

Preliminary Report of the Kansas Criminal Justice Reform Commission to the 2020 Kansas Legislature

CHAIRPERSON: Marc Bennett, district attorney from an urban area, appointed by the Kansas County and District Attorneys Association (KCDA);

VICE-CHAIRPERSON: Representative Stephen Owens

OTHER MEMBERS: Senators David Haley and Rick Wilborn; Representative Gail Finney

FACILITATOR: Reggie Robinson, appointed by Governor Kelly (Governor)

NON-LEGISLATIVE MEMBERS: Chief Todd Ackerman, Marysville Police Department, appointed by the Attorney General (Attorney General); Jennifer Baysinger, criminal justice reform advocate, appointed by the Legislative Coordinating Council (LCC); Honorable Glenn Braun, Chief Judge, Ellis County, appointed by the Kansas District Judges Association; Sheriff Bill Carr, Ford County, appointed by the Attorney General; Honorable Marty Clark, Magistrate Judge, Russell County, appointed by the Kansas District Magistrate Judges Association; Professor John Francis, Washburn University School of Law, appointed by the Dean of Washburn University School of Law; Chris Mechler, Judicial Branch Court Services Officer, appointed by the Chief Justice of the Supreme Court; Tabitha Owen, county attorney from a rural area, appointed by the Kansas County and District Attorneys Association; Sylvia Penner, criminal defense attorney, appointed by the Governor; Bill Persinger, mental health professional, appointed by the Kansas Community Mental Health Association; Professor Jean Phillips, University of Kansas School of Law, appointed by the Dean of the University of Kansas School of Law; Pastor Adrion Roberson, faith-based community representative, appointed by the Governor; Brenda Salvati, SB 123 treatment provider, appointed by the Kansas Sentencing Commission; and Shelly Williams, community corrections representative, appointed by the Secretary of Corrections.

CHARGE

The Commission is directed by KSA 2019 Supp. 21-6902 to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;
- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;
- Analyze diversion programs and recommend options to expand diversion programs and implement statewide standards;

- Review community supervision levels and programming available for those serving sentences for felony convictions;
- Study and make recommendations for specialty courts statewide;
- Survey and make recommendations regarding available evidence-based programming for offenders in correctional facilities and in the community;
- Study Department of Corrections policies for placement of offenders and make recommendations for specialty facilities, to include geriatric, healthcare, and substance abuse facilities;
- Evaluate existing information management data systems and recommend improvements that will allow criminal justice agencies to more efficiently evaluate and monitor the efficacy of the criminal justice system; and
- Study other matters, that, as the commission determines, are appropriate and necessary to complete a thorough review of the criminal justice system.

December

DRAFT

Kansas Criminal Justice Reform Commission

PRELIMINARY REPORT

Conclusions and Recommendations

The Commission adopted the following Preliminary Recommendations:

- The Legislature should consider 2019 HB 2292 with certain proposed amendments;
- Funding and authority for the Kansas Department of Corrections (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 should be authorized;
- Funding and authority for KDOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment should be authorized;
- Funding and authority for KDOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment should be authorized;
- The recommendations of the Mental Health Task Force Report (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 should be adopted;
- The Kansas Court Services Officer's Association's legislative initiative to amend KSA 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 should be considered;
- A request for proposal (RFP) should be issued as soon as possible for a comprehensive assessment relating to the current state of data sharing across Kansas agencies;
- An inventory of all major initiatives developed and funded at local and state levels to improve outcomes with offenders with mental illness and/or substance use disorders within and prior to entering the criminal justice system should be conducted;
- 2019 HB 2292 should be re-visited and the stakeholders should work together to find a workable solution to allow certified substance abuse treatment prior to conviction;
- Funds during the 2020 legislative session that can be spent on regional treatment beds during the 2021 fiscal year should be identified and earmarked;
- The penalties for crimes classified as drug grid level five should be revised to be similar to nondrug grid level eight;
- Unlawful tampering with an electronic monitoring device should be reclassified from a level six crime to a level eight crime;

- The felony loss threshold should be increased from \$1,000 to \$1,500 on certain property crimes;
- Domestic battery qualifying prior convictions should be revised to include prior convictions with a domestic violence designation;
- Pre-trial substance abuse programs should be implemented statewide;
- Department of Revenue Form DC-1020 and fees associated with restricted licenses should be revised such that the fee must be paid before the person knows if they qualify for a restricted license;
- The mandatory 90-day suspension period that accompanies reinstatement should be amended;
- One reinstatement fee should be permitted per suspended license citation; and
- Courts should be permitted to waive mandatory fines and fees for indigent persons charged with driving on a suspended license.

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BACKGROUND

The 2019 Legislature passed House Bill 2290 (HB2290), codified at KSA 2019 Supp. 21-6902, which establishes the Kansas Criminal Justice Reform Commission (Commission), and directs the Commission to address various specified issues involving the Kansas criminal justice system. Provisions of the bill require the Commission to study the following topics:

- The sentencing guideline grids for drug and nondrug crimes and make recommendations for legislation that will ensure sentences are appropriate;
- The sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses;
- The diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards;
- The supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision;
- The specialty courts and make recommendations for the use of specialty courts throughout the state;
- 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;
- The policies of the Kansas Department of Corrections (KDOC) 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 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; and
- Other matters as the Commission determines are appropriate and necessary to complete a thorough review of the criminal justice system.

The Commission is to submit a preliminary report to the 2020 Legislature and a final report to the 2021 Legislature.

ORGANIZATION

HB 2290 established the following voting members and appointing authorities for the Commission:

- One member of the Kansas Senate, appointed by the President of the Senate;
- One member of the Kansas Senate, appointed by the Minority Leader of the Senate;
- One member of the Kansas House of Representatives, appointed by the Speaker of the House of Representatives;
- One member of the Kansas House of Representatives, appointed by the Minority Leader of the Kansas House of Representatives;
- One member of the Judicial

Branch Court Services, appointed by the Chief Justice of the Supreme Court;

- One criminal defense attorney or public defender, appointed by the Governor;
- One county or district attorney from an urban area and one county attorney from a rural area, appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, appointed by the Attorney General;
- One professor of law from the University of Kansas School of Law and one professor of law from Washburn University School of Law, appointed by the deans of such schools;
- One drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program, appointed by the Kansas Sentencing Commission;
- One district judge, appointed by the Kansas District Judges Association;
- One district magistrate judge, appointed by the Kansas District Magistrate Judges Association;
- One member representative of the faith-based community, appointed by the Governor;
- One member of a criminal justice reform advocacy organization, appointed by the LCC;
- One mental health professional, appointed by the Kansas Community Mental Health Association; and

- One member representative of community corrections, appointed by the Secretary of Corrections.

The Commission also includes the following non-voting members:

- The Attorney General, or the Attorney General's designee;
- The Secretary of Corrections, or the Secretary's designee; and
- The Executive Director of the Kansas Sentencing Commission, or the Executive Director's designee.

HB 2290 also required the Governor to appoint a facilitator to assist the Commission in developing a project plan and to assist in carrying out the duties of the Commission in an orderly fashion.

The appointments to the Commission were completed by August 1, 2019. Pursuant to HB 2290, staff and meeting support for the Commission was provided by the Office of the Revisor of Statutes, the Kansas Legislative Research Department (KLRD), and the Division of Legislative Administrative Services.

SUBCOMMITTEES

At its August 28 meeting, the Commission voted to establish five subcommittees and directed each subcommittee to study specific topics assigned by HB 2290. The subcommittees established were:

- Data Management;
- Diversion/Specialty Courts/Specialty Prisons/Supervision ;
- Mental Health and Drug Treatment;
- Proportionality/Guidelines; and
- Reentry.

After the subcommittees were established, Commission members volunteered to serve on specific subcommittees and a chairperson for each subcommittee was selected at that time. A list of the subcommittee chairpersons and members is attached to this report as Appendix B.

From September through November 2019, each subcommittee met multiple times, usually *via* teleconference or videoconferencing with access provided to the public. In November 2019, the LCC approved two meeting days (use of Statehouse facilities and technology) for each subcommittee for the remainder of FY 2020.

Each subcommittee produced a preliminary report, including recommendations it proposed the Commission consider for adoption as part of this report. The Commission considered these proposed recommendations at its November meeting, as discussed below. The preliminary reports produced by each subcommittee is attached to this report as Appendix C.

COMMISSION MEETINGS

The LCC approved seven meeting days for the Commission during FY 2020. The Commission met four times before submission of this report: on August 28, September 30, October 28, and November 25.

August 28 Meeting

Facilitator Reggie Robinson began the meeting with a welcome and introduction to the work of the Commission, noting work would occur over eighteen months. Members and staff of the Commission then introduced themselves.

Overview of 2019 HB 2290

Representative J. Russell Jennings appeared by teleconference and provided an overview of 2019 HB 2290, the legislation that created the Commission. Representative Jennings discussed the impetus behind the bill, including capacity issues within the Department of Corrections. He noted the State could choose to build more capacity in the state prisons and hire additional correctional officers, or, it could choose to allocate those resources elsewhere. He also stated the Commission should draft specific recommendations and draft legislation.

Representative Jennings also requested the Commission consider the goal of the criminal justice system to aid in drafting recommendations. He stated it was his opinion that, for offenders who will return to the community, the main goal should be to change the behavior of the offender.

Update on Current Criminal Justice Reform Efforts in Kansas

Attorney General Derek Schmidt began the discussion with a summary of his op-ed that was published shortly before the meeting. He noted there are two ways to alter the behavior of offenders: mental health services and substance abuse treatment.

General Schmidt recommended consideration of substance abuse, drug courts, and specialized sentencing guidelines. He also recommended the Commission review a report by a recent mental health task force which, among other recommendations, suggested the state double the number of mental health beds in the state.

Facilitator Robinson stated he had reached out to a number of state agencies to determine their current reform efforts and to seek input. He noted the Department of Corrections is implementing the Justice Reinvestment Initiative by involving groups such as the Council of State Governments, the Justice Center, Pew Charitable trusts, and the National Governors Association.

Acting Secretary of Corrections Zmuda stated he is excited about collaborating with the various groups. He stated it was his expectation that the groups could help make recommendations specifically for Kansas.

Marc Bennett stated the report submitted by the Kansas Criminal Justice Recodification, Rehabilitation and Restoration Project (3Rs Committee) made recommendations that required a large amount of funds. He stated it would be beneficial to seek out an amount the legislature would be willing to spend in the Commission's initial report.

Commission Organization

Staff from the Office of Revisor of Statutes provided an overview of the Kansas Open Meetings Act and Kansas Open Records Act and how both apply to the Commission.

Facilitator Robinson then opened the floor for discussion and nominations for the officer positions of the Commission. After discussion, members decided to select a chairperson and vice-chairperson. After nominations and commission voting, Marc Bennett was selected as the chairperson and Representative Stephen Owens was selected as the vice-chairperson.

Chairperson Bennett assumed the chair and began a discussion regarding subcommittees. Members decided to establish five subcommittees and directed each working group to study specific topics assigned by HB 2290. The subcommittees were established with the following chairpersons:

- Data Management—Jennifer Baysinger;
- Diversion/Specialty Courts/Specialty Prisons/Supervision—Chris Mechler;
- Mental Health and Drug Treatment—Representative Stephen Owens;
- Proportionality/Guidelines—Chief Todd Ackerman; and
- Reentry—Representative Gail Finney.

Chairperson Bennett next discussed the duties of the subcommittees. He noted they are to identify the issues, examine the efforts of other states or entities, and determine goals and required resources.

September 30 Meeting

After Chairperson Bennett's welcome, he stated the Commission would hear reports by each subcommittee.

Subcommittee Reports

Data Management

Subcommittee chairperson Jennifer Baysinger gave a report on the Data Management Subcommittee. She stated the subcommittee had met once *via* teleconference and during the meeting the subcommittee identified two areas of interest: the first is receiving an overview of the current communication among governmental data systems, and the second is the technical

implementation of a plan that would allow greater communication among all agencies.

Ms. Baysinger also stated agency representatives will be invited to the next subcommittee meeting to discuss current system gaps, what those agencies would like to see happen, and desired system features. She also discussed possible funding that had been set aside for juvenile justice reform that KDOC may be able to redirect for system upgrades.

Diversion/Specialty Courts/Specialty Prisons/Supervision

Subcommittee chairperson Chris Mechler stated the subcommittee had met two times. She indicated during the first meeting, the subcommittee reviewed goals imparted by Chairperson Bennett and discussed the four main topics assigned to the subcommittee. Ms. Mechler stated the subcommittee members decided to divide into four working groups: diversion; supervision; specialty courts; and specialty prisons. Each working group will focus on its specific topic and then report back to the subcommittee.

Ms. Mechler stated the second meeting of the subcommittee occurred on September 20. She noted General Schmidt provided an overview of the Kansas Open Meetings Act and answered questions on the topic. She stated staff from the Council of State Governments provided details on the entity's collaboration with the Kansas Department of Corrections and offered to provide assistance to the subcommittee.

Mental Health/Substance Abuse

Subcommittee chairperson Representative Stephen Owens reported on the Mental Health/Substance Abuse Subcommittee. He stated the subcommittee had met once and started by discussing member interests, goals, and possible alternatives. He stated the subcommittee discussed topics such as possible integration of substance abuse treatment with healthcare, diversion, and the Shawnee County co-responder system. Representative Owens further discussed potential presentations by stakeholders including presentations on co-responder systems, mental health treatment in the state, and KDOC mental health programs. He also stated a number of comments were made by members of the public

regarding potential options to address mental health problems.

Proportionality/Sentencing

Subcommittee chairperson Chief Todd Ackerman stated the Proportionality/Sentencing Subcommittee had met twice. At the first meeting, the subcommittee reviewed the goals they wanted to achieve. He stated the subcommittee discussed gaps in current law, certain property crimes, and the codification work of the 3Rs Committee. Chief Ackerman also noted the subcommittee requested prison projection data from the Kansas Sentencing Commission for drug and property crimes.

Chief Ackerman stated at the second meeting, the Sentencing Commission made a presentation on prison projections and other statistics and information from its annual report. He noted the subcommittee discussed developing a pilot project for sentencing reform in four counties: Johnson County; Sedgwick County; Shawnee County; and Wyandotte County. Chief Ackerman stated the subcommittee is also planning to discuss legislative proposals that may be brought by the Sentencing Commission during the 2020 Legislative Session.

Reentry

Subcommittee chairperson Representative Gail Finney reported on the Reentry Subcommittee. She stated the subcommittee had met twice. Representative Finney stated during the first meeting, the subcommittee discussed 2019 HB 2290 and brainstormed a list of topics that affect offenders as they reenter society. She noted the subcommittee decided to focus on the following topics: mental health, housing, employment, and driver's licenses.

Representative Finney stated the subcommittee received information from the Acting Secretary of Corrections, who indicated of the 6,000 prisoners released each year, nearly 50.0 percent have difficulty obtaining a driver's license or other form of identification. She stated the subcommittee discussed daily activities that require a driver's license such as driving to the probation office, driving to work, driving to doctor appointments and taking children to school. She further stated fines and fees make it more difficult for persons to comply and for many, it is easier to drive without a license. Representative Finney noted her subcommittee has requested additional

statistics on the topic and plan to develop legislation to address the issue.

Discussion of Commission Goals

Chairperson Bennett reminded members of the nine topics for the Kansas Criminal Justice Reform Commission set forth in 2019 HB 2290:

- Analyzing the sentencing guidelines;
- Proportionality of sentences;
- Diversion programs;
- Supervision levels and programming;
- Specialty courts;
- Evidence-based programming;
- Policies of KDOC for placement of offenders within the correctional facility system, including geriatric, healthcare, and substance abuse facilities;
- Data management; and
- Other matters.

Chairperson Bennett asked for discussion on the direction the Commission wants to take and considerations for the preliminary report. Facilitator Robinson stated the more immediate question is what the Commission wants to include in its report.

Commission members noted the difficulties of identifying specific proposals for certain subcommittees and that subcommittees should ascertain the state of the criminal justice system so proposals may be made. Members also discussed the need for funding, noting it should be addressed in the preliminary report. Members also discussed setting specific goals so that legislation can be introduced during the 2020 Session.

Following discussion, Chairperson Bennett stated the consensus is that the Commission will incorporate specific goals in the interim report and the goal will be to incorporate as many objectives from 2019 HB 2290 as possible.

Commission members next discussed some specific issues identified by the subcommittees. Commission members discussed the creation of a substance abuse treatment facility that had been proposed by the 3Rs Committee, but was not constructed due to lack of funds. Members noted provisions are in place in current law that can help alleviate some of the impact on prison bed space. Commission members also discussed the potential for street-based programs to address mental health and addiction along with veterans courts, modeled after the Johnson County program.

Facilitator Robinson stated the framework of the report should have three parts: 1) The organization of the Commission, how often meetings have been held, and a summary of the work that has been done; 2) Identification of the items that are ready for legislative action in 2020; 3) The roadmap for what the Commission intends to study going forward, the work that is planned, and a foreshadowing of the cost involved.

Commission members discussed costs and some suggested potential savings be presented as an investment opportunity with initial costs offset by later savings. Members also discussed developing a 3-year plan to demonstrate the division of funding over future fiscal years rather than presenting costs as one sum.

Chairperson Bennett stated a regional approach to some issues may be helpful. He gave an example of Wichita utilizing additional drug, alcohol, and mental health treatment which could reduce the numbers of those entering prison by as much as 25.0 percent. Acting Secretary Zmuda stated the CSG has collaborated with KDOC to examine the criminal justice system and will be able to assist the Commission with determining potential savings, outcome projections, or both.

Commission members also briefly discussed topics such as:

- Prison overcrowding;
- County jails;
- Prison alternatives;
- Funding for public defenders;
- Pre-conviction programs; and

- Methamphetamine abuse.

Discussion of the 3Rs Report

Chairperson Bennett opened the discussion on the 3Rs Report. Ms. Mechler stated she was around when the report was written. She stated many topics discussed today were discussed in the report. Chairperson Bennett asked staff to identify relevant portions from the 3Rs report for each subcommittee.

Other Matters

Chairperson Bennett opened the floor for discussion on other matters that should be brought to the attention of the Commission.

Sheriff Carr stated it would be helpful to find out if any Kansas communities or counties are planning to build new jails or make renovations to existing jails.

Chairperson Bennett stated subcommittee reports will be discussed at the next meeting. He asked Executive Director Schultz and Acting Secretary Zmuda to present on sentencing issues and recidivism rates at the next meeting.

Commission members also discussed desired information such as the uniformity and availability of community programming. Members noted certain subcommittees were examining the topic and other members stated legislation had also been considered. Members also discussed the need for input from entities such as Valeo Behavioral Health Care, the League of Kansas Municipalities, and the Kansas Association of Counties.

October 28 Meeting

After Chairperson Bennett's welcome, he stated the Commission would hear reports by each subcommittee.

Subcommittee Reports

Data Management

Chairperson Bennett gave a report on the Data Management Subcommittee. He stated the subcommittee has worked to identify barriers between various criminal justice stakeholder IT systems. Chairperson Bennett noted one particular challenge is making specific recommendations due to the differences between systems. He stated the group may request an audit by Legislative Post

Audit to determine the makeup of various IT systems.

Diversion/Specialty Courts/Specialty Prisons/Supervision

Subcommittee chairperson Chris Mechler stated her group has held several meetings and that she will plan to provide a summary of each of the work of each of the working groups. Ms. Mechler stated the subcommittee as a whole is working to develop a survey to further their understanding of the criminal justice system, but the group has not identified any “low-hanging fruit” at this point.

Shelly Williams provided the report on the Diversion working group. She stated the group has identified a number of diversion issues, concerns, and gaps in the system. She stated the group is working towards formulating specific recommendations for the preliminary report.

Ms. Mechler next discussed the Specialty Courts working group. She stated the group has held one meeting to date. She noted the group has obtained a list of each specialty court in the state. Ms. Mechler stated the group is planning to attend a drug court session to observe the court’s work.

Ms. Mechler next discussed the Specialty Prisons working group, noting General Schmidt is the chairperson of the group. Chief Ackerman stated the group will make specific recommendations to address bed space in existing facilities. Ms. Mechler also stated the group is planning to provide financial information to the Legislature.

Ms. Mechler also addressed the work of the Supervision working group. She stated the group has met twice and has gathered information regarding the current supervision programs in the state. Ms. Williams noted the group has specifically examined cognitive behavioral intervention programs and have identified some gaps in community supervision, specifically in substance abuse treatment.

Mental Health/ Substance Abuse

Subcommittee chairperson Representative Stephen Owens reported on the Mental Health/ Substance Abuse Subcommittee. He stated the subcommittee had met most recently by telephone conference. Representative Owens stated a

presentation was made about community mental health systems (CMHCs). He stated the group also discussed the 2006 3Rs report and decided to make a recommendation for an audit to develop an inventory of mental health and substance abuse initiatives across the state. He stated the information would help the group determine gaps in the system.

Proportionality/Sentencing

Subcommittee chairperson Chief Todd Ackerman stated the Proportionality/Sentencing Subcommittee had recently met and during the meeting, Sentencing Commission staff gave a presentation regarding proposed legislation related to proportionality in sentencing. Some of the Sentencing Commission’s specific recommendations included modifications to an increase in Good Time credit, and reclassification of certain drug crimes. He stated the subcommittee has also discussed a proposal of early discharge for non-violent drug offenders and the use of in-patient facilities for certain inmates.

Reentry

Subcommittee chairperson Representative Gail Finney reported on the Reentry Subcommittee. She stated the subcommittee had met four times since the Commission began its work. Representative Finney stated the subcommittee has spent time learning about reentry and has held discussions with Acting Secretary Zmuda and Margie Phelps of KDOC. She stated the group decided to address driver’s license issues for those released from incarceration. She further noted her group has heard testimony that possessing a driver’s license enables offenders to obtain a job which is a requirement of parole. Representative Finney also stated that the subcommittee is proposing a reduction of fees and penalties for those found to be driving on a suspended license. The group has reached out to various stakeholders for comment on the proposal.

Professor Phillips also commented on the suspended license topic. She noted that persons who are found to be driving without a valid license are currently suspended from driving for 90 days after paying a fine. She stated the group may propose to do away with the 90 day suspension which would allow those who have paid their fine to be able to drive immediately.

Overview—Kansas Sentencing Commission

Executive Director Scott Schultz began his presentation by discussing the makeup of the Sentencing Commission. He stated the group is made up of a cross-section of the criminal justice community. Mr. Schultz discussed the work of the Sentencing Commission and noted his agency:

- Tracks and provides prison bed impact statements for all legislation with criminal justice implications;
- Makes various presentations to legislative committees;
- Is actively involved with the House Corrections and Juvenile Justice Committee, House Judiciary, and Senate Judiciary Committees;
- Maintains many criminal justice databases with records from the KDOC and Kansas Bureau of Investigation (KBI);
- Prepares an annual report and Desk Reference Manual;
- Administers the SB 123 Program substance abuse treatment program; and
- Answers research requests and staff a Q&A hotline.

Mr. Schultz also discussed the creation of the Sentencing Commission and stated it is charged with the development and maintenance of uniform sentencing guidelines. He also noted the Sentencing Commission is required by law to make recommendations annually if the prison population is within two years of being at capacity.

Next, Mr. Schultz discussed the annual report and certain statistics. Mr. Schultz noted an increase of 432 felony sentences in 2018 with drug-related offenses being the most prevalent overall. Mr. Schultz also discussed the demographics of the prison population and noted African Americans are overrepresented in the incarcerated population. He also stated the median age of Kansans is 36.3 years old, which is

reflected in the prison population with the highest age cohort being between age 31 and 40 years old. Mr. Schultz also stated the counties of Johnson, Sedgwick, Shawnee, and Wyandotte account for 46.0 percent of crimes committed in the state.

Mr. Schultz also discussed legislative proposals that will be made by the Sentencing Commission, including:

- Good Time increase of up to 50.0 percent;
- Early discharge from probation;
- Removing drug offenders from the state registry;
- Decrease in penalties for certain drug possession crimes;
- Amending criminal penalties for tampering with electronic monitoring equipment;
- Funding a pre-trial substance abuse diversion program;
- Increasing felony loss thresholds for certain property crimes;
- Compassionate release;
- Addressing mandatory minimums for certain misdemeanor crimes; and
- Early discharge for drug offenders after completion of at least 50.0 percent of their sentence.

Responding to a question, Mr. Schultz stated there should be a two-step approach to treating drug offenders. He stated recommendations should include provisions to save prison beds and also treat offenders after release.

Commission members also discussed early discharge. Responding to a question, Mr. Schultz indicated persons participating in drug court programs would not likely receive the 50.0 percent reduction, to allow them to complete the program.

Overview—Kansas Department of Corrections

Acting Secretary Jeff Zmuda began his presentation by stating the presentation would include an overview of the agency and a discussion of particular stresses on the system.

Mr. Zmuda stated both male and female prison populations are increasing and the agency needs to add more beds. He stated KDOC has considered re-purposing a unit at the Kansas Juvenile Correctional Complex, opening a unit at the former Larned Juvenile Correctional Facility, or new construction at the Topeka Correctional Facility to address the growing population of female inmates. He noted an additional issue to consider when adding beds is whether the facility can be adequately staffed.

Addressing the male population, Mr. Zmuda stated KDOC has examined buildings adjacent to the Winfield facility, former honor camps at Toronto, and Eldorado, the former Larned Juvenile Correctional Facility, and units at Lansing. He also stated KDOC has contracted with certain counties to house inmates and with Saguaro Correctional Center in Arizona. Mr. Zmuda also provided an update on the Lansing construction project, stating an additional 2,400 beds are expected to be open in 2020.

Mr. Zmuda next discussed particular services offered by KDOC. He noted approximately 98.0 percent of offenders will return to the community, so KDOC emphasizes services in order to combat recidivism. Mr. Zmuda stated recidivism has been reduced since 2001 from 55.0 percent to 34.0 percent. He noted 75.0 percent of those released need job services such as GED programs and vocational training; substance abuse and recovery services; and programming to address criminal thinking.

Mr. Zmuda also discussed staffing issues including retention. He stated the pay increase approved by the legislature is helping to retain existing staff and hire new staff. He noted KDOC was recently able to end mandatory 12-hour shifts at El Dorado, although overtime is still an issue.

Responding to a question, Mr. Zmuda indicated release centers can be helpful to individuals who may not have the support or resources needed to succeed after reentering the

community. He stated work release programs may be a topic the Commission could study.

Review and Discussion of 2006 3Rs Committee Work

Staff from KLRD presented a brief overview of the history and reports of the 3Rs Committee, which was established by the 2004 Legislature and charged with similar tasks as the present Commission. The 3Rs Committee formed three subcommittees to accomplish its work: a recodification subcommittee, a behavioral health subcommittee, and a reentry subcommittee. Staff noted in addition to filing reports to the Legislature in 2005 and 2006, the 3Rs Committee also established the Kansas Reentry Policy Council and conducted a statewide Policy Conference on Offender Reentry.

The 2006 3Rs Committee Report noted the 2005 Legislature had appropriated significant funding for reentry initiatives in Sedgwick County and Wyandotte County. The 2006 Report also noted a number of issues the 3Rs Committee had encountered that had prevented it from fully accomplishing its work. Staff noted that while the 2006 Legislature did extend the time for submission of a final 3Rs report until January 2007, and records indicate 3Rs activity continued throughout 2006, there is no record of a final 2007 report ever being completed and submitted. Staff noted the work of the 3Rs recodification subcommittee was continued and completed through the establishment in 2007 of the Kansas Criminal Code Recodification Commission and the adoption by the 2010 Legislature of the recodified Criminal Code produced by this Recodification Commission.

Staff then walked through the recommendations included by each of the 3Rs subcommittees in the 2006 Report. Commission members requested staff continue to attempt to identify legislation that may have resulted from the 3Rs Committee work, and also requested more information regarding the Sedgwick and Wyandotte County reentry initiatives funded by the 2005 Legislature.

Discussion of Goals and Recommendations for the Interim Report

Staff advised the Commission that because of the timing of the November meeting, the report will need to be drafted ahead of time and it will be

sent to Commission members for review before the November 25 meeting.

Chairperson Bennett stated each subcommittee will be allotted time to discuss their progress and specific recommendations at the next meeting. He asked each subcommittee to submit their report to staff by November 18. Chairperson Bennett also asked each subcommittee to list identified goals and proposed legislation in the report.

Facilitator Robinson summarized the discussion by reminding the members that they will receive a draft report ahead of the November 25 meeting and the Commission will decide whether they are in agreement with the contents of the report. He also discussed the method of determining agreement for recommendations, and suggested a simple majority rule may be appropriate.

Chairperson Bennett stated each report should first state the goals of the subcommittee and the things they want to address over the next year. He stated part two should include “low-hanging fruit” and legislation the subcommittee would recommend for consideration, with the last part including goals for the next year.

Staff discussed the proofing process and time needed to assemble the report. Staff also discussed the services offered by the Office of Revisor of Statutes with respect to drafting potential legislation. It was noted that the legislative members of the Commission would take responsibility for the legislation during Session.

Commission members discussed whether legislation recommendations should require a two-thirds majority for approval, ultimately deciding to reflect any consensus decisions in the minutes.

Professor Francis next discussed two particular topics. He first discussed debt collection courts and his concern that persons who miss debt collection hearings may have warrants issued for their arrest, with the bond money potentially being paid to the creditor. He noted that means a court through the threat of jail can leverage the payment of privately held debt. Professor Francis stated the Commission should consider studying the topic and possibly recommending criminal sanctions as opposed to jail time. Chairperson Bennett stated the Reentry subcommittee could consider the topic.

Professor Francis also stated he felt the Commission membership should include a public defender, noting he would make a proposal to the legislature to authorize the addition of a public defender member.

Sheriff Carr informed the Commission that he has conducted a survey on county jails. He stated he found there are 97 county jails in the state. Sheriff Carr noted he had received 47 responses with 25 sheriffs indicating their jails are at or near capacity. He also discussed jail construction and cost-sharing with municipalities.

PRELIMINARY RECOMMENDATIONS

Each subcommittee was asked to develop its own recommendations for approval by the full Commission and to include these recommendations in a subcommittee report (attached to this report as Appendix C).

At its November 25 meeting, the Commission discussed and approved the following preliminary recommendations based upon the subcommittees’ proposals. [Note: Due to the timing of the meeting and the report deadline, as well as the drafting and approval process, additional details regarding the November meeting could not be included in this report. This information may be found in the minutes for the November 25 meeting and will be included in the Commission’s report to the 2021 Legislature.]

Data Management

- A request for proposal (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.

Diversion/Specialty Courts/Specialty Prisons/Supervision

The subcommittee members chose to organize four working groups: diversion, supervision, specialty courts, and specialty prisons.

Diversion

- The Legislature should consider 2019 HB 2292 with certain proposed amendments. [see HB 2292 bill draft in Appendix C].

Specialty Courts

No recommendations were made.

Specialty Prisons

- Funding and authority 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 should be authorized;
- Funding and authority for KDOC to repurpose/renovate an existing building within the correctional facility system to provide approximately 200-250 male beds for substance abuse treatment should be authorized;
- Funding and authority for KDOC to build a substance abuse treatment center within the correctional facility system to provide approximately 240 male beds for substance abuse treatment should be authorized;
- The recommendations of the Mental Health Task Force Report (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 should be adopted;
 - Maintain at least the current number of beds in Osawatimie State Hospital (OSH) and Larned State Hospital (LSH) and add 36-60 additional regional or state hospital beds within 24 months;
 - Within five years, add up to a total of 22 new regional or state hospital beds, including those added in the first 24 months;

- Stabilize staffing at state hospitals by eliminating shrinkage, updating market analysis for wages, and ensuring sufficient employees for quality of treatment and number of licensed beds; and
- End the moratorium on admissions to OSH that has been in place since June 2015.

Supervision

- The Kansas Court Services Officer's Association's legislative initiative to amend KSA 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 should be considered.

Mental Health/ Substance Abuse

- An inventory of all major initiatives developed and funded at local and state levels to improve outcomes with offenders with mental illness and/or substance use disorders within and prior to entering the criminal justice system should be conducted;
 - The purpose of the study will be to identify effective strategies for coordinating community mental health and substance abuse treatment with the criminal justice system;
 - This study should evaluate existing local programs such as crisis intervention teams (CIT), jail diversion, and integrated case management approaches to treatment of offenders;
- 2019 HB 2292 should be re-visited and the stakeholders should work together to find a workable solution to allow certified substance abuse treatment prior to conviction; and
- Funds during the 2020 legislative session that can be spent on regional treatment beds during the 2021 fiscal year should be identified and earmarked.

Proportionality/Sentencing

- The penalties for crimes classified as drug grid level five should be revised to be similar to nondrug grid level eight;
- Unlawful tampering with an electronic monitoring device should be reclassified from a level six crime to a level eight crime;
- The felony loss threshold should be increased from \$1,000 to \$1,500 on certain property crimes [*see 20 RS 1899 in Appendix C*];
- Domestic battery qualifying prior convictions should be revised to include prior convictions with a domestic violence designation; and
- Pre-trial substance abuse programs should be implemented statewide.

Reentry

- Department of Revenue Form DC-1020 and fees associated with restricted licenses should be revised such that the fee must be paid before the person knows if they qualify for a restricted license;
- The mandatory 90-day suspension period that accompanies reinstatement should be amended;;
- One reinstatement fee should be permitted per suspended license citation; and
- Courts should be permitted to waive mandatory fines and fees for indigent persons charged with driving on a suspended license.

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