



# **KANSAS SENTENCING COMMISSION**

## **2009 REPORT TO THE KANSAS LEGISLATURE**

**JANUARY 2009**

700 SW Jackson Street, Suite 501, Topeka, KS 66603 -3714  
Voice 785-296-0923 Fax 785-296-0927 <http://www.kansas.gov/ksc>

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### **Section I**

Summarizing the statutory obligation of the Commission is the Agency's Mission Statement. Also, included in this section is enabling legislation, K. S. A. 74-9101, including duties and obligations aimed at the implementation of a sentencing guidelines system and those aimed at monitoring and reporting on the system of determinate sentencing.

### **Section II**

K.S.A. 74-9101(b)(15) directs the Kansas Sentencing Commission to produce official inmate population projections annually. This section presents a brief narrative along with the official FY 2009 – FY 2018 adult prison population projections.

### **Section III**

This section presents a status update on the alternative sentencing substance abuse treatment program (2003 SB 123). The Sentencing Commission, in conjunction with the Department of Corrections, has focused efforts on an effective implementation and administration of the program since its passage in 2003. In addition to information on the current status of this program, cost savings information is provided.

### **Section IV**

This section presents a status update regarding state-wide implementation of a standardized risk assessment tool to identify supervision assignment in the community. Johnson County has piloted use of this tool for assigning supervision since 2003. The Commission has assigned a subcommittee to implement use of the tool throughout Kansas.

### **Section V**

This section reports Kansas Sentencing Commission efforts to recommend more proportional sentences and to work jointly with the Kansas Recodification Commission in their mission to recodify the criminal code.

### **Section VI**

The agency has several projects underway which present opportunities to change the environment within which the Kansas Sentencing Commission operates, as well as offering long-term criminal justice system refinement. Commission initiatives and future direction are discussed in this section.

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## **Section I. Enabling Legislation Agency Mission Statement**

### **Chapter 74.--State Boards, Commissions and Authorities Article 91.--SENTENCING COMMISSION**

#### **Agency Mission:**

To develop monitoring procedures and reporting methods to evaluate the guideline sentencing system where public safety is the focus; to advise and consult in developing mechanisms to link sentencing practices with correctional resources and policies; and to determine the impact of guidelines on the state's prison population. Agency's resources are devoted to this mission at the direction of the Commission.

#### **Agency Philosophy:**

The philosophy of the Kansas Sentencing Commission is that criminal sentences should be imposed fairly, rationally and consistently, and that incarceration should be reserved for the most serious offenders. The Kansas Sentencing Commission is a service oriented agency whose main product is statistically generated analysis used to facilitate policy decision-making in an environment concerned with providing and sustaining public safety while efficiently using state (tax payer) resources. As such, the Commission strives to ensure that valid, reliable information is accessible to all customers. Such customers include, but are not limited to, varying levels of government in the State of Kansas within all three branches of government, local units, and public citizens.

#### **Programs that Assist with Agency Mission:**

1. Projections, Research and Statistical Analysis – Promulgating the sentencing guidelines, and assessing, monitoring and reporting of the impact of the sentencing guidelines to state policy makers and the Kansas Legislature.
2. 2003-SB 123 (K.S.A. 21-4729) - Implementation, administration, and evaluation of the alternative sentencing program (community supervision in combination with certified drug abuse treatment program) to non-violent drug possession offenders.

**K. S. A. 74-9101 as amended by 2008 Senate Bill 435, effective July 1, 2008.**

**KANSAS SENTENCING COMMISSION; establishment; duties.**

(a) There is hereby established the Kansas Sentencing Commission.

(b) The Commission shall:

(1) Develop a sentencing guideline model or grid based on fairness and equity and shall provide a mechanism for linking justice and corrections policies. The sentencing guideline model or grid shall establish rational and consistent sentencing standards which reduce sentence disparity, to include, but not be limited to, racial and regional biases which may exist under current sentencing practices. The guidelines shall specify the circumstances under which imprisonment of an offender is appropriate and a presumed sentence for offenders for whom imprisonment is appropriate, based on each appropriate combination of reasonable offense and offender characteristics. In developing its recommended sentencing guidelines, the Commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities. In its report, the Commission shall make recommendations regarding whether there is a continued need for and what is the projected role of, if any, the Kansas Parole Board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued;

(2) consult with and advise the Legislature with reference to the implementation, management, monitoring, maintenance and operations of the sentencing guidelines system;

(3) direct implementation of the sentencing guidelines system;

(4) assist in the process of training judges, county and district attorneys, court services officers, state parole officers, correctional officers, law enforcement officials and other criminal justice groups. For these purposes, the Sentencing Commission shall develop an implementation policy and shall construct an implementation manual for use in its training activities;

(5) receive presentence reports and journal entries for all persons who are sentenced for crimes committed on or after July 1, 1993, to develop post-implementation monitoring procedures and reporting methods to evaluate guideline sentences. In developing the evaluative criteria, the Commission shall take into consideration rational and consistent sentencing standards which reduce sentence disparity to include, but not be limited to, racial and regional biases;

(6) advise and consult with the Secretary of Corrections and members of the Legislature in developing a mechanism to link guidelines sentence practices with correctional resources and policies, including but not limited to the capacities of local and state correctional facilities. Such linkage shall include a review and determination of the impact of the sentencing guidelines on the state's prison population, review of corrections programs and a study of ways to more effectively utilize correction dollars and to reduce

prison population;

(7) make recommendations relating to modifications to the sentencing guidelines as provided in K.S.A. 21-4725, and amendments thereto;

(8) prepare and submit fiscal impact and correctional resource statement as provided in K.S.A. 74-9106, and amendments thereto;

(9) make recommendations to those responsible for developing a working philosophy of sentencing guideline consistency and rationality;

(10) develop prosecuting standards and guidelines to govern the conduct of prosecutors when charging persons with crimes and when engaging in plea bargaining;

(11) analyze problems in criminal justice, identify alternative solutions and make recommendations for improvements in criminal law, prosecution, community and correctional placement, programs, release procedures and related matters including study and recommendations concerning the statutory definition of crimes and criminal penalties and review of proposed criminal law changes;

(12) perform such other criminal justice studies or tasks as may be assigned by the Governor or specifically requested by the Legislature, Department of Corrections, the Chief Justice or the Attorney General;

(13) develop a program plan which includes involvement of business and industry in the public or other social or fraternal organizations for admitting back into the mainstream those offenders who demonstrate both the desire and ability to reconstruct their lives during their incarceration or during conditional release;

(14) appoint a task force to make recommendations concerning the consolidation of probation, parole and community corrections services;

(15) produce official inmate population projections annually on or before six weeks following the date of receipt of the data from the department of corrections. When the Commission's projections indicate that the inmate population will exceed available prison capacity within two years of the date of the projection, the Commission shall identify and analyze the impact of specific options for (A) reducing the number of prison admissions; or (B) adjusting sentence lengths for specific groups of offenders. Options for reducing the number of prison admissions shall include, but not be limited to, possible modification of both sentencing grids to include presumptive intermediate dispositions for certain categories of offenders. Intermediate sanction dispositions shall include, but not be limited to: intensive supervision; short-term jail sentences; halfway houses; community-based work release; electronic monitoring and house arrest; substance abuse treatment; and pre-revocation incarceration. Intermediate sanction options shall include, but not be limited to, mechanisms to explicitly target offenders that would otherwise be placed in prison. Analysis of each option shall include an assessment of such options impact on the overall size of the prison population, the effect on public safety and costs. In preparing the assessment, the Commission shall review the experience of other states

and shall review available research regarding the effectiveness of such option. The Commission's findings relative to each sentencing policy option shall be presented to the Governor and the Joint Committee on Corrections and Juvenile Justice Oversight no later than November 1;

(16) at the request of the Governor or the Joint Committee on Corrections and Juvenile Justice Oversight, initiate and complete an analysis of other sentencing policy adjustments not otherwise evaluated by the Commission;

(17) develop information relating to the number of offenders on postrelease supervision and subject to electronic monitoring for the duration of the person's natural life;

(18) determine the effect the mandatory sentencing established in K.S.A. 21-4642 and 21-4643, and amendments thereto, would have on the number of offenders civilly committed to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq., and amendments thereto;

(19) assume the designation and functions of the state statistical analysis center. All criminal justice agencies, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, and the juvenile justice authority shall provide any data or information, including juvenile offender information, requested by the commission to facilitate the function of the state statistical analysis center; and

(20) *subject to the provisions of appropriation acts and the availability of funds therefor*, produce official juvenile correctional facility population projections annually on or before November 1, not more than six weeks following the receipt of the data from the juvenile justice authority and develop bed impacts regarding legislation that may affect juvenile correctional facility population.

In addition to the Sentencing Commission duties and responsibilities contained within K.S.A. 74-9101, staff of the Commission is also responsible for several duties related to 2003-SB 123, K.S.A. 21-4729 the alternative sentencing policy for non-violent drug possession offenders under K.S.A. 75-52,144. Some examples of these additional duties include:

(21) The Sentencing Commission functions as the centralized payment center for treatment services delivered to SB 123 offenders.

(22) The Sentencing Commission collects data and measurement regarding the addiction/dependence level demonstrated by SB 123 offenders at three distinct points in time; (1) prior to the start of treatment, (2) at the conclusion of treatment under this sentence, and (3) six-months following treatment completion.

(23) The Sentencing Commission works in closely with the Kansas Department of Corrections in several operational aspects related to SB 123 which includes, but is not limited to:

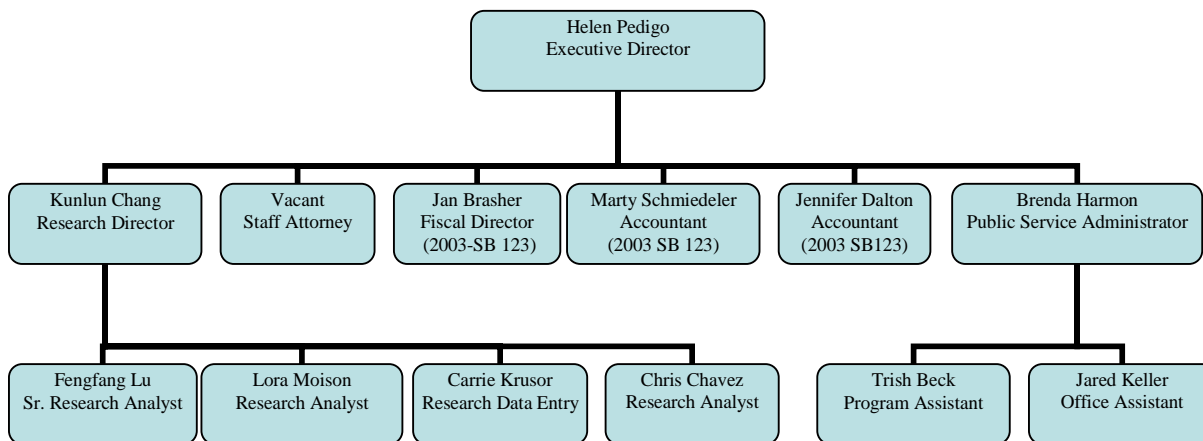
- Functioning as a centralized payment center and providing accounting services,
- The budgetary aspects related to treatment under the 2003-SB 123 program,
- Serving as an information resource to all stakeholders,
- Working with the Department of Corrections Programs staff to administer the provisions of community-based treatment, inclusive of cognitive-behavioral elements for SB 123 sentenced offenders,
- Producing and presenting program status update conferences in conjunction with KDOC,
- Initiating periodic evaluations of the SB 123 program. Such evaluations occur at prescribed intervals and as required,
- Collecting and assimilating data as recorded by Community Corrections officers which is geared to enabling future evaluative efforts as well as documenting the progress of individual offenders during their Community Corrections supervision.

**Commission Membership:**

Commission membership is defined in K.S.A. 74-9102. Presently, the membership is comprised as follows:

Chief Justice/Designee	Hon. Christel E. Marquardt
2 District Court Judges appointed by the Chief Justice	<b>Hon. Ernest L. Johnson, Chairman</b> Hon. Richard M. Smith
The Kansas Attorney General's Office	Kevin Graham
Public defender appointed by the Governor	Rick A. Kittel
Private defense counsel appointed by the Governor	Daniel E. Monnat
County Attorney/District Attorney appointed by the Governor	Thomas J. Drees
Secretary of Corrections	Sec. Roger K. Werholtz
Kansas Parole Board/Designee	Patricia A. Biggs
2 general public members appointed by the Governor	Pastor Junius B. Dotson Captain Dale A. Finger
Community Corrections Director appointed by the Governor	Annie E. Grevas
Court Services Officer appointed by the Chief Justice	Chris A. Mechler
Four members of the Legislature: <ul style="list-style-type: none"> <li>• Appointed by the Senate President</li> <li>• Appointed by the Senate Minority Leader</li> <li>• Appointed by the House Speaker</li> <li>• Appointed by the House Minority Leader</li> </ul>	Senator John L. Vratil Senator Greta H. Goodwin Representative Kevin W. Yoder Representative Janice L. Pauls

**Agency Staff**



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## Section II.

### 2009 Adult Inmate Population Projections

In accordance with K.S.A. 74-9101(b)(15), the Sentencing Commission produces an official inmate population projection annually. This year's adult prison population projection is displayed in table and graphic forms on the following pages.

In reviewing the prison population projections for FY 2009 model, the most significant change in this model is the increase of offgrid prison population. Over the ten-year forecast period, offgrid prison population will increase by 910 inmates or 112.1%. The dramatic increase is primarily due to Jessica's Law. The impact of this law will result in approximately 71 offgrid offenders (based on FY 2008 data and 50% downward departure to guidelines) to prison each year from FY 2009. According to this law, such offenders are required to serve a minimum term of imprisonment of not less than 25 years or 300 months.

The second observable trend is the probation condition violators entering into the state prisons. Probation condition violators admitted to prison decreased in FY 2008 when compared with FY 2006 and FY 2007. The number of probation condition violators decreased from 2,038 in FY 2006 to 1,624 in FY 2008, a drop of 20.3% or 414 violators. The decrease of probation condition violators reflected the impact of House Substitute for Senate Bill 14, which requires at least a 20% reduction from that of FY 2006. With the continuous implementation of House Substitute for Senate Bill 14, the projected probation condition violators to prison will continue to decrease.

The third notable trend during FY 2008 was that prison releases exceeded prison admissions. This is a fourth consecutive year that releases exceeded admissions. Analyses of FY 2008 prison admissions and releases revealed that the largest releases in number over admissions were found on all drug severity levels, especially drug severity level IV followed by drug severity levels III and I. Releases over admissions during FY 2008 were also found in nondrug severity levels II, III and VI to X.

Jessica's Law continuously impacts nondrug severity levels I, II, III and V. Some child sex offenses categorized on these severity levels in the past are reclassified as offgrid offense. The projected prison population of nondrug severity levels II and III will decrease over the ten-year forecast period. However, nondrug severity level I indicates an increase trend over the ten years. This is due to the longer length of sentence. The projection of nondrug severity level V shows a mixed picture. Jessica's Law, on the one hand, reduces the population by moving the child sex offenders to the offgrid but, on the other hand, increases the population by increasing the offender registration violators from nondrug severity level X to nondrug severity level V. House Substitute for Senate Bill 14 will decrease the population of nondrug severity level V by at least 20% reduction of probation condition violators, while Senate Bill 204 enacted into law on July 1, 2007 adds drug manufacture and possession of precursor drugs for sale statutes to the offender registration list. This addition will increase the pool of offender registration and

potentially increase the number of violators to prison. In FY 2008, 18 offenders who violated the registration act were sentenced to prison on nondrug severity level V. Nondrug severity level V needs continuous monitoring during the next few years.

Overall, the FY 2009 projections indicate that the state's prison population will increase by 839 inmates or 9.7% in FY 2018 over the current prison population. The total prison population is expected to reach 9,477 inmates by the end of FY 2018. Offgrid, nondrug severity levels I, II and III will account for 48.6% of the projected prison population in FY 2018. Nondrug severity levels IV, V and VI will make up 16.1% and nonviolent inmates will consist of 12.7% of the projected prison population in FY 2018. The projected drug inmate prison population will represent 14.2% while parole/post-release supervision condition violators will make up 8.4% of the forecasted prison population in FY 2018.

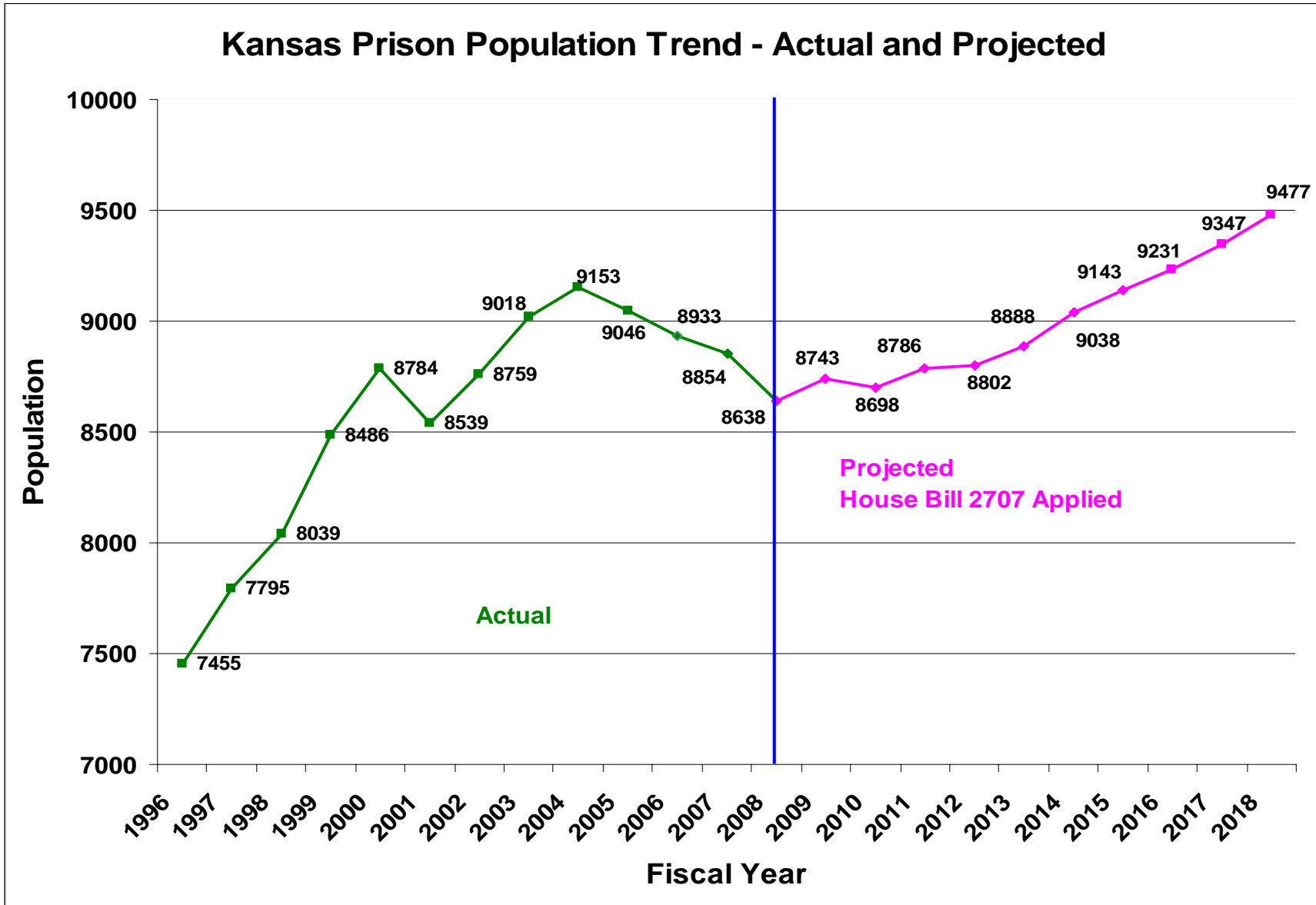
A full copy of the FY 2009 Adult Inmate Prison Population Projection can be obtained by contacting the Kansas Sentencing Commission or via the internet at:

<http://www.kansas.gov/ksc/>

**2009 Adult Inmate Population Projections**

Severity Level	June 30 2008*	June 30 2009	June 30 2010	June 30 2011	June 30 2012	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018	Total # Increase	% Increase
D1	378	358	354	345	333	318	310	306	298	287	296	-82	-21.7%
D2	160	146	142	138	143	150	156	162	163	172	163	3	1.9%
D3	421	398	376	356	340	335	325	301	320	313	300	-121	-28.7%
D4	659	617	562	556	509	509	527	533	566	565	590	-69	-10.5%
N1	882	928	960	988	1027	1066	1096	1131	1164	1189	1203	321	36.4%
N2	435	430	421	414	416	415	414	409	405	383	371	-64	-14.7%
N3	1321	1310	1311	1330	1343	1328	1320	1327	1300	1309	1309	-12	-0.9%
N4	275	270	278	293	291	271	263	281	266	253	251	-24	-8.7%
N5	1091	1094	1130	1126	1103	1091	1132	1109	1111	1100	1104	13	1.2%
N6	151	171	178	158	171	170	175	161	160	164	167	16	10.6%
N7	775	754	693	723	674	658	652	642	625	653	672	-103	-13.3%
N8	199	215	194	190	177	189	191	199	194	196	192	-7	-3.5%
N9	223	291	300	285	301	282	303	281	278	291	297	74	33.2%
N10	34	54	51	40	34	49	44	47	43	47	42	8	23.5%
OFF GRID	812	893	981	1063	1159	1251	1345	1438	1528	1628	1722	910	112.1%
Condition Parole/PIS Violators	819	814	767	781	781	806	785	816	810	797	798	-21	-2.6%
<b>Total</b>	<b>8638</b>	<b>8743</b>	<b>8698</b>	<b>8786</b>	<b>8802</b>	<b>8888</b>	<b>9038</b>	<b>9143</b>	<b>9231</b>	<b>9347</b>	<b>9477</b>	<b>839</b>	<b>9.7%</b>

\*. The numbers on June 30, 2008 are the actual prison population on that date. Total numbers include two non-grids and one missing.  
Note: House Bill 2707 enacted into law on July 1, 2008.



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## Section III

### 2003-SB 123-Alternative Sentencing

#### MAJOR HIGHLIGHTS AND PRESENT STATUS

During the 2003 session, House Substitute for SB 123 set mandatory treatment for a target population of offenders convicted of drug possession which was implemented November 1, 2003. (K.S.A. 21-4729). Duties were assigned to the Kansas Sentencing Commission under K.S.A. 75-52,144 to be a centralized payment center for the program.

The program conforms to the agency philosophy to sustain public safety while efficiently using state resources and provides community based alternatives that will produce reductions in recidivism for those who do not pose a public safety threat.

By delivering substance abuse treatment with cognitive behavioral skills combined with probation supervision, Kansas administers a comprehensive statewide drug policy focusing on the causes of substance abuse and providing appropriate treatment with the objectives of reducing recidivism, holding the offender accountable, and ensuring public safety. “Longitudinal outcome studies find that those who participate in community-based drug abuse treatment programs commit fewer crimes than those who do not participate in such programs.”<sup>[1]</sup>

The Sentencing Commission and the Department of Corrections, along with treatment providers within each community, continue to work closely in carrying out the operation, and the continued refinement of the requirements set forth in this legislation. Throughout the operation of this program, input from various stakeholders has been solicited (treatment providers, mental health professionals, judges, attorneys, offender participants and community corrections officers). Responses from stakeholders reflect the positive impact of this program.

The agency is also responsible for ongoing analyses and specified periodic evaluations. The eighteen month evaluation of the implementation processes, outsourced to the Vera Institute of Justice, is available on the Commission’s website (<http://www.kansas.gov/ksc>). Outsourcing the evaluation of the implementation was considered necessary to facilitate a non-biased evaluation since both the Department of Corrections and the Sentencing Commission played pivotal roles in the implementation process. Using data provided by the Sentencing Commission and the Department of Corrections, a 36 month evaluation draft has been presented. Evaluators have received data for the 60 month evaluation. The agency, using payment and journal entry data has produced an analysis of the cost and benefits of this program. Specifically, this analysis presents a cost avoidance report covering implementation, November 1, 2003 through October 31, 2008.

<sup>[1]</sup> Offender Substance abuse Report, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* by Bennett W. Fletcher and Redonna K. Chandler, with guidance from Jack B. Stein

## Sentencing Practices and Recidivism rates

The brief cost-benefit analysis includes five year pre-SB 123 sentences from FY 1999 to FY 2003 and post SB 123 sentences from FY 2004 to FY 2008. The data used includes all drug possession sentences. The comparison between pre and post SB 123 includes two outcomes – direct prison admission and probation revocation to prison. Direct prison admission is divided into two groups – one with criminal history category E to I and another with criminal history category A to D.

- A. Criminal History Category E to I:** The ten year drug possession sentences with criminal history category E to I and the percentage of the offenders directly sentenced to prison are shown in the following table. The average percentage of direct prison sentence for pre-SB 123 is 10.6% while the average percentage of direct prison sentence for post SB123 is 4.8%. The average percentage reduction after SB 123 implemented is 5.8%.

**Pre and Post SB123 Direct Prison Sentence**

<b>Fiscal Year</b>	<b>Criminal History E to I</b>	<b>% of Direct Prison Sentence</b>
1999	1084	11.8%
2000	1217	10.8%
2001	1247	10.1%
2002	1383	10.0%
2003	1502	10.4%
2004	1426	8.3%
2005	1647	5.8%
2006	1847	4.9%
2007	1754	4.0%
2008	1844	4.4%
<b>Pre-SB 123 Average % Directly Sentenced to Prison</b>		<b>10.6%</b>
<b>Post SB 123 Average % Directly Sentenced to Prison</b>		<b>4.8%</b>
<b>Pre and Post % Difference</b>		<b>-5.8%</b>

- B. Criminal History Category A to D:** The average percentage of this group who were directly sentenced to prison from FY 1999 to FY 2003 was 53.3%. The average percentage of this group from FY 2004 to FY 2008 was 39.7%, a reduction of 13.6%.
- C. Probation Revocation to Prison:** The comparison between pre and post SB 123 probation revocation to prison is shown in the following table. The number of probation revocation to prison from FY 1999 to 2003 (pre SB 123) is based on

the drug possession sentences with criminal history category E to I. The number of probation revocation to prison from FY 2004 to FY 2008 is based on the SB 123 sentences. As indicated below, FY 2004 had no SB 123 revocations and FY 2005 indicated 55 revocations to prison. Therefore, the average probation revocation rate to prison is based on the last three years. The average percent reduction is 12.1%.

#### Pre and Post SB 123 Revocation Rate to Prison

Fiscal Year	Number of Revocation to Prison	Revocation % to Prison
1999	269	28.3%
2000	258	23.8%
2001	245	21.9%
2002	320	26.5%
2003	335	25.8%
2004	0	0.0%
2005	55	5.0%
2006	150	11.1%
2007	187	14.9%
2008	179	13.6%
<b>Pre-SB 123 Average % to Prison</b>		<b>25.3%</b>
<b>Post SB 123 Average % to Prison (FY 2006 to FY 2008)</b>		<b>13.2%</b>
<b>Pre and Post % Difference</b>		<b>-12.1%</b>

The Overall reduction of prison admission is shown in the following table.

#### Prison Admission Reduction

Fiscal Year	Direct Prison Admission Reduction	SB 123 Revocation to Prison Admission Reduction	Total Prison Admission Reduction
2004	61	38	99
2005	173	123	296
2006	189	154	343
2007	167	144	311
2008	183	149	332

The estimated prison bed saving is based the SB 123 offenders' average underlying prison sentences minus good time and jail credit. The annual cost of an inmate housed in KDOC

is based on \$25,000. The table below indicates the estimated beds and money saved from FY 2004 to FY 2008.

**Brief Cost-Benefit Analysis (CBA) of SB 123**

**Beds and Money Saved**

<b>Fiscal Year</b>	<b>Beds Saved</b>	<b>Money Saved</b>
2004	79	\$1,975,000
2005	270	\$6,750,000
2006	379	\$9,475,000
2007	387	\$9,675,000
2008	405	\$10,125,000

Since the implementation of SB 123, this policy has saved the State an estimated total of \$7.5 millions over the past five years. This savings does not include any indirect cost, such as, prison construction or expansion cost due to the increasing number of beds needed, jail cost and court fees due to revocation hearing, offenders' salaries due to continuous employment, etc.

**Direct Cost and Benefit**

<b>Fiscal Year</b>	<b>SB 123 Expenditure</b>	<b>Money Collected*</b>	<b>Actual SB123 Cost</b>	<b>Estimated Saving from Prison Cost</b>	<b>Estimated Money Saved</b>
2004	\$998,430	\$15,948	\$982,482	\$1,975,000	-\$992,518
2005	\$5,100,925	\$150,224	\$4,950,701	\$6,750,000	-\$1,799,299
2006	\$7,860,995	\$213,589	\$7,647,406	\$9,475,000	-\$1,827,594
2007	\$8,640,330	\$202,784	\$8,437,546	\$9,675,000	-\$1,237,454
2008	\$8,733,855	\$229,649	\$8,504,206	\$10,125,000	-\$1,620,794
<b>Total</b>	<b>\$31,334,535</b>	<b>\$812,194</b>	<b>\$30,522,341</b>	<b>\$38,000,000</b>	<b>-\$7,477,659</b>

\* Money collected from offenders and insurances.

**Substance Abuse Treatment Expenditures**

Since implementation date of November 1, 2003 through June 30, 2008, a total of \$31,236,658 was expended on assessments and treatment services (based on service rendered date – not on a cash flow basis).

The table below represents the number of offenders and the average cost of treatment including assessments for each fiscal year.

**SB 123 Cost Per Offender  
Treatment and Assessment  
November 2003-June 2008**

<b>Fiscal Year</b>	<b>Months Included</b>	<b>Number of Offenders</b>	<b>Cost per Offender</b>	<b>Total Cost per Fiscal Year</b>
2004	8	500	\$ 3,327	\$ 998,468
2005	12	1,631	\$ 4,060	\$ 5,100,925
2006	12	2,503	\$ 3,878	\$ 7,861,395
2007	12	2,675	\$ 3,842	\$ 8,642,250
2008	12	2,649	\$ 3,834	\$ 8,640,488
				<u>\$ 31,243,526</u>

*\* Number of unique offenders for each year does not equal total, due to a treatment regime spanning upto 18 months and a resulting overlap from year to year*

The following presents this information by **modality type**.

<b>SB 123 Inpatient Treatment November 1, 2003 Through June 30, 2008</b>			
Days of Intermediate Residential, Social Detox, Reintegration and Therapeutic Community			
Fiscal Yr	# Days	# Offenders	Total Expenditures
FY 2004	4,167	112	\$594,134
FY 2005	24,882	606	\$2,772,416
FY 2006	42,759	999	\$4,400,630
FY 2007	41,996	998	\$4,289,663
FY 2008	41,194	937	\$4,278,368
<b>Total Inpatient</b>	<b>154,998</b>		<b>\$16,335,211</b>
<b>SB 123 Outpatient Treatment November 2003-June 2008</b>			
Units of Outpatient Treatment Services Day Treatment, Intensive Outpatient, Individual, Group, Family Relapse Prevention			
Fiscal Yr	# Hours	# Offenders	Total Expenditures
FY 2004	6,868	439	\$314,128
FY 2005	45,158	2,401	\$2,111,278
FY 2006	82,740	3,667	\$3,191,865
FY 2007	117,078	3,968	\$4,090,191
FY 2008	117,368	4,092	\$4,114,848
<b>Total Outpatient</b>	<b>369,212</b>		<b>\$13,822,310</b>
<b>Total for all modalities and assessments</b>			
<b>Treatment Payments</b>			<b>\$30,157,521</b>
<b>Assessment Payments</b>			<b>\$1,086,005</b>
<b>Total Expenditures</b>			<b>\$31,243,526</b>

**Treatment Cost per Offender**

Offenders who have received a 2003 SB 123 sentence are allowed up to eighteen months of treatment. From the beginning of the program, November 1, 2003 through June 30, 2008, 5,928 offenders were sentenced to the SB 123 program. For this period, the average cost of treatment and assessments for up to 18 months of services is \$6,329 per offender. The annualized expenditure per offender is \$3,838 including assessment and treatment.

### **Offender Reimbursement and Insurance Receipts**

As a part of this program, offenders are required to reimburse the state for treatment costs which is to be applied to subsidize state expenditures. Also included in the requirements is the collection of insurance payments, if such exists. The following tables show the amounts received for each.

<b>SB 123 Offender Reimbursements</b>		<b>SB 123 Insurance Receipts</b>		<b>Combined Receipts per fiscal year</b>
Year	Amount	Year	Amount	
FY 2004	\$ 2,120	FY 2004	\$ 13,828	\$ 15,948
FY 2005	\$ 27,278	FY 2005	\$ 122,946	\$ 150,224
FY 2006	\$ 48,786	FY 2006	\$ 164,803	\$ 213,589
FY 2007	\$ 59,915	FY 2007	\$ 142,869	\$ 202,784
FY 2008	\$ 71,678	FY 2008	\$ 157,972	\$ 229,649
Total	\$ 209,777	Total	\$ 602,418	\$ 812,194.26

### **Agency Administrative Responsibilities**

Outlined below are the specific functions in relation to 2003-SB 123 that are performed by the Commission. One staff position is shared between the KSC office budget/fiscal function and 2003-SB 123 functions. One bill payment position was added through community corrections supervision funding shifted from the Department of Corrections to the Sentencing Commission when Community Corrections agencies requested the Commission staff pay invoices centrally. One invoice payment position is funded through insurance receipts from the program.

### **ADMINISTRATION**

Commission staff, in conjunction with Department of Corrections staff, are responsible for administering functions of 2003-SB 123, including development of policies and procedures for 2003-SB 123 operations, publication of the Operations Manual, monitoring the progress of the program, answering questions related to the imposition of 2003-SB 123 sentences, and reporting on program progress to stakeholders through regular update conferences in Wichita, Salina and Topeka.

### **BUDGETING FUNCTION AND CENTRALIZED BILL PAYMENT**

The Commission serves as the centralized bill payment center for this program. Receipts into the program from insurance proceeds and offender reimbursement are tracked and reported by the agency. The Commission also budgets for program treatment.

### **EVALUATION EFFORTS**

On the treatment/rehabilitative side, 2003-SB 123 continues to show promise. Enough time has passed that program success can begin to be evaluated. This program requires a sentence of up to 18 months of community-based supervision through Community Corrections and drug treatment through a certified treatment provider. The offender cohort used for evaluative analysis requires between 12 and 18 months post-sentence completion before any determination of program success can be measured. Given the November 1, 2003 implementation date, the first cohort of offenders were at 18 months post-sentence completion in November 2006. In FY 2004, a total of 439 SB 123 sentences were imposed across the state. By now, a sufficient number of completions should exist from which to evaluate the program. The evaluation is underway at present.

The Sentencing Commission continues to monitor the progress of the program and continues to generate and refine output measures and measures indicative of more intermediate outcomes. Currently, the agency is soliciting professional clinical entities to conduct a utilization audit. This audit would assess the treatment modality mix to examine if treatments are within ASAM criteria. Specifically, this audit would serve to verify that the intensity of the treatment modality(s) are appropriate for the severity of the addiction and identified problem areas.

The Sentencing Commission continues in its mission to improve quality control of data obtained through the payment process. These records are used to provide information to stakeholders and data for evaluation purposes.

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## **Section IV.**

# **STATE-WIDE IMPLEMENTATION OF A STANDARDIZED RISK ASSESSMENT TOOL**

### **Background**

The Kansas Sentencing Commission formed a work group in the fall of 2002 to address the possibility of implementing a dynamic risk/needs assessment instrument across agencies in one targeted area in Kansas. In November 2002, members of the work group met with representatives of Johnson County Community Corrections, probation and parole.

Agreement was reached to pilot the LSI-R (Level of Services Inventory-Revised©, developed by Don Andrews, Ph.D. & James Bonta, Ph.D. and marketed through Multi-Health Systems, Inc, who hold the copyright). The LSI-R inventory is a quantitative survey of offender attributes and their situations relevant to level of supervision and treatment decisions. Designed for ages 16 and older, the LSI-R inventory helps predict parole outcome, success in correctional halfway houses, institutional misconduct, and recidivism. The 54 items are based on legal requirements and include relevant factors needed for making decisions about risk and treatment. The Johnson County agencies agreed to pursue this project together.

The Sentencing Commission recognizes the success of the Johnson County pilot project with the LSI-R to date. While the pilot project is working well in Johnson County, there are several more technical items that must be focused on and resolved prior to implementation statewide. Included here are issues such as the pilot project focusing and recording the “top three” domains whereas all domains should be tracked and recorded. Also, Johnson County is recording data into the Multi Health Systems information system. This has resulted in a diminished ability to track offenders assigned to Community Corrections versus those assigned to Court Services. All data should, instead, be recorded into a Kansas-based information system so as to facilitate future analyses and resource planning efforts. The Kansas Criminal Justice Information System (KCJIS) may be the appropriate venue for such data collection and maintenance. The pilot project was designed to use the results of an initial LSI-R used for assignment to supervision by Court Services or Community Corrections. This should be expanded such that reassessments are conducted to measure intermediate offender performance. Further, standards should be developed for a wider deployment and use of the LSI-R tool.

### **Recent Action**

In October 2007, the Sentencing Commission formed a new subcommittee to review and make recommendations to the Commission on the items listed below:

- Review data currently available from the pilot project compiled by Dr. Holsinger;

- Review how the Johnson County process is working and the success of the LSI-R in determining an appropriate level of supervision for each offender;
- Make recommendations to the Sentencing Commission regarding statewide implementation of the LSI-R;
- Identify and recommend solutions for issues related to statewide implementation of the LSI-R; and
- Review statewide data and make recommendations regarding post-implementation issues regarding the use of the LSI-R as the supervision tool for all Kansas supervision entities.

### **Current Activity**

A committee was appointed by the Commission to make recommendations on the statewide expansion of a mandatory, standardized risk assessment tool [K.S.A. 75-5291(a)(2)(E)]. The KSC has also been designated as facilitator for the statewide implementation of a risk/needs assessment tool. The KSC committee has engaged several participants to determine best practices in the implementation of a risk/needs assessment tool statewide.

Members of the KSC serving on the committee are Patricia Biggs, Kansas Parole Board, who serves as chairperson, Roger Werholtz, Secretary of Corrections, Representative Janice Pauls, Dale Finger, Leawood Police Department, Chris Mechler, Office of Judicial Administration (OJA), and Annie Grevas, Director of Community Corrections for the 28<sup>th</sup> District. Also participating are staff of KDOC, and KSC. Presenters included Tim Mulcahy, Johnson County's Chief Information Officer, Rick Guinn, Deputy of Criminal Division of the Attorney General's office, who was part of the Johnson County office of the District Attorney at implementation of the pilot and Risë Haneberg, Chief Court Services Officer for Johnson County.

### **Goal of the Committee**

The goal of this committee is to facilitate statewide implementation of a risk needs tool that would provide evidence based practice in supervision classification. To achieve this purpose the committee considered the Johnson County pilot program; studies of LSI-R that have been done; along with issues for delivery of services; and tracking results through a statewide data system.

### **Selection of the LSI-R**

The committee confirmed as an assessment tool the Level of Service Inventory-Revised (LSI-R) to be used statewide to determine offenders' risk to re-offend. Several studies have shown the predictive validity of the LSI-R as an assessment tool for offender populations. This tool measures criminogenic attributes along with identifying needs that

should be addressed to increase offenders' success in society. The use of the LSI-R not only allows for valid classification of custody, but also facilitates case planning and treatment intervention. The committee determined that their recommendation would include the use of the LSI-R scores for offenders whose sentence would be presumptive non-prison to determine placement under either court services or community corrections after sentencing.

### **Identified Initiatives:**

1. Evidence-based supervision classification is more effective than present methods.
2. LSI-R tool has been validated internationally and throughout many states, including Kansas.
3. The LSI-R instrument is in use throughout community corrections, prison, parole services and in Johnson County, court services.
4. State-wide implementation requires additional resources for:
  - a. Training court services officers and refresher training to assure competency and consistency in administering the instrument;
  - b. Compatible data systems across branches and throughout local to state layers of government; and
  - c. Prior and present assessment information that is available to multiple users and evaluators.

### **Current use of LSI-R-Johnson County and KDOC**

The LSI-R is currently used by KDOC for determining the level of supervision in community corrections and for those sentenced under K.S.A. 21-4729 (2003-SB 123). This assessment tool has also been used for both court services and community corrections in Johnson County as a pilot program. That pilot program was due to cease, in 2008 when it was anticipated that the use of the LSI-R would expand statewide, however, implementation has been delayed due to lack of funding, and finalization of the implementation plan. During the 2008 legislative session, SB 411 was passed, which extended the pilot LSI-R program in Johnson County to July 1, 2010.

### **Training Recommendation and Funding**

Input from KDOC about current training practices employed for community corrections officers who administer the LSI-R provided a foundation for a training plan for court service officers. OJA, with input from KDOC proposed a budget enhancement that would provide training for 10 court service officers. The training of court service officers would allow all felony offenders not sentenced to prison to be assessed after sentencing. The proposal would be a bridge to the establishment of a Statewide Training Academy.

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## **Statewide Data Recommendations**

Another objective considered by the committee was the need for tracking the LSI-R (s) for each offender. Solutions to a statewide tracking system were addressed by Bill Noll, Chief Information Officer, KDOC with cooperation of Kelly O'Brien, Chief Information Officer, Office of Judicial Administration and Tim Mulcahy, Johnson County's Chief Information Officer. An IT subcommittee was formed to identify gaps and needs regarding a statewide LSI-R tracking system. Three options were provided and the committee selected a web-based statewide central repository system. Mr. Noll provided a cost estimate for this option.

## **Remaining Objectives**

- The committee awaits norming data from Dr. David Simourd, of Algonquin Correctional Evaluation Services that would identify a cutoff score to determine whether an offender would be supervised under court services or community corrections.
- Funding of the data system, training, and statewide collaboration.
- Legislation to continue the pilot program until the statewide implementation.

## **Current and Future Direction**

While plans can be developed to address these issues, the committee recognizes that additional resources are required to bring those plans to fruition. Therefore, at this time, the Commission has suspended its work until additional resources may be available. The Commission has requested legislation be drafted to allow the Johnson County pilot project to remain in existence without a sunset.

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## **Section V. RECOMMENDATIONS REGARDING SENTENCE PROPORTIONALITY AND RECODIFICATION OF THE CRIMINAL CODE**

### **Sentence Proportionality**

In June 2007, the Kansas Sentencing Commission formed a subcommittee to review proportionality of sentences. This subcommittee works in conjunction with the Kansas Recodification Commission, charged with recodifying the criminal code. The Subcommittee was charged with reviewing changes in felony sentencing law since the inception of guidelines in 1993, to review a 2004 study by the Vera Institute of Justice, and to make recommendations regarding realigning and appropriately placing felonies by severity level within various crime categories and overall.

The Kansas Sentencing Commission authorized the Proportionality Subcommittee to review and analyze all Kansas felonies then recommend appropriate offense severities with a focus on (a) presumptive prison sentences, (b) similar treatment of property, drug, and sex offenses with similar degrees of harm, (c) proportionate sentences for repeat DUI and domestic violence offenders, and (d) proportionate sentences for drug and property crime offenses that minimize sentencing disparity between offenses with similar degrees of harm by utilizing threshold levels based on the quantity of drugs and the actual financial loss to the victim.

The Proportionality Subcommittee is chaired by Mr. Thomas Drees. Members of this committee include: Mr. Kevin Graham, Mr. Rick Kittel, Representative Janice Pauls, Ms. Patricia Biggs, Ms. Chris Mechler, Ms. Annie Grevas and Reverend Junius Dotson. Mr. Ed Klumpp, Vice-chair of the Kansas Recodification Commission, was invited to be part of the group.

Data reviewed by the Proportionality Subcommittee shows a large number of sentencing departures, especially on the drug grid, the majority of which are downward. The number of downward departures suggests a disconnect between the current law on the books and the law in practice; or the possibility that the current severity level is not supported by the proportionality rationale that punishment should be relational to the degree of harm inflicted by the offense. Of equal concern is the consideration that border boxes contained on the grid are presumptive imprisonment border (PIB) boxes, yet result in a probation sentence approximately 80% of the time. There appears to be a disconnect between the law and practice in sentencing cases involving PIB boxes.

The subcommittee recognizes that offender culpability plays a role and should be considered in sentencing for repeat offenses. This is especially true for repeat property, DUI, domestic battery and drug offenses, where offender culpability does not seem proportional to the injury or harm to the victim.

With respect to drug offenses, the recommendations of the Subcommittee advance uniformity, consistency and proportionality. They also clarify the distinction between offenses involving personal use possession and those involving distribution, manufacturing, and cultivation. Further recommendations differentiate between large and small quantities for the purposes of sale and distribution.

### **Kansas Criminal Code Recodification Commission**

The passage, in 2007, of K. S. A. 21-4801 (House Substitute for Senate Bill 14) enacted, along with a package of three recidivism reducing strategies, the Kansas Criminal Code Recodification Commission. Representative Jan Pauls was appointed by the Sentencing Commission to serve as a member of the Recodification Commission.

The Kansas Sentencing Commission Proportionality Subcommittee works very closely with the Recodification Commission to provide information as needed and communicates regularly so that efforts are not duplicated.

### **Current Activity of Proportionality – Recodification**

The section below reports Kansas Sentencing Commission efforts to recommend more proportional sentences and to work jointly with the Kansas Recodification Commission in their mission to recodify the criminal code.

1. The Commission published a proportionality study dated January, 2008.
2. Representative Jan Pauls, a member of the Kansas Sentencing Commission continues to serve as a member of the Kansas Recodification Commission. Additional officials are members of both groups, providing rationale behind Sentencing Commission recommendations and ensuring that efforts were not duplicated between the two Commissions.
3. The Kansas Recodification Commission considered the Sentencing Commission's work throughout 2008 and made additional recommendations and refinements.
4. The Kansas Recodification Commission made additional recommendations regarding quantities of drugs for sale and distribution felonies.
5. The Kansas Sentencing Commission reviewed the work of the Kansas Recodification Commission and made additional refinements and suggestions, which were later adopted by the Recodification Commission.
6. Legislation has been requested by the Kansas Recodification Commission regarding proportionality recommendations. Additional recommendations regarding probation supervision for class A misdemeanors, reclassifying unclassified felonies to severity level 10 nonperson felonies outside of Chapters 21 and 65, and reclassifying

severity levels and values for property crimes outside of Chapters 21 and 65 were added by the Kansas Sentencing Commission that were considered outside the scope of the Recodification Commission's work.

7. The Kansas Sentencing Commission has reconvened the Proportionality Committee for the purpose of making recommendations regarding post-incarceration release and probation terms.
8. The Kansas Sentencing Commission continues to assist the work of the Recodification Commission by providing data analysis as requested, resulting in data-driven recommendations.

## **Section VI.**

# **KANSAS SENTENCING COMMISSION INITIATIVES**

### **Kansas Reentry Policy Council**

To focus on reentry and justice reinvestment, the Kansas Reentry Policy Council (KRPC) was created to discover ways that every offender released from prison will have the tools needed to succeed in the community. Honorable Ernest L. Johnson, KSC Chairman, serves as a member of the KRPC. The Council then established a Steering Committee, appointing the Executive Director of the Sentencing Commission to serve as a member, to make recommendations and provide information to the Council. The Steering Committee has engaged several task forces, composed of people having specific expertise, to identify barriers to offender reentry and make recommendations to reduce them in such areas as housing, transportation, family issues, employment, substance abuse, mental health, cognitive services, parole and probation. A great amount of effort is provided to: ensure responsible use of tax dollars, promote agency collaboration, invest in neighborhood based strategies and provide offender accountability.

### **Substance Abuse Advisory Board**

A member of the Kansas sentencing commission, Chris Mechler serves on the Kansas Criminal Justice Coordinating Council Substance Abuse Advisory Board. This board was established during the 2008 legislative session to consult and advise the council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation and supervision of substance abuse offenders. The board shall specifically analyze and study driving under the influence and the use of drug courts by other states.

### **Annual Report**

The Commission produces an Annual Report, which continues its efforts to monitor the implementation of sentencing guidelines, by examining and conducting research on sentencing issues. The Commission focused on processing statewide felony sentencing journal entries including both prison and non-prison guidelines sentences; evaluating the proportionality of sentences; presenting recommendations to the state legislature relating to modification and improvement of current sentencing guidelines; providing the legislature and state agencies with prison bed-space impact assessments due to related policy changes; producing annual prison population projections, monitoring implementation and operation of the alternative sentencing substance abuse treatment program (2003-SB 123); and responding to national, state and local requests regarding sentencing data. The agency also continues to explore mapping capabilities to better serve stakeholders through this type of analysis. With this analysis, the agency has been able to show growth in service locations of SB 123 treatment providers.

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### **Statistical Analysis Center (SAC) Activities**

The Kansas Sentencing Commission serves as the designated Statistical Analysis Center for Criminal Justice analyses (statistically-based or analytically driven). This is a designation placed on the Commission by the US Department of Justice – Bureau of Justice Statistics. It requires the Commission to analyze programs and data in a scientifically reliable fashion and to share the results of such analyses with other Criminal Justice entities across the U.S. Currently SAC funding is used for evaluation of 2003-SB 123 and mapping capabilities.

### **Web Accessibility**

The agency strives to maintain a user-friendly website and is frequently updated. Case law updates are listed by subject matter. The website is a one-stop shop for Commission publications and 2003-SB 123 substance abuse treatment information.

The Kansas Sentencing Commission continues to utilize list serve to notify subscribers, by email, of the latest updates to the Kansas Sentencing Commission website. Information to subscribe or to unsubscribe is included on the Kansas Sentencing Commission website at <http://www.kansas.gov/ksc/> .

### **Deaths In Custody**

The Kansas Sentencing Commission serves as the State clearinghouse for reporting the number and related information on Deaths in Custody to the Federal Government. Information is collected from over 350 law enforcement agencies.

### **Kansas Criminal Justice Resource Directory**

The Sentencing Commission continues to maintain and update the Kansas Criminal Justice Resource Directory. The purpose of the Resource Directory is to provide assistance to law enforcement, criminal justice and legal system practitioners by having contact information in one source. Copies including, revised pages of the directory may be downloaded from the Sentencing Commission website at [www.kansas.gov/ksc/](http://www.kansas.gov/ksc/) .

In effort to keep the Resource Directory updated, the Resource Directory Information Update Form was created. If an agency should have changes to the listing in the directory, the form with the agency's new contact information is completed, the changes are made and posted monthly on the Sentencing Commission website.

### **Recycling Program**

The Sentencing Commission proudly supports and participates in the Kansas Green Team recycling program

## **Conclusion**

Several initiatives continue to move forward, including proportionality, recodification, and offender reentry. Taken individually or collectively, these initiatives hold the potential to change the landscape and environment in which the Sentencing Commission operates. These efforts also position the Sentencing Commission as an evaluator of many of the criminal justice and justice reinvestment projects proposed by multiple stakeholder groups. The Kansas Sentencing Commission is in the midst of them, recommending rational public sentencing policy, as well as providing information to stakeholders that will assist them in making data driven policy decisions.