

MINUTES

JOINT COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT

September 9-10, 2010
Room 546-S—Statehouse

Members Present

Senator Pete Brungardt, Chairperson
Representative Pat Colloton, Vice-chairperson
Senator Karin Brownlee
Senator Terry Bruce
Senator David Haley
Senator Dick Kelsey
Senator Janis Lee
Senator Tim Owens
Representative Barbara Craft
Representative Doug Gatewood
Representative John Grange
Representative Jerry Henry
Representative Joe Patton
Representative Jim Ward

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Connie Burns, Committee Assistant

Conferees

Helen Pedigo, Executive Director, Kansas Sentencing Commission
Mark Gleeson, Family and Children Program Coordinator, Office of Judicial Administration
Keven Pellant, Acting Deputy Secretary of Corrections for Community and Field Services, Kansas Department of Corrections
Roger Haden, Deputy Secretary for Programs and Staff Development, Kansas Department of Corrections
Roger Werholtz, Secretary, Kansas Department of Corrections
Michael Gaito, Director of Capitol Improvement and Facilities Management, Kansas Department of Corrections
Russ Jennings, Commissioner, Juvenile Justice Authority

Others Attending

See attached list.

Thursday, September 9 Morning Session

The meeting was called to order by Chairperson Pete Brungardt. The Chairperson provided an overview of the meeting and the statutory requirements of the Committee. He advised the Committee the work must be completed in the three meeting days authorized by the Legislative Coordinating Council.

Population Projections

Helen Pedigo, Executive Director, Kansas Sentencing Commission (KSC), provided the Committee with an update on adult inmate prison population projections (Attachment 1). Ms. Pedigo stated that new admissions have increased in drug level 4, nondrug level 7, and nondrug level 9. The increase in nondrug level 7 through 10 are probation condition violators. Another statistic is the amount of jail credits that offenders are receiving; the KSC provides an average calculation by severity level. Comparison graphs and spreadsheets provided are labeled as follows:

- Guideline New Commitment Admission Characteristics - FY 2010;
- Prison Population Characteristics;
- Comparison of Guideline New Commitments by Severity Level and average length of sentence;
- Parole/postrelease supervision condition violators between FY 2008 and FY 2009;
- Kansas Prison Population Trends;
- Admissions vs. releases;
- Admission Trends - Direct New Court Commitments;
- Prison Admission Trends - Probation Condition Violators, Parole/Postrelease Condition Violators, Admissions by Type, Comparison between Probation and Parole/Postrelease Violators with New Sentence, Trends by type FY 1996 through FY 2010;
- FY 2011 Adult inmate prison population projections, actual and projected, male prison population trends actual and projected, female prison population trend actual and projected; and
- Projected Drug Inmate Prison Population, Projected Violent Inmate Prison Population, Projected N4 - N6 Inmate Prison Population, Projected Nonviolent Inmate Prison Population.

Ms. Pedigo stated that, based upon the available bedspace and the population trends, some action on the part of the Legislature in the 2011 Legislative Session will be required to prevent an overcrowding situation. This has been the highest number of admissions since 1994 and the forecast is to grow 2.75 percent over the next two years. The full report is located on the Kansas Sentencing Commission's web site: <http://www.accesskansas.org/ksc/documents>.

Update on Court Services

Mark Gleeson, Family and Children Program Coordinator, Office of Judicial Administration, provided an update on court services operations and programs ([Attachment 2](#)). Currently, there are 351 full time equivalent (FTE) court services positions, all of which are funded primarily from the State General Fund (SGF). These positions are supported by state dollars for personnel costs only. All other operating expenses are provided by counties.

Statewide, each of the 31 judicial districts has a court services division. A court services officer may not be located in each of the 105 counties. Services are provided to each county by a court services officer located somewhere within the judicial district of the county.

The primary role of court services is to assist the district court by performing investigations and supervision. Kansas statutes provide a general definition of responsibilities of court services officers. Chief Judges, within the limits of fiscal resources in individual judicial districts, are able to emphasize certain roles of court services officers from district to district in order to best serve each individual judicial district. Duties performed by court services officers are governed by statute, administrative rule, and court policy.

The 2010 HB 2581 established the Correctional Supervision Fund effective July 1, 2010. This legislation also raised the probation supervision fee from \$50 to \$120 for each adult offender convicted of a felony offense. The supervision fee for each adult convicted of a misdemeanor crime was increased from \$25 to \$60. Revenues from the base fee in effect prior to July 1, 2010, continue to go into the SGF. Revenues from the supervision fee increase are credited to the Correctional Supervision Fund to be used to train court services officers to administer the risk-assessment tool called the Level of Services Inventory, Revised (LSI-R) and to implement evidence-based practices once the initial training has been completed.

Update on Community Corrections

Keven Pellant, Acting Deputy Secretary of Corrections for Community and Field Services, Kansas Department of Corrections (KDOC), provided testimony on the Community Corrections Services Division, which has provided training on and coaching throughout a strategic comprehensive planning and evidence-based practice initiative ([Attachment 3](#)). This initiative will serve to support and enhance the work already in place as a part of the statewide risk reduction activities.

Strategies for continual success:

- Strengthening collaborative partnerships of oversight agencies and local entities with a focus to ensure that public safety is maintained through evidence-based community supervision methods and practices; and
- The team will provide oversight and technical guidance in a number of different focus areas, including grant management, implementation of the integrated model, fiscal management, research and evaluation, and skill development.

Overview of Food Service and Medical Contracts

Roger Haden, Deputy Secretary for Programs and Staff Development, KDOC, provided an overview on the food service and medical contracts ([Attachment 4](#)). The food service contract was entered into with Aramark Correctional Services, Inc. in 1997. The general contract information is as follows:

- Daily population - \$1.428 per inmate per meal per day;
- The food service budget for FY 2011 is \$13,700,482;
- Projected expenditure for FY 2012 is \$14,044,424;
- Aramark cooks food for all KDOC operated facilities with the exception of the Larned Correctional Mental Health Facility, which receives food from the Larned State Hospital;
- Aramark operates food service vocational programs at four KDOC facilities at no extra cost to the state;
- KDOC operates 12 kitchens in 8 facilities;
- Aramark employed 113 staff for the performance of the KDOC contract as of July, 2010;
- Fifteen inmates are employed as "industry workers" and receive minimum wage; and
- Special diets - the vast majority of Kansas inmates eat from the regular menu; however, accommodations are made for medical needs, religious needs, and vegetarian preference. KDOC offers 13 types of medical diets, which must be ordered by a physician.

KDOC's health care services contract was entered into July 1, 2010, with Correct Care Solutions, Inc. (CCS). This contract is for the delivery of medical, dental, and mental health care services to inmates. The bid term of the current contract allows for up to three additional two-year renewals with an expiration date of June 30, 2018. The general contract information is as follows:

- CCS is responsible for all inmate health care costs, including medical, mental health, dental, optometry, and pharmaceutical;
- Contractor accepts full liability and provides full indemnification to the state;
- Required compliance with National Commission on Correction Health Care (NCCHC) and American Correctional Association (ACA) standards. (All sites are not currently accredited due to budget cuts);
- No deductibles;
- No caps on services or contractor expenditures;

- No co-pays from the Department, however, inmates pay \$2.00 co-pay for initial sick call visits that help offset healthcare spending; and
- As of July 1, 2010, CCS employed a total of 358.80 FTE staff for the performance of KDOC contract, including 250.40 medical and dental staff, 96.6 mental health staff, and 11.8 staff for administrative and clinical oversight.

The coverage provided to the state for inmates is comprehensive and has no deductibles or co-pays. The coverage fully indemnifies the state from any litigation filed by an inmate regarding medical or mental health care. Deputy Secretary Haden advised that decreases in both services and staffing were necessary to achieve budget reductions. Service cuts include the following: 39 FTE positions were eliminated, reduction in onsite medical care (i.e. the number of physical exams and laboratory tests), reduction in mental health segregation rounds, reduced re-entry services, and reduced or eliminated activity therapy. Deputy Secretary Haden suggests these services need to be restored to preserve the stability of the correctional clinical environment.

Overview of Expansion Projects and Facilities

Roger Werholtz, Secretary, KDOC, provided an overview of expansion projects and facilities ([Attachment 5](#)). Secretary Werholtz provided a chart on capacity by facility, security designation of bed space, and gender. Male beds by custody level is the main issue. Current capacities and expansion options:

- Current aggregate male capacity is 8,259;
- Current aggregate male population 8,326:
 - 2,326 maximum male beds;
 - 2,634 high medium male beds;
 - 1,019 low medium male beds;
 - 2,280 minimum male beds; and
- Estimated male beds needed by:
 - 2012 - 394;
 - 2013 - 571;
 - 2014 - 737;
 - 2015 - 879;
 - 2016 - 1,085 with a continued increase to 2020 - 1,960.

Parole has capacity issues, as well, and has increased by almost 2,000 over the past ten years. Staff in 2000 was at 128 parole officers and supervisors and in 2010 at 136; of those positions, 13 are currently being held open to meet budget, ten more of those positions could be forced open if KDOC is to make allocated resource budget for FY 2012, another ten positions are being funded with Stimulus/Bryne/JAG grant money, which included 12 special enforcement officers to chase down absconders.

KBI Crime Index reflects that while crime has gone down, violent crimes have increased. Charts were provided on reported crimes: Violent Crime, Murder, Rape, Robbery, Aggravated Assault/Battery, Property Crime, Burglary, Theft, and Motor Vehicle Theft. Aggravated burglary is rising in convictions due to new court commitments.

Afternoon Session

Overview of Expansion Projects and Facilities (continued)

Secretary Werholtz referred to a listing of major legislative changes increasing or decreasing felony criminal sentences, provided by Tim Madden, Sr., Counsel to the Secretary (Attachment 6). The information in the two charts sets out major changes in crime sentencing. The first references changes that have a global impact on sentencing from 1993. The second chart sets out sentencing changes for specific crimes since 2005, including:

- 108 statutory changes;
- 97 increased penalties;
- 7 decreased penalties;
- 1 would have increased and 2 would have decreased penalties if funding had been provided (secure substance abuse treatment facility statute); and
- 1 both increased and decreased penalties.

A chart was provided with housing expansion options. The planning piece has been done on the original four projects and will cut 6 to 6.5 months off the time line to get the beds operational for those four projects:

- 512 medium beds at El Dorado;
- Housing Project at Ellsworth;
- Expansion at Stockton; and
- Construction of the El Dorado facility.

KDOC could have a bid package ready in about two weeks from the time the Legislature authorizes it, but the planning has not been done on the other projects. Mike Gaito, Director of Capitol Improvement and Facilities Management, was available for questions from the Committee on the planning process of the expansions options.

The Committee asked if there was anything that could be done to lower the bed space requirement and reduce the number of offenders coming into the system that was less expensive. Secretary Werholtz stated that there is not anything programming-wise that would have an immediate effect; there is always a delay in the sentencing policy between the time it is implemented and the time the system feels the impact of it. Some ideas would be retroactive application for good time credits (this was done in Mississippi) or periods of time on postrelease supervision (SB 323). During the past six weeks, the Secretary has visited all of the facilities and staff, to prepare a briefing for the new administration on what the facilities need. Every facility stated the need for program restoration. Secretary Werholtz concluded that program restoration is critical, because of the impact the programs have makes the facility safer, and parole officers are just getting worn out because of lack of options and tools.

The Committee asked for the differences, if any, between high/medium and low/medium, and maximum/medium custody levels. The Secretary responded that Ellsworth handles a lock down more easily and with more control because the hardware is different on the cell doors: medium security is swing doors and maximum security is sliders.

Current capacities for severely and persistently mentally ill (SPMI) inmates and behaviorally disordered (BD) inmates are limited. The characteristics of this population include:

- Mental illness;
- Alcohol and drug addiction;
- Homeless;
- Mental retardation/developmental disabilities;
- Traumatic brain injury;
- Physical health problems;
- Limited education;
- Limited family support;
- Poor work history; and
- Fetal alcohol syndrome.

Common behaviors of this population:

- Frequent suicidal gestures;
- Aggressive/assaultive;
- Self-mutilating (cutting, gouging, piercing, chewing);
- Throwing/smearing feces and urine;
- High consumers of medical services;
- Poor hygiene;
- Prior civil commitments to state hospitals; and
- History of Axis I and Axis II diagnosis.

SRS is not able to handle inmates with these illnesses at the state hospital and has no way to treat these offenders or handle such behavior. KDOC is not equipped to handle their illnesses. Housing becomes an issue, because these offenders need to be near a high level of health care. The facility will be very expensive to build and operate. These offenders are already very expensive. The funds for planning this facility are \$992,000. It would be like planning a segregated bed unit; they need to be escorted at all times when not in lock up. The capacity would be between 100-400 males and 25-50 females.

Chairperson Brungardt took a moment of personal privilege to introduce Senator Donne E. Trotter, State Senator from Chicago, Illinois, who was an informal host at a meeting the Chairperson attended on Contemporary Health Problems and Issues.

Unresolved Issues:

- Replacement of KDOC core information technology systems (OMIS/TOADS) - over the last four years (including FY 2011), KDOC has deferred \$3,000,000 in information technology (IT) investment and has used approximately \$500,000 in outside grant money and some project funds, which were intended for system replacement, to conduct the Enterprise Architecture Study required by the Joint Committee on Information Technology; KDOC needs to recover the money and begin to rebuild KDOC's IT environment.

IT enhancement requests:

- \$3 million for first year of a four- or five-year system replacement plan for OMIS and TOADS;
 - \$845,000 for scheduled replacement of IT assets;
 - \$235,000 for video conferencing capacity expansion for release planning;
- KDOC has an aging workforce, with the average age between 46 and 55;
 - Replacement of aging vehicle fleet:
 - Over 164 vehicles already beyond replacement schedule:
 - \$3,115,000 to replace 164 cars, light trucks and vans;
 - \$420,000 to replace two more buses;
 - A small number of heavy trucks; and
 - Contemplating ceasing perimeter patrols because of worn out vehicles and staffing shortages;
 - Conversion to narrowband radio communications:
 - Federal mandate to be compliant by January 1, 2013, requires lead time for towers, bidding, and more; and
 - Current revised estimated cost - \$600,000 (previously \$742,945, used some remaining bond funds to purchases security upgrades including radios that will meet these requirements);
 - Personnel:
 - Currently holding 34 central office positions open to meet budget (reentry and parole are in the central office budget), reduce shrinkage rate from 8.1 percent to 3.5 percent - \$919,000;
 - Replace federal funding for victims services positions - \$207,723;
 - Replace and enhance training staff - \$224,415;
 - Replacement of ARRA funding for Special Enforcement Officers and Parole Officers - \$1,205,000;
 - Restoration of Community Corrections funding - FY 2010 and 2011 community corrections budget relies on \$1,500,000 in ARRA/Byrne/JAG funding each year; Community Corrections programs received an average reduction of 6 percent in FY 2010 (\$1,050,000 reduction);
 - Enhanced funding for community corrections as recommended by the Kansas Community Corrections Association - \$3,297,000; and
 - Place parole staff in Corrections KPERS, inclusion of KDOC employees in KP&F or a comparable system - it is an equity issue; cost is what has prevented this from happening in the past; there would be no cost in FY 2012 if this was enacted this session; \$5.3 million annual cost beginning in FY 2013 (based on an FY 2010 estimate);

A Committee member asked if the Secretary had the authority to ask the Governor to release offenders for budget reasons. The Secretary said that he would have to get back to the Committee with the answer. The Secretary was also asked about "Private Prisons." He responded that private prisons do not have a motivation to reduce prison populations.

Overcrowding is not an option. KDOC is currently releasing inmates from segregation at a number of facilities in order to place other inmates in segregation. Overcrowding increases the risk of disturbances, injuries to staff and inmates, opportunities for sexual assault, and other adverse events.

The Secretary provided photos of battered correction officers, performance measures, and information on the decreased recidivism for mental illness offenders. The Secretary reaffirmed that programs need to be reinstated and the cost to do this is \$6.5 million, just to get back to the 2009 levels.

Friday, September 10 Morning Session

Overview of Programs and Current Information in Juvenile Justice

J. Russell Jennings, Commissioner, Juvenile Justice Authority (JJA), provided the Committee an overview on programs and current information in JJA ([Attachment 7](#)).

Commissioner Jennings informed the Committee about an event on July 3 at Larned Juvenile Correctional Facility where two youths escaped over the fence. The Commissioner stated that three fundamental failures enabled the youths to escape:

- Design and construction of the fence;
- When 30 or more kids are in the recreation area, an officer is to be posted outside the perimeter fence; the shift manager failed to make that assignment;
- The three officers assigned to supervise and monitor the youth were standing and visiting with each other.

The juveniles were captured about 5:30 p.m., about a mile from the facility. The youths were out about six hours. Unfortunately, because of the failure and lapses, an opportunity presented itself and the youths acted on the opportunity. The youths will pay a substantial price that could have been avoided.

The budget was adopted for FY 2011. The Legislature took affirmative steps to assure public safety agencies, including JJA, were able to continue to meet basic service requirement and not unnecessarily place the public at risk. In the area of prevention and graduated sanctions programs, \$9 million was appropriated from the SGF to replace Children's Initiative Funds (CIF) as a source of funding. This change was made in order to provide relief to CIF, because of reduced revenues to CIF. This allowed for JJA to sustain remaining prevention, intervention, and graduated sanctions programs provided through juvenile community corrections organization while reducing the demand upon CIF.

A shift of funds from prevention programs, significant reduction in operating expenses at juvenile correctional facilities through the closure of two facilities, and gaining Recovery Act-Justice Assistance Grant (RA-JAG) funds to support both community and facility operations have allowed the juvenile justice system to remain fairly healthy through very challenging financial times. The most significant budget challenge JJA will face in FY 2012 is the loss of RA-JAG funds. A failure to budget for replacement of these lost funds will result in a \$500,000 reduction to juvenile community corrections graduated sanction programs and a \$378,885 loss of funds between the two juvenile correctional facilities. The \$500,000 loss to communities will be shared among the 31 judicial districts proportionally, in accordance with the formula distribution of state grant funds to communities. In the case of the juvenile correctional facilities, reduction in the number of direct supervision staff is not a viable option. Program staff positions will have to be eliminated, either through attrition or layoff. A reduction in program capacity will negatively impact youth outcomes. The impact of such a reduction in programming will likely be revealed through lower success rates among youth upon their release, ultimately leading to higher rate of return to juvenile correctional facilities and admission to adult corrections. In order for JJA to meet its public safety responsibility and to improve the likelihood of law-abiding behavior among committed youth, behavioral change must occur in the youth.

A budget enhancement for FY 2012 of \$160,605 will be requested to fund the compensation rate adjustment for juvenile corrections officers. The disparity in the rate of compensation creates a competitive disadvantage in recruiting and retaining a qualified staff.

In 2008, JJA received a grant, Project S.O.A.R. (Successful Outcomes Achieving Reentry), funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to develop and implement sex offender programming for moderate to high risk youth, and to provide a predisposition sex offender evaluation protocol. The current Project S.O.A.R. sex offender program is at least 9 to 12 months in duration, and addresses the unique needs of juvenile sex offenders to reduce their risk for re-offending. Many times, the courts would not have this information readily available when making sentencing decisions. If approved, the enhancement will allow for statewide juvenile sex offender evaluation by a licensed psychologist with adolescent sex offender training and experience. This person also would provide sex offender programming oversight in juvenile correction facilities to assure program fidelity and effectiveness.

The Commissioner provided charts and graphs on the following:

- Number of Juvenile arrest;
- Total number of intakes;
- Youth processed through intake by number and age in FY 2010;
- Number of Juvenile Court case filings;
- Number of cases granted post-filing diversion;
- Number of youth waived to adult court;
- Number of juvenile offenders supervised by court service probation on 6/30/10;
- Total number of youth placed on intensive supervision probation (ISP);
- Average number of months spent on ISP;
- Total number of youth placed on case management - state custody;
- Youth on case management placed out-of-home as of 6/30/10;
- Average length of time youth spent on case management;
- Month end custody population FY 2006-FY 2011 YTD;
- Number and type of JCF admission;
- Total number of admissions by admission type;
- Average length of stay in JCF;
- JCF population trend;
- FY 2010 month end population JCF;

- Average length of stay in month on conditional release;
- FY 2009 recidivism - JCF releases (12 months following release);
- FY 2008 recidivism - JCF releases (12 months following release);
- FY 2008 recidivism - JCF releases (24 months following release);
- One year recidivism rate - Youth discharged from state custody in FY09; and
- Two year recidivism rate - Youth discharged from custody in FY 2008.

Current Initiatives

Youth Residential Center II's:

- Contract requirement through agency standards regarding written policy for classification and assignment of youth to multiple occupancy rooms;
- CbS at Youth Residential Centers - Contract requirement effective July 1, 2010
 - September - training for participants;
 - October - first round of data submission;
- YRC II category service (Refocus)
 - Collaborative effort with providers
 - Work group established
 - Assignment of youth according to risk/needs assessment
 - Prison Rape Elimination Act (PREA) implications

Annie E. Casey Foundation - Juvenile Detention Alternative Initiative

- 75 percent participation based on licensed beds;
- October - National Conference Kansas City;
- November:
 - Agency and community leadership orientation;
 - Facility/Judicial district orientation;
 - Targeted meetings at community level; and
 - Final commitment of facility/community/Casey Foundation:
 - Data gathering and assessment;
 - Best practice training;
 - Implementation of change:
 - Legal/system process;
 - Structured decision making instrument development; and
 - Alternative to detention.

Youth Level of Service/Case Management Inventory (YLS/CMI)

- Goal - Implementation YLS/CMI - post adjudication pre disposition;
- Community planning document due by October 1st; and
- Implemented in 5 judicial districts now - Districts 5, 7, 10, 18, and 22.

Commissioner Jennings stated that there has not been any legislative initiative with anything the agency has done in the past three years; JJA has initiated on its own.

Overview of Programs and Current Information in Corrections

Secretary Werholtz provided an overview of FY 2012 Enhanced Budget Package requests and current information on FY 2012 Allocated Resources in KDOC (Attachment 8).

The Secretary addressed questions on what authority the Governor or the Secretary has to release prisoners. Clemency is the only tool available to the Governor and is deliberately designed to be slow and very precise. It is not intended to be used as a means for mass reduction of prison populations. The Secretary has the authority to do extended limits of confinement/furloughs. Secretary Werholtz would not use this tool, because, if he released a large number of individuals, some would go out and commit new crimes. He stated it is a statistical certainty that they would do that.

Statement and Discussion

Chairperson Brungardt stated that the Committee is proving that one can fulfill the statutory requirement of the Interim Committee in a day and a half, but to do so, one must curtail site visits, severely restrict the number of people to testify, and severely restrict any review of any programs or like practices of other states or nation-wide. Many things that one is supposed to get out of a joint committee, one just does not have the time to study or review. Essentially, the JCCJJO is getting what the Legislature gets during session, which, the Chairperson says is fine, but he stated Interim Session exists to study topics in more detail. The Chairperson suspects the Legislative Coordinating Council knows this, but wished to put a statement in the report.

The next Committee meeting will be September 23, 2010. The Committee meeting was adjourned at 11:50 a.m.

Prepared by Connie Burns
Edited by Athena Andaya

Approved by the Committee on:

September 23, 2010
(Date)