribution more severe, but prosecutors will simply plea the distribution to possession.  | 9/1/2020 1:00 PM  |
| 60 | Many Qs left black due to lacking adequate knowledge or a strong position.  | 9/1/2020 12:54 PM |
| 61 | In light of the public safety risk posed by the crime, the maximum sentence in a felony DUI case should be longer than 12 months. The maximum sentence should increase with each additional conviction instead of remaining the same whether it is the fourth or the fourteenth.  | 9/1/2020 12:42 PM |
| 62 | Fleeing and eluding should be presumptive prison.   | 9/1/2020 12:42 PM |
| 63 | Do not reduce mandatory penalties.  | 9/1/2020 12:32 PM |
| 64 | The questions regarding proportionality are not good questions. I am not sure my understanding of what "reworked for proportionality" means is the same of what it means in this questionnaire.   | 9/1/2020 12:32 PM |
| 65 | The issue with drug possession being non-grid crime is the burden it would impose on the local jails for incarceration. If reclassified as a non-grid crime you shift financial responsibility to county jails that cannot handle the burden.   | 9/1/2020 12:20 PM |
| 66 | The missing piece is providing appropriate therapy: drug therapy, anger management, etc. In order to promote rehabilitation, therapy is essential & unavailable to the extent necessary.  | 9/1/2020 12:20 PM |
| 67 | Judges should have more discretion in sentencing.   | 9/1/2020 12:04 PM |
| 68 | We need to address registration violations. They should not carry a more severe sentence than the original underlying crime in some offenses.   | 9/1/2020 11:54 AM |
| 69 | 1 jury trial 2019, if judges would work it would be helpful, and prosecutors do nothing but plea  | 9/1/2020 11:42 AM |

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| 70 | The drug felonies really need to be reworked. The quantities used to separate the severity levels are not realistic, especially meth and marijuana. The prosecutors even think they are ridiculous.  | 9/1/2020 11:25 AM |
| 71 | Safety of others beyond the individual should be considered. Would this put others at risk if the current were to be changed?  | 9/1/2020 11:08 AM |
| 72 | MJ poss. (Even 3rd subsequent) Should be infraction.   | 9/1/2020 11:05 AM |
| 73 | The KORA registration penalties are out of proportion and basically punish people who are poor and have mental health issues. We are locking up homeless people because they fail to register. These laws are inhumane. The laws for sex offenders who go to prison--life time post release with ankle bracelet--are ridiculous. While there may be some sex offenders who may deserve this, others are given no hope of ever getting out of the system. This is particularly true for young men who get caught in the system over a he said/she said case. We should not be locking people up for selling marijuana when it is legal in other states. I have represented people stopped in Greenwood county for possession of drugs with intent to distribute. These are not big quantities which are found, but there they are locking up out of state people in our prison. I doubt Kansans would want to pay to incarcerate people for years in our system when they don't even live here. This county stops everyone who has an out of town plate and then they proceed to impound their vehicles and have them forfeited to our state. The aggravated burglary statute should not include inherently dangerous felony of stalking in it. I see people charged with going back to their own home and then charged with aggravated burglary which carries a penalty which is too severe. Proportionality concerns--I currently have a case where the client beat up his girlfriend, posted bond, they got back together and the cycle repeated. Now, he is looking at spending more time in prison than he would had he killed her. There should be a maximum to how the State may stack charges when the person is out on bond and picks up new offenses. | 9/1/2020 10:48 AM |
| 74 | You ask "reworked for proportionality" ... that is a bad question and means different things to different people. It should ask "increase or decrease." Any small quantity drug possession should be a misdemeanor. Failure to register is an absolute joke. It's nothing more than a tool of oppression, and cannot be said to do anything for public safety. Kansas is one of only a few states that require violent and drug offender registration.   | 9/1/2020 10:44 AM |
| 75 | Mandatory minimums should be eliminated and DUIs should be treated as all other cases that can be plea bargained.  | 9/1/2020 10:43 AM |
| 76 | I don't think this survey appropriately allows for the right questions to be asked and answered. The sentences are not proportional to the crimes committed, but some are more disproportional than others (KORA, for example). Additionally, mandatory minimums are an absolute travesty that do not actually deter future conduct, similar to three-strikes rules. Finally, it is clear that the "war on drugs" has failed and just leads to mass incarceration. Drug crimes should not be punished as harshly as they are. While I said the two grids should be combined, I could be persuaded that different grids are appropriate if the drug grid takes into consideration actual needs of those who are investigated and convicted of drug crimes and doesn't simply chuck someone in prison based on an arbitrary weight set by a legislature that seems to change the grids on a whim.  | 9/1/2020 10:40 AM |
| 77 | There needs to be a difference between DWS due to inability to pay fines and DWS because of DUI. The current law unfairly lumps the two groups together.   | 9/1/2020 10:36 AM |
| 78 | Mandatory sentencing has really removed the ability of the lawyers and the judges to manage cases well. In jurisdictions where I practice my hands are largely tied when it comes to sentencing due to mandatory sentences combined with judges who are very reluctant to do departures. And, further, mandatory sentences do not necessarily take into account relatively reformed behavior (i.e. 2x DUI in 2005 then a 3rd in 2020 will require 90 days in jail despite 15 years of sobriety. The court is unable to take into account individual circumstances of the defendant which might have caused the issue. ).   | 9/1/2020 10:35 AM |
| 79 | Need to work on reducing the amount of special rules and mandatory minimums  | 9/1/2020 10:30 AM |
| 80 | Criminal offenses need to have proportional sentences attached. Probation in its current form is a failure as it does nothing to discourage future criminal acts.  | 9/1/2020 10:29 AM |
| 81 | We need to have more punishment especially for repeat offenders  | 9/1/2020 10:28 AM |

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| 82 | I did not answer many of the questions. I am concerned that my support for attempts to achieve proportionality or remove minimums will not lead to less crime, and there is no information regarding increases in mandatory treatment for drug and alcohol crimes that could reduce crime. All of these concerns are not based on how I personally feel, but I believe these well-intentioned efforts neglect past, current and future victims. Are we asking them (at least past and current victims) how they feel about these changes? Forty years ago, mental health hospitals began to empty with the promise that reduce costs in MH hospitals would be redirected to communities where local treatment would be provided. We saw what happened around the country and the mess was laid at the feet of law enforcement, families and new victims. I may be digressing so I will stop what may read like a rant, but I assure you it is genuine concern for the safety of our communities. | 9/1/2020 10:15 AM |
| 83 | Drug sentencing is way out of line, and needs to come down significantly. Criminal threat needs to be a misdemeanor, or needs to have some sort of equivalent misdemeanor available. Mandatory minimums are a problem that make it a lot harder to negotiate palatable pleas.  | 9/1/2020 9:44 AM  |
| 84 | We must take dramatic action if we want to meaningfully address our mass incarceration crisis. I'm concerned that "combining the grids" will increase sentences for nondrug felonies, rather than dramatically reduce sentences for drug crimes. Our drug grid is absolutely draconian. The prevalence of the special rules, which apply more often than not and always increase the controlling sentence, is another reason to dramatically reduce sentences. I urge the committee to seek input from public defenders in a more substantive and meaningful way than this survey.   | 9/1/2020 9:26 AM  |
| 85 | If you build up regional resources for mental health instead you will likely not need to rework the crime issue as those who really need help will get it instead of leaving it up to law enforcement to solve. Spend your time wisely working on that issue instead. Mental Health is a MEDICAL issue; not a Law Enforcement issue.   | 9/1/2020 8:56 AM  |
| 86 | Drug offense's need to be tied to rehab!   | 9/1/2020 8:11 AM  |
| 87 | What are the ranges of proportionality you are considering. These are very open ended questions!   | 9/1/2020 7:45 AM  |
| 88 | The system is broken....the lack of sentencing has sent the wrong "impression" to criminals, thus creating the sense nothing will happen....build more prisons.....society is out of hand....  | 9/1/2020 7:36 AM  |
| 89 | Need to make the charges more severe   | 9/1/2020 6:31 AM  |
| 90 | If you don't make drug users spend time in jail and prison they will not change. Not enough time clean. You can not reduce penalties on victim crimes. If an offender has no consequence he will continue to strike. This will cause the death of many victims. Property crime should be punished harder. The offender never learns and believes that is their only way of life  | 8/31/2020 9:41 PM |
| 91 | The fleeing and eluding laws should be strengthened. Pursuits have become to common place.   | 8/31/2020 9:09 PM |
| 92 | This is poorly written. Answers can easily be misinterpreted.  | 8/31/2020 8:49 PM |
| 93 | NA   | 8/31/2020 8:33 PM |
| 94 | The sentencing guidelines should be firm and proportional to the crime and less ability for deviation agreements by attorneys or judges. The lack of fear for the criminal justice system enables criminals and subverts justice. It should be called the "victim/society justice system. But then defense attorneys would be out of a job.  | 8/31/2020 7:36 PM |
| 95 | Drug crimes are currently disproportionate to non-drug crimes. Sentencing on drug possession would be better as a non-drug as long as drug treatment was still provided. Also, remove the 3rd or subsequent special rule. It prevents treatment in some situations which is greatly needed and unjust (for example two priors from many years ago or two picked up in a very short time so only one chance at treatment because the first two were sentenced together).  | 8/31/2020 7:11 PM |
| 96 | Drug offenses, if off grid, would make drug offenders spend too much time in the county jail.  | 8/31/2020 7:07 PM |
| 97 | Build more prisons. Drugs are the underlying issues with most crimes. Need more mental health facilities as it is ridiculous to have officers sit with patience for up to 16-24 hours before can get them into state hospital. Need more drug treatment facilities. Focus on the issues and quit bashing law enforcement wjmhen they don't have resources to do the job.   | 8/31/2020 6:43 PM |
| 98 | The penalties on the drug grid are ridiculous. I understand the intent to punish people who are  | 8/31/2020 5:34 PM |



selling drugs to prevent others from being addicted or over-dosing. But most cases we see are possession with the intent and not actual selling. Most of the time, they are drug addicts themselves who are struggling to get by and support their own addiction. It's ridiculous that person who has over 3.5 grams of meth or heroin--which is NOT a large amount to get to-- could do more time in prison than people charged with high-level, violent offenses. In fact, it's not a could do more time-- it does happen. All the time. In doing this job, I don't think I've ever seen a meth PWID case be charged from the beginning as a level 3 drug felony. Most of the time, they are level 2s because the minimum gram requirement is so low that it easily bumps up to a level 2. As far as making the level 5 drug felony a non-grid-- I'm torn. It has positives and negatives. Clients would lose good-time credit they would otherwise receive and no opportunity for program credit. Serving the sentencing in KDOC vs. the county jail. I'm sure the county isn't going to want to pay for that since those cases are numerous. However, it would cap the penalty at 12 months as opposed to the 42 months that is the current maximum. It's ridiculous that a person with two or more priors for marijuana can go to prison for 42 months (incorporates another survey question) or someone who possesses a small quantity of meth/heroin/cocaine could face that much time. Once again, that's more time than what some people could/would do for higher-level person/violent offenses. They're addicts--they need treatment. It's a waste of resources to incarcerate them for the amount of time the grid currently requires. On the other hand, they won't get the KDOC programming in the jail. The best solution would be just to re-work the drug grid or at least a MINIMUM re-work the level 5 drug grid (or incorporate the grids and put this at lower level) so the client would be subjected to less time overall, but could still receive the benefits of KDOC should the person be remanded to serve time. Another negative of making it nongrid is the graduated sanctions don't apply, though they don't exist much anymore anyway. The courts wouldn't be required to do a two/three-day sanction before remanding a client to serve a sentence. Plus, most of my clients prefer to go to KDOC and serve time as opposed to in the county jail. Penalties under KORA are also ridiculous. Especially since it's supposedly not punishment to require people to register. Clients can and do have larger sentences for failing to register than for the original offense that required registration in the first place. Criminal threat being a felony is absurd. If a person physical touches/injures a person, it's a simple misdemeanor battery. But using words instead is a felony? And a person felony at that where the client's criminal history is more significantly impacted. Not sure why forgery requires the mandatory jail time. However, that's preferred than if it were mandatory imprisonment like ID theft. The "fleeing/eluding a third or subsequent" current rule is bizarre and doesn't really do much. It's just mandatory imprisonment and imposed consecutively. However, that's just obvious anyway. Fleeing and eluding is a person felony. So if it's a third or subsequent, then that person has 2 prior felony convictions for fleeing/eluding. So they should be presumptive prison anyway based on criminal history. If it elevated the severity level of the offense from a 9 to something a little higher, that would make more sense. Or if there were aggravating factors, that would make more sense.

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| 99  | I believe that offender registration violations should be severely reduced in penalties. I believe that DUI should have an escalating penalty and be moved to the grid. I believe that criminal threat should also be a misdemeanor.   | 8/31/2020 4:30 PM |
| 100 | Most of my clients are in prison for drug crimes. I do not believe they are a harm to the public and they should not incarcerated, at least not at the length at which they are currently sentenced.   | 8/31/2020 3:52 PM |
| 101 | none   | 8/31/2020 3:45 PM |
| 102 | I'm not sure what you mean by "proportionality". You should not increase L9 sentences to match the current 5Ds. You should reduce the 5D crime to match the L9s. In fact, consider making 1st time possession of ANY drug a misdemeanor. Also, Drug Distribution should not be chargeable as a 3D or 4D on weight alone.   | 8/31/2020 3:43 PM |
| 103 | I am not quite sure what the thinking is on question 3--is it asking whether I think sentences are currently too high and need to be reduced for proportionality purposes, or too low and need to be adjusted upward? If it is that they are currently too high, I would agree. Not addressed by the survey: There needs to be adjustment to shrink the gap between the sentence for A and B offenders and the sentence for C offenders on higher level crimes. Where there are aggravating factors, the state has the ability to up-depart, but baseline sentences shouldn't start out so high. Definitely shouldn't be so high when comparing them to C box offenders. Also, not all person crimes are equal--there is a huge difference between someone who is in the A box because of 3 prior attempted murders or even aggravated batteries committed at different times and someone who is in the A box because of 9 prior violations of a protection order that | 8/31/2020 3:27 PM |

have been converted or 3 prior criminal threats. These less serious, nonviolent "person" crimes should be treated differently and shouldn't result in a person being presumptive for prison on all cases.

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| 104 | Possession and use of illicit drugs should be properly addressed as a public health issue, meaning individuals should be given access to effective medical treatment. Many of the crimes committed stem from or are related to drug use. Incarceration does not address or treat the underlying addiction/mental health issues, instead it often worsens the individual's condition and makes it more difficult for them to recover/lead a productive life.   | 8/31/2020 3:27 PM |
| 105 | The overall length of sentences has spun out of control, particularly on the left hand side of the grid, and we incarcerate people for entirely too long. Frankly, almost every sentence in the A, B, and C ranges are incredible punitive, and probably longer than can be justified for any peneological reason but retribution, which is the least important justification in my opinion. It makes absolutely no sense to have grid sentences that are longer than the hard 25, and just shows how ridiculous some of the grid sentences are. In fact, when the grid was introduced in 1993, the highest sentence possible was around 200 months, whereas now it is over 600. This is simply outrageous, as i do not think we are any more criminal in 2020 than we were in 1993, and if i had to guess, would guess that we are less so. Also, regarding Number 5, i do not think that any sort of drug possession without any distribution or sale should ever result in a prison sentence. i struggled with how to answer 5 though. This is because our DUI scheme is an absolute mess and it makes no sense to have that crime follow different rules for any other crime. In my estimation the idea of non-grid felonies is dumb and unnecessary. As such, I do not favor making anything like our DUI sentencing scheme because it is convoluted and nearly unworkable; ask three attorneys exactly how DUI post-imprisonment supervision works, and i would not be surprised to get three different answers. I would instead support simply decriminalizing possession all together. However, if we insist to continue making simple possession a crime, in no circumstance should it ever be a felony. Ever. So i support decriminalizing possession, but if they must remain crimes, they should become misdemeanors, and preferably Class C or B. Simply put, we are over incarcerating, both in length of sentence and number of acts criminalized. | 8/31/2020 3:24 PM |
| 106 | I would need additional context for #5 to answer definitively. This list is a good start (esp. the drug offenses and KORA violations), and there are so many other proportionality concerns that the subcommittee could consider. The problems that sentencing in Kansas present go way beyond these offenses - in the words of Danielle Sered, we must reckon with how we treat "violent" offenders as well. And there are so many offenses with life sentences. That said, I understand the Commission already has a huge scope -- perhaps the Commission could work with the Sentencing Commission or the Criminal Justice Reform Commission (the former has decades of experience with trying to pass proportionality measures, building support for merging grids, etc. -- as for the latter, honestly, I don't hold out a lot of hope for them to change the sentencing provisions). I don't know if you are bringing non-Commission members onto your subcommittee, but I would highly suggest that you consult further with public defenders and appointed counsel - as far as felonies go, we handle 85% of the cases in this state so we have a lot of information about how it all plays out.  | 8/31/2020 3:21 PM |
| 107 | Mandatory minimums for nonviolent crimes that pose no potential for danger should be removed (keep and raise mandatory minimums for cruelty to animals and keep them for DUI/DWS). Drug possession should have a treatment emphasis - incarceration serves little purpose except to institutionalize addiction.   | 8/31/2020 3:16 PM |
| 108 | Mainly--ORV   | 8/31/2020 3:12 PM |
| 109 | Grid Boxes for Severity Level 1 and 2 at Criminal History A and B are not proportionate to off-grid homicides.  | 8/31/2020 3:11 PM |
| 110 | When the guidelines were first enacted in 1993, the longest sentence allowed was 204 months. Now it is 653 months. No science or expertise led the legislature to make such draconian changes. K DOC is going to one day have to reckon with a large population of geriatric individuals whom the State has chosen to lock in cages and forget. Guidelines, Hard 50, Hard 25, aggravated/persistent offenders, etc., are going to cost a lot of money, deprive a lot of people of their humanity, and do nothing to make communities safer and reform individuals. In no realm do our guidelines make LESS sense than in the context of offender registration penalties. I've represented people looking at 30+ years on offender registration cases even though there was absolutely no cognizable harm done by my client not registering. That has to change.   | 8/31/2020 3:08 PM |



SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2469**

As Amended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2469, as amended, would raise the allowed release of inmates by the Kansas Department of Corrections (KDOC) for a terminal medical condition from 30 days to 120 days.

Current law allows the Prisoner Review Board (Board) to approve the release of an inmate if a doctor determines the inmate has a terminal medical condition likely to cause death within 30 days and does not represent a future risk to public safety. Release of an inmate is conditional and may be revoked if the:

- Person's illness or condition significantly improves;
- Person does not die within 30 days of release;
- Person fails to comply with conditions of release; or
- Board otherwise concludes the person presents a threat or risk to public safety.

The bill would replace references to 30 days with 120 days, and would allow release if an inmate's terminal medical condition is likely to cause death within 120 days, or revocation of release if the person does not die within 120 days of release.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission.

In the House Committee hearing, Representative Highberger; and representatives of the American Civil Liberties Union, Kansas Association of Criminal Defense Lawyers, and Kansas Sentencing Commission testified in support of the bill. Written neutral testimony was provided by a representative of the KDOC.

The House Committee amended the bill by raising the allowed release for a terminal medical condition to 120 days. [Note: Current law allows release if the terminal medical condition is likely to cause death within 30 days. The bill, as introduced, would have increased this time limitation to 90 days.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDOC indicates that it has released one inmate under the current process since 2013 and states that expanding the window to 90 days would likely increase the number of potential candidates for release. However, KDOC anticipates that the number of individuals who would be eligible for consideration and release would be minimal, and any fiscal impact could be absorbed within existing resources.

The Kansas Sentencing Commission indicates enactment of the bill would have no effect on prison admissions, but the bill could affect prison bed space depending on the number of individuals released.

The Office of Judicial Administration indicates enactment of the bill would have no fiscal effect. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

**REVISED**  
*SESSION OF 2020*

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2484**

As Amended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2484, as amended, would amend law related to the amount of good time incarceration credit and program credit allowed by the Kansas Department of Corrections (KDOC) for persons convicted of certain crimes.

- The bill would specify the current good time incarceration credits would be limited to crimes committed between the dates in current law and June 30, 2020. The bill would also allow the following good time incarceration credit for crimes committed after July 1, 2020:
  - 25.0 percent of the prison part of the sentence for a person felony; and
  - 40.0 percent of the prison part of the sentence for a nonperson felony.

Current law allows the following good time incarceration credit:

- 15.0 percent:
  - Crimes committed on or after July 1, 1993; and
- 20.0 percent:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Non-drug severity level 7 through 10 crimes committed on or before January 1, 2008;
- Drug severity level 3 or 4 crimes committed on or after January 1, 2008, but prior to July 1, 2012; or
- Drug severity levels 3 through 5 crimes committed on or after July 1, 2012.

Current law provides that the State of Kansas, the Secretary of Corrections, and the Secretary's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission in making good time and program credit calculations. The bill would remove "wrongful" from this immunity provision.

Further, the bill would allow up to 150 days of program credit, which may be awarded based upon the completion of certain KDOC programs while a person is incarcerated. Current law allows for up to 120 days of such program credit.

Finally, the bill would also make technical amendments to remove outdated language regarding previously required good time and program credit calculations by the Secretary of Corrections and to ensure consistency in statutory phrasing.

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission (Commission).

In the House Committee hearing, representatives of the American Civil Liberties Union, the Commission, and the Kansas Association of Criminal Defense Lawyers testified in support of the bill, stating the bill would help incentivize good behavior of inmates while also reducing the number of prison beds needed. Opponent testimony was provided by representatives of the Kansas Association of Chiefs of Police, Kansas County and District Attorneys Association, Kansas

Peace Officers Association; and the Kansas Sheriffs Association, stating the bill, as introduced, would not consider the seriousness of underlying offenses and would not account for crime victims. Written-only neutral testimony was provided by KDOC.

The House Committee amended the bill by inserting provisions that base available good time incarceration credit on the underlying offense, amending the liability for damages caused by acts or omissions in credit calculation, and raising the amount of program credit available.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Commission indicates enactment of the bill would result in a decrease of 150 adult prison beds needed by the end of FY 2021 and a decrease of 2,020 adult prison beds needed by the end of FY 2030. The Commission indicates the bill would have no effect on prison admissions. KDOC indicates enactment of the bill could help the State avoid millions of dollars in costs for future construction, operations, and contract beds between FY 2022 and FY 2029. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.



**HOUSE BILL No. 2052**

By Committee on Corrections and Juvenile Justice

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to probation; hearing; credit toward early discharge; amending K.S.A.  
3 2018 Supp. 21-6608 and repealing the existing section.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 21-6608 is hereby amended to read as  
7 follows: 21-6608. (a) The period of suspension of sentence, probation or  
8 assignment to community corrections fixed by the court shall not exceed  
9 two years in misdemeanor cases, subject to renewal and extension for  
10 additional fixed periods of two years. Probation, suspension of sentence or  
11 assignment to community corrections may be terminated by the court at  
12 any time and upon such termination or upon termination by expiration of  
13 the term of probation, suspension of sentence or assignment to community  
14 corrections, an order to this effect shall be entered by the court.

15 (b) The district court having jurisdiction of the offender may parole  
16 any misdemeanant sentenced to confinement in the county jail. The period  
17 of such parole shall be fixed by the court and shall not exceed two years  
18 and shall be terminated in the manner provided for termination of  
19 suspended sentence and probation.

20 (c) For all crimes committed on or after July 1, 1993, the duration of  
21 probation in felony cases sentenced for the following severity levels on the  
22 sentencing guidelines grid for nondrug crimes and the sentencing  
23 guidelines grid for drug crimes is as follows:

24 (1) For nondrug crimes the recommended duration of probation is:

25 (A) 36 months for crimes in crime severity levels 1 through 5; and

26 (B) 24 months for crimes in crime severity levels 6 and 7;

27 (2) for drug crimes the recommended duration of probation is 36  
28 months for crimes in crime severity levels 1 and 2 committed prior to July  
29 1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or  
30 after July 1, 2012;

31 (3) except as provided further, in felony cases sentenced at severity  
32 levels 9 and 10 on the sentencing guidelines grid for nondrug crimes,  
33 severity level 4 on the sentencing guidelines grid for drug crimes  
34 committed prior to July 1, 2012, and severity level 5 of the sentencing  
35 guidelines grid for drug crimes committed on or after July 1, 2012, if a  
36 nonprison sanction is imposed, the court shall order the defendant to serve

1 a period of probation of up to 12 months in length;

2 (4) in felony cases sentenced at severity level 8 on the sentencing  
3 guidelines grid for nondrug crimes, severity level 3 on the sentencing  
4 guidelines grid for drug crimes committed prior to July 1, 2012, and  
5 severity level 4 of the sentencing guidelines grid for drug crimes  
6 committed on or after July 1, 2012, and felony cases sentenced pursuant to  
7 K.S.A. 2018 Supp. 21-6824, and amendments thereto, if a nonprison  
8 sanction is imposed, the court shall order the defendant to serve a period of  
9 probation, or assignment to a community correctional services program, as  
10 provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to  
11 18 months in length;

12 (5) if the court finds and sets forth with particularity the reasons for  
13 finding that the safety of the members of the public will be jeopardized or  
14 that the welfare of the inmate will not be served by the length of the  
15 probation terms provided in subsections (c)(3) and (c)(4), the court may  
16 impose a longer period of probation. Such an increase shall not be  
17 considered a departure and shall not be subject to appeal;

18 (6) except as provided in subsections (c)(7) and (c)(8), the total  
19 period in all cases shall not exceed 60 months, or the maximum period of  
20 the prison sentence that could be imposed whichever is longer. Nonprison  
21 sentences may be terminated by the court at any time;

22 (7) if the defendant is convicted of nonsupport of a child, the period  
23 may be continued as long as the responsibility for support continues. If the  
24 defendant is ordered to pay full or partial restitution, the period may be  
25 continued as long as the amount of restitution ordered has not been paid;  
26 and

27 (8) the court may modify or extend the offender's period of  
28 supervision, pursuant to a modification hearing and a judicial finding of  
29 necessity. Such extensions may be made for a maximum period of five  
30 years or the maximum period of the prison sentence that could be imposed,  
31 whichever is longer, inclusive of the original supervision term.

32 (d) In addition to the provisions of subsection (a), a defendant ~~who~~  
33 ~~has a risk assessment of low risk, has paid all restitution and has been~~  
34 ~~compliant with the terms of~~ *may be discharged early from* probation,  
35 assignment to a community correctional services program, suspension of  
36 sentence or nonprison sanction ~~for a period of 12 months shall be eligible~~  
37 ~~for discharge from such period of supervision by the court if such~~  
38 ~~defendant is found to be in substantial compliance with the conditions of~~  
39 ~~such supervision. The court shall set a hearing at sentencing for the date~~  
40 ~~when the defendant will have served 50% of such defendant's term of~~  
41 ~~supervision to determine if a defendant has been in substantial compliance~~  
42 ~~with the defendant's term of supervision.~~ The court shall grant such  
43 discharge unless the court finds by clear and convincing evidence that

1 denial of such discharge will serve community safety interests.

2 *(e) A defendant shall earn credit to reduce such defendant's term of*  
3 *probation, assignment to a community correctional services program,*  
4 *suspension of sentence or nonprison sanction when the defendant has*  
5 *substantially complied with the conditions of such defendant's supervision.*  
6 *A defendant shall be awarded seven days earned discharge credit for each*  
7 *full calendar month of substantial compliance with the conditions of such*  
8 *defendant's supervision.*

9 *(f) The Kansas sentencing commission shall adopt procedures and*  
10 *forms to standardize the process for calculating earned discharge credit*  
11 *pursuant to this section.*

12 *(g) For the purposes of this section, "substantial compliance" means:*

13 *(1) The defendant has made significant progress in meeting the*  
14 *conditions of probation, assignment to a community correctional services*  
15 *program, suspension of sentence or nonprison sanction; and*

16 *(2) the defendant has no violations of conditions of probation,*  
17 *assignment to a community correctional services program, suspension of*  
18 *sentence or nonprison sanction filed with the court pursuant to K.S.A. 22-*  
19 *3716, and amendments thereto.*

20 *(h) The state of Kansas or any agents or employees of the state shall*  
21 *not be liable for damages caused by any negligent or wrongful act or*  
22 *omission in making the earned discharge calculations authorized by this*  
23 *section.*

24 Sec. 2. K.S.A. 2018 Supp. 21-6608 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its  
26 publication in the statute book.

# Kansas Criminal Justice Reform Commission

## Race in the Criminal Justice System Sub-Committee

October 26, 2020

To: Race in the Criminal Justice System Sub-Committee of the Criminal Justice Reform Commission

Re: 2020 Update

### *Background*

During the June 2020 meeting of the Kansas Criminal Justice Reform Commission, members of the Criminal Justice Reform Commission suggested the creation of a new subcommittee specifically to address issues of race in the criminal justice system. The subcommittee was established and held its first meeting on August 13, 2020. Subsequent meetings were held on September 8, 2020 and October 20, 2020.

### *Goals*

Having identified membership of the subcommittee in August of 2020, and given the December 1, 2020 deadline for the final report from the Criminal Justice Reform Commission, the subcommittee endeavored only to identify issues which the majority of members agreed upon given the short turn around.

### *Discussion*

The Race in the Criminal Justice System subcommittee recommends that the Criminal Justice Reform Commission include the following in the Commission's December 1, 2020 report to the Kansas Legislature:

1. *Data:* That law enforcement agencies in the State of Kansas collect additional data related to the race of citizens with whom they have contact and make the data available—not limited only to arrests.

Suggestions would include utilizing an existing database, like the Kansas

Criminal Justice Information System (KCJIS) which is maintained by the Kansas Bureau of Investigation.

The subcommittee recommends that the Criminal Justice Reform Commission include in its final report, a request to the legislature to give strong consideration to the recommendations of the Governor's Commission on Racial Equity and Justice in December of 2020 on the topic of data collection, maintenance and analysis.

2. *Bail Reform*: while the topic of bail reform and its impact on communities of color was discussed, the subcommittee is aware of the effort of the Pretrial Justice Task Force chaired by Judge Karen Arnold-Berger. That task force, which has met since 2019, is taking public comment after the issuance of a lengthy report. A final series of recommendations to the legislature is expected in November of 2020. The subcommittee recommends that the Criminal Justice Reform Commission include in its final report, a request to the legislature to give strong consideration to the recommendations of the Pretrial Task Force.
3. *The Public Defender*: The subcommittee discussed the negative impact on communities of color due to the underfunded public defender system in Kansas. While recognizing that state resources will be impacted by the COVID pandemic, the subcommittee recommends the legislature identify revenue sources to (1) increase the budget of the current public defender system (State Board of Indigent Defense Services), and (2) expand the public defender system to create stand-alone public defender offices statewide, to ensure access to public defenders by judicial district.

Again, the report to be issued by the Governor's Commission on Racial Equity and Justice will have specific recommendations regarding the public defender system in Kansas as does the report already issued by Board of Indigent Defense Services (B.I.D.S.) Executive Director, Heather Cessna. This subcommittee requests the legislature give strong consideration to both reports, including the specific recommendation from

the Governor's Commission that any community with more than 100,000 residents have a stand-alone public defender's office.

4. *New Commission:* The subcommittee recommends that, similar to HB 2290, new Section 2, passed by the 2019 Kansas legislature which established the Kansas criminal justice reform commission, the 2021 Kansas legislative session should establish a standing commission on racial equity in the criminal justice system.

In addition, the subcommittee suggests the legislature specifically identify the groups from which representatives on this commission would be drawn. Specifically, the subcommittee requests the legislature include members from both rural and urban areas--including public defenders; criminal defense attorneys; a representative of the public education (K-12) system; and a person with a history of involvement with the justice system in Kansas.

Respectfully Submitted this \_\_\_ day of October, 2020.

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Marc Bennett, District Attorney  
Chair

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Mark McCormick, Kansas ACLU  
Vice-chair

**October 26, 2020**

To: Criminal Justice Reform Commission

From: Re-Entry Subcommittee

Re: Final Report of the Subcommittee

Members of the Criminal Justice Reform Commission:

## **I. Procedural History**

During the first meeting of the Kansas Criminal Justice Reform Commission on August 28, 2019, the Re-Entry Sub-Committee was established. Rep. Gail Finney was selected to chair the sub-committee. Jean Phillips became the vice chair in January, 2020 and took over at chair of the subcommittee in March, 2020. Since its creation, the sub-committee has met 16 times, and heard presentations from Secretary Zmuda with the Kansas Department of Corrections and three presentations from the Council of State Governments. The Committee studied the report issued by the *Kansas Criminal Justice Recodification, Rehabilitation, and Restoration Project* (3Rs Report), obtained information through open records act requests, and heard from various stakeholders regarding the work of this sub-committee.

## **II. Work of the Subcommittee**

According to statistics from the Kansas Department of Corrections (KDOC), over 6,000 offenders are released from custody each year. Of these 6,000:

- 50% have issues relating to driver's licenses.
- 75% enter KDOC needing job training. KDOC reaches about 75% of these persons.
- 75% need substance abuse and recovery programming. KDOC reaches about 50% of these persons.
- 20% will leave with no stable housing.
- 25% will need some level of mental health services.
- Within three years, a third of those released will return to prison; half for supervised release violations, and the rest for new crimes.

The statistics bear out what was concluded in federally funded *Report of the Re-entry Policy Council* and the 2006 report of the *Kansas Criminal Justice Recodification, Rehabilitation, and Restoration Project* (3Rs Report): successful re-entry requires that individuals have access to transportation, employment, housing, and health services, including physical, mental, and substance abuse treatment. These areas are linked. A person must be able to drive to consistently get to work or counseling or treatment. A job provides financial stability, which is important to housing. The necessity for a holistic approach to re-entry was reaffirmed by the research presented to the subcommittee by the Council of State Governments (CSG) (Slide Presentation Update to the Re-entry Subcommittee, Oct. 7, 2020).

Successful re-entry serves the needs of the person returning to society and the rest of the citizenry. To enable successful transition from prison or jail to the community, and to decrease recidivism, the subcommittee focused on the following:

- Stable housing
- Supportive Benefits
- Job training and barriers to employment opportunities.
- Access to driver's licenses

The Kansas Department of Corrections provided the subcommittee with extensive research. (Presentation by Secretary Zmuda and Margie Phelps, both of KDOC at Sept. 16, 2019 subcommittee meeting). The CSG also conducted extensive research, contacting stakeholders in 99 of the 105 counties in Kansas and speaking with over 180 persons. (Slide Presentation Update to the Re-entry Subcommittee, Oct. 7, 2020). Based on the research from KDOC and CSG, the subcommittee provides the following information and recommendations for each of the above five target areas.

## **A. Housing**

### **1. Scope of the Problem**

There is a cyclical relationship between housing instability and a person's involvement in the criminal justice. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Sept. 9, 2020). According to the Kansas Department of Corrections, 20% of the individuals who are released from prison, leave with no stable housing. (Presentation by Secretary Zmuda and Margie Phelps, both of KDOC at Sept. 16, 2019, subcommittee meeting). Unfortunately, there is no data regarding housing security for people who leave jails in Kansas.

The CSG reached out to 99 of the 105 counties in Kansas in an effort to learn more about housing within the State. Their research revealed that there is low housing stock and a lack of housing options and funding, especially in western and rural Kansas. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). The KDOC has created multiple programs to help people find housing as they reenter the community, including master leases, housing specialists, and a Kansas Supportive Housing for Offender (KSHOP) program. Unfortunately, these programs are unable to meet the high demand for housing. The KDOC needs more housing infrastructure to meet the needs of the population leaving prisons.

Through the data gathered by the CSG, the subcommittee learned that there is a lack of consistent, formal, state-wide policies to provide for consistent and informed decision making across various agencies. In addition to the programs provided by the KDOC, the Kansas Department for Aging and Disability Services (KDADs) and Kansas Housing Resources Corporation (KHRC) provide housing support that in some cases can be accessed by people in the criminal justice system. Through the KHRC, Housing and Urban Development (HUD) provides Emergency Solutions Grants (ESG) that impact persons upon leaving prison or jail. The Catholic Charities of Northern Kansas that serve Salina has an ESG focused on people in the justice system. KDADs also fund programs through SAMSHA's Projects for Assistance in Transition from Homelessness (PATH), and one program that provides funding for a Community Mental Health Center to have a master lease for people reentering the community from jail or state hospitals.



These organizations, however, do not have statutory or administrative regulations that formally connect their goals and resources. To efficiently and consistently assist persons who are leaving prisons and jails with stable housing, the subcommittee adopted several policy recommendations of the CSG to better leverage the available resources and increase the availability of stable housing options for persons leaving prisons or jails.

## **2. Solutions**

In reviewing the data and information available across all housing agencies, there are four policy options, and four types of infrastructure for the KDOC that the subcommittee recommends. Some of the recommended changes can take place immediately and without significant additional cost to the State. The infrastructure the KDOC requires will have costs, but can be implemented over time. Additionally, by following the recommendations of the Commission as a whole to decrease the prison population, funds will become available to ensure stable housing for those being released.

### **a. Policy Changes**

First, it is critical for the state agencies to work together address homelessness, housing instability, and support the broadening of housing opportunities for people in justice system in Kansas. The following policy recommendations were presented to the subcommittee by the CSG on October 7, 2020, and ultimately, adopted by the subcommittee. The recommendations will reduce housing barriers for people in the criminal justice system and can be broken down into four priorities.

❖ *Leverage current efforts to review and address housing and homelessness in Kansas. There are local and statewide task forces currently working on reducing homelessness and increasing housing stability in Kansas.*

There are several immediate administrative actions that should be taken. First, the State should incorporate people in the criminal justice system into existing working groups and task forces with a priority on homelessness and housing. This would include:

- Cooperating with the Lieutenant Governor's Office and the Kansas Housing Resources Corporation (KHRC), work with the Rural Prosperity Task Force and the Housing and Homeless Subcommittee to include people in the criminal justice system.
- Ensuring that people in the criminal justice system are included in the upcoming housing study.
- Evaluating barriers to accessing existing shelter services, permanent supportive housing, recovery housing, and other housing options for people in the criminal justice system.

Second, the State should expand existing lists of housing opportunities available through KDOC, the Kansas Housing Resources Corporation (KHRC), and the Kansas Department for Aging and Disability Services (KDADS) to provide information on which

programs in the state support access for people in the justice system. This would include:

- Developing policies and procedures on coordination between KDOC and the regional Balance of State (BoS) Continuum of Care (CoC) coordinators, CoCs, CMHC housing specialists, recovery housing, and other housing services providers.
  - Having the regional BoS CoCs coordinators review information in the new Housing Management Information System (HMIS) to identify available properties and support people reentering the community from jails or prison.
- ❖ *Provide opportunities and develop policy on cross-system coordination. There are many agencies funding housing programs that can coordinate more effectively to support people reentering the community who need housing.*

The State should immediately establish policies that require an ongoing collaboration among state agencies, including KDOC, KDADS, and KHRC, to address housing for people in the justice system. In the process, the State should identify statutory or administrative restrictions on housing for people with criminal histories and distill those barriers that are perceived versus the restrictions that are mandatory to generate a list of restrictions that impact the most people in the criminal justice system. For example, HUD only prohibits persons who were convicted of manufacturing methamphetamine in federally subsidized housing from subsequently utilizing federally funded housing, but many Local Housing Authorities apply across the board prohibitions against person convicted of a felony drug offenses. All such perceived barriers need to be examined and removed.

- ❖ *Prioritize collecting data to guide policy improvements. There is a lack of available data and no standard way to identify people in jails and prisons who have housing instability or are at risk of homelessness.*

The subcommittee recommends that the State immediately pass legislation that requires a consistent method of tracking persons in jails and prisons who are experiencing housing instability or are at risk of homelessness. One option would be to require the use of the Vulnerability Index - Service Prioritization Decision Assistance Tool (VI-SPDAT), which is used by the BoS CoC as well as some of the other CoCs to identify people experiencing homelessness.

The subcommittee also recommends administrative action to identify common data metrics that should be collected across the criminal justice, mental illness, substance use disorder, and housing systems. This group will develop recommended legislation regarding what metrics should be included in the data framework.

- ❖ *Focus on training and education to help people in the justice system get access to housing. There is a lack of education and training for community service providers on how to work with people in the justice system.*

As stated above, there are common misperceptions about restrictions for housing offenders. To provide housing stability for those leaving prisons or jails, the fragmented approach to housing must end. Through administrative action, formal partnerships between the various housing agencies can be established to provide better training and information sharing.

The subcommittee recommends that administrative action focus on training and coordination in the following ways:

- Training for housing providers on working with people in the justice system on criminogenic risks, needs, and common misconceptions.
- Outreach and training for CoCs, housing authorities, and landlords on the housing needs of people in the justice system and how to effectively coordinate with community supervision agencies, CMHCs, and substance use disorder treatment providers.
- Training for community supervision officers on housing opportunities, the housing system, and strategies to better coordinate with CoCs, housing authorities, landlords, CMHCs, and housing support service providers.

#### **b. Infrastructure Changes**

In addition to the administrative and policy changes, an integral component to solving the housing needs of the re-entry population is simply creating more available housing. The costs of the additional infrastructure will be recouped by reducing the number of released offenders who are returned to the KDOC. According to data provided by the KDOC, the cost of housing an offender in prison is \$30,077. If the KDOC is able to prevent 162 offenders from returning to prison, it will save \$4,872,474. This savings will pay for the cost of many of the following recommendations. There will also be cost savings by decreasing the prison population as recommended by the Proportionality Subcommittee.

Based on data and research provided by the KDOC, the subcommittee recommends four infrastructure and employee changes. The subcommittee presents the recommendations in order of importance:

❖ *Immediately fund additional master leases.*

Currently, the KDOC has 40 master lease housing units consisting of houses and/or apartments leased by KDOC to house people needing a transition period. The leases are primarily located in the central and eastern parts of the state. Currently, there are 4 housing specialists in the central and eastern part of the state (Kansas City, Wichita, Olathe, and Topeka) and meet the needs of 150 people. The housing specialists work to locate housing for persons leaving KDOC custody and are currently not able to support everyone with housing needs.

Because 20% of the 6000 people being released a year are housing insecure, funding must be made available to provide the KDOC with 40 additional master leases and 3

additional housing specialist (Wichita; Central; Olathe). The additions would allow provide transition housing for an additional 150 people at a cost of \$450,000.

- ❖ *Increase the number of coordinators for the Kansas Supportive Housing for Offenders program.*

Currently, the KDOC offers the Kansas Supportive Housing for Offenders Program (KSHOP), which finds and secures housing and provides additional wraparound services for offenders who are chronically homeless and institutionalized, and who have dual and triple diagnoses. Currently the KDOC is able to provide assistance for up to 18 people reentering the community in each of the following areas: Topeka, Olathe, Kansas City and Wichita. The number of persons provided services at any given time varies based on client behaviors and needs.

The offenders served by KSHOP require intense case management, but KDOC data establishes that there is a 25% return rate with this very challenging population when they work with a KSHOP Care Coordinator. Currently, the KDOC has two coordinators that can serve 12-18 offenders at a time. Because KDOC releases four times that many persons needing wraparound services per year, the subcommittee recommends that the five KSHOP Coordinators (2 in Wichita, 1 in SE Kansas, 1 in Kansas City, and 1 in Central Kansas) be added to the KDOC. The additional coordinators would be able to serve up to an additional 60-90 offenders at a cost of \$322,500.

- ❖ *Create a Forensic Unit to house persons released with special needs.*

The KDOC reports that every year it has 15-20 offenders who need structured housing. These offenders are not easily placed in the community or in existing centers. Although the expansion of KSHOP may result in a decrease in the number of persons needing a structured facility, the KDOC projects that it will still need to provide long-term care to a certain percentage of the population with special needs.

The cost for anticipated for 60-90 beds would be approximately \$10,000,000. However, by running the solicitation through KDADS, Medicaid dollars would cover about 60% of the total cost.

- ❖ *A position to track housing after release.*

Currently, the KDOC does not have the resources to track persons released from prison. Because of the number of housing insecure persons re-entering society, it is important that the KDOC be able to track persons 90 days, 180 days, or a year from release. There are currently significant challenges in getting accurate information about housing for people reentering the community. Housing is crucial to successful and long-term reintegration into society and the KDOC needs data to understand the scope of the housing problem. The cost for this position, with salary, benefits, travel, equipment, software, and training would be \$80,000.

## **B. Supportive Benefits and Training**

### **1. Scope of the Problem**

Persons re-entering the community after completion of a prison or jail sentence are more likely to be food insecure, which research suggests contributes to high-risk behavior. According to data gathered by the CSGs, public benefits, such as Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF), support successful reentry and reduce recidivism by providing the essentials that reentering individuals and their families need. SNAP provides for food assistance in the form of food stamps and TANF provides temporary cash assistance to families in need. These programs also provide additional supports to beneficiaries in the form of job and skills training and a range of other services from transportation assistance to provision of job interview clothing. The research suggests that based on the current economic climate, the need for food stability, cash assistance and additional supports is only expected to rise. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

Kansas currently has a partial ban on access to SNAP benefits for people with a drug felony conviction. A person is ineligible for SNAP benefits after the first felony drug offense, unless the person participates in state-approved drug treatment program and passes drug tests in accordance with plan (or based on formal screening and or assessment it is determined that treatment is not necessary). Unless the approved drug program was completed while incarcerated, the person must pay for all treatment and testing. Any subsequent felony drug conviction results in an absolute lifetime ban. K.S.A. 39-709(b)(13). Likewise, a person is eligible for TANF benefits for five years after the first felony drug conviction, regardless of whether they have completed treatment. Any subsequent felony drug convictions result in a lifetime ban. K.S.A. 39-709(l)(5).

### **2. Proposed Solutions**

Currently, 30 states have opted out of the felony drug conviction ban on SNAP and TANF. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). The subcommittee recommends that Kansas follow suit and immediately amend K.S.A. 39-709 to fully opt out of the federal ban on both SNAP and TANF to allow persons with felony drug convictions to access the public benefits. Not only will those benefits assist persons with the successful transition from prison or jail, but SNAP and TANF benefits allows people with drug felonies to access federally funded workforce training programs and other critical services. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). As explained in the next section, job training is a critical component of successful re-entry and access to federally funded job training and employment assistance further supports the need to immediately opt out of the ban on SNAP and TANF.

Opting out of the federal ban will not be costly to the State. SNAP benefits are funded entirely by federal dollars. Although federal TANF funding is dependent upon state spending levels, those current level are unlikely to increase significantly. Additionally, fully opting out will reduce the administrative burden on Kansas agencies tasked with administering the ban and vetting applicants and their treatment progress. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

## **C. Job Training and Employment**

### **1. Scope of the Problem**

According to the data gathered by the KDOC, nearly 3,500 people in Kansas prisons do not have a high school diploma or a GED, yet the Kansas Department of Labor reports that in 2019 nearly 80% of high-demand jobs in Kansas required a high school diploma or a higher level of education. The KDOC also reports that in 2019 the majority of new offender prison admissions were for people assessed as having a medium-high risk to reoffend and with a moderate to a high need for education and employment assistance. Specially, there were 2,587 new first time admission and 57% of whom were assessed as medium-high risk to reoffend and of those persons 98% had a moderate to very high need in education and employment domain of the LSI-r. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020)

The KDOC prioritizes educational and employment programming, but it cannot meet the need and there are barriers to ensuring that all persons with an indicated need receive the training they need. In FY2019, the KDOC reported that 2,007 released offenders had a moderate to very-high education or employment need, but only about 633 or about 32% were enrolled in training prior to their release from prison. Several reasons were reported for the inability to provide education and employment assistance to those who require it:

- There isn't a streamlined process to use assessment results for assigning people to a facility based on programming needs, availability, interest, anticipated release date, and security risk.
- If a person has a short sentence, they may not be eligible to participate in programming.
- Operating procedures may inhibit the amount of programming that can be offered each day.
- Programs are not available each day of the week to maximize participation.
- People who are in work release, segregation, or other restrictive housing may be unable to participate in programming.
- Prior to the Second Chance Pell Pilot Programs, participation in post-secondary education was funded via self-pay and tribal grants.
- There is a lack of funding to increase programming and repurpose facility space in order to maximize participation in programming.

(CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

Once a person is released from custody, finding employment is challenging. According to research provided by the CSG, an estimated 46% of people on parole in 2019 were unemployed, in contrast to a statewide unemployment rate of 3.2 % at the time. Although multiple agencies in Kansas provide employment services, few provide the intensive services necessary for people upon re-entry who score high in the education and employment domain. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

Barriers to employment also exist through licensing and certification requirements. Licensure is required for a significant portion of the Kansas workforce across a range of jobs. Access to any Kansas license can be restricted by a felony conviction, and specific licenses are subject to

additional conviction-based restrictions. In 2018, the legislature amended K.S.A. 74-120 to improve access to licensing opportunities for people in the justice system, but the legislation falls short in the following ways:

- All licensing bodies retain broad discretion to deny applicants based on any felony conviction
- While the 2018 law somewhat limits discretion by authorizing disqualification only for offenses a licensing body determines to be “directly related” to the “general welfare and the duties and responsibilities” of the licensing body, it provides no standards to guide that determination and allows for potentially overbroad criminal history-based exclusions.
- Individualized consideration of applicants and their specific offenses is not required and the law provides no standards to promote consistent consideration of each applicant’s specific experience (including evidence of rehabilitation) or criminal history.
- The law creates a process for prospective applicants to request, at any time, a non-binding decision on whether their criminal history will be disqualifying. In theory, this allows applicants to invest time and resources in the pursuit of licensure without the risk that they will ultimately be denied due to a prior conviction. However, the non-binding nature of the pre-qualification decision undermines the purpose of the law by failing to provide certainty about the ultimate impact of a person’s conviction.
- 11 licensing bodies are exempt from most of the provisions of the current licensing law and retain practically unlimited discretion to deny applicants with felonies. All licenses that require a bachelor’s degree or higher are also exempt.

(CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020).

## **2. Solutions**

Research clearly establishes that one factor to re-entry success is employment. To address the educational and employment needs, the subcommittee relied on the research of the CSG and adopted the proposals of CSG presented at the Oct. 7, 2020, Re-Entry Subcommittee meeting. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). The subcommittee recommends those proposals to the legislature.

### **a. Administrative changes within the KDOC**

#### *❖ Immediate Action*

Develop a streamlined process during intake to KDOC facilities for using assessment results and other information gathered during intake to assign people to a facility based on programming needs, availability, interest, anticipated release date, as well as security risk.

Develop a sustainability plan for the Second Chance Pell Pilot Programs to continue educational and vocational programming.

Standardize KDOC’s roles and responsibilities for employment specialists to include job development or invest in job development specialists to form relationships with

businesses in the community to promote hiring people who are reentering the community.

Develop a plan for marketing KDOC Vocational/Career and Technical Education (CTE) to businesses and legislators to show that KDOC's untapped skilled population has what it takes to meet the needs of businesses and that Kansas stakeholders should continue to invest in programming.

❖ *Long-term Opportunities*

Develop additional partnerships with community-based agencies to provide more programming, such as Adult Basic Education (ABE) and General Educational Development (GED) courses each day of the week.

Increase funding for education and employment programming and space within KDOC facilities.

**b. Changes within the State**

❖ *Immediate Statutory Action*

Appoint a representative from KDOC to the KansasWorks state board to ensure the workforce development and supportive service needs of people with justice system involvement are taken into consideration when developing the state Workforce Innovation and Opportunity Act (WIOA) plan and other state-funded workforce development initiatives.

❖ *Immediate Administrative Action*

Develop formal partnerships between KDOC, KCCHE, businesses, and all local Workforce Boards to leverage state, federal, and private funding and resources to bring intensive workforce development models to scale within the state.

Develop formal partnerships and information-sharing agreements between KDOC and DCF's Vocational Rehabilitation department to screen people for services prior to release from KDOC and/or at the start of community supervision.

- Develop a shared administrative position between DCF and KDOC that will assist with information gathering to pre-screening people for DCF coordinated services between 180 to 90 days prior to a person's release from KDOC and facilitate a connection with DCF vocational rehabilitation counselors.
- DCF vocational rehabilitation counselors to conduct full screening, develop rehabilitative plan and conduct case management services for eligible participants starting 90 days prior to release from KDOC facilities.
- DCF vocational rehabilitation counselors to work with DCF Regional Resource Coordinators, and KDOC transitional employment specialists to form relationships



with businesses in the community to develop work experience opportunities and promote hiring people who are reentering the community.

❖ *Long-term Administrative Opportunities*

Utilize the governor's WIOA Reserve Obligation/set-aside to build on successful intensive workforce development models.

Develop shared positions between KDOC, DCF, and all local Workforce Boards to ensure a smooth handoff as a person reenters the community.

Develop a Legislative Liaison position at KDOC to ensure that the statutory and administrative policy barriers experienced by people in the justice system are communicated to policymakers.

### **c. Statutory Changes**

Research by CSG discerned that there are four licensing best practices that provide for increased employment opportunities while maintaining public safety: (1) having a direct or substantial relationship standard between denial of the license and the person's criminal history; (2) consideration for each application be on an individual basis; (3) pre-qualification requests be binding (absent new criminal behavior); and (4) written reasons for the denial of a license. (CSG, Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020). Currently nine states have adopted all four best practices and 10 states have adopted at least three of the best practices. (50 State research by CSG provided to the subcommittee).

The subcommittee adopted the recommendations of the CSG and recommends that the legislature immediately adopt better licensing and certification standards to further promote fair, consistent, and transparent application of occupational licensing barriers. Specifically, the subcommittee adopted and recommends the following changes:

- Require that disqualifying offenses be directly related to the specific duties and responsibilities of the licensed activity.
- Require individualized consideration of applicants and their convictions guided by a consistent factor-based analysis that considers evidence of rehabilitation, time since conviction, the nature of the offense, and other relevant factors.
- Provide applicants with written reasons for conviction-based denial that address all statutory factors that must be considered.
- Make pre-application determinations binding unless new criminal history information comes to light, either in the form of new charges or convictions or past convictions that were not previously disclosed.
- Eliminate or narrowly tailor exemptions for specific licensing bodies and types of licenses.

- Expand the law to cover all state-imposed conviction-based licensing barriers so that existing mandatory barriers (those that, by law, *must* be imposed in all cases where a person has a disqualifying conviction) are essentially converted into discretionary ones that allow individuals to be considered on their merits and in the full context of their history and experience.

## **D. Driver's licenses**

### **1. Scope of the Problem**

The Subcommittee filed an open records request with Kansas Department of Revenue, Division of Motor Vehicles and learned that a substantial number of people lose their licenses because they are unable to pay traffic fines and fees. Because 50% of those being released from the KDOC have difficulty obtaining a license due to outstanding fines and fees, (KDOC presentation, Sept 16, 2019), the subcommittee concluded it was important to immediately address the issues surrounding driver's licenses. Janelle Robinson, Driver Services Supervision with the Kansas Department of Revenue (KDOR), Division of Vehicles gave a presentation to the subcommittee. Currently, if a person cannot pay the fines and fees for a traffic ticket, the person's license is suspended. Although district courts have discretion to reduce court fees, they do not have the discretion to reduce statutorily mandated fines. Once a person's license is suspended, it cannot be reinstated until the person pays the underlying fines and fees and pays \$122 per each individual charge listed on the original traffic ticket. K.S.A. 8-2110b. Then the person must wait 90 days before the KDOR reinstates the license. (Robinson presentation, Oct. 14, 2019).

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### **2. Proposed Solutions**

In the December 2019, interim report, the Re-Entry subcommittee recommended that the persons seeking a restricted license not be required to pay the \$25 fee unless the person was eligible for a restricted license. The Subcommittee also recommended that once a person pays the fines and fees of the underlying traffic ticket, the person pay only one reinstatement fee per case, rather than \$100 for each charge listed on the original ticket, and that the KDOR immediately reinstate the license, rather than waiting 90 days. Finally, it was recommended that a person's license not be suspended solely because the person could not pay the fines and fees for a traffic offense.

In the 2020 Legislative session, HB2547 and SB275 were submitted. Both bills removed the payment of \$25 to apply for a restricted license, and decreased the current administrative 90 day extension of a suspended license if the person drove on suspended license. HB 2547 also reduced the costs to reinstate a license to a flat \$100 per case, rather than per charge listed on the original ticket. The court fees were unchanged. Both bills passed unanimously and were set for reconciliation when COVID-19 cut the legislative session short and the bills died on the floor.

Based on the positive reception of HB2547 and SB275, the subcommittee recommends that the bill be reintroduced in the 2021 legislative session. The subcommittee also recommends that the legislature take into consideration making changes retroactive so that persons who currently owe significant fees to the KDOR have the ability to pay the flat fee and have their license reinstated. Such a provision would allow persons currently re-entering society to obtain a driver's license.

HB2434 was introduced, but did not make it out of committee. The bill provided that the failure to pay traffic fines and fees would not result in suspending a person's driver's license. Based on the fiscal report, HB2434 would have decreased the Office of Judicial Administration's (OJA) budget by nearly \$500,000. Understanding that COVID-19 has created budget difficulties, the subcommittee recognizes that it may not be feasible to pass legislation eliminating the suspension of licenses for failure to pay traffic tickets in the 2021 session. The subcommittee steadfastly maintains, however, that it is imperative that such legislation eventually be passed to increase the accessibility of driver's licenses, which are integral to job transportation for persons re-entering society upon completion of a prison or jail sentence.

## Appendix: Information Gathered

To date, the subcommittee has met on 16 occasions. Initially, the subcommittee reviewed the charge as set out in section 2 of HB2290, and then turned to several documents to learn about the issues facing re-entry, including:

- Re-entry research provided by Natalie Nelson with the Kansas Research Department. Ms. Nelson's report provided information from clearinghouses on re-entry issues, including: <https://whatworks.csgjusticecenter.org> and <https://crimesolutions.gov>. One of the documents specifically addressed the Wichita Work Release Program.
- The conclusions reached regarding re-entry from the 2006 3Rs Report.
- The conclusions reached in the 2003 *Report of the Re-entry Policy Council*
- A report from Secretary Zmuda, who is a subcommittee member that provided detailed information about recidivism, which has decreased from 55% to 36%, and the issues facing persons released from the KDOC, including on-going issues that will need to be addressed upon re-entry. Secretary Zmuda described the strategies KDOC has in place to continue to decrease recidivism, and the barriers that still exist and impact successful re-entry.

Subcommittee members agreed to investigate driver's license reform, job training, housing, employment, and gaps in re-entry. The subcommittee first focused on driver's license issues. The following is the research conducted, presentations received, and information obtained from several stakeholders:

- A review of the current statutes, regulations, and practices with regard to driver's licenses, including issues with obtaining a license and the problems that occur when released offenders drive without a license or on a suspended license. The subcommittee soon discovered that for many a continuous cycle of license suspensions occurs that can be difficult to break and which significantly impact a person's ability to maintain employment. HB 2547 and SB275 were proposed.
- Margie Phelps, Executive Director of Programs and Risk Reduction at KDOC, provided the subcommittee with specific barriers that inmates face with driver's licenses. She also provided information about unpaid fines that inmates have which can create significant problems upon release.
- Janelle Robinson, Driver Services Supervisor with Kansas Department of Revenue Division of Vehicles, gave a presentation on *Suspended & Restricted Driver's License Process in Kansas*. Subcommittee learned about priorities with DC1020 and 1015 forms, the cost for requesting restricted licenses, and the 90-day suspension period.
- Pursuant to an Open Records Request of the Kansas Department of Revenue Division of Vehicles, the subcommittee learned that, as of October 10, 2019, there were a total of 213,055 suspended licenses in 2019. From that same request, the following are the revenues attached to driver's license fees:
  - Municipal court fees:
    - FY2018 \$901,981.12
    - FY2019 \$541,014.09
  - Driving Suspended Reinstatement fees:

- FY2018 \$3,292,273.34
  - FY2019 \$3,606,116.99
- Driver's License Reinstatement fees:
  - FY2018: \$2,663,082.50
  - FY2019: \$2,530,711.50
- Patrick Armstrong with Council of State Governments (CSG) gave a presentation on the ways the CSG can assist the subcommittee. Mr. Armstrong provided three different reports that had been created on the issue of driver's license schemes.
- Professor Meredith Schnug with the Douglas County Legal Aid Clinic at the University of Kansas School of Law provided insight into how the driver's licenses issues are addressed in Douglas County.
- Austin Spillar from the ACLU participated in a subcommittee meeting and directed the subcommittee to Fine and Fee Justice Center for more information.
- Data and information was provided by Kansas Appleseed regarding the costs of the current system and changes that could would be beneficial while still collecting fees, specifically pointing to the changes made in California that have resulted in few suspensions and more compliance, including payment of fines, and the Free to Drive Coalition.
- Sarah Hoskinson, Deputy Special Counsel of the Kansas Supreme Court, discussed the *Ad Hoc Committee Report on Bonding Practices, Fines, and Fees in Municipal Court*. The report was the result of an Ad Hoc Committee created by Kansas Supreme Court Order. The report was submitted on September 6, 2018.
- Impact Assessment and Proposal for the early release of drug offenders provided by the Kansas Sentencing Commission. Based on that assessment, the Commission drafted a proposal that would permit drug offenders who have completed all KDOC programming to petition the court for early release.
- Report by Prof. John Francis of Washburn Law School on the problem of debt collection, bond, and/or incarceration. The subcommittee learned that people who have outstanding debt can be repeatedly summoned to court for nonpayment. If the debtor fails to appear, a show-cause order for contempt and eventually a warrant for non-appearance may be issued. If arrested, bond can be required to release the debtor from jail, and significantly, rather than returning the bond money when the person appears in court, bond can be forwarded to the creditor.

The subcommittee then turned to the issues of job training, housing, employment, and gaps in supportive services facing persons released from custody. The following information and presentations were the basis for the subcommittee's final recommendations on housing, supportive services, and job training and employment:

- Margie Phelps, Executive Director of Programs and Risk Reduction at KDOC, provided the subcommittee with information and data on the re-entry housing issues facing the KDOC. She also provided the committee with information on current job training programs that KDOC currently provides. She gave a presentation at the September 18, 2020, subcommittee meeting, provided input and clarification at other committee meetings, and provided the data from Attachment A to the subcommittee.
- A team from CSG provided the committee with significant data and research. The team consisted of Patrick Armstrong, Erica Nelson, Joshua Gaines, and Sarah Wurzburg. The

subcommittee heard two presentations based on their research and contact with stakeholders across the state:

- September 9, 2020, subcommittee meeting, Slide Presentation, Update to the Re-entry Subcommittee, Sept. 9, 2020.
- October 7, 2020, subcommittee meeting Slide Presentation, Update to the Re-entry Subcommittee, Oct. 7, 2020.
- 50 State Chart prepared by the CSG on licensing and certification statutes for people with a felony record.
- Three working group phone calls with the CSG further explaining the data and research provided by the slide presentations at the subcommittee meetings: Sept. 8, 2020; Sept. 23, 2020; Sept. 30, 2020.

**Housing Needs of KDOC Returning Citizens**

| Enhancement             | Current Work  | Justification   | Number of Positions Created | Projected Number of People Served | Annual costs |
|-------------------------|---|---|-----------------------------|-----------------------------------|--------------|
| KSHOP Care Coordinators | Currently, KDOC offers the Kansas Supportive Housing for Offenders Program (KSHOP), which finds and secures housing and provides additional wraparound services for up to 18 people reentering the community in Topeka, Olathe, Kansas City and Wichita at any given time. The number varies based on client behaviors and needs. | We continue to release offenders who are chronically homeless and institutionalized, and who have dual and triple diagnoses; these cases require intense case management. We have enjoyed a 25% return rate with this very challenging population when they work with a KSHOP Care Coordinator. We have two; they can serve 12-18 offenders at a time; we have at least four times that many releasing per year with this need. The proposal is to add five KSHOP Coordinators, 2 in Wichita, 1 in SE Kansas, 1 in Kansas City, and one in Central Kansas.<br>Cost: 5 x \$43,000 x 1.5 (50% for benefits) | 5                           | 60-90                             | \$ 322,500   |

|                           |  |  |         |       |              |
|---------------------------|--|--|---------|-------|--------------|
| Forensic Nursing Facility | This is a gap in the system currently.   | <p>Cost anticipated for 60-90 beds; solicitation runs through KDADS; draw down Medicaid dollars for about 60%; total cost about \$10M.</p> <p>Each year we have 15-20 offenders who need this structured housing. We are not able to get them placed, but rarely, in the existing homes/centers, because they lack sufficient numbers, and more important are unwilling to take this population most of the time. How many beds we ultimately need will interplay with how many master leased units and KSHOP Coordinators we establish. Some of these folks with time could "step down" to a master leased unit, and maybe ultimately to some housing with a housing stipend if they are eligible through HUD programs.</p> | Unclear | 60-90 | \$ 4,000,000 |
| Data Position             | This position does not exist currently and there are significant challenges in getting accurate information about housing for people reentering the community. | <p>Position to track housing after release, as it often changes because of the rate of returning citizens who are precariously housed at release. There is no reliable resource for this data. This cost is for a position, with salary, benefits, some travel, equipment, software, and training.</p>   | 1       | N/A   | \$ 80,000    |



|   |   |   |          |            |                     |
|---|---|---|----------|------------|---------------------|
| <p>Scattered Site Housing Units (KDOC master lease) and Housing Specialists</p> | <p>There are about 40 master release housing units—houses and/or apartments leased by KDOC to house people needing a transition period—primarily located in the central and eastern parts of the state. Currently, there are 4 housing specialists in the central and eastern part of the state— Kansas City, Wichita, Olathe, and Topeka—and they are not able to support everyone with housing insecurity reentering the community.</p> | <p>Master Leased Units<br/> Housing Specialists (1, Wichita; 1, Central; 1, Olathe)<br/> Cost: Average of \$750 for rent x 12 months = \$9,000 per unit x 40 more units<br/> Housing Specialists - 3 x \$48,000 x 1.5 (50% Benefits) + related costs<br/> At least 10% of the releases are no plans; and at least another 25% of the residence plans are precarious. Also as noted above, the special needs population faces significant housing challenges. We are able to serve about 150 offenders with current master leased units; we need four times that at a minimum. This proposed enhancement would double how many we can serve.</p> | <p>3</p> | <p>150</p> | <p>\$ 450,000</p>   |
|   |   |   |          |            | <p>\$ 4,852,500</p> |

NOTE: If we reduced returning offenders by 162 offenders that would pay for these costs, because it costs \$30,077 on average to house one person in prison for one year. That is 162 out of 4800 releases per year and about 6000 returned citizens under supervision.

**States implementing fair chance licensing best practices identified in Kansas policy recommendations**

Source: Statutory review by CSG Justice Center, Oct. 2020)

| State              | Citation                             | “Direct” or “substantial” relationship standard | Individualized consideration guided by specific factors | Pre-qualification (binding absent new criminal history) | Written reasons for denial | Notes   |
|--------------------|--------------------------------------|---|---|---|----------------------------|---|
| <b>Arizona</b>     | Ariz. Rev. Stat. § 41-1093.04        | ✓   |   | ✓   | ✓                          |   |
| <b>Arkansas</b>    | Ark. Code Ann. § 17-3-102            |   | ✓   | ✓   | ✓                          |   |
| <b>California</b>  | Cal. Bus. & Prof. Code §§ 480 & 4481 | ✓   | ✓   |   |                            | Guidance for individualized consideration is relatively limited |
| <b>Connecticut</b> | Conn. Gen. Stat. § 46a-80            | ✓   | ✓   |   | ✓                          |   |
| <b>Colorado</b>    | C.R.S. 24-5-101                      | ✓   | ✓   |   |                            |   |
| <b>Delaware</b>    | 74 Del. Laws 262                     | ✓   |   | ✓   |                            |   |
| <b>DC</b>          | D.C. Code §§ 47-2853.17; 3-1205.03   | ✓   | ✓   |   | ✓                          |   |
| <b>Florida</b>     | Fla. Stat. § 112.011                 | ✓   |   |   |                            |   |
| <b>Georgia</b>     | Ga. Code Ann § 43-1-19               | ✓   | ✓   |   |                            |   |
| <b>Hawaii</b>      | Haw. Rev. Stat. § 831-3.1            | ✓   |   |   |                            |   |
| <b>Idaho</b>       | Idaho Code § 67-9411                 |   | ✓   | ✓   |                            |   |
| <b>Iowa</b>        | HF2627 (2020)                        | ✓   | ✓   | ✓   | ✓                          |   |

| State         | Citation  | “Direct” or “substantial” relationship standard | Individualized consideration guided by specific factors | Pre-qualification (binding absent new criminal history) | Written reasons for denial | Notes |
|---------------|---|---|---|---|----------------------------|-------|
| Illinois      | 20 ILCS 2105/2105-131 (Pub. Act 100-0286)       | ✓   | ✓   |   | ✓                          |       |
| Indiana       | Ind. Code § 25-1-1.1-6                          | ✓   | ✓   | ✓   | ✓                          |       |
| Kentucky      | Ky. Rev. Stat. Ann. § 335B.020                  | ✓   | ✓   |   | ✓                          |       |
| Louisiana     | La. Rev. Stat. Ann. § 37:2950                   | ✓   |   |   | ✓                          |       |
| Maine         | Me. Rev. Stat. Ann. tit. 5, § 5301              | ✓   |   |   | ✓                          |       |
| Maryland      | Md. Crim. Proc. Code § 1-209; COMAR 09.01.10.02 | ✓   | ✓   |   |                            |       |
| Massachusetts | Mass. Gen. Laws ch. 6 § 172N                    | ✓   |   |   |                            |       |
| Michigan      | Mich. Comp. Laws § 338.42                       | ✓   |   |   |                            |       |
| Minnesota     | Minn. Stat. § 364.03                            | ✓   | ✓   |   | ✓                          |       |
| Mississippi   | SB2781 (2019)                                   | ✓   |   | ✓   | ✓                          |       |
| Missouri      | Mo. Rev. Stat. § 324.012                        | ✓   | ✓   | ✓   | ✓                          |       |

| State          | Citation                                | “Direct” or “substantial” relationship standard | Individualized consideration guided by specific factors | Pre-qualification (binding absent new criminal history) | Written reasons for denial | Notes   |
|----------------|---|---|---|---|----------------------------|---|
| Montana        | Mont. Code Ann § 37-1-204               | ✓   |   |   | ✓                          |   |
| Nebraska       | LB 299 (2018)                           |   |   | ✓   | ✓                          |   |
| New Hampshire  | N.H. Rev. Stat. Ann. § 332-G            | ✓   | ✓   | ✓   | ✓                          |   |
| New Jersey     | N.J. Stat. Ann. §§ 2A:168A-1; 2A:168A-2 | ✓   | ✓   |   |                            |   |
| New Mexico     | N.M. Stat. Ann. § 28-2-4                | ✓   |   |   | ✓                          |   |
| New York       | N.Y. Correct. Law. §§ 752; 753          | ✓   | ✓   |   | ✓                          |   |
| North Carolina | N.C. Gen. Stat. § 93B-8.1               | ✓   | ✓   | ✓   | ✓                          |   |
| North Dakota   | N.D. Cent. Code § 12.1-33-02.1          | ✓   | ✓   |   | ✓                          |   |
| Ohio           | Ohio Rev. Code Ann. § 4743.06           | ✓   |   |   | ✓                          |   |
| Oklahoma       | HB 1373 (2019)                          | ✓   |   | ✓   | ✓                          | Statutory ambiguity about the extent to which pre-qualification determinations are binding. |

| State         | Citation                                     | “Direct” or “substantial” relationship standard | Individualized consideration guided by specific factors | Pre-qualification (binding absent new criminal history) | Written reasons for denial | Notes |
|---------------|--|---|---|---|----------------------------|-------|
| Oregon        | Or. Rev. Stat. § 670.280                     | ✓   |   |   |                            |       |
| Pennsylvania  | SB-637 (2019)                                | ✓   | ✓   | ✓   | ✓                          |       |
| Rhode Island  | R.I. Gen. Laws § 28-5.1-14                   | ✓   | ✓   |   | ✓                          |       |
| Tennessee     | 2018 Tenn. Acts, ch. 793 (SB-2465)           | ✓   | ✓   | ✓   | ✓                          |       |
| Texas         | Tex. Occupations Code Ann. §§ 53.021 to .023 | ✓   | ✓   | ✓   | ✓                          |       |
| Utah          | Utah Code Ann. § 58-1-501; SB-201(2020)      | ✓   | ✓   | ✓   | ✓                          |       |
| Virginia      | Va. Code Ann. § 54.1-204                     | ✓   | ✓   |   |                            |       |
| Washington    | Wash. Rev. Code § 9.96A.020                  | ✓   |   |   |                            |       |
| West Virginia | W. Va. Code § 30-1-24                        |   |   | ✓   |                            |       |
| Wisconsin     | Wis. Stat. § 111.335                         | ✓   | ✓   | ✓   | ✓                          |       |
| Wyoming       | Wyo. Stat. § 33-1-304                        | ✓   |   |   |                            |       |