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Senate Judiciary Committee January 22, 2013

Scott M. Schultz, Executive Director
Kansas Sentencing Commission

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Nuts & Bolts: An Overview of the Kansas Sentencing Commission and the Kansas Sentencing Guidelines Act

Agenda

- Agency Overview
- Sentencing Guidelines 101

2013 Commission Members

Honorable, Richard M. Smith ,Chair

District Judge, 6th Judicial District

Honorable Evelyn Z. Wilson, Vice Chair

District Judge, 3rd Judicial District

Honorable Patrick D. McAnany

Kansas Court of Appeals

Jennifer C. Roth

Public Defender, 3rd Judicial District

Carolyn McGinn

Kansas Senate

Ray Roberts

Secretary of Corrections

David B. Haley

Kansas Senate

David W. Riggin

Kansas Prisoner Review Board

Janice L. Pauls

Kansas House of Representatives

Amy J. Hanley

Attorney General's Office

Kevin N. Berens

Thomas County Attorney

J. Shawn Elliott

Attorney

Elizabeth (Betsy) M. Gillespie

Director of Corrections, Johnson County

Quentin L. Martin

Public Member

Reverend Junius B. Dotson

Public Member

Chris A. Mechler

Office of Judicial Administration

Duties and Responsibilities

- Legislative
 - Impacts during the session
 - Presentation to Joint Committee on Corrections and Juvenile Justice Oversight
- State Statistical Analysis Center for Criminal Justice
 - Maintain database of sentencing journal entries, PSIs and probation revocation journal entries
- Maintain and update the Kansas Sentencing Guidelines Desk Reference Manual (DRM)
- Annual prison bed population and inmate classification projections for KDOC
- Annual Report

FY 2013 MODEL

Month/Year	Projected	Actual	Difference	Percent Error
July 2012	9457	9444	13	0.14%
August 2012	9504	9467	37	0.39%
September 2012	9521	9465	56	0.59%
October 2012	9547			
November 2012	9553			
December 2012	9583			
January 2013	9598			
February 2013	9621			
March 2013	9630			
April 2013	9618			
May 2013	9652			
June 2013	9680			

Note: Federal female inmates housed at KDOC's Topeka facility are excluded.

Duties and Responsibilities

- Administration of SB 123 payments to drug abuse treatment providers
- Private Research Requests
- Death In Custody Recordkeeping
- Training and information resource for criminal justice agencies
 - Development of sentencing manuals and related training (i.e., DRM and the Kansas Criminal Justice Resource Directory)
 - Quarterly newsletter
 - Sentencing Q & A helpline

Staff

- Currently 10 staff members
- Report to 17-member Commission
- Major functional areas:
 - Research and data maintenance
 - SB 123 (provider payments and data tracking)
 - Legislative issues (bed impacts and special requests)
 - Legal issues (JE revisions, PSI questions, DRM updates)



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WHY SENTENCING GUIDELINES?

- 1988
 - Prison Overcrowding Litigation
 - Court Order – Reduce Kansas Prison Population by 100 inmates per month
 - Criminal Justice Coordinating Council
 - Recommended Establishing the Kansas Sentencing Commission in 1989
 - DISPARITY BASED ON RACE AND GEOGRAPHY
 - PROPORTIONALITY
 - TRUTH IN SENTENCING

Brief History of the Kansas Sentencing Commission

- Established in 1989 with passage of K.S.A. 74-9101
- Senate Bill 50, which became law in 1989, established the Kansas Sentencing Commission, and directed the Commission to: "Develop a sentencing guidelines model or grid based on fairness and equity and...provide a mechanism for linking justice and corrections policies. The sentencing guideline model or grid shall establish rational and consistent sentencing standards which reduce sentence disparity, to include, but not be limited to, racial and regional biases which may exist under current sentencing practices."
- Commission appointed to present a report to the legislature

- 1991
 - Commission formed to study sentencing disparity
 - Delivered a report to the legislature that called for guidelines sentences
- 1993
 - Legislature passed the Kansas Sentencing Guidelines Act
 - Nondrug and drug grids adopted
 - Indeterminate sentences abolished and converted

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-5

24 months recommended for felonies classified in Severity Levels 6-7

18 months (up to) for felonies classified in Severity Level 8

12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-4

24 months for felonies classified in Severity Levels 5-6

12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-6

12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

SENTENCING RANGE- DRUG OFFENSES

Categories→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

Presumptive Probation

Border Box

Presumptive Imprisonment

•Fines not to exceed \$500,000 (SL1-SL2), \$300,000 (SL3-SL4), \$100,000 (SL5)

•Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.

Distribute or Possess w/ intent to Distribute

Levels	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	Cultivate	Dosage Units	Postrelease	Probation	Good Time
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	36	36	15%
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	36	36	15%
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	36	36	15%
IV	< 3.5 g	< 1 g	< 25 g			<10	24	≤ 18	20%
V	Possession		Possession-2nd offense				12	*≤12	20%

* ≤ 18 months for 2003 SB123 offenders

- Annually
 - Changes made every year to reflect new or amended laws
 - Our office tracks and reviews all bills that were introduced for relevancy and provides prison bed impacts
 - Forms and Sentencing Policy Subcommittees review and suggest legislative and administrative changes to the Commission

SB 123 Structure and Practice

Drug Possession

- An alternative sentencing is available for offenders convicted of possession (2003 Senate Bill 123). Offenders are supervised by Community Corrections and are sentenced to drug treatment for a term of up to 18 months. Dual case management is provided by the treatment provider and community corrections to provide intensive supervision and help resolve drug dependency issues.

Target population (WHO?)

- Level 5 C-I with no priors of sale, trafficking, manufacture, etc.
- Level 5 A-B with judicial finding no risk to public safety
 - Prior person felony (reason they are A-B) must be SL8-10 or nongrid
 - Is a departure under K.S.A. 2012 Supp. 21-6824(e)

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IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
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KANSAS SB 123 Drug Possession Sentencing

Fiscal Year	Total Sentences	Level 4 Drug Sentences		SB 123 Sentences		Prison Reduction		
		Sentences	(%)	Sentences	(%)	Direct	Revocation	Total
2004 *	13,049	2,245	18.8	360 *	2.8 *	85	41	126
2005	13,517	2,764	20.4	1,105	8.2	115	128	243
2006	13,456	3,016	22.4	1,359	10.1	133	154	287
2007	12,646	2,932	23.2	1,261	10.0	151	144	295
2008	13,710	2,875	21.0	1,319	9.6	168	150	318
2009	13,401	2,555	19.1	1,166	8.7	124	127	251
2010	13,810	2,566	18.6	1,062	7.7	135	124	259
2011	14,003	2,527	18.0	1,072	7.7	142	162	304
Total 8 Years	107,592	21,691	20.2	8,704	8.1	1,053	1,030	2,083

*SB 123 Effective

11/1/2003

Why Presumptive Guidelines?

- Establishes Equity Among Offenders in Typical Cases
- Allows departures in Non-Typical Cases
- Allows for More Certainty in Predicting Prison Populations

Who Determines the Severity and Penalty Level?

- Legislative Process
- Statutory Guidelines
- Commission Process

- What is a Departure?
 - Substantial and Compelling Reasons
 - Aggravating Factors
 - Mitigating Factors
- Who has Discretion Under the Sentencing Guidelines?
- Does an Appeal Process Exist?

Evidenced-Based Practices (E.B.P.)

- Evidence-based practices are those using the most current and valid research findings to determine "what works." Probation, or community monitoring instead of prison, uses effective supervision, intervention and treatment to reduce offender recidivism. Examining and utilizing proven, evidence-based strategies helps in permanently changing criminal behavior to benefit the community.

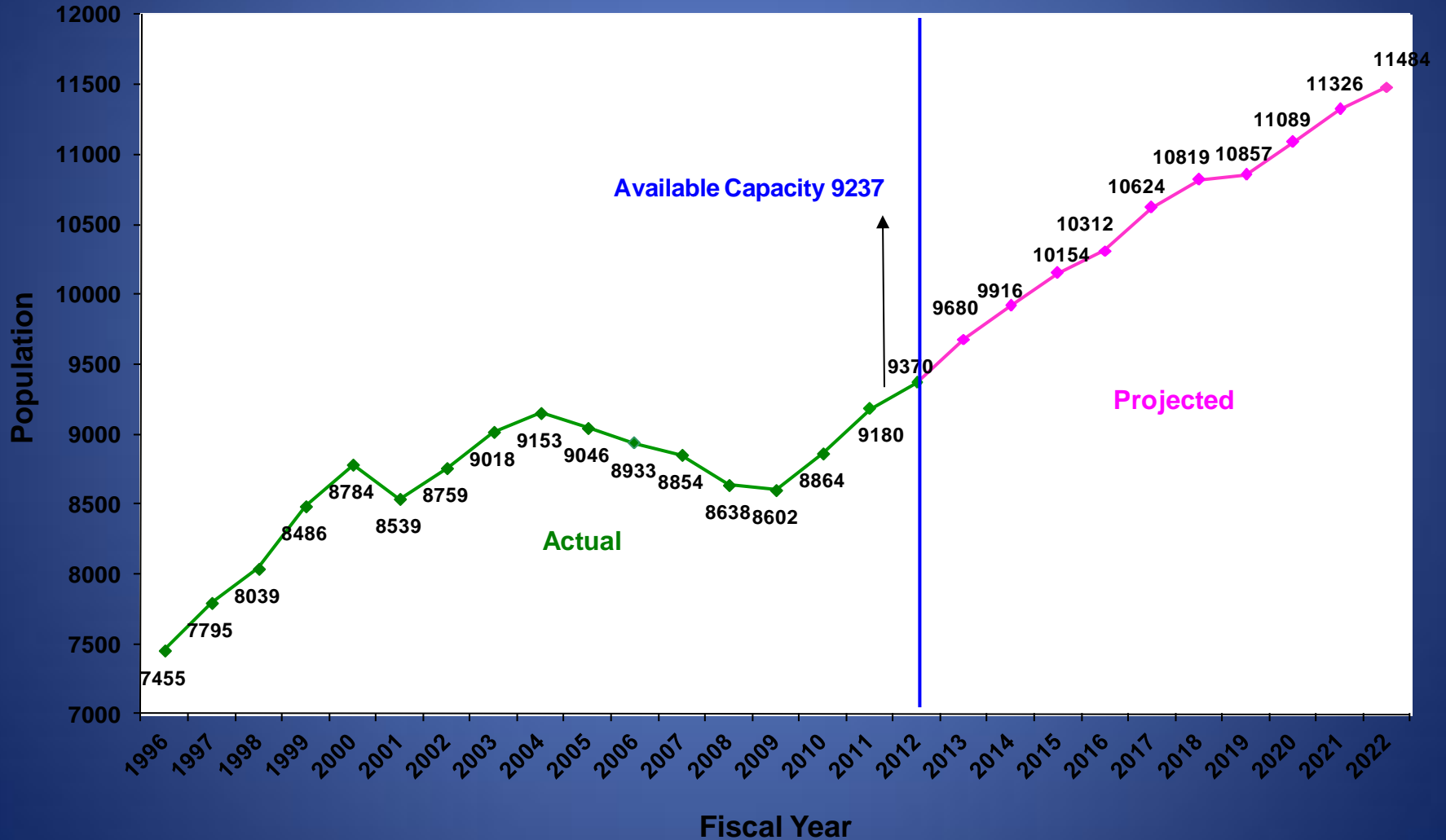
What is the significance of E.B.P.

- Through statistical analysis such as recidivism studies we have seen hard data that shows:
 - Over-supervision can actually increase offender recidivism
 - Gut-level instinct is not an accurate measure in evaluating risk/needs
 - Managing shrinking resources includes targeting higher risk individuals

OUR PRISONS ARE FULL AND THE KANSAS PRISON POPULATION IS PROJECTED TO INCREASE 22.6% IN 10 YEARS DESPITE REDUCTIONS IN CASES FILED

ADULT MALE PRISON POPULATION

Kansas Prison Population Trend - Actual and Projected



- Closing
 - Almost 20 years a resource for the Legislature
 - Data collection allows for better forecasting for Legislature and the criminal justice community
 - Questions
 - Thank you





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