

**Minutes of the Kansas Sentencing Commission Meeting  
November 19, 2014**

The Honorable Evelyn Z. Wilson, Chair, called the Kansas Sentencing Commission Workshop, Day 1, to order on November 19, 2014 at 9:02 a.m. in the Regency Room of the Topeka Ramada Convention Center, Topeka, Kansas.

**Participants:**

**Members:**

- Honorable Evelyn Z. Wilson, Chair
- Honorable W. Lee Fowler, Vice Chair
- Honorable Patrick D. McAnany
- Senator David B. Haley
- Representative Tom Sawyer
- Representative John J. Rubin
- Senator Carolyn McGinn
- David W. Riggan, Kansas Prisoner Review Board
- Amy J. Hanley, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Secretary Department of Corrections Designee, Tim Madden
- Kevin N. Berens, Thomas County Attorney
- J. Shawn Elliott, Attorney
- Elizabeth M. (Betsy) Gillespie, Director of Corrections, Johnson County
- Jennifer C. Roth, 3rd Judicial District Assistant Public Defender
- Edward (Eddie) J. Regan, Public Member
- Reverend Junius B. Dotson, Public Member

**Guests:**

Steve Obermeier, Assistant Johnson County District Attorney  
Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Sheriffs' Association  
Robert Allison-Gallimore, Kansas Legislative Research Department

**Staff:**

Scott M. Schultz, Executive Director  
Brenda Harmon, Special Assistant to the Executive Director  
Kunlun Chang, Director of Research  
Fengfang Lu, Senior Research Analyst  
Sean Ostrow, SB 123 Program Director/ Staff Attorney  
Jennifer Dalton, Accountant  
Trish Beck, Program Assistant  
John Spurgeon, Budget Director

### **Approval of Agenda and Minutes**

Chair Wilson referred to the Sentencing Commission Meeting Agenda for the 2014 KSC Workshop. Shawn Elliott moved to approve the agenda and Kevin Berens seconded the motion. The motion carried and the agenda was approved.

Chair Wilson referred to the Sentencing Commission Meeting minutes of August 21, 2014. Amy Hanley moved to approve the minutes and Betsy Gillespie seconded the motion. The motion carried and the minutes were approved.

### **Approval of Journal Entry Forms – *St. v. Murdock* and DUI Proposals**

Sean Ostrow, SB 123 Program Director, provided a summary of the proposed Journal Entry form, “*State v. Murdock* Journal Entry Correction Supplement.” Chair Wilson suggested to amend the language of the form to reflect the verbatim language used in *Murdock*. Betsy Gillespie moved to adopt the suggested amendment and Chris Mechler seconded the motion. After discussion, the motion failed.

Proposals based on the discussion for a new *Murdock* form will be considered during the December 18 meeting.

Sean Ostrow reviewed the proposed amendment to the Sentencing Journal Entry (JE) with changes in language regarding “Felony DUI & Test Refusal” and the addition of “Other Nongrid Felonies” to the form. Kevin Berens moved to adopt the JE changes and Judge Fowler seconded the motion. The motion carried and the JE changes were adopted.

### **Agency Report**

Scott Schultz, Executive Director, provided an update of the agency, including a “KSC Workflow Chart”, which was provided to Commission members describing the workflow of the KSC over the course of a year.

Mr. Schultz reported receiving the University of Cincinnati draft report of the 2003 SB123 study, which will be presented to Commission for approval at the December meeting.

### **2015 Legislative Options - Brainstorming Session**

KSC members were provided a handout, *2014 KSC Workshop Options*, to be used as a tool to discuss possible amendments to present to the legislature in 2015.

#### **Option #1 – Criminal History: Out-of-State Misdemeanor Scoring**

Judge Fowler moved to approve the proposed amendment to 2013 HB 2703 with language in K.S.A. 21-6811(e)(2)(B) amended as discussed by the Commission and to replace each occurrence of “crime” with “offense” in the subsection. Betsy Gillespie seconded the motion and the motion carried.

#### **Option #2 - K.S.A. 75-5291(a)(2): Community Corrections Target Population Deletion**

Betsy Gillespie moved to delete the current language in (a)(2)(A), replacing it with the current language in (a)(2)(E). The language of (a)(2)(E) would be then amended to be

consistent with the language used in cutoff level scoring for the LSI-R set by the Commission in July 2014. Chris Mechler seconded the motion and the motion carried.

**Option #5 - Drugs: Repeal Special Rule 26-Third Time Drug Possession**

Betsy Gillespie moved to support the repeal of Special Rule 26 in K.S.A. 21-6805(f)(1). Judge Wilson seconded the motion and the motion carried. Chris Mechler, Amy Hanley and Kevin Berens were recorded as voting nay.

**Option #6 - Drugs: Amend First and Second Marijuana Possession to B and A Misdemeanors**

Pastor Junius Dotson moved to propose the amendment of first and second marijuana possession offenses to B and A misdemeanors. Betsy Gillespie seconded the motion and the motion carried. Kevin Berens and Amy Hanley were recorded as voting nay.

**New Option #20 – Drugs: Diversion Agreements for Felony Drug Possession Cases**

Judge Fowler moved to incentivize offenders by encouraging diversions for felony drug possession cases. The diversions would count as convictions for criminal history in subsequent prosecutions, similar to that of the current DUI law. The Commission discussed this option and will revisit the motion on the second day of the workshop. The motion was withdrawn by Judge Fowler.

**Perspectives on *State v. Murdock***

Steve Obermeier, Sr. Deputy District Attorney in Johnson County, provided several documents to the Commission pertaining to *State v. Murdock*. *Order of Modification, Syllabus by the Court and Overview of State v. Murdock, 299 Kan. 312, 323 P.3d 846 (2014), as modified (Sept, 19, 2014)* were submitted for review and consideration.

Mr. Obermeier provided and presented, *Overview of the Kansas Supreme Court's Decision in State v. Murdock, 299 Kan. 312 (2014)*.

**Adjournment**

The workshop was adjourned at 3:43 p.m.

**Minutes of the Kansas Sentencing Commission Meeting  
November 20, 2014**

The Honorable Evelyn Z. Wilson, Chair, called the Kansas Sentencing Commission Workshop, Day 2, to order on November 20, 2014 at 9:00 a.m. in the Regency Room of the Topeka Ramada Convention Center, Topeka, Kansas.

**Participants:**

**Members:**

- Honorable Evelyn Z. Wilson, Chair
- Honorable W. Lee Fowler, Vice Chair
- Honorable Patrick D. McAnany
- Senator David B. Haley
- Representative Tom Sawyer
- Representative John J. Rubin
- Senator Carolyn McGinn
- David W. Riggan, Kansas Prisoner Review Board
- Kansas Attorney General's Office Designee, Steven Karrer
- Chris A. Mechler, Office of Judicial Administration
- Secretary Department of Corrections Designee, Tim Madden
- Kevin N. Berens, Thomas County Attorney
- J. Shawn Elliott, Attorney
- Elizabeth M. (Betsy) Gillespie, Director of Corrections, Johnson County
- Jennifer C. Roth, 3rd Judicial District Assistant Public Defender
- Edward (Eddie) J. Regan, Public Member
- Reverend Junius B. Dotson, Public Member

**Guests:**

Timothy R. Schnacke, Center for Legal & Evidence-Based Practices  
Risë Haneberg, Criminal Justice Coordinator, Johnson County Manager's Office  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Kathleen Graves, Deputy Secretary, Department of Corrections  
Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Sheriffs' Association

**Staff:**

Scott M. Schultz, Executive Director  
Brenda Harmon, Special Assistant to the Executive Director  
Kunlun Chang, Director of Research  
Fengfang Lu, Senior Research Analyst  
Sean Ostrow, SB 123 Program Director/ Staff Attorney  
Jennifer Dalton, Accountant  
Trish Beck, Program Assistant  
Ebo Brown, Research Analyst

## **Recap from Day 1**

Chair Wilson provided a recap of Day 1 motions based from the handout, *2014 KSC Workshop Options*.

## **Presentation on Legal and Evidence-Based Bail Administration**

Timothy R. Schnacke, Center for Legal & Evidence-Based Practices, provided an overview on the presentation, *Legal & Evidence-Based Bail Administration*.

## **Presentation on Integrating Pretrial Risk Assessment and Decision Making**

Risë Haneberg, Johnson County Criminal Justice Coordinator, provided an overview of pretrial work in Johnson County, Kansas, with the presentation, *Integrating Pretrial Risk Assessment & Decision Making*.

## **Proposed Amendments for 2015 Legislation - Brainstorming Session Continued**

### **Option #3 - JRI: Delete Quick Dip Requirement Prior to Prison Sanctions for Absconding/New Crimes**

Judge Fowler moved to remove the quick dip requirement prior to DOC prison sanctions for offenders that are determined to be absconders or have committed new crimes. Betsy Gillespie seconded the motion and the motion carried.

### **Option #4 - JRI: Define Absconder in Statute**

Betsy Gillespie moved to decline the option of defining absconder in statute. Steve Karrer seconded the motion and the motion carried.

### **Option #7 - Drugs: Crimes within 1,000 ft of School - Reduce Distance of School Zone**

Representative John Rubin moved to decline the option of reducing the distance of the school zone relating to drug crimes. Kevin Berens seconded the motion and the motion carried.

### **Option #8 - SB 123: Expand to Severity Level 4 Drug Small Sales**

Jennifer Roth moved to decline the option of including 2003 SB 123 expansion to severity level 4 drug sales. Betsy Gillespie seconded the motion and the motion carried.

### **Options #10 and #11 - Criminal History: Good Time Credit Amendment for Nonperson Severity Level 7-10 and Drug Severity Level 4-5**

Prison bed space assessments were provided to show bed savings regarding increasing good time to 30% and 40% for nonperson severity level 7-10 and drug severity level 4-5.

Betsy Gillespie moved to propose changing good time credit percentages to 30%, 35% & 40% for nonperson severity level 7-10 and drug severity level 4-5. Judge Fowler seconded the motion and the motion carried. Steve Karrer, Representative John Rubin and Kevin Berens were recorded as voting nay.

### **Options #12, #13, and #14 - Criminal History: Scoring Decay of Nonperson, Drug Severity Level 4-5 and Traffic Felonies After 10, 15 & 20 Years**

Steve Karrer moved to decline options 12, 13 and 14 that proposed allowing criminal history older than 10, 15, or 20 years to decay and not be considered at an offender's sentencing. Representative Rubin seconded the motion and the motion carried. Tim Madden abstained.

**Option #15 - Theft: Increase Felony Loss Threshold to \$2,000 in K.S.A. 21-5801**

Kevin Berens moved to increase felony loss threshold to \$2,000. It is currently \$1,000. Steve Karrer seconded the motion and the motion carried.

**Option #16 – Burglary: Require Prior Theft Conviction to be a Felony in Special Rule 27**

Jennifer Roth moved to add the word “felony” in K.S.A. 21-6804(p), commonly referred to as Special Rule 27, to require a felony theft prior conviction when sentencing for an underlying burglary. Shawn Elliott seconded the motion. The motion failed.

**Option #17 - Office Administration: Charge of \$6.50 for each Journal Entry Beginning FY 2016**

Judge Fowler moved to decline the option of charging \$6.50 for each journal entry beginning in FY 2016. Chris Mechler seconded the motion and the motion carried.

**Option #18 - Criminal History: *State v. Murdock* amendments to the Kansas Sentencing Guidelines Act**

The Commission agreed to support the amendment language to K.S.A. 21-6811(e) and K.S.A. 21-6810(d) as suggested by Sr. Deputy District Attorney, Steve Obermeier. Steve Karrer moved to approve the suggested amendments found in the handout provided by Obermeier. Kevin Berens seconded the motion and the motion carried.

**Option #19 – Drugs: Extension of Border Boxes to Drug Severity Level 4 C and D**

Jennifer Roth moved to extend the border boxes to Severity Level 4 C and D on the drug grid. Chair Wilson seconded the motion and the motion carried. Steve Karrer, Representative Rubin, Kevin Berens and Chris Mechler were recorded as voting nay. Judge Fowler and Tim Madden abstained.

**New Option #20 – Drugs: Diversion Agreements for Felony Drug Possession Cases**

Judge Fowler revisited his prior motion with modifications to allow for diversions for felony drug possession cases to count as convictions for criminal history in subsequent prosecutions. Those agreements would be supervised by Court Services or Community Corrections based upon LSI-R scores. SB 123 funding would also be provided for those defendants who would otherwise qualify based on the risk/needs assessment.

Pursuant to K.S.A. 22-2909, the modifications should include allowing for stipulations regarding facts and procedural issues to those contained in K.S.A. 22-2909(c).

This modification also allows for sanctions to be imposed for violations pursuant to the Justice Reinvestment Initiative found in K.S.A. 22-3716.

Betsy Gillespie seconded the motion with these modifications and the motion carried.

**Future Workshop**

The 2015 workshop will be held November 18 and 19, 2015.

**Adjournment**

The 2014 workshop was adjourned at 4:03 p.m.