

February 6, 2013

Governor Sam Brownback
Second Floor, Statehouse
300 SW 10th Ave
Topeka, KS 66612-1590

Dear Governor Brownback:

Pursuant to K. S. A. 74-9101(b)(15), the Kansas Sentencing Commission is directed to identify and analyze the impact of specific options to reduce prison population, once the prison population projections indicate that the state's prison population will exceed capacity within two years, and upon request of the Corrections Secretary or the Legislature.

Pursuant to provisions of K.S.A. 21-4725, the Corrections Secretary has informed the Kansas Sentencing Commission that the number of KDOC inmates as of December 31, 2012, represented 101.4% of the overall capacity within the Kansas correctional system. On that date, there were 9,494 inmates with total capacity being 9,364 including 9,233 beds in KDOC facilities and 131 placements available to the Department in facilities operated by other agencies. Considering KDOC facilities only, the 9,318 inmates housed in these facilities on December 31, 2012 represented 100.9% of the capacity. Of the total inmate population, 8,775 were male and 719 were female. Total correctional system capacity for housing males is 8,569; for females, the capacity is 795. The December 31st inmate population represented 102.4% of capacity of those facilities.

The Commission publishes annual adult prison population projections each year for KDOC. Unfortunately there appears no end in sight for the increase in prison population. The projections indicate that prison admissions will continue to outpace releases for the next 10-year forecast period, adding 2,114 new inmates over the current population. This represents a 22.6% increase in the adult prison population by 2022.

Since April 2012, the Commission has been closely associated with the Council on State Government Justice Reinvestment. Many meetings have been held with Commission staff over the past year and much of the criminal data produced for CSG analysis was provided by the Commission. As a result, many of the priorities set forth in the attachment align with the recommendations of CSG to the state. The Commission has worked closely with Department of Corrections and other criminal justice stakeholders to craft options based on evidence-based practices that enhance public safety while being good stewards of taxpayer dollars.

Pursuant to K.S.A. 74-9101, the Kansas Sentencing Commission has analyzed policy options that would reduce prison beds currently in the system. Our obligation is clearly to provide you with alternatives to opening or building additional prison beds. These options, we believe, are data driven and the most rational approaches to public safety to maintain space requirements for the most serious offenders while seeking alternative methods to curb admissions. Attached is a list of priorities established by the Commission to directly and indirectly accomplish this statutory charge. In describing the priorities, the document also identifies first and tenth year bed savings.

We are willing to discuss any of these priorities at your request.

Sincerely,

Honorable Richard M. Smith
Chairman

Enclosure

CC: Senator Ty Masterson, Chair, Senate Ways and Means Committee
Senator Laura Kelly, Ranking Democrat, Senate Ways and Means Committee
Representative Marc Rhoades, Chair, House Appropriations Committee
Representative Jerry Henry, Ranking Democrat, House Appropriations Committee
Senator Jeff King, Chair, Senate Judiciary Committee
Senator David Haley, Ranking Democrat, Senate Judiciary Committee
Representative John Rubin, Chair, House Corrections and Juvenile Justice Committee
Representative Gail Finney, Ranking Democrat, House Corrections and Juvenile Justice Committee
Representative Lance Kinzer, Chair, House Judiciary Committee
Representative Janice Pauls, Ranking Democrat, House Judiciary Committee
Representative Virgil Peck, Chair, House Transportation and Public Safety Budget Committee
Representative Robert Grant, Ranking Democrat, House Transportation and Public Safety Budget Committee
Michael Wales, Budget Analyst, Kansas Legislative Research Department



**2013 Objectives for the Reduction of
Prison Admissions**

**Report to the Governor and the
Joint Committee on Corrections and
Juvenile Justice Oversight
February 6, 2013**

2013 Objectives for the Reduction of Prison Admissions

1. Enhance Probation Supervision
2. Adopt Statewide LSI-R Assessment Guidelines
3. Management of Postrelease Supervision
4. Realize System Efficiencies Through Disposition of Detainers When in KDOC
5. Enable Judiciary Sentencing Discretion

Objective 1: Enhance Probation Supervision

1. Authorize probation officers to employ swift and certain responses to technical violations.

Description

- Enable judges to advise offenders at sentencing that the Court shall establish an intermediate sanction period of up to three days in jail for technical violations of felony and misdemeanor probation. This would allow court services and community corrections officers to respond to certain probation violations without a court hearing.
- The jail sanction is designated as a “swift and certain” response to noncompliant offender behavior and would be limited to a total of not more than six days per month in any three separate months during the period of release supervision. The six days per month confinement may only be imposed as two-day or three-day consecutive periods, not to exceed 18 days of total confinement.
- With advance approval from the chief court services officer or director of community corrections, the sanction may be imposed at the request of the assigned court services or community corrections officer.
- A probationer subject to this jail sanction will be required to waive their notice of a probation revocation hearing. A probationer who does not waive their right to a full hearing receives a hearing within a reasonable time.
- Graduated intermediate sanctions: Prior to revocation to prison to serve the original sentence, further sanctions while on community corrections supervision are required. After the community corrections offender has received at least one jail swift and certain sanction, the offender would be notified of a violation response sanction (VRS) court hearing in which the term of community corrections would be suspended while the offender serves 120 days incarceration in prison. The offender would then return to community corrections. A second VRS following the same procedure would be 180 days of incarceration in prison. The offender would then return to community corrections. Any subsequent violations would subject the offender to revocation to prison for the remainder of their sentence.
- After being placed on community corrections, probation condition violators will be eligible to earn sanction reduction credit, resulting in reduction credits up to 60 days for the first VRS and up to 90 days for the second VRS based upon compliance and good behavior while incarcerated. These reduction credits would only shorten their stay for the VRS and would not be credited as good time credit toward their prison sentence.
- Suspension of community corrections supervision with the VRS for 120 or 180 days is to be served in prison, not jail.
- This procedure shall not apply to probationers who have absconded or are convicted of a new felony or misdemeanor crime while on probation.
- If public safety is at issue, the Court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender without having previously imposed an intermediate sanction if the court finds and sets forth with particularity the reasons for finding that the safety of the public will be jeopardized or that the welfare of the offender will not be served by such sanction.
- In an effort to monitor those probationers revoked to serve their original sentences, postrelease supervision would be reinstated for those offenders.

Rationale

In FY 2012, 33.7% of all prison admissions were offenders whose probation was revoked not because they were convicted of a new crime, but because they violated the conditions of their supervision. In focus group meetings performed this past year by the Council on State Governments Justice Reinvestment, probation officers reported they spend days waiting for the Court to hold a single probation violation hearing. For probation officers to respond swiftly and certainly to people under supervision when they break the rules, these probation officers need the authority and flexibility to take action without seeking a court hearing. Providing probation officers this discretion also enables them to spend less time waiting for court hearings and more time in the community supervising people on their caseloads.

Probation departments in both Georgia and Hawaii have implemented policies that facilitate swift responses, including brief, but immediate incarceration when a probationer violates the terms of his or her supervision. Researchers evaluating these policy changes have found that the Georgia policy, which enabled probation officers to impose these sanctions without seeking a court hearing, reduced by 70 percent the number of days that people on probation spent in jail because of a violation of a condition of supervision or because they were awaiting a court hearing.

Prison Bed Impact

Utilizing the following scenario: If (1) first probation condition violators are required to serve 3 days in jail; (2) second probation condition violators serve 120 days in prison, then return to community corrections; (3) third probation condition violators serve 180 days in prison, then return to community corrections and (4) those who exhaust their jail time and prison term are revoked to prison to serve their remaining underlying prison sentence, by:

- FY 2014, **811 prison admissions** would be reduced and **791 prison beds** would be saved, and
- FY 2023, **970 prison admissions** would be reduced and **2,502 prison beds** would be saved.

2. Focus probation resources on those offenders most likely to commit crime.

Description

- Direct court services and community corrections to allocate supervision and treatment resources according to those offenders who pose the greatest risk of reoffending.
- Use a validated instrument to assess felony probationers for risk of reoffending, and terminate supervision for those offenders who are determined to pose a low risk to public safety *and* who demonstrate compliance with all terms and conditions of supervision.
- A defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court. The court shall grant such discharge unless the court finds substantial and compelling reasons for denial of such discharge.

Rationale

Currently successful, low risk probationers are being supervised as long as moderate to high risk probationers. Probationers on community corrections, for example, average the following months on supervision, low risk, 24; moderate risk, 25; and high risk, 22. But their corresponding revocation rates are 4%, 37%, and 76%. Research shows that reductions in recidivism can be achieved when treatment and supervision resources are concentrated on moderate to high risk and moderate to high need individuals. Furthermore, applying the same level of supervision resources to high and low risk offenders is counterproductive and has been shown to actually increase recidivism rates for low risk offenders.

Objective 2: Adopt Statewide LSI-R Assessment Guidelines

- 1. Legislation to authorize KSC to make cutoff decisions based upon risk levels and needs of the offender. KSC will periodically review data and make recommended changes.*

Description

- Court services and community corrections field staff have requested a statewide system that would enable judicial districts to be uniform in their assessment of risk and needs as it pertains to DUI, SB 123 drug treatment, and those nondrug felonies levels 8, 9, and 10. The current tool that has been authorized by the Commission is the Level of Service Inventory - Revised. The assessment is 54 items grouped into ten domains that represent key criminogenic risk factors. The LSI-R can be thought of as something like a medical triage decision making tool - it provides insight into which offenders should receive the highest priority for treatment, regardless of their specific problem areas.
- Improvements in data collection would result from all jurisdictions utilizing the same cutoffs and requirements for service.
- K.S.A. 2012 Supp. 74-9101 would be amended to add the following language, “The Kansas Sentencing Commission is authorized to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. The commission shall periodically review data and make recommended changes.”

Rationale

Currently, over 10 different cutoff scores exist in the state, which renders inequities. For example, in determining SB 123 eligibility for drug possession offenses in neighboring judicial districts, one offender may be eligible for state paid substance abuse treatment and probation while the other may be presumptive prison. The resulting sentencing decision is not based upon the criminal conduct but due to the location of the crime.

Prison Bed Impact

With increased emphasis on evidence-based practices in the community, this objective will provide a positive prison bed impact savings in identifying and treating higher risk offenders. However, no data exists at this time to quantify the savings.

Objective 3: Better Management of Postrelease Supervision

- 1. Utilize evidence-based practices in a postrelease supervision setting to allow for early release while not jeopardizing public safety.*

Description

- This proposal would allow the Secretary of Corrections to determine early release of an offender, based upon risk or the Secretary's criteria similar to parole. It would not change postrelease supervision time but simply allow for early termination if the inmate was compliant and availed themselves of the beneficial programs while incarcerated.
- The current practice adds any good time and programming credit earned to postrelease supervision time. The proposal would eliminate this practice.
- Sexually violent offenders defined in K.S.A. 2012 Supp. 22-3717, electronic solicitation as defined in K.S.A. 2012 Supp. 21-5509, and unlawful sexual relations as defined in K.S.A. 2012 Supp. 21-5512, would be excluded and would continue to have good time and programming credits added to their postrelease supervision term.

Rationale

With the exception of sexually violent, sexually motivated, electronic solicitation and unlawful sexual relations convictions, offenders are incentivized by accumulating good time and programming credits while incarcerated in KDOC. As a result, this time awarded is not added to their postrelease supervision. It is important to note that truth-in-sentencing is maintained as the offender will still serve 80-85% of the original sentence. The original postrelease supervision term that was originally ordered at sentencing will remain the same.

Prison Bed Impact

Eliminating the requirement of adding good time to postrelease supervision time will **reduce 113 prison admissions and save 47 to 49 beds each year.**

- 2. Expand the powers of the Prisoner Review Board from misdemeanor to felony violations of postrelease supervision.*

Description

- K.S.A. 75-5217(c) currently requires an offender to serve all of the remaining balance of their postrelease supervision if the violation is a result of a new felony conviction. Subsection (c) would be amended to allow the PRB to determine the period of confinement up to the remaining balance of the offender's postrelease supervision term.

Rationale

The PRB already has this authority with new misdemeanor convictions while on postrelease supervision.

Prison Bed Impact

Allowing the PRB this remedy will **save 22 to 24 beds each year.**

Objective 4: Realize System Efficiencies Through Disposition of Detainers When in KDOC

- 1. Utilize state resources more effectively in the disposition of criminal cases when an offender is incarcerated with KDOC and has pending case(s) throughout the state.*

Description

- The judiciary requests a remedy to dispose of pending cases more effectively while the offender is in the custody of KDOC.
- There is a need to better manage transport costs to the corresponding jurisdictions.
- K.S.A. 22-4301, 22-4303 and 22-4304 of the Uniform Mandatory Disposition of Detainers Act would be amended to include probation revocations in a list of proceedings required to be held within 180 days of receipt of the request for final disposition from the offender.
- As current law provides, the burden will still remain with the offender to dispose of the detainer.

Rationale

In some cases, lingering probation violations that are unresolved hinder the reentry process for the offender and KDOC. As a result, speedier disposition of these types of hearings will have an impact on bed space.

Prison Bed Impact

Through more timely resolution of pending cases, this objective will provide a positive prison bed impact savings. However, no data exists at this time to quantify the savings.

Objective 5: Enable Judiciary Sentencing Discretion

1. *Probation Revocations: Allow Courts more latitude to modify an offender's sentence if the offense is committed while on felony supervised status and felony bond.*

Description

- Commonly known as Special Rule 9, K.S.A. 21-6604(f)(1) currently allows discretionary sentencing to prison for an offender that commits any felony while under supervision. It is mandatory, however, that the new sentence runs consecutive with the probation revocation sentence. K.S.A. 21-6606(c).
- Commonly known as Special Rule 10, K.S.A. 21-6604(f)(3) currently allows discretionary sentencing to prison for an offender that commits any felony while on felony bond. It is mandatory, however, that the new sentence runs consecutive with the probation revocation sentence. K.S.A. 21-6606(d).
- The amendment enables judges to exercise discretion on a case-by-case basis by allowing the Court to sentence a new felony conviction concurrently with the probation revocation sentence.
- Modification of these statutes does not affect the presumption of imprisonment that is required by the special rules and would not affect those who commit a new offense while incarcerated.

Rationale

Each case before a district court is factually different. In some instances, the Court may find facts and circumstances warranting concurrent sentencing. Under the current law, the Court is unable to order this sanction. The modification of Special Sentencing Rules 9 and 10 would impact prison sentence length.

Prison Bed Impact

Special Sentencing Rule 9: This policy proposal will **not** reduce **prison beds** in FY 2014 but will **save 37, 95 and 184 prison beds** in FY 2023, respectively based upon assumption frequencies (10%/25%/50%) in which the Court would sentence an offender to concurrent rather than consecutive sentences.

Prison Bed Impact

Special Sentencing Rule 10: This policy proposal will reduce **no prison beds** in FY 2014 but will **save 22, 65 and 105 prison beds** in FY 2023, respectively based upon assumption frequencies (10%/25%/50%) in which the Court would sentence an offender to concurrent rather than consecutive sentences.