

Minutes of the Kansas Sentencing Commission Workshop September 18, 2019

The Honorable W. Lee Fowler, Chair, called the Kansas Sentencing Commission (KSSC) Workshop, Day 1, to order on September 18 at 9:01 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 Dennis "Boog" Highberger
- Representative John Barker
- Senator Carolyn McGinn
- Joseph Phillips, Kansas Prisoner Review Board Designee
- Jessica Domme, Kansas Attorney General's Office
- Chris A. Mechler, Office of Judicial Administration
- Randy Bowman, 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
- Ronald Pauls, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Kim T. Parker, Kansas County and District Attorneys Association
Marie McNeal, Kansas Department of Corrections
Ed Klump, KS Association of Chiefs of Police, KS Sheriff's Association, KS Peace Officers Association
Natalie Scott, Revisor of Statutes
Charles Branson, Douglas County Attorney
Mallory Lutz, Little Government Relations, Kansas Association of Counties
Jason Thompson, Revisor of Statutes
Chris Esquibel, Kansas Association of Court Services Officers
Sarah Thompson, Mirror Inc.
Melissa Goodman, Mirror Inc.
Brooke Paulson, US Probation
Stuart Little, Little Government Relations
Mike L Clark, 2nd Judicial District Court Services

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
- Kira Johnson, SB 123 Program Director
- Trish Beck, Program Assistant
- Jamie Mai, Administrative Assistant
- Christopher Lyon, Staff Attorney
- Francis Givens, Special Projects Director
- Melissa Zoesch, Accounting Assistant

Approval of Proposed Agenda & August 29, 2019 Meeting Minutes

Chair Fowler asked if there were any objections or additions to the agenda. There were no objections and the agenda was approved.

Chair Fowler referred to the August 29, 2019, KSSC minutes. Honorable Judge Stephen Hill moved to approve the minutes and Chris Mechler seconded the motion. The motion carried and the minutes were approved.

The Impact of Criminal Justice Policies on Women

George “Ebo” Browne, Senior Research Analyst, provided a handout and presented, *The Impact of a Graduated Sanctions Model on Female Probationers: Does this Program Affect Women and Men the Same?*

Charles Branson, Douglas County District Attorney, provided a handout and provided information on the Douglas County diversion program in his presentation, *Women’s Substance Use Disorder Prosecutor-Led Diversion and Treatment Program*.

Emerging Issues & Future Direction for the SB 123 Drug Treatment Program

Kira Johnson, SB 123 Program Director, provided a presentation, *Emerging Issues & Future Direction for the SB 123 Drug Treatment Program*.

Ms. Johnson reported the SB 123 Drug Treatment Program Fall Conference will be held October 15, 2019, in the Florentine Room of the Jayhawk Tower in Topeka.

Judicial Council Advisory Committee on Sex Offenses & Registration Update

Vice Chair Sexton discussed the progress and work being completed by the Judicial Council Advisory Committee on Sex Offenses & Registration.

Judicial Council Advisory Committee on DUI Update

Christopher Mann provided a presentation and discussed the progress and work being completed by the Judicial Council Advisory Committee on DUI.

A Federal Perspective on Reentry

Melissa Goodman, Residential Reentry Facility Coordinator for Mirror Inc., provided a presentation, *A Federal Perspective on Reentry*.

Residential Reentry Centers

Chris Lyon, Staff Attorney, provided a presentation, *Residential Reentry Centers on a State Level*.

Review & Discussion of Proposed Legislation

Chair Fowler referred to the *Review & Discussion of Proposed Legislation* handout. The Commission then reviewed the informational items: *Medicaid Expansion and SB 123*, *Drug Offender Data for the Past Five Years*, and *Departures* that were presented by SB 123 and research staff.

Adjournment

The meeting adjourned at 4:17 p.m.

**Minutes of the Kansas Sentencing Commission Workshop
September 19, 2019**

The Honorable W. Lee Fowler, Chair, called the Kansas Sentencing Commission (KSSC) Workshop, Day 2, to order on September 19 at 9:09 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 Dennis “Boog” Highberger
- Representative John Barker
- Senator Carolyn McGinn
- Joseph Phillips, Kansas Prisoner Review Board Designee
- Jessica Domme, Kansas Attorney General’s Office
- Chris A. Mechler, Office of Judicial Administration
- Jefferey Zmuda, Secretary of Corrections
- Dan Dunbar, Shawnee County Chief Deputy District Attorney
- Stacey L. Donovan, Third Judicial District Public Defender’s Office
- Christopher Mann, Private Attorney
- Ronald Pauls, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Ed Klump, KS Association of Chiefs of Police, KS Sheriff’s Association, KS Peace Officers Association
Randy Bowman, Kansas Department of Corrections
Marie McNeal, Kansas Department of Corrections
Jenna Moyer, Revisor of Statutes
Jason Thompson, Revisor of Statutes
Mallory Lutz, Little Government Relations
Kim Parker, Kansas County and District Attorney’s Association
Natalie Scott, Revisor of Statutes
Karen Wittman, Wyandotte County District Attorney’s Office
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
- George “Ebo” Browne, Senior Research Analyst
- John Grube, Research Analyst
- Kira Johnson, SB 123 Program Director
- Trish Beck, Program Assistant
- Jamie Mai, Administrative Assistant
- Christopher Lyon, Staff Attorney
- Francis Givens, Special Projects Director
- Melissa Zoesch, Accounting Assistant

An Overview of Kansas Correction Facilities

Secretary Jefferey Zmuda provided handouts and presented, *An Overview of Kansas Correctional Facilities*.

Review & Discussion of Proposed Legislation

Chair Fowler referred the handout *Review & Discussion of Proposed Legislation* and reviewed the process in adopting proposed legislative options. Chair Fowler explained that proposed legislation accepted by the Commission will be also included in the recommendation letter to Governor Kelly.

Chair Fowler recommended KSSC’s 2020 proposed legislation be forward to the Kansas Criminal Justice Reform Commission (KCJRC).

Compassionate Release of Ill and Elderly Inmates

The Commission discussed K.S.A. 22-3729 and the Department of Corrections Internal Management Policy and Procedure, 11-110. No action was taken. The Commission agreed to discuss the proposal at the October 24, 2019, meeting.

Amending the Requirements for Offender Registration

Christopher Mann moved to approve 2019 HB 2051 and continue supporting it. Stacey Donovan seconded the motion. Jessica Domme and Ronald Pauls opposed the motion. The motion carried.

Vice Chair Sexton moved to strike K.S.A. 22-4902(e)(2), the “deadly weapon” language from the violent offender requirement to register. Representative Highberger seconded the motion. Vice Chair Sexton moved to table the motion for further possible discussion at the October 24, 2019 KSSC meeting. Representative Highberger seconded the motion. The motion carried and the item was tabled.

Early Discharge from Probation

Representative Highberger moved to table the proposal to the October 24, 2019 KSSC meeting. Stacey Donovan seconded the motion. Representative Highberger withdrew his motion. The proposal was then moved to the end of the day.

Increasing Felony Loss Thresholds for Certain Property Crimes

Christopher Mann moved to support a new version of 2019 HB 2049 for the 2020 legislative session. Chris Mechler seconded the motion. The motion carried.

Designate Certain Legislative Members for Membership on the Kansas Sentencing Commission

Christopher Mann moved to propose legislation amending K.S.A. 75-9102 to require KSSC legislative members appointed by House and Senate leadership be members of the House Corrections and Juvenile Justice Committee and Senate Judiciary Committee. Vice Chair Sexton seconded the motion. Senator Haley opposed the motion. The motion carried.

Changing Penalties for Drug Crimes

Stacey Donovan moved to affirm 2019 HB 2047 and continue supporting it. Vice Chair Sexton seconded the motion. The motion carried.

Resolve Conflict of Mandatory or Discretionary Consecutive Sentences for New Crimes While on Felony Supervision (K.S.A. 21-6604(f)(4) and K.S.A. 21-6606(d))

Stacey Donovan moved to affirm 2019 HB 2046 and continue supporting it. Representative Highberger seconded the motion. The motion carried.

Early Release for Drug Crimes

Chris Mechler moved to send the proposal to the KCJRC for consideration. Secretary Jefferey Zmuda seconded the motion. Christopher Mann, Jessica Domme, Dan Dunbar, and Joseph Phillips opposed the motion. The motion carried.

Modify Good Time Credit

Stacey Donovan moved to propose legislation amending K.S.A. 21-6821, to increase the good time credit to 50%. Christopher Mann seconded the motion. Jessica Domme and Chris Mechler opposed the motion. The motion carried.

Christopher Mann moved to make the proposal prospective. Stacey Donovan seconded the motion. Dan Dunbar, Senator Haley, Representative Highberger, and Stacey Donovan opposed the motion. The motion carried.

Pre-Trial SB 123 Program

Karen Whitman, Wyandotte County District Attorney's Office, presented on the Wyandotte County diversion program for drug offenders. She indicated that 90% of their current participants would not be eligible for SB 123 due to low LSI-R score.

Jessica Domme moved to affirm 2017 HB 2087 and continue supporting it with the addition of amendatory language that replaces current total score LSI-R requirements with the LSI-R alcohol and drug use domain score for those eligible for diversion. If the divertee is scored on a majority of the domain questions (five or higher) and is then assessed as high on the SASSI-4, they are eligible for state-paid substance abuse treatment. Christopher Mann seconded the motion. Shelly Williams opposed the motion. The motion carried.

Post-Sentencing Change of Venue for SB 123 Eligible Cases

Vice Chair Sexton moved to adopt the proposal to transfer SB 123 eligible cases to the offender's county of residence with the approval of all the interested parties in the sentencing and receiving jurisdiction. Representative Highberger seconded the motion. The motion carried.

Women's Risk Need Assessment Tool

Jessica Domme moved to designate the Women's Risk Need Assessment Tool (WRNA) as a trailer tool to the LSI-R. Stacey Donovan seconded the motion. The motion carried.

Christopher Mann moved to implement the WRNA as soon as practicable. Vice Chair Sexton seconded the motion. The motion carried.

Amending the Criminal Penalties for Unlawful Tampering with Electronic Equipment

Jessica Domme moved to approve the original 2016 HB 2459 for filing in the 2020 legislative session. Stacey Donovan seconded the motion. The motion carried.

Mandatory Minimums Removed From Certain Misdemeanor Crimes

The Commission discussed removing mandatory minimums from certain misdemeanors. No motions were made. The Commission agreed to discuss the proposal at the October 24, 2019, meeting.

Modification of Care and Treatment Law

Vice Chair Sexton moved to amend the Care and Treatment law during an involuntary commitment to allow for a mental illness determination at the temporary custody hearing with a finding that the respondent is a danger to themselves or others. This determination at the temporary hearing would prohibit the respondent from purchasing firearms until such time as the respondent petitions and receives approval from the court. Chris Mechler seconded the motion. Ronald Pauls opposed the motion. The motion carried.

Early Discharge from Probation

Vice Chair Sexton moved to amend 2019 HB 2052 by:

- removing all language referring to seven days discharge credit per calendar month;
- adding language as recommended by the Office of Judicial Administration that makes notice given at time of sentencing sufficient notice of hearing and allows the judge to remove a review or hearing from the docket if the defendant has violated their probation or otherwise not complied;
- adding that the defendant may be discharged early from probation provided the defendant has successfully completed all programs ordered by the district court or required by community services or court services;

- adding the defendant has no violations of conditions of probation, suspension of sentence, or nonprison sanctions filed with the court except for the K.S.A. 21-6608(g)(2); and
- removing the clear and convincing language to allow for judicial discretion.

Chair Fowler seconded the motion. The motion carried.

Adjournment

Ronald Pauls moved to adjourn. Stacey Donovan seconded the motion. The motion carried.

The meeting adjourned at 4:00 p.m.

The next Sentencing Commission meeting will be October 24, in the Senate Room of the Jayhawk Tower.