

STATE OF KANSAS



KANSAS SENTENCING COMMISSION
700 SW JACKSON, SUITE 501
TOPEKA, KS 66603
PHONE: (785) 296-0923

HONORABLE W. LEE FOWLER, CHAIR
HONORABLE BENJAMIN J. SEXTON, VICE CHAIR
SCOTT M. SCHULTZ, EXECUTIVE DIRECTOR
<http://www.sentencing.ks.gov>

GOVERNOR JEFF COLYER, M.D.

Minutes of the Kansas Sentencing Commission Workshop September 19, 2018

The Honorable Benjamin J. Sexton, Vice Chair, called the Kansas Sentencing Commission (KSSC) Workshop, Day 1, to order on September 19 at 9:10 a.m.

Participants:

Members:

- Honorable W. Lee Fowler, Chair
- Honorable Benjamin J. Sexton, Vice Chair
- Honorable Stephen D. Hill, Kansas Court of Appeals
- Senator David B. Haley
- Representative Tom Sawyer
- Representative John Barker
- Senator Carolyn McGinn
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica Domme, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Tim Madden, Secretary of Corrections Designee
- Dan Dunbar, Shawnee County Chief Deputy District Attorney
- Stacey L. Donovan, Third Judicial District Public Defender's Office
- Christopher Mann, Private Attorney
- James Echols, Public Member
- Ronald Pauls, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Jenna Moyer, Kansas Office of Revisor of Statutes
Jason Thompson, Kansas Office of Revisor of Statutes
Representative Boog Highberger, Kansas House of Representatives
Isaac Elyacharshuster, Kansas Legislative Research
Jennifer Roth, Attorney
Eric Van Allen, Beacon Health Options
Marie McNeal, Kansas Department of Corrections
Ed Klumpp, KS Association of Chiefs of Police, KS Sheriff's Association, KS Peace Officers Association
Steve Kearney, KS County & District Attorneys Association - KS Association of Court Services Officers
Jeremy Way, Citizen
Laurene Way, Citizen
Linda Stumbaugh, Citizen
Mark Stumbaugh, Citizen

Staff:

- Scott M. Schultz, Executive Director
- Brenda Harmon, Special Assistant to the Executive Director
- Kunlun Chang, Director of Research
- George “Ebo” Browne, Senior Research Analyst
- John Grube, Research Analyst
- Trish Beck, Program Assistant
- Bryanna Estanol, Administrative Assistant
- Kira Johnson, SB 123 Program Director
- Jamie Mai, Administrative Assistant
- Francis Givens, Staff Attorney

Approval of Proposed Agenda and Minutes

Vice Chair Sexton asked if there were objections to the agenda. There were no objections to the agenda.

Vice Chair Sexton referred to the Sentencing Commission Meeting minutes of August 30, 2018. Chris Mechler moved to approve the minutes and Jonathan Ogletree seconded the motion. The motion carried and the minutes were approved.

2003 SB 123 Drug Treatment Program: An update 15 years in the Making

Kira Johnson, SB 123 Program Director, provided a presentation, *What’s New with SB 123: An Update 15 Years in the Making*. Ms. Johnson announced that KSSC and SB 123 Program partnered with Beacon Health Options to provide invoice payment processing. The new online billing system will go live October 1, 2018.

Eric Van Allen, Senior Vice President, Beacon Health Options presented, *SB 123 Program Implementation* and furnished detailed information concerning Beacon’s business operations and the SB 123 Program system workflow.

SB 123 Telepsych Assessment

Kira Johnson and George Browne, Senior Research Analyst, reported information relating to their presentation, *SB 123 Telepsych Assessment Pilot Project Update*. Handouts were provided. The commission expressed interest in exploring options to provide substance abuse treatment in underserved areas of the state through the use of video conferencing.

2013 HB 2170 Update: A five-year review

George Browne and John Grube, Research Analyst, referred to the handout, *HB 2170: A Five-Year Review*. Information was provided on the intent of the legislation, statistics over the last five years and options for potential policy changes.

25th Anniversary Luncheon

Recognition of the 25th anniversary of the Kansas Sentencing Guidelines Act was provided by Scott Schultz during the luncheon. A slide show prepared by Kira Johnson and Trish Beck, Program Assistant, was shown, outlining the history and milestones of the commission and the legislation.

Deconstructing the Myth of Sex Offenders

The Honorable Mary Katherine Huffman, Montgomery County Court of Common Pleas, Dayton OH, provided handouts and presented, *Deconstructing the Myth of Sex Offenders*. Judge Huffman reported on sex offenders, recidivism, differences between sex offenders and general offenders, sex offender laws and registration.

Kansas Offender Registration Act

Jennifer Roth, attorney with the Office of the Appellate Defender, provided a presentation and handout, *Kansas Offender Registration Act: A Statutory and Caselaw Overview*. Ms. Roth reported the changes to the Act since inception and illustrated the effects that KORA has on drug offenders and the level of crime for which offenders are convicted.

Discussion and Review of Offender Registration Proposal

Scott Schultz, Executive Director, referred to the handout, *Review and Discussion of Proposed Legislation*. Stacey Donovan moved to amend the Kansas Offender Registration Act by removing the language which requires offender registration for drug crimes. Shelly Williams seconded the motion. As part of discussion, Representative John Barker provided a substitute motion to table Stacey Donovan's motion until the October 25, 2018, KSSC meeting to receive responses or presentations from the Attorney General's Office, Law Enforcement, Kansas County & District Attorneys Association and the Kansas Association of Criminal Defense Lawyers. Dan Dunbar seconded the motion and the motion carried.

Adjourn

Vice Chair Sexton asked for a motion to adjourn. Jessica Domme moved to adjourn. Stacy Donovan seconded the motion and the motion carried.

Meeting adjourned at 4:00 p.m.

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GOVERNOR JEFF COLYER, M.D.

Minutes of the Kansas Sentencing Commission Workshop September 20, 2018

The Honorable Benjamin J. Sexton, called the Kansas Sentencing Commission (KSSC) Workshop, Day 2, to order on September 20 at 9:03 a.m.

Participants:

Members:

- Honorable W. Lee Fowler, Chair
- Honorable Benjamin J. Sexton, Vice Chair
- Honorable Stephen D. Hill, Kansas Court of Appeals
- Senator David B. Haley
- Representative Tom Sawyer
- Representative John Barker
- Senator Carolyn McGinn
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica Domme, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Tim Madden, Secretary of Corrections Designee
- Dan Dunbar, Shawnee County Chief Deputy District Attorney
- Stacey L. Donovan, Third Judicial District Public Defender's Office
- Christopher Mann, Private Attorney
- James Echols, Public Member
- Ronald Pauls, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Jenna Moyer, Kansas Office of Revisor of Statutes
Jason Thompson, Kansas Office of Revisor of Statutes
Isaac Elyacharshuster, Kansas Legislative Research
Representative Boog Highberger, Kansas House of Representatives
Marie McNeal, Kansas Department of Corrections
Steve Kearney, The Kansas County & District Attorneys Association - Kansas Association of Court Services Officers
Liz Rice, Kansas Department of Corrections
Brad Schuh, Kansas Association of Court Services Officers

Staff:

- Scott M. Schultz, Executive Director
- Brenda Harmon, Special Assistant to the Executive Director
- Kunlun Chang, Director of Research
- George “Ebo” Browne, Senior Research Analyst
- John Grube, Research Analyst
- Trish Beck, Program Assistant
- Bryanna Estanol, Administrative Assistant
- Kira Johnson, SB 123 Program Director
- Jamie Mai, Administrative Assistant
- Francis Givens, Staff Attorney

Kansas Department of Corrections (KDOC): An Overview

KDOC staff members, Liz Rice, Marie McNeal, Tim Madden, and Jonathan Ogletree provided an overview and updates regarding the Department and Community Corrections. They reported trends, practices, processes and protocols for probation violation and prison sanctions for KDOC.

Review and Discussion of Proposed Legislation

George Browne and John Grube provided additional information and discussed possible options amending HB 2170.

Policy Options Determination Wrap-up

Scott Schultz referred to the handout, *Review and Discussion of Proposed Legislation*, explained each proposal and reviewed the process in adopting proposed legislative options. Mr. Schultz explained that proposed legislation accepted by the Commission will be also included in the letter of recommendations to the Governor unless specifically excluded.

Removing Drug Offender Registration from the Kansas Offender Registration Act.

During the first day of the workshop, this item was tabled until the October 25, 2018 KSSC meeting. There was no further discussion on the second day.

Discussion of alternatives to 2013 HB 2170 graduated sanctions.

Jessica Domme moved to refer the proposal to the KSSC HB 2170 Committee for further work and requested the Committee submit proposed legislation to the Commission at the October 25, 2018, KSSC meeting. Stacey Donovan seconded the motion and the motion passed.

Increasing felony loss thresholds for certain property crimes.

Stacey Donovan moved to increase felony loss thresholds for certain property crimes from \$1,000 to \$1,500. Representative Tom Sawyer seconded the motion and the motion passed.

Amend K.S.A. 21-6824 by adding K.S.A. 21-5705 (distribution) to list of offenses eligible for paid treatment.

Jessica Domme moved to amend K.S.A. 21-6824(a) to include 2018 Supp. 21-5705 small sales of controlled substances to the offenses eligible for paid drug abuse treatment. Jonathan Ogletree seconded the motion and the motion passed.

K.S.A. 74-9102(b) – Designate certain legislative members for membership on the KSSC.

The proposal to amend K.S.A. 74-9102 in lieu of current legislative membership to include specific legislative members be appointed to KSSC's membership as follows: the chairperson and the ranking minority member of the House Corrections and Juvenile Justice Committee and the chairperson and ranking minority member of the Senate Judiciary Committee. After discussion, no motions were made.

Criminal history scoring of out-of-state priors - State v. Wetrich and State v. Smith.

Jessica Domme moved to amend K.S.A. 21-6811 to add language to clarify criminal history scoring of out-of-state prior convictions after *State v. Wetrich*, 307 Kan. 552, 412 P.3d 984 (2018). This included utilizing a three-part comparison test and the following language to illustrate legislative intent:

For the purpose of determining whether an offense is comparable the following shall be considered:

- 1) The name of the out of state jurisdiction offense;*
- 2) the elements of the out of state jurisdiction offense; and*
- 3) whether the out of state jurisdiction offense prohibits similar conduct to the conduct prohibited by the closest approximate Kansas offense.*

The legislature intends that the provisions of this act related to comparability of an out-of-state jurisdiction offense to a Kansas offense shall be liberally construed to allow comparable offenses regardless of whether the elements are identical to or narrower than the corresponding Kansas offense to be included in a person's criminal history.

Representative Barker seconded the motion and the motion passed. Chris Mechler abstained from voting. Stacey Donovan opposed the motion.

Presentence Investigation (PSI) Reports – Include Community Correctional Services as entity able to receive confidential information.

Shelly Williams moved that the Commission support the Office of Judicial Administration's position to allow transfer of confidential information contained in PSI Reports to Community Correctional Services by amending K.S.A. 21-6813(c). Chris Mechler seconded the motion and the motion passed.

K.S.A. 21-6604(f)(4) and 21-6606(d) – Resolves conflict of discretionary or mandatory consecutive sentences committed while on bond.

Representative Tom Sawyer moved to amend K.S.A. 21-6606(d) by changing the language, "shall" to "may". Representative Sawyer then amended his motion to change the language in 21-6606(d) to match the language in 21-6606(b) to enable the court discretion to impose consecutive or concurrent sentences. Stacey Donovan seconded the motion and the motion passed.

K.S.A. 59-2959 – Amendment to prohibit possession of a firearm during a temporary custody order.

After discussion no motions were made.

Closing Statements

Jessica Domme requested that the Commission, with legislator permission, work with Revisor's office to draft appropriate bill language in the approved proposals. With no objection from legislative members, Vice Chair Sexton granted the request.

Adjourn

Vice Chair Sexton asked for a motion to adjourn. Chris Mechler moved to adjourn. Ronald Pauls seconded the motion and the motion carried.

The next Sentencing Commission meeting will be at 1:30 p.m. on October 25, 2018 at the Jayhawk Tower, Senate Room.

Meeting adjourned at 3:05 p.m.