

**Minutes of the Kansas Sentencing Commission Meeting  
September 27, 2016**

The Honorable W. Lee Fowler, Vice Chair, called the Kansas Sentencing Commission Workshop, Day 1, to order on September 27, 2016 at 9:04 a.m. in the Grand Ballroom of the Topeka Downtown 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 Janice Pauls
- Representative John Barker
- Senator Carolyn McGinn
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica G. Domme, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Secretary Joe Norwood, Department of Corrections
- Kevin N. Berens, Thomas County Attorney
- Stacey L. Donovan, Third Judicial District Public Defender's Office
- Meredith Butler, Eighth Judicial District Community Corrections
- Nathan Barnes, Public Member
- Terry J. Malone, Attorney

**Guests:**

Tim Madden, Senior Counsel, Department of Corrections  
Cody McArthur, Kansas Association of Court Service Officers  
Jason Thompson, Senior Assistant Revisor of Statutes  
Natalie Scott, Assistant Revisor of Statutes  
Dr. Travis Pratt, University of Cincinnati Corrections Institute  
Dr. Mario Cano, Kansas State University Sociology Professor

**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 Becker, Utilization Review/SB 123 Program Director
- George "Ebo" Browne, Research Analyst
- Jesse Becker, Finance Director
- Trish Beck, Program Assistant
- Erica Waggoner, Administrative Assistant
- Karen Wittman, Attorney

## **Welcome New KSSC Member**

Vice Chair Fowler introduced and welcomed new Sentencing Commission member, Representative John Barker, who has replaced Representative John Rubin.

## **Approval of Minutes**

Vice Chair Fowler referred to the August 25, 2016 Sentencing Commission meeting minutes. Chris Mechler moved to approve the minutes as written. Senator Haley seconded the motion. The motion carried and the minutes were approved.

## **Presentation on Strategies for Supervising and Treating Offenders**

Travis C. Pratt, PhD, University of Cincinnati, provided an overview on the presentation, *Beyond Getting Tough: Evidence-Based Strategies for Supervising and Treating Offenders in the Community*.

## **2017 Legislation Proposals – Brainstorming Session**

KSSC members were provided a handout, *Proposals for 2016 KSSC Workshop*.

Members reviewed and discussed 2017 legislation proposals presented by the Legislative Committee.

### ***Proposal #1 – Controlled Substance Study***

Vice Chair Fowler proposed a global study of drug policy within the state. This would include considering misdemeanor offenses for certain quantities of controlled substances (e.g., under an ounce for marijuana).

### ***Proposal #2 – Pre-trial SB 123 Program***

Vice Chair Fowler proposed to allow diversions for the 2003 SB 123 program which would incentivize offenders and lower costs to law enforcement, prosecutors and the courts.

### ***Proposal #3 – Repeal Special Rule 26 for Third Time Possession of Controlled Substances***

Vice Chair Fowler recommended the repeal of Special Rule 26 (K.S.A. 21-6805(f)(1)) to be introduced next session. The proposal mirrors 2016 HB 2458 which had a hearing on January 20, 2016 in House Corrections and Juvenile Justice Committee (HCJJ) but did not move out of committee.

### ***Proposal #4 – Allow SB 123 Treatment to be Used for Severity Level 4 Drug Crimes***

Vice Chair Fowler suggested allowing 2003 SB 123 Substance Abuse Treatment program be used for severity level 4 drug crimes. The proposal mirrors 2016 HB 2461 which had a hearing on January 20, 2016 in HCJJ but did not move out of committee.

### ***Proposal #5 – Amending the Criminal Penalties for Unlawful Tampering with Electronic Equipment***

Executive Director, Scott Schultz, reviewed the language of 2016 HB 2459, which received a hearing in HCJJ. It was amended to have only two penalty provisions rather than the tiered approach recommended by the Commission. The language provides that if an offender is on felony supervision and commits this crime, the violation would be a severity level 8, nonperson felony. If on misdemeanor supervision or court-ordered supervision in any civil case the violation would be a class A nonperson misdemeanor. The bill passed out of HCJJ last year in this form as amended but no floor debate occurred before the full House.

**Proposal #6 – *Allow Certain Juvenile Adjudications to Decay from Adult Criminal History***

Mr. Schultz reviewed the history of 2016 HB 2463 which received a hearing on January 21, 2016 in HCJJ. It was worked on January 26<sup>th</sup> and passed out favorably. The Commission’s specific language was later stripped out of the bill by the Senate Corrections and Juvenile Justice.

**Proposal #7 – *KSSC Interagency Cooperation***

Mr. Schultz discussed the importance of working with the Kansas Department for Aging and Disability (KDADS). Mr. Schultz explained having access to KDADS databases, specifically the Kansas Client Placement Criteria (KCPC), would enhance the SB 123 program.

**Proposal #8 – *Resolving Postrelease Supervision When Considering K.S.A. 22-3717(d)(1)(D) and (G)***

Jessica Domme discussed a potential conflict between the two subsections that relate to the length of supervision for sex-related convictions.

**Proposal #9 – *Sentencing of Juveniles Certified as Adults***

Tim Madden recommended drafting a postrelease supervision policy that is constitutional in accordance with *State v. Dull*.

**Proposal #11 – *Increase Loss Thresholds***

Stacey Donovan discussed increasing felony thresholds to \$1,500 for the crimes of criminal damage to property, giving a worthless check, impairing a security interest, criminal use of an explosive, counterfeiting, criminal use of a financial card and theft of property lost, mislaid or delivered by mistake.

**Adjournment**

Meeting adjourned 2:49 p.m.

## **Minutes of the Kansas Sentencing Commission Meeting September 28, 2016**

The Honorable W. Lee Fowler, Vice Chair, called the Kansas Sentencing Commission Workshop, Day 2, to order on September 28, 2016 at 9:05 a.m. in the Grand Ballroom of the Topeka Downtown 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 Janice Pauls
- Representative John Barker
- Senator Carolyn McGinn
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica G. Domme, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Secretary Joe Norwood, Department of Corrections
- Kevin N. Berens, Thomas County Attorney
- Stacey L. Donovan, Third Judicial District Public Defender's Office
- Meredith Butler, Eighth Judicial District Community Corrections
- Nathan Barnes, Public Member
- Terry J. Malone, Attorney

#### **Guests:**

Tim Madden, Senior Counsel, Department of Corrections  
Cody McArthur, Kansas Association of Court Service Officers  
Jason Thompson, Senior Assistant Revisor of Statutes  
Natalie Scott, Assistant Revisor of Statutes  
Marie McNeal, Department of Corrections  
Jennifer Roth, State Board of Indigents' Defense Services  
Chris Esquibel, 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
- Fengfang Lu, Senior Research Analyst
- Charlene Becker, Utilization Review/SB 123 Program Director
- George "Ebo" Browne, Research Analyst
- Jesse Becker, Finance Director
- Trish Beck, Program Assistant
- Erica Waggoner, Administrative Assistant
- Karen Wittman, Attorney

## **2017 Legislation Proposals – Brainstorming Session**

### **Proposal #10 – *Offender Registration Act***

In presenting the final proposal, Stacey Donovan discussed two amendments to the act.

## **Action Taken on 2017 KSSC Proposed Legislation**

KSSC members were referred to handout, *Proposals for 2016 KSSC Workshop*, which was being used as a tool while considering KSSC 2017 proposed legislation. The following action was taken as to the proposals:

### **Proposal #1 – *Controlled Substances Study***

Vice Chair Fowler asked for a motion to consider exploring possible grants for the controlled substances study. Chris Mechler moved to approve the motion. Representative Tom Sawyer seconded the motion and the motion carried.

### **Proposal #2 – *Pre-trial SB 123 Program***

Representative John Barker moved to approve Proposal #2. Representative Tom Sawyer seconded the motion and the motion carried. Chris Mechler, Kevin Berens and Jessica Domme opposed the motion.

### **Proposal #3 – *Repeal Special Rule 26 for Third Time Possession of Controlled Substances***

Senator David Haley moved to approve Proposal #3. Stacey Donovan seconded the motion and the motion carried. Kevin Berens and Jessica Domme opposed the motion.

### **Proposal #4 – *Allow SB 123 Treatment to be Used for Severity Level 4 Drug Crimes***

Judge McAnany moved to approve Proposal #4. Vice Chair Fowler seconded the motion and the motion carried.

### **Proposal #5 – *Amending the Criminal Penalties for Unlawful Tampering with Electronic Equipment***

Senator David Haley moved to approve Proposal #5. Stacey Donovan seconded the motion and the motion carried. Jessica Domme opposed the motion.

### **Proposal #6 – *Allow Certain Juvenile Adjudications to Decay from Adult Criminal History***

Representative Janice Pauls moved to approve Proposal #6. Representative John Barker seconded the motion and the motion carried. Kevin Berens and Jessica Domme opposed the motion.

### **Proposal #7 – *KSSC Interagency Cooperation***

Judge McAnany moved to approve Proposal #7. Chris Mechler seconded the motion and the motion carried.

### **Proposal #8 – *Resolving Postrelease Supervision When Considering K.S.A. 22-3717(d)(1)(D) and (G)***

Jessica Domme moved to approve Proposal #8 with new language to be discussed at the October commission meeting. Kevin Berens seconded the motion and the motion carried.

**Proposal #9 – *Sentencing of Juveniles Certified as Adults***

Jessica Domme moved to approve Proposal #9 with new language to be discussed at the October commission meeting. Judge McAnany seconded the motion and the motion carried.

**Proposal #10 – *Offender Registration Act***

Stacey Donovan moved to remove cultivation and distribution of controlled substances in K.S.A. 21-5705(a)(1) from the definition of “drug offender” in the Offender Registration Act. Chris Mechler seconded the motion and the motion carried. Kevin Berens and Jessica Domme opposed the motion.

Stacey Donovan moved to amend the act to always charge a misdemeanor for the failure to pay the \$20 registration fee, rather than a felony. Representative Tom Sawyer seconded the motion and the motion carried.

**Proposal #11 – *Increase Loss Thresholds***

Stacey Donovan moved to approve Proposal #11. Kevin Berens seconded the motion and the motion carried.

**Adjournment**

Senator Haley moved to adjourn. Representative Barker seconded the motion and the motion carried.

The next Sentencing Commission meeting will be at 1:30 p.m. on October 20, 2016 at the Jayhawk Tower, Senate Room.

Meeting adjourned 11:09 a.m.