

MINUTES

JOINT COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT

October 30-31, 2003
Room 123-S—Statehouse

Members Present

Representative Ward Loyd, Chairperson
Senator Pete Brungardt
Senator Greta Goodwin
Senator David Haley
Senator Kay O'Connor
Senator Lana Oleen
Representative Doug Gatewood
Representative Bill Light
Representative Dean Newton
Representative Jan Pauls
Representative Dale Swenson

Members Absent

Senator Nancey Harrington
Senator Jean Schodorf
Representative Thomas Klein

Staff Present

Nicoletta Buonasera, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Dr. Becky Krahl, Kansas Legislative Research Department
Art Griggs, Kansas Revisor of Statutes Office
Jill Wolters, Kansas Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees

Denise Everhart, Commissioner, Juvenile Justice Authority
Roger Werholtz, Secretary of Corrections, Kansas Department of Corrections
Julie Wright, Director of Youth Services, Garden City
Dr. Stuart Little, Kansas Community Corrections Association
Mark Masterson, Administrative Contact for 18th Judicial District, Wichita
Anne Grevas, Salina
Phil Lockman, Kansas City
Honorable Ernest L. Johnson, Chair, Kansas Sentencing Commission
Patricia Biggs, Executive Director, Kansas Sentencing Commission
James W. Ellis, Regents Professor of Law, University of New Mexico School of Law
Nancy Strouse, Kansas Judicial Council

Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities
Rocky Nichols, Executive Director of Kansas Advocacy and Protective Services

**Thursday, October 30
Morning Session**

Topic No. 9—Review of Juvenile Justice Authority Act

Denise Everhart, Commissioner, Juvenile Justice Authority (JJA), reminded the Committee that the Legislature created the JJA and the Kansas Youth Authority in 1995. The Juvenile Justice Reform Act went into effect in 1997 and will sunset on July 1, 2004. This Act transferred authority to the JJA to manage court programs such as juvenile intake and assessment, juvenile supervision probation, and community case management of juveniles (Attachment 1).

In the late 1990's JJA implemented a community planning team to research methods of identifying each community's strengths and weaknesses. This helped identify prevention and graduated sanction programs in each of the 31 judicial districts. JJA works with 477 county employees who provide core programming, immediate intervention programs, and graduated sanctions.

A Committee member questioned how many preventative programs at the local level had funding cut for 2003. Ms. Everhart responded she was not sure how many programs, but knew that \$600,000 was cut from those funds. JJA has now hired a person for grant writing purposes. The goal is to restore funds which were cut.

Statistics show a decline in juvenile arrests, but a new Juvenile Correctional Complex is scheduled to open in July 2004. It will include a reception and diagnostic unit, an infirmary, and a maximum security correctional facility for juveniles.

Commissioner Everhart requested that the Committee recommend the Legislature delete the sunset provisions of the Juvenile Justice Authority Act, clean up language in the Act by changing the word "boy" to "juvenile offenders", and allow fingerprinting of juveniles at intake.

Afternoon Session

**Topic—Kansas Department of Corrections
Risk Management Philosophy**

Roger Werholtz, Secretary of Corrections, Kansas Department of Corrections, provided the Committee with a slide presentation on a national risk management program, which stresses that the corrections community needs to recognize that they should start preparing inmates for their release as soon as they enter the prison (Attachment 2). Inmates need a realistic set of expectations as to what the community can and will provide once they are released. In addition, it is important for the community and corrections personnel to recognize that tools are not perfect regardless of supervision. Some inmates will go out and offend again and again, regardless of how much help is provided.

Representative Pauls made the motion to have the Committee report recommend the endorsement of the Risk Management Program by the Department of Corrections. Senator Oleen seconded the motion. The motion carried.

Topic—Community Corrections Agencies' Experience with the Juvenile Justice Authority

Julie Wright, Director of Youth Services, Garden City, believed that the JJA has done a good job in helping juveniles be more prepared for reintegration than before the reform. However, she was concerned with how hard it is to get community service providers in western Kansas. (Attachment 3).

Dr. Stuart Little, Kansas Community Corrections Association, encouraged the Committee to support the deletion of the sunset provision in the JJA Act. Due to the change of the Commissioner and some staff at JJA and the work done by Legislative Post Audit on prevention funds, implementing JJA's programs has been complicated. Because communication between the two agencies needs to be improved, he supported the Legislature passing SB 11, which would establish a Juvenile Community Advisory Committee to bring together representatives of graduated sanctions and prevention programs to provide perspective on important issues as they arise.

Dr. Little was concerned about the increase in operational costs associated with juvenile correctional facilities resulting in a shortage of funds for community programs (Attachment 4).

Mark Masterson, Administrative Contact for the 18th Judicial District, Wichita, told the Committee that Sedgwick County receives \$1.2 million in funds from JJA. All Level Five programs are full and JJA needs to attract more providers for this population. He also emphasized that it costs more than \$106 a day to provide services for these juveniles.

Anne Grevas, Salina, suggested that JJA develop supervision standards so community corrections knows what they are being judged on. JJA has improved over the past year, but she encouraged every community to get involved with finding solutions.

Phil Lockman, Kansas City, commented that prior to the Reform Act, it was not uncommon to be over populated in the detention facilities at the local level; 80 or 90 percent of juveniles were placed in homes when they should have been in out of home placement. Currently the population of detention facilities are at 60 to 70 percent capacity.

Senator Oleen made the motion to have a bill introduced which would repeal the sunset provision of the JJA and to clarify that JJA is subject to K-Goal audits, as other state agencies are. Senator Goodwin seconded the motion. The motion carried.

Friday, October 31 Morning Session

Senator O'Connor made the motion to approve the Committee Minutes from the September meeting. Representative Pauls seconded the motion. The motion carried.

Topic—SB 123 Implementation Update

Honorable Ernest L. Johnson, Chair, Kansas Sentencing Commission (KSC), informed the Committee that, while SB 123 was effective July 1, 2003, it was not retroactive. The courts have taken the position that anyone arrested since that date and sentenced on or after November 1 would be sentenced under the non-prison sanction. Because of the delay the courts have imposed on the sentencing, the effect is that SB 123 is not reducing new prisoners as quickly as the Sentencing Commission had projected.

Patricia Biggs, Executive Director, KSC, agreed with Judge Johnson that, because the court determined the effective date differently, there will be a reduction of about half of 190 inmates in the first year. She proceeded to give an update on the implementation progress of SB 123:

- 125 treatment counselors have attended treatment training;
- 119 community corrections staff have attended Risk Needs training;
- 74 have taken the substance abuse training;
- 4 classes are being offered targeting Addiction Severity Level training, all of which are full;
- 61 agencies can provide assessments;
- the majority of community corrections plans are assessed and none were completely inadequate; however, some needed more work;
- bill paying will be done at a centralized location; and
- implementation manuals have been printed and distributed ([Attachment 5](#)).

Dr. Stuart Little, Kansas Community Corrections Association and Association of Mental Health Centers of Kansas, reminded the Committee that his organizations supported SB 123 as long as they were adequately funded. However, funding for November 1 to June 30 may be inadequate because of the implementation costs associated with the passage of SB 123. He encouraged the Legislature to fund the program, as promised, which would probably be in excess of \$8 million ([Attachment 6](#)).

Topic No. 10—Review of Sentencing—Focus on Drug Grid

Executive Director Patricia Biggs provided the Committee with a five-year analysis (1999-2003) of those sentenced to prison under the Drug Grid. The Commission found:

- the number of prison admissions sentenced under the Drug Grid increased 44 percent;
- Severity Level 1 has seen the most dramatic increase. In 1999 there were 10 admissions and in 2002 there were 209;
- the average length of stay in Level 1 has decreased from 105 months in 1999 to 92 months in 2003; and
- the average length of stay sentenced under the Drug Grid Severity Level 1 is consistently under the minimum term of incarceration.

Ms. Biggs was concerned about the departure from the grid reflected in sentences in Severity Level 1, because judges are departing on the duration of prison sentence imposed for the group on a consistent basis. The sentence recommendation is reviewed as either too harsh or the offenses are not considered to be as serious as the recommended sentence length implies. She suggested that the Sentencing Commission research the issue further and either adjust the grid by reclassification of crimes or shortening the recommended sentence length (Attachment 7).

Topic—Adult Inmate Prison Population Projections

Director Biggs proceeded to inform the Committee that the KSC is working with the JJA so they will be able to make projections for JJA. However, KSC is having to transfer funding from the JJA so KSC can collect data for the projections.

Severity Level 1 nondrug offenders have increased and these offenders are staying longer in prison, whereas levels 4, 7, and 9 are staying 1½ years. SB 123 will reduce prisons beds by 196 by the end of the second year, and there will be a stacking effect in the most severe levels of the Drug Grid 10 years out. KSC is projecting that Kansas Department of Corrections will reach capacity by June 2007 (Attachment 8).

Topic 5—Capital Punishment Where the Defendant is Mentally Retarded

Art Griggs, Revisor of Statutes Office, provided background information on the topic. When the Kansas Legislature reimposed the death penalty in 1994, specific provisions relating to mentally retarded defendants were included. These recommendations allow a defendant's attorney to request that the court determine whether or not the defendant is mentally retarded. The court orders a psychiatric or psychological examination to be conducted by licensed doctors. If the court finds that the defendant is not mentally ill, it can impose the death penalty. If the court determines the defendant is mentally ill, it cannot impose the death penalty and must apply an alternate sentence (Attachment 9).

In the recent U.S. Supreme Court Case of *Atkins v. Virginia*, the Supreme Court ruled that the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. The death penalty is excessive in that the Constitution places a substantive restriction on the State's power to take the life of a mentally retarded offender. While Kansas already excludes the mentally retarded from the death penalty, the case also focuses on state procedures:

- Timing
 - Kansas allows the issue of mental retardation to be raised after the defendant is found guilty of the crime.
- Definition of mental retardation
 - The definition in Kansas is the clinical definition of "to the extent which impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law."
- Whether a judge or jury decides the issue of mental retardation

- Under current law, the trial judge determines mental retardation after receiving reports from licensed physicians and/or psychologists.
- The burden of proof, *i.e.*, whether the issue of mental retardation has to be proved by a "preponderance of the evidence" or "beyond a reasonable doubt".
 - In Kansas the burden of proof is met by "preponderance of the evidence."

James W. Ellis, Regents Professor of Law, University of New Mexico School of Law, touched on a couple of issues and then took questions. On the issue of timing, Kansas was one of the earliest states to adopt legislation with regard to procedures. Kansas and New York are the only two states that enacted the mental retardation protection when they adopted the death penalty.

In most of the 18 states that have passed statutes, the petition would be made before the trial in a bench proceeding before the trial judge. There is quite a bit of experience on making the determination of mental retardation both before trial and before sentencing. In the states that resolve the question of mental retardation after the verdict is in, those cases do not settle, as opposed to determination of mental retardation before trial where cases are resolved by settlement, stipulation, or plea bargain. In those states that determine mental retardation before trial, there is the possibility of saving the state money by not having to go through a capital murder trial when the person cannot actually receive the death penalty (Attachment 10).

Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, believes people who are mentally retarded should not be subject to the death penalty. While they should be subject to some type of punishment if they commit a crime, it should be one that is appropriate for their disability (Attachment 11).

Nancy Strouse, Kansas Judicial Council, stated that the Council's Criminal Law Advisory Committee is studying this issue and will have a recommendation on December 11, which will be posted on their website, www.kscourts.org/council (Attachment 12).

Rocky Nichols, Executive Director of Kansas Advocacy and Protective Services, suggested Kansas law would not withstand a court challenge because of the definition it uses to determine mental retardation. He suggested the statute be changed to make the determination of mental retardation be before the trial so the victims, state budgets, and the court system would not have to go through the expense of a trial (Attachment 13).

The Committee meeting adjourned. The next meeting is scheduled for November 24 and 25, 2003.

Prepared by Cindy O'Neal
Edited by Martha Dorsey and Becky Krahl

Approved by Committee on:

November 24, 2003

(date)

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