

HOUSE Substitute for SENATE BILL No. 45

AN ACT creating the Kansas criminal justice recodification, rehabilitation and restoration project; duties thereof; establishing a committee to govern the project; providing for the membership thereof; development of the comprehensive corrections plan.

WHEREAS, The legislature finds and declares that, since the Kansas criminal code was codified in 1993 and through 2003, 50 new felonies have been enacted; 10 felony offenses have increased severity levels; 14 misdemeanor offenses were increased to felony offenses; four crimes were moved to nongrid status; four nonperson crimes were moved to person crime status; the present sentence for nondrug severity level 1 with criminal history A is 219% greater than it was 10 years ago (194 months to 620 months) and for criminal history I, it is 60% greater (97 months to 155 months); the present sentence for nondrug severity level 2 with criminal history A is 219% greater than it was 10 years ago (146 months to 467 months) and for criminal history I, it is 60% greater (73 months to 117 months); and countless new misdemeanors have been enacted and codified throughout the Kansas statutory code, increasing the margin for error in prosecutors appropriately identifying and charging for certain criminal acts; and

WHEREAS, In recent years there have been numerous appellate court decisions, both federal and state, which have impacted determinant sentencing, most especially with regard to departures from the sentencing guidelines, and the enforceability and sentencing severity of enacted criminal legislation; and

WHEREAS, Numerous societal changes have occurred as a result of advances in technology, the advent of terrorism and the need for homeland security, which must be appropriately addressed; and

WHEREAS, The Legislature further finds and declares that a comprehensive review of these new and enhanced offenses should be conducted to determine if the sentences for these offenses are appropriate and proportionate to other sentences imposed under the code; and

WHEREAS, Crime rates have been falling since 1994, with violent and property crime rates nationally being at their lowest level in 30 years. Recidivism as reported in the Corrections Yearbook is rising, and Bureau of Justice Statistics Special Report on Recidivism data indicates that within three years of release, 67.5% of released prisoners were re-arrested, 46.9% were reconvicted for new crimes, 35.4% were re-sentenced for new crime, and 51.8% returned to prison; and

WHEREAS, The inmate population in Kansas grew at a rate of 45.7% over the past 10 years, now exceeds 9,100 people, and is currently projected to increase to a population of 10,131 in 2013, an additional 11% increase; and

WHEREAS, Many of these increased admissions are nonviolent offenders and technical parole violators who have committed no crime or not been reconvicted but have violated a condition of their parole. In Kansas, 53.2% of the re-admittees over a three-year period were in this category; and

WHEREAS, There have been new and apparently effective reentry strategies for offenders developed that show much promise for improved public safety and successful reintegration of offenders into communities as productive citizens; and

WHEREAS, The rate of mental illnesses in state prisons and local jails is three times the rate in the general population, constituting more than 21% of inmates, with approximately 75% of these individuals having a co-occurring substance abuse disorder; and

WHEREAS, In most areas of Kansas, the mental health, substance abuse and criminal justice systems offer an uncoordinated system of care or no effective response for individuals with a serious mental illness or co-occurring substance abuse disorder; and

WHEREAS, The use of newer psychotropic medications has resulted in improved response to treatment for individuals with a serious mental illness, and access to these new medications has resulted in restored health and enhanced public safety; and

WHEREAS, Criminal justice, mental health and substance abuse systems that do not provide a coordinated response to individuals with serious mental illness often end up using expensive public safety and emergency services to respond to certain of those individuals; and

WHEREAS, System integration between the mental health, substance abuse and criminal justice system at the county, regional and state levels can provide prompt, appropriate treatment and interventions to break the cycles of decompensation and incarceration to successfully reduce the number of individuals with serious mental illnesses entering into, residing in and reentering the criminal justice system; and

WHEREAS, The system of criminal justice and incarceration in Kansas, presently offers substantially diminished opportunities for inmate literacy or marketable skills, or other programs and services that could ameliorate factors which place inmates at higher risk of recidivism after release; and

WHEREAS, The economic burden of recidivism is threefold, being the cost of unemployment in lost income taxes or contributions to the economy, the cost of the crime event itself compounded by police, prosecution and court expenses, and the cost of incarceration; and

WHEREAS, 93% of prisoners in the prison systems of the states are men; 55% have minor children; the average age of these children is eight, and in all, approximately 2% of all children have a parent in prison; one in seven children in our nation, before reaching age 18, will have an incarcerated father; having a father in prison is a powerful predictor of antisocial behavior in general and of criminality in particular, making a child five to six times more likely to end up in prison; and

WHEREAS, The state must learn to spend money more wisely, in order to bring crime down more effectively than to simply imprison, and thereby save moneys to spend on other priorities: Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) There is hereby created the Kansas criminal justice recodification, rehabilitation and restoration project.

(b) The project shall:

(1) Re-codify the Kansas criminal code by:

(A) Analyzing and reviewing all criminal statutes and criminal procedure, making recommendations for legislation that would ensure that the sentences are appropriate and proportionate to other sentences imposed for criminal offenses, with particular emphasis on the sentencing guidelines grid for drug crimes.

(B) Studying and making recommendations concerning the statutory definitions of crimes and criminal penalties and evaluate whether certain criminal conduct may be combined into one criminal statute, thus alleviating any potential problems of having two statutes prohibiting the same criminal conduct.

(C) Reviewing and making recommendations concerning proposed criminal law modifications and amendments.

(D) Reviewing and determining the severity of the Kansas sentencing policies in relation to other states and review possible adjustments which may relieve or eliminate prison capacity issues in Kansas.

(E) Reviewing the enactment of K.S.A. 2003 Supp. 21-4729, and amendments thereto, the nonprison sanction of certified drug abuse treatment programs for certain offenders, and review and recommend how best to enhance the sentence for an offender who is not subject to treatment.

(2) Identify ways to rehabilitate offenders and to work with offenders on community-based supervision by:

(A) For all offenders:

(i) Establishing an assessment and classification system whereby offenders are classified into those who can correct their criminal behavior and have a successful reentry upon release and those who are offenders who continue to be a threat to society and need to be incarcerated or incarcerated for longer periods of time.

(ii) Studying and reviewing programs which hold offenders responsible and accountable for such offender's actions and reduces recidivism.

(B) For reentry:

(i) Reviewing all correctional programs and study ways to more effectively utilize the monies being spent on such programs to reduce prison population and recidivism, particularly programs which target nonviolent offenders to earn early release by participating in rehabilitative programs while incarcerated then completing the transition by reintegration into

the community and obtaining gainful employment and housing. Such rehabilitative programs may include programs which modify criminogenic behavior, enhance education, and provide job training and substance abuse treatment.

(ii) Reviewing and recommending treatment programs for mental health, drug abuse and alcohol abuse, and to provide any necessary and appropriate collaboration and cooperation among governmental agencies and services to such end.

(C) Reviewing all current research concerning criminal behavior, focusing on rehabilitating criminals in prison and upon reentry into the community and recommend a course of action.

(D) Reviewing and recommending reentry initiatives, for continuity between institutional programs and activities, offenders' reentry plans, and the supervision and services offenders receive once released, and necessary collaboration among corrections, law enforcement, and community service agencies for appropriate offender monitoring to assist in meeting the needs of the offender and the offender's family and ensure that safe communities are maintained.

(E) Make recommendations concerning reentry initiatives for serious, violent offenders based on current research and collaborative opportunities identified.

(F) Consider and harness the resources and experience of faith-based, volunteer, advocacy and community organizations to help returning offenders contribute to society.

(3) Identify ways to restore the offender into society as a productive member:

(A) Reviewing transitional programs such as mentoring, available treatment, supervised and transitional housing, basic job training and placement, and correctional industry and work release programs which assist offenders to reintegrate into the community.

(B) Establishing community networks which would support and assist the offender upon release. Such support may include assisting the offender to learn about parenting and the role of the family, and to have a productive relationship with such offender's family, including being a positive and responsible parent and spouse, providing mentoring for children of prisoners, and plans for the whole family.

(C) Recommending release planning processes that ensure each offender has an individual goal-driven release plan that targets such offender's risks and needs, and which assures the safety of our Kansas communities.

(c) The project shall be governed by a committee made up of the following members:

(1) One legislator shall be appointed by the president of the senate;

(2) one legislator shall be appointed by the minority leader of the senate;

(3) one legislator shall be appointed by the speaker of the house of representatives;

(4) one legislator shall be appointed by the minority leader of the house of representatives;

(5) one member of the judicial branch appointed by the chief justice of the supreme court;

(6) one member of the law enforcement community appointed by the attorney general;

(7) one defense attorney or public defender appointed by the governor;

(8) one county attorney or district attorney appointed by the Kansas county and district attorney association;

(9) a professor of law from the university of Kansas school of law and a professor from Washburn university school of law appointed by the deans of such schools;

(10) a drug and alcohol addiction treatment provider appointed by the governor;

(11) one district court judge appointed by the Kansas district judges association;

(12) one member representative of the faith-based community appointed by the governor;

(13) one member representative of the criminal justice field appointed by the secretary of corrections; and

(14) the attorney general, the secretary of corrections, the secretary of social and rehabilitation services and the commissioner of juvenile justice, or such persons' designees, shall serve as ex officio, nonvoting members of the committee.

(d) The members of the committee shall elect officers from among its members necessary to discharge its duties. The committee shall receive testimony from interested parties at public hearings to be conducted in the various geographic areas of the state.

(e) Each member of the committee shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the committee shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on committee activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees, except that the legislative members shall receive compensation as provided in K.S.A. 75-3212, and amendments thereto.

(f) The committee shall have the authority to:

(1) Organize and appoint such task forces or subcommittees as may be deemed necessary to discharge such committee's duties;

(2) accept grants, gifts and other appropriation of funds;

(3) hire and employ staff persons; and

(4) contract for the services of organizations and agencies in any evaluation or report necessary for the discharge of the committee's duties.

(g) The committee shall work with the Kansas judicial council, the department of corrections, the department of social and rehabilitation services, the juvenile justice authority and the Kansas sentencing commission and review studies and findings of the Kansas sentencing commission concerning proportionality of sentencing.

(h) The committee shall prepare and submit its interim report to the legislature on or before February 1, 2005. A final report and recommendations shall be submitted to the legislature on or before January 9, 2006.

(i) The staff of the office of the revisor of statutes and legislative research department shall provide such assistance as may be requested by the committee and to the extent authorized by the legislative coordinating council.

(j) The provisions of this section shall expire on July 1, 2006.

Sec. 2. (a) The secretary of corrections shall develop a comprehensive plan for the expansion of maximum, medium and minimum security prison capacity, for specialized facilities and for a training academy. In developing such plan, the secretary shall engage in discussions with local units of government in jurisdictions in which department of corrections facilities are situated. The secretary shall present such plan to the legislature not later than February 1, 2005.

(b) The secretary is authorized to enter into agreements with Woodson County, or with any municipality within Woodson County, in preparation for the expansion of the minimum security correctional facility at Toronto to house additional medium or minimum security male inmates or for the development of related correctional facilities in Woodson County.

(c) The secretary is authorized to enter into agreements with Rooks County, or with any municipality within Rooks County, in preparation for the expansion of the minimum security correctional facility at Stockton to house additional medium or minimum security male inmates or for the development of related correctional facilities in Rooks County.

(d) In carrying out duties under this section, the secretary shall coordinate with the Kansas criminal justice recodification, rehabilitation and restoration project committee and with the Kansas sentencing commission.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.