

**Minutes of the Kansas Sentencing Commission Meeting
November 18, 2015 - Day 1**

The Honorable Evelyn Z. Wilson, Chair, called the Kansas Sentencing Commission Workshop, Day 1, to order on November 18, 2014 at 9:06 a.m. in the Grand Ballroom 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. Riggin, Kansas Prisoner Review Board
- Amy J. Hanley, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Secretary Ray Roberts, Department of Corrections
- Kevin N. Berens, Thomas County Attorney
- J. Shawn Elliott, Attorney
- Elizabeth M. (Betsy) Gillespie, Director of Corrections, Johnson County
- Stacey L. Donovan, 3rd Judicial District Chief Public Defender
- Edward (Eddie) J. Regan, Public Member
- Reverend Junius B. Dotson, Public Member

Guests:

Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Criminal Justice
Rhys Hester, Post-Doctoral Fellow, Robina Institute of Criminal Law and Criminal Justice
Representative Janice Pauls
Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Sheriffs' Association
Jennifer C. Roth, 1650 Law and Policy Group, LLC
Kathleen Graves, Deputy Secretary, Department of Corrections
Tim Madden, Senior Counsel, Department of Corrections
Natalie Scott, Revisor of Statutes
Jason Thompson, Revisor of Statutes

Staff:

Scott M. Schultz, Executive Director
Brenda Harmon, Special Assistant to the Executive Director
Kunlun Chang, Director of Research
Fengfang Lu, Senior Research Analyst
Charlene Peacock, Utilization Review/SB 123 Program Director
Jesse Becker, Finance Director
Trish Beck, Program Assistant
Ebo Brown, Research Analyst

Approval of Agenda and Minutes

Chair Wilson referred to K.S.A. 74-9101(b)(15), describing the Commission's charge to make policy recommendations to the Executive and Legislative branches of Kansas government.

Chair Wilson referred to the Sentencing Commission meeting minutes of October 22, 2015. Kevin Berens moved to approve the minutes and Chris Mechler seconded the motion. The motion carried and the minutes were approved.

Criminal History Enhancements in Guidelines Systems

Dr. Rhys Hester, Post-Doctoral Fellow, and Kelly Mitchell, Executive Director of Robina Institute of Criminal Law and Criminal Justice, University of Minnesota presented *Criminal History Enhancements in Guidelines Systems*. The presentation covered the following topics:

- Justifying Criminal History Enhancements at Sentencing
- Magnitude of Criminal History Enhancements
- Decay and Gap Policies
- Timing of Current and Prior Crimes: What Counts as a "Prior" Conviction?
- Juvenile Adjudications
- Misdemeanor Convictions
- Severity Premium for Similar Prior Offending; Patterning Rules
- Prior Offense Weighting and Special Eligibility Rules for High Criminal History Categories
- Custody Status as a Criminal History Enhancement
- The Treatment of Multiple Current Offenses
- The Relationship between Criminal History and Recidivism Risk
- Criminal History Enhancements as a Cause of Minority Over-Representation

Potential considerations for Kansas were provided:

- Consider a lookback limit for adults
- Consider Juvenile limits
- Consider adopting a Racial Impact Statement

Juvenile adjudication considerations were:

- Decay or gap
- Time lapse

2016 Legislative Proposals and Letter to the Governor Options - Brainstorming Session

KSC members were provided a handout, *2015 KSC Workshop Legislative Proposals*.

Members reviewed and discussed 2016 legislative proposals.

Adjournment

The workshop was adjourned at 3:03 p.m.

**Minutes of the Kansas Sentencing Commission Meeting
November 19, 2015 - Day 2**

The Honorable Evelyn Z. Wilson, Chair, called the Kansas Sentencing Commission Workshop, Day 2, to order on November 19, 2015 at 9:15 a.m. in the Grand Ball 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. Riggin, Kansas Prisoner Review Board
- Amy J. Hanley, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Secretary Ray Roberts, Department of Corrections
- Kevin N. Berens, Thomas County Attorney
- J. Shawn Elliott, Attorney
- Elizabeth M. (Betsy) Gillespie, Director of Corrections, Johnson County
- Stacey L. Donovan, 3rd Judicial District Chief Public Defender
- Edward (Eddie) J. Regan, Public Member
- Reverend Junius B. Dotson, Public Member

Guests:

Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Sheriffs' Association
Jennifer C. Roth, 1650 Law and Policy Group, LLC
Kathleen Graves, Deputy Secretary, Department of Corrections
Tim Madden, Senior Counsel, Department of Corrections
Natalie Scott, Revisor of Statutes
Aaron Johnson, Johnson County Court Services
Shane Rolf, Shane's Bail Bonds, Olathe, KS
Brianna Landon, Legislative Liaison & Public Information Officer, Department of Corrections
Robert Sullivan, Johnson County Criminal Justice Coordinator
Kevin Barone, Kansas Bail Agents 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
Charlene Peacock, Utilization Review/SB 123 Program Director
Jesse Becker, Finance Director
Trish Beck, Program Assistant
Ebo Brown, Research Analyst

Chair Wilson recognized Department of Corrections' retirements of Secretary Ray Roberts; David Riggan, Prisoner Review Board; and Kathleen Graves, Deputy Secretary.

Future Workshop

The 2016 workshop will be held September 27 and 28, 2016. Representative Rubin moved to approve the dates and Kevin Berens seconded the motion. The motion carried.

Presentation on Legal & Evidence-Based Bail Administration

Aaron Johnson, Johnson County Court Services presented information relating to evidence-based bail administration.

Pretrial Detention Roundtable

Scott Schultz moderated a discussion with Aaron Johnson, Johnson County Court Services and Shane Rolf, Shane's Bail Bonds, Olathe, KS, discussing the pretrial process and duties and responsibilities of court services and a bail bondsman.

KSC Agency Report

Legislative post audit report evaluating the state substance abuse programs will be due December.

New Administrative Assistant, Erica Waggoner will be replacing Rachel Cole who was promoted to Data Entry Operator III.

SB 123 Workshop was held October 30, 2015 in Topeka to address the invoice process with community corrections officers and treatment providers. Approximately 80 were in attendance.

Proposed Amendments for 2016 Legislation - Brainstorming Session Continued

KSC members were provided a handout, *2015 KSC Workshop Legislative Proposals*, (Attachment 1) to be used as a tool while considering proposed 2016 legislation and/or include in the letter of recommendations to the Governor.

Proposal #7 - Drugs: Repeal Special Rule 26 Third Time Drug Possession.

Judge Fowler moved to approve the proposal for legislation only. Judge Wilson seconded the motion and the motion carried. Amy Hanley, Kevin Berens and Representative Rubin opposed the motion.

Proposal #9 - SB 123: Expand to severity level 4 drug small sales if SB 123 criteria is met.

Judge Fowler moved to approve the proposal for both legislation and the letter to the Governor. Representative Rubin seconded the motion and the motion carried. Amy Hanley and Kevin Berens opposed.

Proposal #11 - JRI: Delete quick dip requirement prior to prison sanctions for abscond but not new crimes.

Representative Rubin moved to approve proposal for both legislation and the letter to the Governor. Chris Mechler seconded the motion and the motion carried. Amy Hanley opposed.

Proposal #14 - Failure to Register: Amending penalties from person to nonperson.

Dave Riggins moved to approve the proposal for both legislation and the letter to the Governor. Shawn Elliott seconded the motion. Stacey Donovan moved to table the motion pending receipt of underlying prison sentences and length of registration for FY15. Amy Hanley seconded the motion and the motion was tabled.

Proposal #15 - Theft: Increase felony loss threshold to \$2,000.

Kevin Berens moved to approve proposal for both legislation and the letter to the Governor. Amy Hanley seconded the motion and the motion carried. Dave Riggins opposed.

Proposal #16 - Unlawfully tampering w/electronic monitoring equipment: Amending the severity level from 6 to severity level 6 for nondrug severity levels 1-5 and drug severity levels 1-2; severity level 8 for nondrug severity levels 6-8 and drug severity levels 3; severity level 10 for nondrug severity levels 9-10 and drug severity level 4-5; and class A misdemeanor for misdemeanor or civil cases involving electronic monitoring.

Representative Rubin moved to approve proposal for both legislation and the letter to the Governor. Tom Sawyer seconded the motion and the motion carried.

Proposals #18 - #20: Studies: Use of drug courts as a reentry program for drug addicted offenders, prison length of stay for drug possession crimes (D5) and system-wide identification of the extent of substance abuse and/or mental illness.

Judge Fowler will provide draft language at the December 17th KSC meeting.

Proposal #21 - Probation: Technical violators determined by KDOC to have substance abuse problems will serve six months and then be released to community corrections.

Secretary Roberts will bring draft language to the December 17th meeting.

Proposal #22 - Criminal History Scoring: Except offgrid and nonperson severity levels 1-4, all juvenile adjudications, will decay if the offender has no new adjudications within five years from the date of discharge of the final adjudication.

Betsy Gillespie moved to approve the proposal for Legislation only. Representative Sawyer seconded the motion and the motion carried. Amy Hanley and Kevin Berens opposed.

Proposal #23 - Proportionality Statement by the Commission: The Kansas Sentencing Commission will present a proportionality statement on all legislative impacts. Crimes with current severity level and those one level above and below shall be included comparatively with the proposed offense.

Representative Rubin moved to approve the proposal. Chris Mechler seconded the motion and the motion carried.

Proposals #1-6, #8, #10, #12-13 and # 19 were not adopted by the Commission.

Adjournment

The 2015 workshop was adjourned at 3:54 p.m.

Attachment 1

2015 KSC Workshop Legislative Proposals			Attachment 1
November 18-19, 2015			
Description	Approved		Gov. Ltr (G), Legislation (L) or Both (B)
	Yes	No	
1 . Criminal History Scoring: np and drug SL 4-5 decay after 10 yrs	<input type="checkbox"/>	<input type="checkbox"/>	
2 . Criminal History Scoring: np and drug SL 4-5 decay after 15 yrs	<input type="checkbox"/>	<input type="checkbox"/>	
3 . Criminal History Scoring: np and drug SL 4-5 decay after 20 yrs	<input type="checkbox"/>	<input type="checkbox"/>	
4 . Drugs: Reduce Length of Sentence for SL 1-3 on Drug Grid by 20%	<input type="checkbox"/>	<input type="checkbox"/>	
5 . Drugs: Reduce Length of Sentence for SL 1-3 on Drug Grid by 25%	<input type="checkbox"/>	<input type="checkbox"/>	
6 . Drugs: Reduce Length of Sentence for SL 1-3 on Drug Grid by 30%	<input type="checkbox"/>	<input type="checkbox"/>	
7 . Drugs: Repeal Special Rule 26 Third Time Drug Possession	<input type="checkbox"/>	<input type="checkbox"/>	
8 . Drugs: Extend border box on drug grid to 4-C and 4-D	<input type="checkbox"/>	<input type="checkbox"/>	
9 . SB 123: Expand to SL 4 drug small sales	<input type="checkbox"/>	<input type="checkbox"/>	
10 . SB 123: Expand to nondrug grid to subst. abuse-related np	<input type="checkbox"/>	<input type="checkbox"/>	
11 . JRI: Delete quick dip requirement prior to prison sanctions for abscond/new crime	<input type="checkbox"/>	<input type="checkbox"/>	
12 . <i>State v. Pearce</i> : Amend KSA 21-6810(d)(9) to include "or applicable penalties"	<input type="checkbox"/>	<input type="checkbox"/>	
13 . Inmate Letter: Amendment to retroactively apply current severity level 1 and 2 crimes to those similarly convicted from 1996-1998	<input type="checkbox"/>	<input type="checkbox"/>	
14 . Registration: Failure to Register - amend penalties from person to nonperson	<input type="checkbox"/>	<input type="checkbox"/>	
15 . K.S.A. 21-5801 Theft: Increase felony loss threshold to \$2,000	<input type="checkbox"/>	<input type="checkbox"/>	
16 . K.S.A. 21-6322 Unlawfully tampering w/electronic monitoring equipment: Reducing penalty from SL 6 to SL 8	<input type="checkbox"/>	<input type="checkbox"/>	
17 . DUI: Procedural fix for prohibiting all time of 2,160 hours to be spent at home rather than obtaining employment while on house arrest or work release	<input type="checkbox"/>	<input type="checkbox"/>	
18 . Studies: Use of Drug Courts as a Reentry Program for drug addicted offenders	<input type="checkbox"/>	<input type="checkbox"/>	
19 . Studies: Prison Length of Stay for Drug Possession Crimes (D5)	<input type="checkbox"/>	<input type="checkbox"/>	
20 . Studies: System-wide Identification of the Extent of Substance Abuse and/or Mental Illness	<input type="checkbox"/>	<input type="checkbox"/>	
21 .	<input type="checkbox"/>	<input type="checkbox"/>	
22 .	<input type="checkbox"/>	<input type="checkbox"/>	
23 .	<input type="checkbox"/>	<input type="checkbox"/>	
24 .	<input type="checkbox"/>	<input type="checkbox"/>	
25 .	<input type="checkbox"/>	<input type="checkbox"/>	