

**Minutes of the Kansas Sentencing Commission Zoom Workshop
Day One
September 16, 2020**

The Honorable W. Lee Fowler, Chair, called the Kansas Sentencing Commission (KSSC) Zoom Workshop Day One to order on September 16 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
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica Domme, Kansas Attorney General’s Office
- Spence Koehn, Office of Judicial Administration
- Jefferey Zmuda, Secretary of Corrections
- Mark Dupree, Wyandotte County District Attorney
- Jessica A. Glendening, Third Judicial District Public Defender’s Office
- Pat Colloton, Public Member
- Jermaine Wilson, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Governor Laura Kelly
Erin Harbinson, Robina Institute of Criminal Law and Criminal Justice
Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice
Connie Utada, The Pew Charitable Trusts
Patrick Armstrong, The Council for State Governments Justice Center
Carl Reynolds, The Council for State Governments Justice Center
Jason Thompson, Revisor of Statutes
Jenna Moyer, Revisor of Statutes
Sarah Hoskinson, Office of Judicial Administration
Hope Cooper, Kansas Department of Corrections
Ed Klumpp, KS Association of Chiefs of Police, KS Sheriff’s Association, KS Peace Officers Association
Marie McNeal, Kansas Department of Corrections
Natalie Scott, Revisor of Statutes
Todd Ackerman, Marysville Chief of Police
Kim Parker, Kansas County and District Attorneys Association

Staff:

- Scott M. Schultz, Executive Director
- Brenda Harmon, Special Assistant to the Executive Director
- Kunlun Chang, Director of Research
- John Grube, Senior 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, Finance Director

Approval of Proposed Agenda

Chair Fowler asked if there were any objections or additions to the agenda. The Honorable Stephen Hill moved to approve the agenda. Pat Colloton seconded the motion. The motion carried and the agenda was approved.

Approval of August 27, 2020, KSSC Meeting Minutes

Chair Fowler referred to the August 27, 2020, minutes. Jonathan Ogletree moved to approve the minutes. Pat Colloton seconded the motion. The motion carried and the minutes were approved.

Policy Reforms Can Strengthen Community Supervision

Executive Director Scott Schultz introduced Erin Harbinson, Research Scholar at the Robina Institute of Criminal Law and Criminal Justice; Kelly Mitchell, Executive Director of the Robina Institute of Criminal Law and Criminal Justice; and Connie Utada, a manager with Pew Charitable Trusts.

Connie Utada presented *Public Safety Performance Project: Community Supervision Initiative*, which discussed possible policy changes to supervision.

Kelly Mitchell and Erin Harbinson presented *Addressing the Intersection of Policy and Practice*, which discussed various data relating to probation revocations.

SB 123: Program Growth and Pandemic Response

Kira Johnson, SB 123 Program Director, presented to the Commission, *SB 123 Program Growth & Pandemic Response*, discussing recent changes to the program, such as the approval of telehealth modalities, effects that COVID-10 has had on the program, and the upcoming virtual SB 123 Conference on October 20, 2020.

Kansas Criminal Justice Reform Evaluation

Executive Director Scott Schultz introduced Council for State Governments Justice Center guest speakers, Patrick Armstrong, Esq., Project Manager and Carl Reynolds, Esq., Senior Legal and Policy Advisor. Patrick and Carl presented *Justice Reinvestment in Kansas*, which discussed challenges in the criminal justice system in Kansas and the analyses of Kansas data.

Review and Discussion of Proposed Legislation

Chair Fowler referred to the *Review & Discussion of Proposed Legislation* document and reviewed the process in adopting proposed legislative options.

Changing Certain Penalties for Drug Crimes (2019 HB 2047)

Vice Chair Sexton moved to approve reintroduction of 2019 HB 2047 and continue supporting it. Representative Dennis Highberger seconded the motion. Jessica Domme voted no. The motion carried.

Amending the Requirements for Offender Registration (2020 HB 2474 and 2019 HB 2051)

Vice Chair Sexton moved to continue supporting Judicial Council's 2020 HB 2474 and approve reintroductions of 2019 HB 2051 with the exception of maintaining registration for drug manufacturing. Jermaine Wilson seconded the motion. Jessica Domme voted no. The motion carried.

Allowing Earned Discharge Credit for Probation and Parole/Postrelease Supervision (2019 HB 2052)

The Commission agreed to continue discussion on day two of the Workshop.

Increasing Felony Loss Thresholds for Certain Property Crimes (2020 HB 2485)

Jessica Domme moved to approve and continue supporting reintroduction of 2020 HB 2485. Vice Chair Sexton seconded the motion. The motion carried.

Requiring Legislative Members of the Sentencing Commission to be Members of the Senate Judiciary and House Corrections and Juvenile Justice Committees (2020 HB 2493)

Secretary Jefferey Zmuda moved to approve and continue supporting reintroduction of 2020 HB 2493. Representative Dennis Highberger seconded the motion. The motion carried.

Clarifying Concurrent or Consecutive Sentencing for Persons Convicted of New Crimes While on Release for a Felony (2019 HB 2046)

Jessica Domme moved to approve and continue supporting reintroduction of 2019 HB 2046. Jermaine Wilson seconded the motion. The motion carried.

Extending Terminal Medical Release to Inmates in KDOC Custody with a Condition Likely to Cause Death Within 120 Days (2020 HB 2469)

Representative Dennis Highberger moved to approve and continue supporting reintroduction of 2020 HB 2469. The Honorable Stephen Hill seconded the motion. The motion carried.

Creating a Drug Abuse Treatment Program for People on Diversion & Allowing County Attorneys to Enter into Agreements with Court Services and Community Corrections for Supervision (2020 HB 2002)

Mark Dupree moved to approve and continue supporting reintroduction of 2020 HB 2002. Jermaine Wilson seconded the motion. The motion carried.

Clarifying Jurisdiction and Supervision of Offenders in a Certified Drug Abuse Treatment Program (2020 HB 2470)

Pat Colloton moved to approve and continue supporting reintroduction of 2020 HB 2470. Jermaine Wilson seconded the motion. The motion carried.

Adjournment

The meeting adjourned at 4:34 p.m.

**Minutes of the Kansas Sentencing Commission Zoom Workshop
Day Two
September 17, 2020**

The Honorable W. Lee Fowler, Chair, called the Kansas Sentencing Commission (KSSC) Zoom Workshop Day Two to order on September 17 at 9:02 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
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica Domme, Kansas Attorney General’s Office
- Spence Koehn, Office of Judicial Administration
- Jefferey Zmuda, Secretary of Corrections
- Mark Dupree, Wyandotte County District Attorney
- Jessica A. Glendening, Third Judicial District Public Defender’s Office
- Pat Colloton, Public Member
- Jermaine Wilson, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Hope Cooper, Kansas Department of Corrections
Ashley Bauman, Bauman Consulting Group
Breanna Boppre, Wichita State University
Alex Holsinger, University of Missouri-Kansas City
Jason Thompson, Revisor of Statutes
Ed Klumpp, KS Association of Chiefs of Police, KS Sheriff’s Association, KS Peace Officers Association
Natalie Scott, Revisor of Statutes
Jenna Moyer, Revisor of Statutes
Patrick Armstrong, The Council for State Governments Justice Center
Carl Reynolds, The Council for State Governments Justice Center
Marie McNeal, Kansas Department of Corrections
Kim Parker, Kansas County and District Attorneys Association
Randall Bowman, Kansas Department of Corrections
Stuart Little, Little Government Relations

Staff:

- Scott M. Schultz, Executive Director
- Brenda Harmon, Special Assistant to the Executive Director
- Kunlun Chang, Director of Research
- John Grube, Senior 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, Finance Director

KDOC: Alternatives to Incarceration

Hope Cooper, Deputy Secretary of Juvenile and Adult Community-Based Services with the Kansas Department of Corrections, presented *Alternatives to Incarceration*, discussing alternative methods that KDOC has used to imprisonment during COVID-19 as well as possible policy changes.

Gender Responsiveness – In Search of a Prescreening Sentencing Tool for Kansas

Executive Director Schultz introduced Ashley Bauman, President of Bauman Consulting Group; Dr. Bree Boppre, Professor in the School of Criminal Justice at Wichita State University; and Dr. Alex Holsinger, Associate Dean and Professor in the Criminal Justice and Criminology Department at UMKC.

Dr. Boppre presented *Why Gender-Responsive Assessment*, discussing reasons for gender-responsive assessments and various data relating to gender and presentencing.

Dr. Holsinger presented *Developing Gender-Responsive Assessments: Recognizing Difference, Avoiding Bias*, discussing pre-sentencing tools and data and development of assessment tools.

Ms. Bauman presented *Same is Not Equal*, discussing gender-responsiveness and assessment tools.

Review and Discussion of Proposed Legislation

Modification of Care and Treatment Law – Allowing courts to prohibit possession of a firearm in a temporary custody order pursuant to the Care and Treatment Act for mentally ill persons (2020 HB 2551)

Vice Chair Sexton moved to approve and continue supporting reintroduction of 2020 HB 2551. Representative Dennis Highberger seconded the motion. Jessica Domme voted no. Spence Koehn abstained from voting. The motion carried.

Early Prison Release for Certain Drug Offenders

Chair Fowler moved to approve the proposal allowing certain inmates convicted of drug severity level 2-5 offenses to apply for probation after service of at least 50% of their sentence. Factors to consider would be if they have completed their program requirements and have a good disciplinary record, including a report from KDOC. Chair Fowler asked for further discussion of procedural issues and possibilities at the next meeting, including input from the Office of the Revisor of Statutes. Vice Chair Sexton seconded the motion. Jessica Domme voted no. Spence Koehn abstained. The motion carried.

Amending the Criminal Penalties for Unlawful Tampering with Electronic Equipment (2020 HB 2494)

Representative Dennis Highberger moved to approve and continue supporting reintroduction of 2020 HB 2494. Jessica Glendening seconded the motion. The motion carried.

Modify Good Time and Program Credits – Current 15%-20% good time credit would be modified to 25% for person and 40% for nonperson felonies. Program credit would be increased from 120 to 150 days. (2020 HB 2004)

Representative Dennis Highberger moved to approve and continue supporting reintroduction of 2020 HB 2004. Senator David Haley seconded. Jessica Domme voted no. The motion carried.

Enacting a Program of Early Release and House Arrest for Certain Inmate due to COVID-19

The Commission discussed the proposal and no action was taken.

Special Rule #26 – Determining Prior Convictions When charging Drug Crimes in Same Complaint K.S.A. 2019 Supp. 21-6805(f)(1).

Pat Colloton moved to adopt the prior language change to clarify provisions in special rule #26. Vice Chair Sexton seconded the motion. The motion carried.

Modification of the Drug Grid

Vice Chair Sexton moved to modify the current drug grid by changing all drug severity level 5 crimes to presumptive probation, drug severity level 4 crimes with criminal history G through criminal history I to presumptive probation, drug level 3 crimes with criminal history H and I to presumptive probation and drug severity level 3 with criminal history G to a border box classification. Representative Dennis Highberger seconded the motion. The motion was tabled by Chair Fowler to the next meeting pending further information and discussion. Secretary Zmuda and Shelly Williams requested information a financial impact on Community Corrections and the inclusion of probation and supervision on the impact statement.

Criminal History Decay

The Commission discussed possibilities and proposals relating to criminal history decay, including the handout *Decay and Gap of Certain Adult Convictions - Robina Criminal History Enhancements Sourcebook*. No action was taken. The Commission agreed to discuss the proposal at the next meeting and requested more information be provided.

Defining Absconding on Supervision

The Commission discussed possibilities and definitions relating to absconding, including the handouts the Kansas Supreme Court case, *State v. Dooley*, and *Absconder Definition Input from the Revisor's Office*. No action was taken. The Commission agreed to discuss the proposal at the next meeting when a draft proposed definition would be presented.

Allowing Earned Discharge Credit for Probation and Parole/Postrelease Supervision (2019 HB 2052)

The Commission discussed a proposed definition for substantial compliance and the good time credit proposal. No action was taken. Shelly Williams requested the proposed draft definition of substantial compliance offered in subsection (a)(3), be modified from “treatment programs” to “programs”. The Commission agreed to discuss the proposals at the next meeting.

Adjournment

Representative Dennis Highberger moved to adjourn. Senator David Haley seconded the motion. The motion carried.

The meeting adjourned at 4:27 p.m.

The next Sentencing Commission meeting will be Thursday, October 22, 2020, in the Senate Room of the Jayhawk Tower.