

Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2021 Kansas Legislature

CHAIRPERSON: Senator Rick Wilborn

VICE-CHAIRPERSON: J. Russell Jennings

OTHER MEMBERS: Senators Molly Baumgardner, Ed Berger, John Doll, Oletha Faust-Goudeau, Pat Pettey, and Mary Jo Taylor; Representatives Sydney Carlin, Gail Finney, Dennis “Boog” Highberger, Kyle Hoffman, Stephen Owens, and John Resman

CHARGE

KSA 2019 Supp. 46-2801 directs the Joint Committee to monitor inmate and juvenile offender populations and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections (KDOC). In addition to its statutory duties, the committee was charged to study the following topics:

- Benefits provided to KDOC employees and their families who become ill or die after exposure to COVID-19 in a KDOC facility;
- COVID-19 action plans in KDOC facilities;
- Compassionate medical release and terminal medical release;
- Early release programs for persons convicted of certain crimes;
- Kansas prison population and programming effectiveness, focusing on racial demographics of offenders and demographic sentencing data;

- The impact of recent criminal justice legislation on racial minorities, including presentations concerning the studies and recommendations of the Kansas Criminal Justice Reform Commission and the Governor’s Commission on Racial Equity and Justice; and
- Daily operations of the Kansas Juvenile Correctional Complex by means of a tour to provide a first-hand view.

Joint Committee on Corrections and Juvenile Justice Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Corrections and Juvenile Justice Oversight recognizes the efforts of the Secretary of Corrections and the staff of the Kansas Department of Corrections (KDOC) in managing the COVID-19 pandemic in department facilities and extends its deepest gratitude to the staff working in those facilities who placed themselves in harm's way every day to protect the people of the State of Kansas. Additionally, to the families, friends, and co-workers of those staff who died as a result of COVID-19 while in service to the state, the Committee extends its deepest sympathies.

The Committee recommends the Legislature hold firm on limitations placed on the Evidence-Based Programs Account of the State General Fund (SGF) and not use it to balance the state budget.

The Committee recommends addressing conditions of confinement of the female inmates at the Topeka Correctional Facility, through the possible repurposing of the Kansas Juvenile Correctional Complex, or through other facility improvements.

The Committee recommends improvements to the juvenile legal defense system be explored.

The Committee recommends that adult and juvenile offenders, preferably during their term of confinement, or upon release, have the opportunity to be involved in WorkKeys or another nationally recognized educational program to prepare them for work, and that work preparation be emphasized.

The Committee recommends an expedited study of the potential of repurposing the Kansas Juvenile Correctional Complex (KJCC) in Topeka, perhaps for adult KDOC use, and creating three smaller, regionally dispersed juvenile facilities in south-central, northeast, and western Kansas (possibly including the former juvenile correctional facility in Larned), including the potential use of reinvestment funds and bonding paid through the Juvenile Detention Facilities Fund for such a project without new SGF funding. The purpose would be to better utilize KJCC bed capacity, to keep offenders nearer to families, and to utilize smaller facilities consistent with best practices for juvenile correctional facilities.

The Committee recommends the Legislature revisit 2020 HB 2547, as amended by the House Committee on Corrections and Juvenile Justice, making changes to suspended drivers' license requirements, and 2020 SB 275, as amended by House Committee on Transportation, regarding eligibility requirements for restricted driving privileges, exclusion from an additional 90-day waiting period, and removing and changing certain fees that apply for failure to comply with a traffic citation. The Committee also recommends further study be undertaken to seek an appropriate method to provide the financial support necessary for Kansas courts to operate, should this legislation be enacted, and that in the course of such study careful consideration be given to all fees that are assessed, including those for expungements, to fund the Courts in lieu of SGF support.

The Committee supports the restoration of funding to the KDOC budget for facility renovation to create 250 beds for substance abuse treatment for inmates, to ensure that those who need substance abuse treatment while in KDOC custody can receive it.

The Committee recommends the expansion of successful, evidence-based programs involving early intervention and early childhood, and consideration of the potential impact of these.

The Committee continues to be concerned regarding the lack of progress on juvenile crisis intervention centers, and asks the appropriate standing committees to carefully study any proposal by the Department for Children and Families or the Department for Aging and Disability Services.

The Committee requests KDOC explore the possibility of an expanded medical and compassionate release program.

The Committee supports consideration of the possible removal of barriers to employment for those receiving technical education or occupational licensing while incarcerated or while trying to reintegrate into society.

The Committee recommends the Legislature consider the possibility of amnesty for those with outstanding suspended driver's licenses and reinstatement fees due.

Proposed Legislation: The Committee requests legislation based on the following bills that passed the House or were recommended favorably by the House Committee on Corrections and Juvenile Justice in 2020 be prefiled in both the House and Senate, if approved by the Legislative Coordinating Council, and that the chairperson and vice-chairperson of this Committee meet with leadership following the December elections to coordinate between chambers to expedite the consideration of the legislation, including joint House and Senate committee hearings:

- HB 2469, as amended by the House Committee on Corrections and Juvenile Justice, extending terminal medical release to inmates in the custody of the Department of Corrections with a condition likely to cause death within 120 days;
- HB 2484, as amended by House Committee, increasing good time credits and program credits for certain offenders;
- HB 2485, as introduced, aligning the felony loss thresholds for certain property crimes;
- HB 2494, as introduced, amending the criminal penalties for unlawfully tampering with electronic monitoring equipment;
- HB 2518, as introduced, counting any crime with a domestic violence designation as a prior conviction under domestic battery; and
- HB 2708, as introduced (with small changes suggested by the Judicial Branch), creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with court services and community corrections for supervision.

BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the Secretary of Corrections. Statewide, there are eight correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs.

There is one operational juvenile correctional facility (JCF): Kansas Juvenile Correctional Complex (KJCC). Individuals as young as 10 and as old as 17 years of age may be adjudicated as juvenile offenders (JO) and remain in custody in a JCF until age 22.5 and in the community until age 23.

The Committee is composed of 14 members, with 7 members each from the House and the Senate. In odd-numbered years, the chairperson and ranking minority member are House members and the vice-chairperson is a Senate member; in even-numbered years, the chairperson and ranking minority member are Senate members and the vice-chairperson is a House member.

The Committee's duties, as outlined in KSA 2019 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under KDOC's control and supervision. The Committee is also charged to review and study the adult

correctional programs, activities, and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

Similarly, the Committee is charged to review and study programs, activities, and plans involving juvenile offenders, including the responsibility for their care, custody, control, and rehabilitation, and the condition and operation of the JCFs. Further, the Committee is charged to review and study the JO programs, activities, and facilities of counties, cities, school districts, and other local governmental entities, including programs for the reduction and prevention of juvenile crime and delinquency; programs and activities of private entities operating community juvenile programs and facilities; and the condition and operation of local governmental residential or custodial facilities for the care, treatment, or training of juvenile offenders.

In addition to its statutory duties, the 2020 Committee was charged by the Legislative Coordinating Council to study the following topics:

- Benefits provided to KDOC employees and their families who become ill or die after exposure to COVID-19 in a KDOC facility;
- COVID-19 action plans in KDOC facilities;
- Compassionate medical release and terminal medical release;
- Early release programs for persons convicted of certain crimes;
- The Kansas prison population and programming effectiveness, focusing on racial demographics of offenders and demographic sentencing data;
- The impact of recent criminal justice legislation on racial minorities, including

presentations concerning the studies and recommendations of the Kansas Criminal Justice Reform Commission and the Governor’s Commission on Racial Equity and Justice; and

- Daily operations of the Kansas Juvenile Correctional Complex by means of a tour to provide a first-hand view.

COMMITTEE ACTIVITIES

The Committee requested three meeting days and authorization to tour the KJCC. The Legislative Coordinating Council granted the Committee a total of three meeting days. The Committee met November 17 and 18, 2020, at the Statehouse, with some members and conferees appearing *via* Zoom videoconference. Due to the ongoing COVID-19 pandemic, the Committee did not tour the Kansas Juvenile Correctional Complex.

November 17, 2020, Meeting

Overview—Juvenile Services, KDOC

The Secretary of Corrections began the overview of Juvenile Services with introductory remarks before introducing the Deputy Secretary of Juvenile and Adult Community-Based Services (Deputy Secretary) to continue the overview.

The Deputy Secretary began by reviewing several recent initiatives involving Juvenile Services, including implementation of the Crossover Youth Practice Model (CY Model) and standardization of a state definition of “crossover youth”; implementation of the National Girls Initiative to reduce reliance on incarceration of females and build up the continuum of care available for girls; assessment of the Kansas juvenile defense structure by the National Juvenile Defender Center; and implementation of the Immediate Intervention Program Database and other Juvenile Services technology updates.

Next, the Deputy Secretary reviewed current programs and services at the KJCC. She reported the latest population count in the facility was 144 youth, including 5 females. Youth in the facility

are placed in smaller cohorts and remain with this same group, which helped mitigate the spread of COVID-19 at the facility. Behavioral health services are being emphasized, and a contractor was developing a virtual family therapy program.

The Deputy Secretary then provided an overview of the Juvenile Services response to the COVID-19 pandemic. For community-based services, virtual site visits and virtual training through the Zoom platform have been implemented. In-person site visits will resume after the pandemic. At the KJCC, the low population has allowed the youth to be spread out and kept within their smaller cohorts. Admissions have been slowed, and mandatory mask use and testing have been implemented. Family visitation is being conducted *via* video, and educational services are continuing. A “drive-up” graduation ceremony was conducted, and 16 youth had been released on honoree reintegration passes.

Turning to trends and outcomes, the Deputy Secretary stated functional family therapy has been implemented in all 105 counties. The use of earned discharge credit has increased, and the juvenile probation success rate across the state was 69.5 percent. In 2017, Kansas was below the national average youth incarceration rate for the first time, the five-year population trend at KJCC shows a decrease, and the offenses and risk levels of the youth at KJCC indicate that the “right” youth are at the facility. The Deputy Secretary reported no misdemeanants at the facility. KDOC is working with the Kansas Advisory Group and the Juvenile Justice Oversight Committee (JJOC) to further study racial and ethnic disparity, as there is evidence that males and nonwhite youth are overrepresented in the “deeper ends” of the system.

Finally, the Deputy Secretary highlighted several ongoing challenges for Juvenile Services, including maintaining continuous quality improvement, improving data through partnerships and sharing, upgrading information technology systems, and addressing fatigue due to both COVID-19 and the ongoing implementation of juvenile justice reforms.

In response to questions from the Committee, the Deputy Secretary stated KDOC does not have

a role in the juvenile defense system; KDOC contracts with psychiatric residential treatment facilities (PRTFs) for beds but did not then have any youth in a PRTF; there is a school on the grounds of the KJCC; Aggression Replacement Training is used at KJCC; female youth at KJCC make up a separate cohort and their treatment is more individually focused due to the low number; and other states have used a model with regionally dispersed JCFs with lower bed capacities with success. In response to a question from a Committee member, the Secretary stated there was no plan to reduce the budget for Juvenile Services.

Committee members requested additional information regarding possible use of WorkKeys with juvenile offenders and the number of KJCC youth who have previously been in the foster care system.

Update—Juvenile Justice Oversight Committee

The Chairperson of the JJOC updated the Committee on the activities of JJOC in 2020. She noted the impact of the COVID-19 pandemic on the juvenile justice system, but stated that changes related to cross-system work and crossover youth have increased in both size and scope, and JJOC has also focused on increasing the collection and reporting of additional data to understand outcomes, with 2020 being a turning point in the use of data in the Kansas juvenile justice system.

The JJOC Chairperson then walked through various stages or aspects of the juvenile justice system and discussed specific progress that had been made in each, including schools, intake, immediate intervention, adjudication and disposition, supervision, and programming. She reviewed training that has been provided to those involved in both the juvenile justice system and in foster care case management, and discussed cross-agency collaboration on the CY Model and the validation of the Youth Level of Services/Case Management Inventory.

The Chairperson then reviewed the JJOC approval of reinvestment funds from the Evidence-Based Juvenile Programs Account of the State General Fund (SGF), including approval of funding for several statewide program contracts, updating of outdated assessment tools, ongoing training, data updates, program implementation,

non-competitive judicial district grants, and Juvenile Correctional Advisory Board requests. Several planned expenditures for 2020 were delayed, including Juvenile Crisis Intervention Center (JCIC) funding, a family engagement process and guide, mental health services funding, family substance abuse counseling, an open-ended cognitive program, and adoption of a justice system navigator.

Finally, the Chairperson outlined JJOC's three goals for the coming year: continue and expand the CY Model, work with an outside agency to implement mental health counseling for youth, and work with the Kansas Advisory Group to facilitate a study on racial and ethnic disparities.

Responding to questions from the Committee, the JJOC Chairperson stated the causes behind the lack of proposals for JCICs needed to be examined, and may include local-level socio-economic issues; the JJOC has made some recommendations for changes to the reforms implemented as a result of 2016 SB 367, but care must be taken to not change too much while the reforms are still being implemented; she was appointed to the JJOC as the representative of the Department for Children and Families (DCF) by the Governor, as she serves as the DCF Kansas City Regional Director; and JJOC will continue to focus on making recommendations for use of reinvestment funds for evidence-based programs. Committee members also discussed the status, history, and funding of JCICs.

Update—Kansas Criminal Justice Reform Commission (KCJRC)

The Chairperson of the KCJRC provided the Committee with an update on the work of the KCJRC, including the following information. KCJRC began its work in summer 2019 by forming subcommittees to examine specific issues within the criminal justice system and to bring specific, substantive proposals back to the full Commission. Some of the subcommittees further broke down into working groups on sub-issues. The KCJRC formed six subcommittees: Data Management; Diversion, Specialty Courts, Specialty Prisons, and Supervision; Mental Health and Substance Abuse; Proportionality and Sentencing; Race and the Criminal Justice System; and Reentry.

The KCJRC submitted its interim report to the Legislature in December 2019, including recommendations for legislation for the 2020 Session. Many bills appeared to be on track for passage before the session ended early due to the COVID-19 pandemic.

The KCJRC Chairperson stated, at its meeting on November 9, 2020, KCJRC began reviewing the final recommendations from the subcommittees, finalizing recommendations from three of the six subcommittees that day. The recommendations submitted by the remaining three subcommittees would be finalized at a meeting on November 23, 2020. [Note: The KCJRC submitted its [Final Report](#) to the Legislature on December 1, 2020.]

The Chairperson then reviewed a summary of the 51 recommendations either approved by KCJRC on November 9 or to be considered on November 23, 2020. The Chairperson stated that, in addition to the specific recommendations developed by each subcommittee, KCJRC also would recommend the Legislature authorize an extension of KCJRC's work for at least one additional year, through 2021, due to the impact of the COVID-19 pandemic on legislation introduced during the 2020 Session and the renewed urgency of the subsequent national discussion on issues of criminal justice reform. He stated KCJRC has already identified nine issues for further study if additional time is granted.

The Vice-chairperson of KCJRC (who is also a member of this Committee) discussed his work with the Mental Health and Substance Abuse Subcommittee, highlighting the necessity of enabling offenders to return to a healthy life. He noted many of the recommendations of the KCJRC subcommittees were developed using information provided by the Council of State Governments (CSG) Justice Center, and are based on concepts that have been proven to work in other states. His subcommittee decided to not focus on the funding aspects in developing its recommendations, but to identify concepts to be implemented when funding is available.

In response to a question from the Committee regarding increasing reentry success, the KCJRC Chairperson stated a multi-pronged approach is

needed, including addressing driving privileges so that supervised persons may drive to work, utilizing remote platforms for some parole or probation officer check-ins, and finding funding streams to provide housing.

A Committee member noted the importance of allowing access to benefits of the Supplemental Nutrition Assistance Program (SNAP), as included in the KCJRC recommendations. Another Committee member (who also is a member of the KCJRC) discussed her work with the Reentry Subcommittee, noting that some persons engaged in reentry encounter difficulties in finding landlords who will rent housing to them and in obtaining occupational licenses for occupations in which they have received training.

In response to a comment by a Committee member that the various entities studying criminal justice issues rarely hear from persons who are affected by the issues in the criminal justice system, the Chairperson stated one of the recommendations of the Race and the Criminal Justice System Subcommittee was to include people who have been adversely affected by or who have been in the system, if the KCJRC is authorized to continue its work.

Update—Justice Reinvestment Assessment and Findings

Staff from the CSG Justice Center presented an update regarding their work with the KCJRC. Justice Center staff stated they were asked to conduct a comprehensive system analysis and explore ways to prioritize prison for people who pose a threat to public safety by managing expensive prison population growth and pressure; increase support for victims of crime; strengthen community supervision and resources to change behavior and reduce recidivism and revocations; and break the cycle of recidivism by ensuring that criminal justice system practitioners have needed resources to help people succeed, including access to mental health and substance use treatment, as well as employment and housing support. Assessments were conducted in the areas of victim services, violent crime, sentencing, supervision, behavioral health, and reentry, with Justice Center staff connecting with more than 180 stakeholders in 99 Kansas counties.

Justice Center staff stated the goal of their work in Kansas was to help prioritize corrections investments that work to reduce recidivism and maintain public safety, while using limited taxpayer dollars efficiently. Sustaining reduced prison populations could save Kansas \$26 million in incarceration costs annually.

Next, Justice Center staff reviewed data showing the pressure that drug-related crime creates at each point in the criminal justice system, and noted that a substantial and growing proportion of the prison population is due to sentences for drug offenses, including a dramatic increase in the number of women in prison for drug offenses. The Justice Center estimates it cost \$41 million to incarcerate people for drug offenses in Kansas in fiscal year (FY) 2019.

Justice Center staff then reviewed several specific policy options that had been approved by various KCJRC subcommittees based on the work of the subcommittees and Justice Center staff. The proportionality and guidelines subcommittee approved six policy options intended to prioritize prison space for people convicted of the most serious crimes, expand diversion options available to prosecutors and judges, and support high-quality and effective supervision practices to reduce recidivism. These policy options include amending the drug and nondrug grids to expand presumptive probation and border box zones to reflect actual sentencing patterns, reinvesting saved incarceration costs into supervision resources, and reducing dual supervision.

Justice Center staff then reviewed policy options approved by subcommittees to be considered at the next KCJRC meeting, and options that were already approved for inclusion in the report.

In response to questions from the Committee, Justice Center staff stated Kansas drug sentencing severity levels are based upon the quantities of the drug involved; Kansas sentencing grids are designed to try to suppress “outlier” sentences; and many states with sentencing guidelines like Kansas also have a decay factor so that previous offenses no longer count in criminal history after a certain amount of time, which is a concept the Kansas Sentencing Commission may consider.

Update—Governor’s Commission on Racial Equity and Justice (CREJ)

The co-chairpersons of the CREJ presented the Committee with an overview of the Commission and an update regarding its work. CREJ was established in June 2020 *via* Executive Order 20-48 and was asked to study issues of racial equity and justice across systems in Kansas, focusing first on policing and law enforcement. CREJ includes perspectives from the criminal justice system, education, health care, and advocacy organizations, and is focused on broad issues of racial equity in Kansas, including some elements of the criminal justice system.

The co-chairpersons stated the full CREJ had met 11 times since July, and had heard from various experts in areas related to policing and law enforcement. Additionally, the CREJ had held 26 learning sessions with community members and stakeholders, including those from law enforcement, health care, education, and municipal government, as well as academic experts. Meanwhile, the CREJ began to build recommendations for its report to the Governor and was obtaining feedback from stakeholders about the content and language of the recommendations. CREJ anticipates presenting its final report to the Governor on December 1, 2020, after which the report and recommendations would be made public. [Note: The CREJ published its [final report](#) on December 1, 2020.]

In response to questions from Committee members, the co-chairpersons stated all CREJ sessions took place *via* Zoom videoconference, so individuals could attend no matter their location; law enforcement has representatives on CREJ and some members had participated in ride-alongs with law enforcement in the past; recommendations were expected to center on training, data collection and analysis, and support for municipalities, among other topics; the Commission heard information related to education and behavioral health, and anticipated delving further into those topics in 2021; the Commission held listening sessions with community involvement, even though COVID-19 limited in-person community meetings; and the Commission would welcome personal stories regarding involvement with policing through emails, phone calls, or social media.

November 18, 2020, Meeting

Overview—Kansas Sentencing Commission (KSC)

The Executive Director of the KSC provided the Committee with an overview of the agency and its annual report, prison population projections, and policy recommendations.

The Executive Director stated among other activities, the KSC provides bed impact analyses to the Legislature during the Legislative Session; serves as the state statistical analysis center for criminal justice, including maintaining a database of sentencing and probation revocation journal entries; maintains and updates the *Kansas Sentencing Guidelines Desk Reference Manual*; produces annual bed population and inmate classification projections for KDOC; and administers 2003 SB 123 drug treatment program payments to drug abuse treatment providers.

Reviewing the annual report, the KSC Executive Director stated in FY 2019 the top five offenses resulting in prison, probation, and jail sentences were drug offenses, theft, burglary, aggravated battery, and driving under the influence (DUI). He discussed the race, gender, ethnicity, and age distribution of offenders. The Executive Director also discussed admissions to KDOC, stating admissions decreased 2 percent in FY 2019 and the number of probation sentences increased by 6.5 percent. He further stated of the 3,939 probation drug offenses in FY 2019, 77.8 percent were for possession offenses. The four counties with the largest numbers of prison, probation, and jail sentences were Sedgwick, Johnson, Wyandotte, and Shawnee, whose sentences totaled 46.9 percent of the total sentences statewide.

Turning to FY 2021 prison population projections, the KSC Executive Director stated the COVID-19 pandemic had reduced the prison population and prison admissions. He reported a prison population of 9,189, down from 10,044 in 2019, with a capacity of 10,368. By 2030, the prison population is projected to rise to 9,584, with both the male and female populations projected to remain under current capacity. He stated these projections would provide the Legislature with an opportunity to keep prison admission numbers down by drawing on the criminal justice reform

efforts currently underway, including by supporting probationers with needed support during their supervision.

In response to questions from the Committee, the KSC Executive Director stated the reduced admissions reflect both a reduction in new admissions and a reduction in parolees and those under postrelease supervision being returned to prison; numbers reflect an increase in domestic violence-related offenses, but a decrease in probation revocations, among many other factors; 70 percent of prison admissions for drug offenses involve methamphetamine, followed by marijuana at about 20 percent, and opiates at a lower percentage; and lengths of sentences and parole for “old law” (pre-sentencing-guidelines) offenders is set by statute and could be changed by the Legislature.

Continuing with his presentation, the Executive Director discussed the KSC’s policy recommendations for the 2021 Legislative Session. The recommendations include several that were presented in 2020 but that did not make it through the legislative process before the Session was shortened due to the COVID-19 pandemic. He stated the policy recommendations will include substance abuse treatment for diverted drug possession offenders; expansion of presumptive probation and border boxes on the drug grid; addressing sentencing proportionality with regard to several crimes or classes of crimes; modifying offender registries; clarifying multiple sentencing of offenders; clarifying prior convictions for special sentencing rules; allowing earned discharge credit while in prison or on probation; allowing efficient transfer of 2003 SB 123 probation to offender place of residence; codifying the definition of “absconds from supervision”; extending compassionate release eligibility; adjusting KSC membership; and, in the statutes governing care and treatment for mentally ill persons, modifying the temporary custody hearing statutes to allow a court to prohibit possession of a firearm.

Overview—KDOC

The Secretary of Corrections and the Deputy Secretary of Juvenile and Adult Community-Based Services began the KDOC overview by responding to questions the Committee had asked

during the Juvenile Services presentation on November 17, 2020.

Initiatives and Challenges

The Secretary then discussed current KDOC initiatives, including replacement of aged information technology data systems; deployment of new technology; a pilot program for virtual hearings with the court system; federal grant funding obtained to improve and expand supervision and services; development of a “Career Campus” concept at Lansing Correctional Facility (LCF); expansion of workforce training opportunities; virtual public comment sessions for the Prisoner Review Board; and several initiatives regarding assessment of resource allocation. The Secretary stated ongoing challenges include COVID-19; employee compensation; aged information systems; facility infrastructure; high caseloads in the community and in facilities; and flat funding of community supervision. The Secretary stated the effect of COVID-19 had been severe, including the deaths of 3 staff members and 11 residents related to the pandemic.

In response to questions from the Committee, the Secretary stated LCF staffing levels are not as low as the initial projection for the facility project indicated; KDOC is planning to bring back inmates then in contract beds in Arizona; work-release programs had been suspended due to COVID-19, but there were no plans to abandon the Wichita Work Release facility; and the Topeka Correctional Facility population had decreased to about 200 under capacity.

Community-Based Services

The Deputy Secretary of Juvenile and Adult Community-Based Services provided the Committee with an overview of the Kansas adult community supervision system. She noted as of June 30, 2020, there were twice the number of people on community supervision (including probation, post-release, and parole) than in prison. She stated probation costs \$7.09 per day and postrelease supervision costs \$6.29 per day, compared to \$82.47 per day in a facility. However, to be effective, community-based services must have the resources to manage caseloads and provide access to programs, education, employment, job skills, housing, and treatment.

The Deputy Secretary stated the five-year trends for probation and postrelease supervision show increases. She noted the use of global positioning system (GPS) monitors is limited due to their mandatory use in some cases and budget limitations.

After reviewing data regarding the employment of persons on postrelease supervision and federal grant funding awarded to KDOC to build capacity among line supervisors and in local community corrections agencies, the Deputy Secretary discussed community supervision during the COVID-19 pandemic. Supervision fees were waived in April and May, transportation was adjusted, and revocation was limited to certain more severe circumstances. SB 123 (2003) drug treatment program training was shifted to a virtual format, which resulted in increased frequency of training.

The Deputy Secretary reviewed several community-based services initiatives and then described ongoing challenges, including high caseloads, lack of resource capacity, dual supervision, lack of employment and housing options, internal and external pay inequity, and staff retention.

In response to questions from the Committee, the Deputy Secretary stated supervision requirements are based on risk level; supervision officers were working remotely and making many contacts through virtual means, which has helped address transportation challenges; postrelease supervision numbers are increasing because the number of people being released from prison is increasing; community corrections agencies receive grant funding from the state, and any amount the county deems needed above that is the responsibility of the county; and some of the potential cost savings from reducing prison population needs to be reinvested in community supervision to accommodate the shift from prison to supervision.

Facilities

The Deputy Secretary of Facilities Management provided an overview of KDOC facilities, beginning with current capacity. Actual facility capacity following the LCF construction is 10,742, which represents an increase of 1,250

from before the construction. Operating capacity for FY 2022 will be 10,368.

The Deputy Secretary stated expansion projects at Lansing and Winfield are proceeding and will add beds for the purposes of substance abuse treatment and specialized housing for older infirm residents. He noted the reduced facility population in 2020 presents an opportunity for the state to rethink criminal justice approaches and realign units at facilities for more effective management of the population, and he presented several options regarding capacity.

The Deputy Secretary then reviewed facility initiatives, including a pilot program using equipment to detect and interdict mail contaminated with illegal substances; technical assistance on a classification system; implementation of rostering software; and technical assistance for staffing analysis. He stated facility challenges include high counselor caseloads; limited capacity for needed services; staff retention; social distancing difficulty; and aging infrastructure that lacks programming space.

In response to questions from the Committee, the Deputy Secretary stated the population in open dormitory-type KDOC facilities has been reduced to facilitate distancing; significant cost savings due to the reduced population would be realized only if facilities or portions of facilities could be closed; and precautions taken by staff are standardized, regardless of the type of facility.

Specific Study Topics

The Secretary addressed several specific study topics assigned to the Committee. Regarding legislative impact on racial minorities, he stated persons of color are in prison at rates greater than in the general population: while 6 percent of Kansas' population is African American and 1 percent is American Indian, 28 percent of the prison population is African American and 3 percent is American Indian. He commented on rates of recidivism and the proportion of inmates who receive programming to meet assessed needs, and stated that expanded data capacity will enable better understanding of the impact of the criminal justice system on persons of color.

Regarding compassionate and terminal medical release, the Secretary provided a statutory overview of functional incapacitation release and terminal medical release. In the period of FY 2016 through FY 2020, three applications for functional incapacitation release were reviewed and two were approved. There were no terminal medical releases during the same period. The Secretary stated the current 30-day timetable for terminal medical release does not provide enough time for KDOC to process the application, and the KSC may recommend this period be extended to 120 days. He noted pilot projects for early release programs for both adults (house arrest) and juveniles (reintegration passes).

In response to questions from the Committee, the Secretary stated KDOC is not resistant to compassionate or medical release, but that the current bar for such release is high, and that the KDOC medical contractor provides end-of-life care for the population and would make the determination whether someone could qualify for the terminal medical release.

Programming

The KDOC Executive Director of Programs and Risk Reduction provided the Committee with an overview of the impact of programming and KDOC's experience with programs. She noted various needs of justice-involved persons and that 98 percent of adults in KDOC facilities will return to the community. She reviewed key programming principles, including robust assessments, targeting areas of need, effective responses to behavior, evidence-based programs, emphasis on employment and education, and strong transition from inside to out. After presenting data on programming effectiveness, the Executive Director reviewed unmet program needs of persons released in FY 2020.

Next, the Executive Director summarized KDOC's workforce readiness programs and an evaluation of their effectiveness, KDOC's education services capacity, and a federal grant KDOC is using to provide substance abuse programming and case management for residents in restrictive housing. She stated seven Kansas colleges are expanding for-credit career and technical education opportunities, which will

allow approximately 700 residents to participate in 25 programs at 8 correctional facilities.

Finally, the Executive Director reviewed programming initiatives for restrictive housing and long-term residents and in higher education, and noted that programming challenges include high unit team staff caseloads; technology gaps; community capacity; infrastructure and space for programs, classes, and study areas; lack of industry jobs; and insufficient facility resources to reach everyone, especially the long-term and restrictive housing population.

In response to questions from the Committee, the Executive Director stated “ban the box” has been useful in increasing employment for persons reintegrating after prison, and “bridging the box” is a similar movement; KDOC would explore purchase opportunities through the Midwestern Higher Education Compact; time barriers for programming are not a result of the assessment and intake process, but rather the short length of stay in situations such as revocations; and persons who are not initially successful in achieving a GED have the opportunity to keep working toward successful completion, if they are willing.

Additional Specific Study Topics

The Secretary addressed additional specific study topics assigned to the Committee, beginning by outlining the line-of-duty death benefits provided for KDOC employees. He then provided additional information regarding the KDOC COVID-19 response, as follows.

He stated KDOC had an existing practice for facilities to have a pandemic plan, which they modified for COVID-19 in partnership with the Kansas Department of Health and Environment. The Secretary detailed KDOC’s implementation of recommended public health measures and testing strategies. Other strategies implemented by KDOC included waiving of medical co-pays, suspension of volunteers and visitation, and free calls and video visits.

The Secretary stated residents and staff had anxiety associated with the unknown and concern for the health of their family members. KDOC’s parole and central office workforce have adjusted to a telework environment, and the reduced

population in facilities has allowed for social distancing and has been vital to virus management. He provided the Committee with a list detailing KDOC’s utilization of coronavirus relief funds.

In response to questions from the Committee, the Secretary stated the population from the Wichita Work Release Center was returned to LCF during the pandemic due to a lack of time, lack of resources in Sedgwick County, and an infection in the population; there had been COVID-19 cases among the inmates in contract beds in Arizona; a \$5 incentive offered to inmates to receive the influenza vaccine is working well; and KDOC has implemented hazard pay for employees working in facilities with positive cases *via* a statute allowing the Secretary to provide monetary awards for meritorious service (KSA 75-37,105).

CONCLUSIONS AND RECOMMENDATIONS

At the end of its November 18 meeting, following discussion, the Committee adopted the following recommendations.

The Committee recognizes the efforts of the Secretary of Corrections and the staff of KDOC in managing the COVID-19 epidemic in department facilities and extends its deepest gratitude to the staff working in those facilities who placed themselves in harms’ way every day to protect the people of the State of Kansas. Additionally, to the families, friends, and co-workers of those staff who died as a result of COVID-19 while in service to the state, the Committee extends its deepest sympathies.

The Committee requests legislation based on the following bills that passed the House or were recommended favorably by the House Committee on Corrections and Juvenile Justice in 2020 be prefiled in both the House and Senate, if approved by the Legislative Coordinating Council, and that the chairperson and vice-chairperson of this Committee meet with leadership following the December elections to try to coordinate between chambers to expedite the consideration of the legislation, including joint House and Senate committee hearings:

- HB 2469, as amended by the House Committee on Corrections and Juvenile

Justice, extending terminal medical release to inmates in the custody of the Department of Corrections with a condition likely to cause death within 120 days;

- HB 2484, as amended by House Committee, increasing good time credits and program credits for certain offenders
- HB 2485, as introduced, aligning the felony loss thresholds for certain property crimes;
- HB 2494, as introduced, amending the criminal penalties for unlawfully tampering with electronic monitoring equipment;
- HB 2518, as introduced, counting any crime with a domestic violence designation as a prior conviction under domestic battery; and
- HB 2708, as introduced (with small changes suggested by the Judicial Branch, creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with court services and community corrections for supervision.

The Committee recommends the Legislature hold firm on limitations placed on the Evidence-Based Programs Account of the SGF and not use it to balance the state budget.

The Committee recommends addressing conditions of confinement of the female inmates at the Topeka Correctional Facility, through the possible repurposing of the Kansas Juvenile Correctional Complex, or through other facility improvements.

The Committee recommends improvements to the juvenile legal defense system be explored.

The Committee recommends adult and juvenile offenders, preferably during their terms of confinement, or upon release, have the opportunity

to be involved in WorkKeys or another nationally recognized educational program to prepare them for work, and that work preparation be emphasized.

The Committee recommends an expedited study of the potential of repurposing the Kansas Juvenile Correctional Complex in Topeka, perhaps for adult Department of Corrections use, and creating three smaller, regionally dispersed juvenile facilities in south-central, northeast, and western Kansas (possibly including the former juvenile correctional facility in Larned); including the potential use of reinvestment funds and bonding paid through the Juvenile Detention Facilities Fund for such a project without new SGF funding. The purpose would be to better utilize KJCC bed capacity, to keep offenders nearer to families, and to utilize smaller facilities consistent with best practices for juvenile correctional facilities.

The Committee recommends the Legislature revisit 2020 HB 2547, as amended by the House Committee on Corrections and Juvenile Justice, making changes to suspended drivers' license requirements, and 2020 SB 275, as amended by House Committee on Transportation, regarding eligibility requirements for restricted driving privileges, exclusion from the additional 90-day wait period, and removing and changing certain fees that apply for failure to comply with a traffic citation. The Committee also recommends further study be undertaken to seek an appropriate method to provide the financial support necessary for Kansas courts to operate, should this legislation be enacted, and that in the course of such study careful consideration be given to all fees that are assessed, including those for expungements, to fund the Courts in lieu of SGF support.

The Committee supports the restoration of funding to the KDOC budget for facility renovation to create 250 beds for substance abuse treatment for inmates, to ensure those who need substance abuse treatment while in KDOC custody can receive it.

The Committee recommends the expansion of successful, evidence-based programs involving early intervention and early childhood, and consideration of the potential impact of these.

The Committee continues to be concerned regarding the lack of progress on juvenile crisis intervention centers, and asks the appropriate standing committees to carefully study any proposal by the Department for Children and Families or the Department for Aging and Disability Services.

The Committee requests KDOC explore the possibility of an expanded medical and compassionate release program.

The Committee supports consideration of the possible removal of barriers to employment for those receiving technical education or occupational licensing while incarcerated or while trying to reintegrate into society.

The Committee recommends the Legislature consider the possibility of amnesty for those with outstanding suspended driver's licenses and reinstatement fees due.