

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

September 24-25, 2002
Room 313-S—Statehouse

Members Present

Senator John Vratil, Chair
Senator Mark Gilstrap
Senator Lana Oleen
Senator Edward Pugh
Senator Dwayne Umbarger
Representative Becky Hutchins
Representative Ward Loyd
Representative Tim Owens
Representative Doug Patterson
Representative Rick Rehorn
Representative Roger Toelkes
Representative Valdenia Winn

Staff Present

Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Gordon Self, Office of the Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees

Barbara Tombs, Executive Director, Kansas Sentencing Commission
Jared Holroyd, Shawnee County Drug Court Coordinator
Katie Kleim, Shawnee County Drug Court Prosecutor
Aaron Zarchan, City of Wichita Department of Law, Drug Court Prosecutor
Diana Collins, President of Kansas Court Services Officers
Vonda Dullan, Department of Social and Rehabilitative Services
Leroy Brungardt, Director of Agents Division, Kansas Department of Insurance
Judge Patrick McAnany, Chief Judge, 10th Judicial District, Johnson County
Ron Hein, American Bail Coalition

Manny Barbaran, Manny's Bonding, Johnson County and Kansas
Association of Professional Sureties
Rena Smith, Barb's Bonding, Hutchinson, Kansas
Bill Kenney, W.R. Kenney Company
Dave Stuckmaker, American Surety Company
Shane Rolf, Shane's Bail Bonds, Olathe, Kansas
Rod Dierking, Atchison, Kansas
Art Unruh, M&M Bonding, Hutchinson, Kansas
Randy Listrom, Listrom Corporation Management Systems
Mary Feighny, Assistant Attorney General
Victor Polek, Pinkerton-Burns Security
Kyle Smith, Kansas Bureau of Investigation

Tuesday, September 24, 2002
Morning Session

**Topic No. 2—Drug Courts and Alternative
Sanctions for Drug Offenders**

Barbara Tombs, Executive Director, Kansas Sentencing Commission, presented the Committee with an overview of the prison population, and Fiscal Year 2003 adult inmate prison population projections for a ten-year period (Attachment 1). Major points in her presentation included the following items:

- While the sentences in the drug grid have decreased in most severity levels, there are 261 more admissions this fiscal year than last, 78 of these resulted in special sentencing rules.
- 99.3 percent of the inmates are now coming in under the Sentencing Guidelines which have been in effect for a period of ten years.
- Kansas had 198 less parole violators last year and they are serving about 15 months. Last year there were nine fewer post-release violators, serving less than an average of 102 days.
- In 2002 there was a .5 percent inmate growth rate. In 2003, there is a projected 1.5 percent growth rate and a projection that the prison population will continue to grow more significantly in 2004 and 2005.
- There is no short-term relief in the prison population rise unless legislation is made retroactive. A portion of the current population would have to be removed.

- The upward rise in prison population is due to the mandatory Hard 40, 50, and life sentences. While there are actually a small number sentenced, they are serving a much longer period of time.
- Sentences due to drug crimes have increased from 98 beds to 2,000 beds.
- D1 severity level on the Drug grid had a 6.2 percent admission rate increase this year which will triple in ten years. A recent Appellate Court decision, *State v. Frazier*, could possibly save some beds (Attachment 2). The courts ruled that the crime of possession of a precursor drug should be moved from a D1 to a D4 category (drug paraphernalia) making many of these people placed on probation instead of prison time. The court decision was taken into consideration when projecting bed spaces.
- D4 is the lowest drug level crime category, and there were 157 beds used for that level.

Ms. Tombs suggested that the Legislature needs to determine whether drug users are “hard core” criminals. Most offenders had limited or no criminal history. According to the conferee many of the offenders are not violent and an adequate punishment would be for them to provide community service. This way the beds would be available for violent offenders.

After studying sentencing in Washington, Hawaii, Arizona, and California Ms. Tombs put together some suggested changes to the drug grid which would save between 400 to 800 prison beds:

- All drug possession convictions would be sentenced as a level D4 classification;
- Boarder boxes on D4 would be replaced with probation boxes;
- If one unsuccessfully discharges or voluntarily quits a required treatment program, the offender would be subject to the entire underlying prison sentence;
- Regardless of the treatment assessed, the offender would be subject to a mandatory period of treatment;
- Core treatment programs should be available in every judicial jurisdiction;
- Courts should handle the most serious offenders; and
- There should be a family component incorporated as a support service.

Implementation of the above proposal will cause the stacking effect to be less but the prison population will still continue to increase, just at a slower rate.

The members were reminded prison projections estimate that prison bed space will run out in 2005, that it takes two years to build a prison, and funding will need to be provided for one added prison in the 2003 Legislative Session.

Senator Oleen, who has studied the issue of drug courts for several years, said she has not found an incident where they do not work. She encouraged the Committee to review the proposed grid ([Attachment 3](#)).

Jared Holroyd, Shawnee County Drug Court Coordinator, stated that the average offender commits 63 drug crimes per year. It costs \$120 each time the police are called for a total of \$6,560 per year. Drug Court costs are approximately \$500 per person as opposed to supervision of a person on probation which costs \$1,500 per person ([Attachment 4](#)).

The Shawnee County Drug Court uses six different treatment providers, who are providing treatment currently for 17 offenders without cost. They have received an Edward D. Byrne grant but still the lack of funding has kept the program from expanding. Of the 17 offenders currently in the program, about half are employed at or below the poverty line. Everyone is required to pay \$5 a week to the treatment provider. The Shawnee County Drug Court deals with felony offenders.

The Committee recessed for lunch at 12:00 noon and reconvened at 1:30 p.m.

Afternoon Session

Katie Kleim, Shawnee County Drug Court Prosecutor, informed the members that drug courts catch those in the beginning of their crisis and usually make contact within 24 hours of their being taken into custody. Not only do drug cases crowd the court docket but they take up a lot of the court's time. She believes that if financial resources are used at the front end of the criminal justice system, it works better for everyone. She did have concerns with mandating drug courts because each city will not have a treatment facility. She would like each city to be able to mold the program to fit their area ([Attachment 5](#)).

Aaron Zarchan, City of Wichita Department of Law, Drug Court Prosecutor, told the members that the City of Wichita Drug Court only accepts adults who have been convicted of misdemeanor crimes. They have about 700 apply for the program but only accept between 300-450 offenders per year with a graduation rate of 65-75 percent. The 2001 cost of the program was \$125,000. The city pays for half of the costs. They use a deferred sentence program so if the offender graduates from the program they can have their sentence dismissed ([Attachment 6](#)).

Diana Collins, President, Kansas Court Services Officers, expressed concern with drug courts because of the level of work it would add to the courts. She stated that offenders would benefit from such programs but only if it was adequately funded (Attachment 7).

Vonda Dullan, Department of Social and Rehabilitation Services (SRS), stated that she was willing to help coordinate treatment programs. SRS currently has 50 treatment providers which are funded through grants. There are 200 treatment providers in the State of Kansas.

Chair Vratil announced that the hearing on Topic No. 2 was closed. The Committee discussed the need for drug courts but agreed that the Legislature could not fund one in every district court jurisdiction. The idea of the possibility of a pilot program in three or four courts which would be paid for by grants was discussed. Regional drug courts to cover both urban and rural needs was also explored.

A copy of the Update on Kansas Department of Corrections Absconders was provided to the Committee (Attachment 8).

Representative Loyd requested that staff put together additional information on what the current prison capacity is, projected prison bed demands in the future, costs of building two prisons, staffing them, and cost per inmate.

The Committee meeting adjourned at 3:00 p.m.

Wednesday, September 25, 2002
Morning Session

Topic No. 3—Licensure of Bail Bondsmen

Staff gave an overview of proposed legislation from the 2002 Session of SB 599, which dealt with licensure of bail bondsmen (Attachment 9).

Leroy Brungardt, Director of Agents Division, Kansas Department of Insurance, explained that there are two types of bondsmen—insurance agent bondsmen and pocket bondsmen. Insurance bondsmen are secured by the insurance company for whom he writes. A pocket bondsman secures his surety with his own assets. Currently, there are 175 insurance bail bondsmen licensed in Kansas, 130 are residents and 45 are not.

Every insurance bondsman's agent has an errors/omission requirement, there is only one marketplace in New York for coverage. They demand a five-year experience factor before they are issued coverage.

Judge Patrick McAnany , Chief Judge, 10th Judicial District, Johnson County, stated that the court maintains a list of approved bondsmen in Johnson County.

Pocket bondsmen who want to bond in the 10th Judicial District must provide the following:

- A list of nonexempt assets, which the court limits the amount of bonding authority based on those assets;
- Photo I.D. for all agents;
- A verification that all outstanding judgements are paid and satisfied in full;
- Financial liability form listing all bonds that have been forfeited; and
- Monthly financial status.

Insurance bondsmen must provide the following to be allowed to bond in Johnson County:

- Insurance company must be licensed and in good standing with the Insurance Department;
- Photo I.D.; and
- All outstanding judgements have been paid.

If any outstanding judgement is not paid within ten days the county pulls them off the approved list until payment is made. He stated that he was not aware if there had been any bonds that were uncollectible but that he would check to see if there are any records of bonds that had been forfeited.

Ron Hein, representing the American Bail Coalition (ABA), a group of insurance agents that write bonds, said his group requested SB 599 during the 2002 Legislative Session. While his association supported the concept of the bill they agreed to work on a new proposed bill draft, which was presented to the meeting today. He suggested that the current proposed legislation had flaws. Mr. Hein suggested meeting with the pocket bondsmen to come to an agreement that would make bonding uniform across the state. Their goal is for the state not to make money from bonding but to make sure that the proposed offender comes back to court. The ABA wants legislation to insure that the state is protected from abuses that can occur due to the inadequacies of existing statutes regarding bail bondsmen (Attachment 10).

Manny Barbaran, Manny's Bonding, Johnson County, and Kansas Association of Professional Sureties, commented that the problem is not the pocket bondsmen but

insurance companies who hire agents to flood the market with bonds, then leave, and start up another company (Attachment 11). Mr. Barbaran provided the members with a copy of the Missouri statute which regulates bail bondsmen (Attachment 12). He submitted a letter from the Johnson County District Attorney's office which stated the problem in Johnson County has been with insurance companies and bond forfeitures. He encouraged the Committee to review the regulations and possibly incorporate some of their ideas into Kansas statute.

Rena Smith, Barb's Bonding, Hutchinson, Kansas, said that the purpose of the proposed bill was to put independent bail bondsmen out of business. She supported regulation of the bonding industry but both types of bondsmen should be required to meet the same standards. Ms. Smith suggested taking the licensing of bondsmen from the Insurance Department and suggested the Committee look at Arkansas legislation regarding the regulation of bonding (Attachment 13).

Bill Kenney, W.R. Kenney Company, informed the members that in Sedgwick County 80 percent of those arrested are released on an own recognizance bond. The collection process in the county requires that if someone fails to appear, the bondsman has 30 days to find the client. If the client is brought in within 30 days the bondsman is reimbursed 75 percent of the bond, whereas if the client is brought in within 60 days the bondsman receives 50 percent of the bond. The bondsman receives 25 percent of the bond if the client is brought in within 90 days. In municipal court, the bondsman has 45 days to bring in the client or he must forfeit the bond.

Dave Stuckmaker, American Surety Company, provided a newspaper article in which a bondsman was jailed for aiding and abetting in a 1999 home invasion (Attachment 14). He also provided a copy of the financial statement of Viking Bail Bonds that was used when they applied to do bonding business in Kansas (Attachment 15). Mr. Stuckmaker believes that the legislation being proposed should be directed toward Viking Bail Bonds because when they get into trouble with the courts they simply change their name and hire new people.

Shane Rolf, Shane's Bail Bonds, Olathe, Kansas, said that the proposed bill would reduce the number of bail bondsmen in the state. In Johnson County there are 38 unpaid forfeited judgements. Mr. Rolf stated that half of those belong to Liberty Bonding and the rest are agents with National American Insurance (Attachment 16).

Rod Dierking, Atchison, Kansas, informed the members that the judges in his area refund all the bonding money if the defendant is brought in, without a time frame reduction. The courts would rather have the client than the money.

Art Unruh, M&M Bonding, Hutchinson, Kansas, commented that the independent bondsman makes sure that forfeitures of bonds do not happen because they have their own personal property at stake. If a forfeiture does happen they take care of their responsibility quickly so they can maintain good standing with the local courts (Attachment 17).

The Committee recessed for lunch at 12:00 noon and reconvened at 1:30 p.m.

Afternoon Session

Topic No. 7—Licensure of Private Security Guards

Staff gave an overview of SB 456 from the 2002 Legislative Session. The bill would establish new statewide regulatory and licensing requirements for private security guards and private security agencies.

Randy Listrom, Listrom Corporation Management Systems, requested SB 456 because he believes that private security companies need regulation so there would be uniform requirements across the state. While there is a difference between law enforcement officers and private security officers, both should still have adequate training and be licensed (Attachment 18).

Mary Feighny, Assistant Attorney General, informed members that the Attorney General's Office regulates private detectives along with the Kansas Bureau of Investigation. The statute that regulates private detectives excludes private security officers. If the proposed bill becomes law it will preclude cities and counties from regulating private security officers.

Victor Polek, Pinkerton-Burns Security, one of the largest security agencies in the United States, stated that they employ about 500 security guards in Kansas. Kansas is one of ten states that does not have regulations of security officers. While SB 456 is a worthy attempt at solving this issue, it needs more work. He suggested the Committee consider legislative language taken from the International Association of Security Industry Regulators Model Legislation (Attachment 19).

Kyle Smith, Kansas Bureau of Investigation (KBI), said the KBI did not have an official position on the issue, but stated that he would be more confident if security officers had more training. According to the conferee, when the bill was introduced last year his agency conducted a phone survey which had 13 responses as to how many people they regulate, which is about 18,000 (Attachment 20).

The meeting adjourned at 2:45 p.m. The next meeting is scheduled for October 24-25, 2002, in Room 313-S of the Statehouse.

Prepared by Cindy O'Neal
Edited by Mike Heim

Approved by Committee on:

October 24, 2002