

**Minutes of the Kansas Sentencing Commission Workshop
Day One
September 07, 2022**

The Honorable W. Lee Fowler, Chair, called the Kansas Sentencing Commission (KSSC) Day One Workshop to order on September 7 at 9:03 a.m. in the KDOC Conference Room.

Participants:

Members:

- Honorable W. Lee Fowler, Chair
- Honorable Benjamin J. Sexton, Vice Chair
- Honorable Stephen D. Hill, Kansas Court of Appeals
- Senator David B. Haley
- Representative Dennis “Boog” Highberger
- Representative John Barker
- Senator Carolyn McGinn
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica Domme, Kansas Attorney General’s Office
- Spence Koehn, Office of Judicial Administration
- Randall Bowman, Department of Corrections Designee
- Mark Dupree, Wyandotte County District Attorney
- Jessica A. Glendening, Third Judicial District Public Defender’s Office
- Pat Colloton, Public Member
- Jermaine Wilson, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Honorable Tyler Roush, Sedgwick County District Court
Ed Klumpp, KS Association of Chiefs of Police, KS Sheriff’s Association, KS Peace Officers Association
Jennifer Kisela, State Governments Justice Center
Mark Bergstrom, Executive Director, Pennsylvania Commission on Sentencing
Rhys Hester, J.D. Ph.D., Professor, Clemson University
Marie McNeal, Kansas Department of Corrections
Robert Sullivan, Director of Corrections, Johnson County
Jason Thompson, Revisor of Statutes
Christy Molzen, Kansas Judicial Council
Natalie Scott, Revisor of Statutes
Jeff Wagaman, Kearney and Associates
Representative Stephen Owens
Lindsay Archer, Kansas Legislative Research Department
Raylene Mattocks, Kansas Court Services
Jenna Moyer, Kansas Legislative Research Department
Meredith Fry, Kansas Legislative Research Department

Staff:

- Scott M. Schultz, Executive Director
- Brenda Harmon, Administrative Services Manager
- John Grube, Director of Research
- Jason Lamprecht, Research Analyst
- Kilye Hucks, Research Intern
- Kira Johnson, SB 123 Program Director
- Gwyn Harvey, SB 123 Program Consultant
- Trish Beck, Program Auditor
- Grazi Gifford, Administrative Specialist
- Francis Givens, Special Projects Manager
- Chris Lyon, Staff Attorney

Approval of Proposed Agenda

Chair Fowler asked if there were objections or additions to the agenda. The agenda was approved with no modifications.

Approval of August 25, 2022, KSSC Meeting Minutes

Chair Fowler referred to the August 25, 2022, KSSC meeting minutes. Vice-Chair Sexton moved to approve the minutes. Mark Dupree seconded the motion. The motion carried, and the minutes were approved.

Reimagining the Sentencing Guidelines – A Pennsylvania Perspective on Comprehensive Review

Executive Director Scott Schultz introduced Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing, and Rhys Hester, J.D. Ph.D., Professor, Clemson University.

Executive Director Mark Bergstrom and Professor Rhys Hester presented *Comprehensive Review of Sentencing Guidelines* and discussed sentencing guidelines and offender criminal history scoring comparisons between Kansas and Pennsylvania.

Jessica Domme requested that KSSC staff provide additional data at the next KSSC meeting.

KSSC Educational Outreach Update

Francis Givens, Special Projects Manager, presented *KSSC Educational Outreach Update* and discussed the trainings provided and upcoming webinars.

Emerging Issues & Future Directions: SB 123 Raft Diversion Program

Kira Johnson, LMLP, SB 123 Program Director, presented the *Emerging Issues & Future Directions: SB 123 Raft Diversion Program*. Ms. Johnson provided an update on the Program, discussed trends, changes, and reported that the SB 123 Fall Conference would be held on October 18, 2022.

Incentivizing Probation Roundtable and the Possible Role of 2021 HB 2084

Executive Director Scott Schultz welcomed and introduced the roundtable participants, Honorable Tyler Roush, Sedgwick County District Court; Robert Sullivan, Director of Johnson County Community Corrections; Shelly Williams, Director of Riley County Community Corrections; and Spence Koehn, Office of Judicial Administration.

Executive Director Schultz moderated the roundtable discussion and reviewed 2021 HB 2084 and K.S.A. 21-6608, allowing courts to modify sentences for misdemeanors and felonies. Topics discussed are as follows:

- General probation modification practices in jurisdictions, including what works, what doesn't work, and ideas for reform.
- Is a mandatory statute necessary when K.S.A. 21-6608 already exists?
- Is a valid alternative an educational effort for offender supervising officers and offenders without a need for statutory guidance?
- If KSSC adopted proposed legislation like 2021 HB 2084, how could it be improved?

Wherefore Art Thou Romeo and Juliet? – A Judicial Council Perspective on Unlawful Voluntary Sexual Relations in KSA 21-5507

Christy Molzen, J.D., Staff Attorney, Kansas Judicial Council, presented the Judicial Council's recommendations relating to K.S.A 21-5507, unlawful voluntary sexual relations, and reported the Judicial Council has twice requested legislation that would amend K.S.A 21-5507 by expanding the age range of minors to which the statute applies and reducing the penalties for voluntary sexual conduct between minors. The legislation was drafted as part of a study of the Kansas criminal code's sex offense structure and related registration requirements for juveniles and adults, which was requested in 2018 and completed in 2020. That study was conducted by the Judicial Council Sex Offenses and Registration Advisory Committee.

Part of the original study request from Representatives Russell Jennings and Blaine Finch asked the Council to review the 2018 HB 2738, a bill introduced at the request of Representative Highberger, that would have amended K.S.A 21-5507 to reduce penalties and, in some cases, decriminalize voluntary sexual conduct between minors who are close in age. The Committee agreed with the rationale behind the 2020 HB 2473 but offered an alternative proposal, first introduced as 2020 HB 2473 and the following year as 2021 HB 2347.

KSSC Legislative Committee Recommendations & Discussion

Chair Fowler reported on the KSSC Legislative Committee meeting held to discuss and recommend 2023 KSSC legislative proposals. Chair Fowler presented the Committee's recommendations to adopt and continue supporting KSSC's 2022 legislative proposals.

Review & Discussion of proposed Legislation

Chair Fowler referred to the handout *Review & Discussion of Proposed Legislation* and reviewed the process in adopting KSSC's 2023 legislative proposals.

Executive Director Scott Schultz referred to the handout *Review & Discussion of Proposed Legislation* and provided an overview of each legislative proposal recommended by the KSSC Legislative Committee.

KSSC Proposals for the 2023 Legislative Session

presented by the Legislative Committee

Previous Bill #	Description	Final Legislative Status	Bed Savings (Year 1 & 10)	Further Description
1	HB 2084	No Hrg. in HCJJ, died	322, 350, or 378; 499, 548, or 591	<p>1. only serve 2x original sntg;</p> <p>2. Hrg. after serve 50% of supervision term to determine subst. compliance; and</p> <p>3. Probationer may earn 7 days discharge credit for each month of subst. compliance.</p> <p>(Kansas Criminal Justice Reform Commission deleted this as a recommendation in 2021).</p>
2	2020 HB 2473	Passed HCJJ in 2020, died	Unk	<p>1. amends elements of unlawful voluntary sexual relations to consolidate elements regarding voluntary sexual intercourse and voluntary sodomy, removes a separate element regarding the child and offender being members of the opposite sex, and restructures the applicable age categories;</p> <p>2. amends criminal penalties for certain crimes; and</p> <p>3. removes the requirement for offender registration for a person convicted of unlawful voluntary sexual relations or adjudicated as a juvenile offender.</p>
3	HB 2030	Passed H 96-29, died in SJ	Unk	Extend from 30d to 120d
4	HB 2031	Hrg. In HCJJ, died	114, 941	Good time Credit 40% for np, 25% for person; Program credit 120 to 150 days

5	HB 2092	Removing drug offenders from the registration requirements of the Kansas offender registration act and removing the felony penalty for multiple nonpayments of fees under the act.	No Hrg. in HCJJ, died	30, 106	Remove drug offenders from the registry and remove enhanced felony penalty for failing to remit payment to sheriff's office within 15d of registration
6	HB 2081	Modifying how certain prior convictions are counted for the special sentencing rule related to possession of a controlled substance and providing concurrent or consecutive sentencing for persons convicted of new crimes while on release for a felony.	Passed H 69-56, died in SJ	Unk	<ol style="list-style-type: none"> 1. Spec Rule 10 - concurrent for sntg on bond; 2. Spec. Rule 12 - clean up from 2nd or subsequent to one or more prior drug mfr.; and 3. Spec. Rule 26 - 3rd or subs conviction to two or more prior felony conv for drug possession
7	HB 2139	Changing penalties for SL 5 drug crimes	Hrg. In HCJJ, died	17, 341	D5 LOS decreased to be proportional with N8
8	HB 2095	Allowing courts to prohibit possession of a firearm in a temporary custody order pursuant to the care and treatment act for mentally ill persons.	Hrg. In HJ, died	Unk	Amends current law by adding provision allowing a court in a temporary care and treatment case to issue a temporary custody order to prohibit the named person from possessing a firearm. If a prohibition is contained in the order, the court would direct the clerk of the district court to send a copy of the order to the Kansas Bureau of Investigation (KBI). The KBI would enter the order into the National Crime Information Center (NCIC) and other appropriate databases. The court would also be required to notify the person affected by the custody order of their right to petition the court to reinstate their right to possess a firearm.
9	SB 5	Aligning felony loss thresholds with theft	Hrg. In SJ, died	1, 2	Increase felony threshold for 11 np crimes from \$1,000 to \$1,500
10	2021 HB 2128 (as introduced)	Expand SB 123 substance abuse treatment to SL 7-10 nondrug offenders.	Hrg. In HCJJ in 2021, amended out	unk	Proposed in 2021 for ND SL7-10; This proposal (Scenarios 10%, 20% or 30% of new offenders receiving SB 123) will increase the cost of SB 123 drug treatment

					program by \$669,405, \$1,342,867 or \$2,024,443 respectively in FY 2024. The average cost was \$4,057 per treatment offender in FY 2022.
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Allowing Earned Discharge and Limiting the Maximum Term for Probation. (HB 2084)

Jessica Glendening moved to approve and continue supporting the reintroduction of HB 2084 with the following amendments.

- 50% callback discretionary rather than mandatory.
- Replace 7d/mo. probation credit with the court service officer's recommendation as recommended in the Research-Based Incentives Subcommittee's Report to the Kansas Criminal Justice Reform Commission.

Jermaine Wilson seconded the motion. The motion carried.

Modifying the Penalties for Sexual Contact between Certain Juveniles and Excluding such Juveniles from Offender Registration. (2020 HB 2473)

Vice-Chair Sexton moved to support the Judicial Council if 2020 HB 2473 is reintroduced. Jessica Glendening seconded the motion. The motion carried.

Extending Terminal Medical Release to Inmates in the Custody of KDOC with a Condition Likely to Cause Death within 120 days. (HB 2030)

Vice-Chair Sexton moved to approve and continue supporting the reintroduction of HB 2030. Pat Colloton seconded the motion. The motion carried.

Increasing Good Time and Program Credit for Certain offenders. (HB 2031)

The Commission discussed amending HB 2031 to increase only 5% good time (15% to 20% and 20% to 25%) and will continue the discussion at the next KSSC meeting upon receiving metrics on those inmates who lose credit.

Allowing Courts to Prohibit Possession of a Firearm in a Temporary Custody Order Pursuant to the Care and Treatment Act for Mentally Ill Persons. (HB 2095)

Pat Colloton moved to table the approval of HB 2095 until the next meeting to determine whether NCIC can post prohibition of temporary hearing and requested a new language be provided. Vice-Chair Sexton seconded the motion. The motion carried.

Aligning Felony Loss Thresholds with Theft. (SB 5)

Jessica Glendening moved to approve and continue supporting the reintroduction of SB 5. Jessica Domme seconded the motion. The motion carried.

Adjournment

The meeting adjourned at 5:00 p.m. Vice-Chair Sexton moved to adjourn. Pat Colloton seconded the motion. The motion carried.

**Minutes of the Kansas Sentencing Commission Workshop
Day Two
September 08, 2022**

The Honorable W. Lee Fowler, Chair, called the Kansas Sentencing Commission (KSSC) Day Two Workshop to order on September 8 at 9:06 a.m. in the KDOC Conference Room.

Participants:

Members:

- Honorable W. Lee Fowler, Chair
- Honorable Benjamin J. Sexton, Vice Chair
- Honorable Stephen D. Hill, Kansas Court of Appeals
- Senator David B. Haley
- Representative Dennis "Boog" Highberger
- Representative John Barker
- Senator Carolyn McGinn
- Jonathan Ogletree, Kansas Prisoner Review Board
- Jessica Domme, Kansas Attorney General's Office
- Spence Koehn, Office of Judicial Administration
- Randall Bowman, Department of Corrections Designee
- Mark Dupree, Wyandotte County District Attorney
- Jessica A. Glendening, Third Judicial District Public Defender's Office
- Pat Colloton, Public Member
- Jermaine Wilson, Public Member
- Shelly Williams, Community Corrections Director

Guests:

Ed Klumpp, KS Association of Chiefs of Police, KS Sheriff's Association, KS Peace Officers Association
Jennifer Kisela, State Governments Justice Center
Tanner Garrett, Domo, Inc.
Marie McNeal, Kansas Department of Corrections
Jason Thompson, Revisor of Statutes
Natalie Scott, Revisor of Statutes
Jeff Wagaman, Kearney and Associates
Representative Stephen Owens
Lindsay Archer, Kansas Legislative Research Department
Jenna Moyer, Kansas Legislative Research Department
Meredith Fry, Kansas Legislative Research Department

Staff:

- Scott M. Schultz, Executive Director
- Brenda Harmon, Administrative Services Manager
- John Grube, Director of Research
- Jason Lamprecht, Research Analyst
- Kilye Hucks, Research Intern
- Chris Chavez, Data Entry Specialist

- Rachel Cole, Data Entry Specialist
- Kira Johnson, SB 123 Program Director
- Gwyn Harvey, SB 123 Program Consultant
- Grazi Gifford, Administrative Specialist
- Francis Givens, Special Projects Manager
- Chris Lyon, Staff Attorney

Justice Reinvestment Initiative in Kansas

Executive Director Scott Schultz introduced Jennifer Kisela, Program Director, State Initiatives, Council for State Governments (CSG) Justice Center.

Ms. Kisela presented *Justice Reinvestment Initiative in Kansas*, a data-driven approach to improve public safety. She reported information on the following topics:

- Kansas Justice Reinvestment overview.
- Implementation progress for diversion and specialty courts, behavior health, and re-entry.
- Kansas challenges in data monitoring.
- Sustainability and next steps for Kansas.

The KSSC Electronic Journal Entry Project – The Future Today with Criminal Justice Data in Kansas

The KSSC has recently entered into an agreement with Domo, Inc. to provide software development services to digitize the agency’s journal entry forms. Executive Director Scott Schultz introduced Tanner Garrett, Product Manager - Custom Apps, Domo, Inc. Mr. Garrett presented the *Electronic Journal Entry Project*, discussed the data app platform implementation, and demonstrated the KSSC Electronic Journal Entry features.

Lessons in Redemption

Jermaine Wilson, Mayor Pro-Tem of Leavenworth, Kansas, and KSSC commission member, provided his inspiring story, ‘*Lessons in Redemption.*’ Mayor Wilson reflected on how he transformed from a convicted drug dealer to a Kansas mayor and continues to be a community leader in many areas.

Also presented was Mayor Wilson’s interview with *CBS Mornings* <https://www.yahoo.com/video/jermaine-wilson-reveals-went-convicted-163613350.html>.

Review & Discussion of Proposed Legislation

Changing Penalties for Severity Level 5 Drug Crimes. (HB 2139)

Vice-Chair Sexton moved to approve and continue supporting the reintroduction of HB 2139. Representative Highberger seconded the motion. Jessica Domme voted no. The motion carried.

Expands SB123 Substance Abuse Treatment to Severity Level 7-10 Nondrug Offenders. (2021 HB 2128)

Pat Colloton moved to table the approval of 2021 HB 2128 until the next meeting and requested additional language be provided for the WRNA and LS/CMI criteria to be tied to high risk on the substance abuse domain of the assessments rather than the current SB 123 criteria. Jessica Glendening seconded the motion. The motion carried.

Removing Drug Offenders from the Registration Requirements of the Kansas Offender Registration Act and Removing the Felony Penalty for Multiple Nonpayments of Fees Under the Act. (HB 2092)

No Action was taken.

Modifying how Certain Prior Convictions are Counted for the Special Sentencing Rule Related to Possession of a Controlled Substance and Providing Concurrent or Consecutive Sentencing for Persons Convicted of New Crimes while on Release for a Felony. (HB 2081)

Representative Highberger moved to approve and continue supporting the reintroduction of HB 2081. Jessica Glendening seconded the motion. The motion carried.

Executive Session

At 2:05 p.m., Chair Fowler requested an Executive Session to discuss personnel compensation. Jessica Domme moved to enter an Executive Session for ten minutes. Jonathan Ogletree seconded the motion. The motion carried.

At 2:15 p.m., the Commission returned to the open session. Vice-Chair Sexton moved to approve a \$3,500 bonus for Executive Director Scott Schultz. Pat Colloton seconded the motion. The motion carried.

Adjournment

Vice-Chair Sexton moved to adjourn. Jonathan Ogletree seconded the motion. The motion carried.

The meeting adjourned at 3:08 p.m.

The next Sentencing Commission meeting will be Thursday, October 13, 2022.