

Approved: March 18, 2008

Date

MINUTES OF THE SELECT COMMITTEE ON CORRECTIONS REFORM AND OVERSIGHT

The meeting was called to order by Chairman Thomas C. Owens at 11:55 AM on March 11, 2008 in Room 431-N of the Capitol.

All members were present except:

Representative Mitch Holmes- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jarod Waltner, Kansas Legislative Research Department  
Michael Steiner, Kansas Legislative Research Department  
Jill Wolters Revisor of Statutes Office  
Jason Thompson, Revisor of Statutes Office  
Cyndie Rexer, Committee Assistant

Conferees appearing before the committee:

Others attending:

See attached list.

Chairman Owens reopened the hearing on **SB 410**. Jason Thompson, Revisor, briefed the committee on a memo they each received last week. In a previous meeting, Representative Dahl questioned why K.S.A. 76-2111 is repealed by the bill. The statute states that any individual convicted of assisting or harboring an escaped juvenile from a juvenile correctional facility guilty of a misdemeanor. The Kansas Juvenile Justice Authority requested the repeal because the statute is obsolete and is covered in other statutes with greater penalty provisions. The Commissioner is in agreement that this statute needs to be repealed.

Chairman Owens closed the hearing and began working the bill with no objection from the committee.

Representative Pauls moved to amend by adding "or the Commissioner's designee" to line 19, page 1. Representative Henry seconded the motion. The motion carried.

Representative Johnson moved the Select Committee on Corrections Reform and Oversight recommend **SB 410** pass favorably as amended. Representative Grange seconded the motion. The motion passed unanimously.

Chairman Owens gave the committee an update on the status of **HB 2879** and the meeting held March 7 with Representative Henry, Department of Corrections, Revisors, Legislative Research and Dalynn Schmitt, Executive Director, Heartland Regional Alcohol & Drug Assessment Center to discuss this bill and **SB 409** and how these bills could be incorporated together. The committee may not have enough time to complete its task. The Speaker may be willing to extend this topic into the Interim.

Athena Andaya, Legislative Research Department, briefed the committee on **Substitute for SB 409**, which passed out of the Senate Judiciary committee today. This bill incorporates all the conclusions and recommendations from the Subcommittee and also rolled in **SB 495** which restricts the transfer of offenders from the jails to the DOC if they have less than 10 days remaining on their sentence. Ms. Andaya distributed to the committee a memorandum on the bed impact on **Substitute for SB 409** and the KDOC Substance Abuse Treatment Facility. (Attachment 1)

The meeting for Friday, March 14 has been canceled. The next meeting will be Tuesday, March 18 at 11:30 a.m. in Room 431-N.

The meeting was adjourned at 12:25. P.M.



# KANSAS

KANSAS SENTENCING COMMISSION  
Honorable Ernest L. Johnson, Chairman  
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

## MEMORANDUM

**To:** Duane Goossen, Secretary, Department of Administration  
**Attn:** Sheena Ward  
**From:** Helen Pedigo, Executive Director  
**Date:** March 10, 2008  
**Re:** Bed Impact on S. Subst. SB 409, KDOC Substance Abuse Treatment Facility

## CONCLUSIONS

- **Impact on the Kansas Sentencing Guidelines Act (KSGA):** This bill would likely have an impact on the Kansas Sentencing Guidelines Act.
- **Impact on Prison Treatment Facility Admissions:** This **SUSTITUTE** bill would result in 587 prison treatment admissions by the end of FY 2009 and 630 prison treatment admissions by the end of FY 2018.
- **Impact on Prison Treatment Facility Beds:** This **SUSTITUTE** bill would result in 291 prison treatment beds needed by the end of FY 2009 and 310 prison treatment beds needed by the end of FY 2018.
- **Impact on Prison General Population Beds:** If no postrelease supervision term is imposed for DUI offenders, by FY 2009, 26 prison beds would be saved and by FY 2018, 27 prison beds would be saved.
- **Impact on the Commission Workload:** This **SUSTITUTE** bill would result in no additional journal entry workload.

## BILL SUMMARY

This **SUBSTITUTE** bill would amend the Kansas Sentencing Guidelines Act with respect to:

1. a 5th or subsequent DUI conviction;
2. a felony theft conviction with two or more prior felony theft convictions;
3. a burglary conviction with two more prior burglary convictions or a prior burglary and aggravated burglary conviction;
4. a 3rd felony conviction for drug possession, K.S.A. 65-4160 or 65-4162;
5. a 4th or subsequent felony conviction for drug possession, K.S.A. 65-4160 or 65-4162; and
6. an condition violation from conditions of release or assignment or a nonprison sanction.

DUI, amending K.S.A. 2007 Supp. 8-1567(h)(2): The court may order the term of imprisonment imposed for a 5<sup>th</sup> and subsequent conviction of DUI to be served in the custody of the secretary of corrections in a state substance abuse treatment facility established or designated by the department of corrections only if that the term of imprisonment is for at least 12 months; the offender shall remain imprisoned at the state facility without good time credit until successfully completing the treatment program or otherwise discharged and then returned by the sheriff to the custody of the court which retains jurisdiction with authority to modify the offender's sentence; after the term of imprisonment imposed by the court, the offender must be supervised by community corrections for a mandatory one year period, which such period of supervision shall not be reduced and the offender shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including but not limited to, an approved aftercare plan or mental health counseling as determined by the court. All references to postrelease supervision have been stricken.

Nondrug grid special rules, amending K.S.A. 2007 Supp. 21-4704: Upon making certain specific findings on the record, the court may recommend to the secretary of corrections when sentencing to prison either a felony theft offender who has two or more prior felony convictions for theft, or a burglary offender who has two more prior convictions for burglary, or a burglary offender who has a prior conviction for burglary and aggravated burglary, that such offender participate in an intensive substance abuse treatment program for a period of at least 4 months with a possibility of an early release from imprisonment upon completion of such intensive treatment program; upon completion of the intensive program or expiration of the term of imprisonment, the offender must be placed under the applicable period of postrelease supervision. The district court retains jurisdiction with authority to modify the offender's sentence.

Drug grid special rules, amending K.S.A. 2007 Supp. 21-4705 (f)(1): A third felony drug possession offender convicted of K.S.A. 65-4160 or 65-4162 must participate for a period of at least 4 months in an intensified substance abuse treatment program determined by the secretary of corrections; upon completion of such intensive treatment program or expiration of the term of imprisonment the offender must be placed under the applicable period of postrelease supervision. The district court retains jurisdiction with authority to modify the offender's sentence.

Amending K.S.A. 2007 Supp. 21-4705(f)(2): A fourth or subsequent felony drug possession offender convicted of K.S.A. 65-4160 or 65-4162 shall receive a presumptive term of imprisonment and must be sentenced to prison if the offender has participated in an intensive substance abuse treatment program. The district court retains jurisdiction with authority to modify the offender's sentence.

Probation violations, amending K.S.A. 2007 Supp. 22-3716(b): For offenders who may be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections pursuant to this subsection, the court may recommend to the secretary of corrections upon sentencing the offender to the custody of the secretary of corrections and upon making certain specified findings on the record, that the offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established should participate in an intensive substance abuse treatment program which shall be determined by the secretary for a period of at least four months and must require that upon completion of such intensive treatment program or expiration of the term of imprisonment the offender must be placed under the applicable period of postrelease supervision;

Secretary's duties, amending K.S.A. 2007 Supp. 75-5210(b): Inmates sentenced to a state substance abuse treatment facility established by the department of corrections, to a facility designated by the secretary for the provision of substance abuse treatment, or for whom the court has recommended intensive substance abuse treatment shall have a presumption of minimum security status which shall be applied to the initial security custody upon readmission into a correctional facility or admission into a state substance abuse treatment facility.

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Amending K.S.A. 2007 Supp. 75-5220(e): Unless otherwise directed by the secretary of corrections, any offender sentenced to a state substance abuse treatment facility established by the department of corrections shall not be transferred to the state reception and diagnostic center but directly to such state substance abuse treatment facility; the secretary may transfer the housing and confinement of any offender sentenced to a state substance abuse treatment facility to any institution or facility pursuant to K.S.A. 75-5206, and amendments thereto.

## KEY ASSUMPTIONS

- The target population in this **SUBSTITUTE** bill includes:
  - (1) Fifth or subsequent felony DUI offenders;
  - (2) felony theft defendants who have 2 or more prior felony convictions of theft;
  - (3) burglary offenders who have 2 or more prior burglary or 1 prior burglary and 1 prior aggravated burglary convictions;
  - (4) drug possession offenders who have a third felony conviction of K.S.A. 65-4160 or K.S.A. 65-4162;
  - (5) drug possession offenders who have a fourth felony conviction of K.S.A. 65-4160 or K.S.A. 65-4162; and
  - (6) offenders with two or more revocations of probation, assignment to a community correctional service program, suspension of sentence or nonprison sanction.
- The sentence for the above offenders, except as defined in above group (5), shall be a presumptive term of imprisonment and the term shall be served in a state substance abuse treatment facility for a period of at least 120 days.
- The sentence for group (5), drug possession offenders with a fourth felony conviction of K.S.A. 65-4160 or K.S.A. 65-4162, shall be a presumptive term of imprisonment and the term shall be served in prison.
- Projected admissions to prison for the target offenders is assumed to increase by an annual average of 0.75%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2007 by the Kansas Sentencing Commission.
- It is assumed that the average length of term served in a state substance abuse treatment facility is 6 months (180 days).
- It is assumed that the effective date for the target offenders is on July 1, 2008.
- It is assumed that 40% of the current 4<sup>th</sup> or subsequent DUI offenders are the 5<sup>th</sup> or subsequent DUI offenders.
- It is assumed that 40% of the current burglary offenders who have a prior residential, nonresidential or aggravated burglary may have 2 or more prior burglary convictions or a combination of convictions. It is further assumed that of the 40%, 37.5% will be sentenced to prison and 62.5% will be sentenced to probation. The percentage distributions are based on the FY 2008 burglary journal entries received during the first 6 months from July 1, 2007 to December 31, 2007, which contain the special rule of 2 or more prior burglary convictions.
- It is assumed that 1.3% of offenders convicted of felony drug possession, K.S.A. 65-4160 and 65-4162, will commit a third felony violation. The 1.3% is based on the actual percent of offenders convicted of a third or subsequent felony conviction during FY 2003, the year prior to enactment of the alternative sentencing substance abuse treatment program (2003-SB 123).

## FINDINGS

- In FY 2007, there were 1,465 felony DUI offenders. Of this number, 810 were 3<sup>rd</sup> DUI offenders and 655 were 4<sup>th</sup> or subsequent DUI offenders.
- In FY 2007, 279 offenders were convicted of the crime of theft with a criminal history category of C, E or F and were sentenced to probation. Their severity levels and criminal history categories follow:

Criminal History Categories → Severity Level ↓	C 1 Person & 1 Nonperson Felonies	E 3+ Nonperson Felonies	F 2 Nonperson Felonies	Subtotal
N5	0	1	0	1
N7	1	3	1	5
N9	90	116	38	244
N10	11	12	6	29
Total	102	132	45	279

- In FY 2007, 46 burglary offenders had prior convictions of residential, nonresidential or aggravated burglary. There was no information regarding how many burglary offenders had prior vehicle burglary convictions. During the first 6 months in FY 2008, 8 burglary offenders had 2 or more prior convictions for burglary. Of the 8 offenders, 3 (37.5%) were sentenced to prison and 5 (62.5%) were sentenced to probation. **THIS GROUP MAY BE UNDERESTIMATED BECAUSE OF LACK OF AVAILABLE DATA.**
- In FY 2007, 2,271 offenders were convicted of the crime of drug possession. Of this number, 1,884 offenders were convicted of the crime under K.S.A. 65-4160 and 387 offenders were convicted of the crime under K.S.A. 65-4162. In FY 2003, 23 offenders were convicted of a third felony drug possession accounting for 1.3% of the total drug possessions in that year. No offenders were found with a 4<sup>th</sup> or subsequent felony drug possession conviction.
- No information is available for 2 or more probation revocations in Commission databases.

**IMPACT ASSESSMENT**

- **Fifth or Subsequent DUI:** If 40% of the 4<sup>th</sup> or subsequent felony DUI offenders are 5<sup>th</sup> or subsequent DUI offenders and are sentenced to DOC treatment facilities with an average length of stay of 180 days,
  - by FY 2009, 133 prison treatment beds would be needed and
  - by FY 2018, 143 prison treatment beds would be needed.

**Fifth or Subsequent Felony DUI Offenders Sentenced to DOC's Treatment Facilities  
 Prison Admission and Bed Impact Assessment**

Fiscal Year	Additional Prison Admissions	Additional Prison Beds Needed
2009	265	133
2010	266	134
2011	271	136
2012	272	137
2013	273	137
2014	275	137
2015	277	139
2016	279	140
2017	280	141
2018	285	143

- **Theft Offenders with 2 or More Prior Felony Theft Convictions:** If offenders convicted of felony theft with 2 or more prior felony convictions are sentenced to DOC treatment facilities with an average length of stay of 180 days,
  - by FY 2009, 141 prison treatment beds would be needed and
  - by FY 2018, 151 prison treatment beds would be needed

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**Theft Offenders with 2 or More Prior Felony Theft Convictions  
 Prison Admission and Bed Impact Assessment**

Fiscal Year	Additional Prison Admissions	Additional Prison Beds Needed
2009	281	141
2010	283	142
2011	285	143
2012	287	144
2013	290	146
2014	292	147
2015	294	148
2016	296	149
2017	298	150
2018	301	151

- **Burglary Offenders with 2 or More Prior Burglary Convictions:**
  - If current policy and practice remains unchanged,
    - by FY 2009, 7 prison beds would be needed and
    - by FY 2018, 10 prison beds would be needed.
  - If burglary offenders with 2 or more prior burglary convictions are sentenced to DOC treatment facilities with an average length of stay of 180 days,
    - by FY 2009, 9 prison treatment beds would be needed and
    - by FY 2018, 10 prison treatment beds would be needed.

**Burglary Offenders with 2 or More Prior Burglary Convictions  
 Prison Admission and Beds Impact Assessment**

Fiscal Year	Prison Admission			Prison Beds		
	Current Policy Prison Admission	2 or More Prior Conviction to DOC Treatment Facility Admission	Additional Admission	Current Policy Prison Beds Needed	2 or More Prior Conviction to DOC Treatment Facility Beds Needed	Beds Difference
2009	7	18	11	7	9	2
2010	7	18	11	13	9	-4
2011	7	18	11	12	9	-3
2012	7	19	12	10	10	0
2013	7	19	12	11	10	-1
2014	7	19	12	13	10	-3
2015	7	19	12	10	10	0
2016	7	19	12	11	10	-1
2017	7	19	12	12	10	-2
2018	7	19	12	10	10	0

- **Third Felony Conviction of K.S.A. 65-4160 or 65-4162:** If offenders convicted of a 3<sup>rd</sup> felony possession, K.S.A. 65-4160 or 65-4162, are required to serve a mandatory term in DOC treatment facilities with an average 180 days,
  - by FY 2009, 15 prison treatment beds would be needed and
  - by FY 2018, 16 prison treatment beds would be needed.

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**Mandatory DOC Treatment Term for 3rd Felony Conviction of  
 K.S.A. 65-4160 and 65-4162  
 Prison Admission and Beds Impact Assessment**

Fiscal Year	Additional Prison Admissions	Additional Prison Beds Needed
2009	30	15
2010	30	15
2011	30	15
2012	30	15
2013	31	16
2014	31	16
2015	31	16
2016	31	16
2017	32	16
2018	32	16

**SUMMARY**

- **Impact on Prison Treatment Facility Admissions:** This **SUSTITUTE** bill would result in 587 prison treatment admissions by the end of FY 2009 and 630 prison treatment admissions by the end of FY 2018.
- **Impact on Prison Treatment Facility Beds:** This **SUSTITUTE** bill would result in 291 prison treatment beds needed by the end of FY 2009 and 310 prison treatment beds needed by the end of FY 2018.

**Overall Prison Treatment Facility Admission and Bed Space Assessment**

Fiscal Year	Prison Treatment Facility Admissions	Prison Treatment Facility Beds Needed
2009	587	291
2010	590	287
2011	597	291
2012	601	296
2013	606	298
2014	610	297
2015	614	303
2016	618	304
2017	622	305
2018	630	310

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**ADDITIONAL IMPACT - NO POSTRELEASE SUPERVISION FOR DUI OFFENDERS - THIS IMPACT IDENTIFIES GENERAL POPULATION BED, NOT TREATMENT BED NEEDS**

- In FY 2007, 100 DUI offenders violated their postrelease supervision conditions and were sentenced to DOC with an average length of stay of 3.1 months (119 days).
- If no postrelease supervision term is imposed for DUI offenders,
  - by FY 2009, 26 prison beds would be saved and
  - by FY 2018, 27 prison beds would be saved.

**Prison Admission and Bed Impact Assessment**

<b>Fiscal Year</b>	<b>Prison Admission Reduced</b>	<b>Prison Beds Saved</b>
2009	101	26
2010	102	26
2011	102	26
2012	103	26
2013	104	26
2014	105	27
2015	105	27
2016	106	27
2017	107	27
2018	108	27

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