

October 19, 2023

Governor Laura Kelly
Second Floor, Statehouse
300 SW 10th Ave
Topeka, KS 66612-1590

Dear Governor Kelly:

Pursuant to provisions of K.S.A. 21-4725, the Secretary of Corrections has informed the Kansas Sentencing Commission that the number of KDOC inmates as of September 30, 2023, represented 85% of the overall capacity within the Kansas correctional system. There were 9,017 inmates on that date compared to a total capacity of 10,600. Of the total inmate population, 8,232 were male and 785 were female. The total correctional system capacity for housing males is 9,668; for females, the capacity is 932. Due to staffing shortages, housing units are offline, bringing the staffed inmate capacity to 99%. This reflects an increase in the inmate population from the previous year.

The Commission publishes annual adult prison population projections each year for KDOC. The projections indicate that prison releases will trail admissions for the next 10-year forecast period, with **2,353** more new inmates over the FY 2023 population. This represents a **26.4%** increase in the adult prison population through FY 2033. The COVID-19 pandemic was a significant driver in decreased prison populations. But felony admission levels have bounced back to near pre-pandemic levels, causing renewed concerns of overcapacity in the near future.

It is the Sentencing Commission's statutory responsibility to identify and analyze options to reduce Kansas prison populations, in the hope of also reducing the need to build more prisons. More specifically, K.S.A. 74-9101(b) states as follows:

- (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;
- ...
- (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, a review of corrections programs and a study of ways to utilize correction dollars more effectively and to reduce prison population; [and]
- ...
- (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[.]

As required by K.S.A. 74-9101, the Kansas Sentencing Commission has analyzed policy options that would reduce prison beds currently in the system. Our obligation is clearly to provide you with alternatives to opening or building additional prison beds. We believe these options are data-driven and the most rational approaches to public safety to maintain space requirements for the most serious offenders while seeking alternative methods to curb admissions. Below is a table of those alternatives established by the Commission to accomplish this statutory charge, directly and indirectly. The table lists the priorities in order by first-year bed savings.

The Commission considered five proposals at its September 2023 meeting. It is acknowledged that some of these proposals will have fiscal notes and may affect probation or jail populations. While these dynamics need to be considered, state corrections in Kansas is expensive and expanding extra bed capacity will come at an even more substantial cost to the taxpayer. The following nine options with explanations below the attached table were approved for consideration:

Kansas Sentencing Commission Prison Bed Reduction Options		Bed Savings (1st Year)	Bed Savings (10th Year)
1.	2023 HB 2104 - Allowing early discharge and limiting the maximum term for probation.	385, 423, or 485	605, 683, or 761
2.	2023 HB 2180 - Increasing good time and program credit for certain offenders.	30	266
3.	2023 HB 2072 - Changing penalties for severity level 5 drug crimes.	21	281
4.	2023 HB 2067 - Aligning felony loss thresholds with theft.	1	2
5.	2023 HB 2074 - Allowing courts to prohibit possession of a firearm in a temporary custody order pursuant to the care and treatment act for mentally ill persons.	unk	unk

- 1. Allowing early discharge and limiting the maximum term for probation** – Probation revocations are a large percentage of admissions to Kansas prisons. To better monitor probationers, the KSSC proposes to modify the current early probation discharge provision with one that would incentivize offenders to successfully complete probation early. Depending on the risk level of the offender, they may request a hearing with the court to have their probation terminated early.

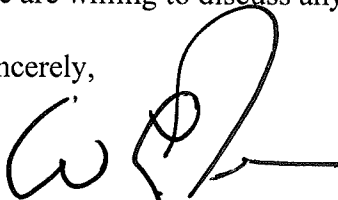
A second initiative includes total time on probation capped at twice the term. K.S.A. 21-6608 is amended to cap the probation terms of 12, 24, 36 and 60 months at twice the term. Provisions are currently in law to transfer any outstanding fines, costs, or restitution to collections. Adopting this practice would assist in caseload management for probation officers, while still maintaining offender accountability to the victim and court for costs incurred. Unsuccessful termination of probation could also be considered by the district court in subsequent cases.

2. **Increasing good time and program credit for certain offenders** - Current 15% and 20% good time credit for ongrid offenses would be increased by 5%. Program credit would be increased from 120 days to 150 days. The KSSC proposal incentivizes inmates to maintain good behavior while incarcerated and in exchange be eligible for up to 25% credit for their sentence. This would also promote staff and inmate safety; and seek to reserve prison bed space for more violent offenders.
3. **Changing penalties for severity level 5 drug crimes** - The Commission addresses proportionality in this proposal by reducing the sentence length of drug severity level 5 possession crimes to be proportional to nondrug severity level 8 crimes. However, criminal history classifications 5G, 5H and 5I remain at 11, 12 and 13 months out of concern for the time required to effectively administer substance abuse treatment programs.
4. **Aligning felony loss thresholds with theft** - K.S.A. 21-5802, 5813, 5821, 5825, 5828, 5830, 5927, 6002, 6004, 6005, and 6205 are affected. The present felony loss threshold for these crimes is \$1,000. Raising the amount to \$1,500 would make these property crimes proportional to simple theft in the 2016 legislation that amended K.S.A. 21-5801. Felony mistreatment of a dependent adult or elder person was also raised to \$1,500 in 2018. A recent study from the Pew Charitable Trusts indicates there is no increase in recidivism with theft or other property crimes when raising felony loss thresholds.
5. **Allowing courts to prohibit possession of a firearm in a temporary custody order pursuant to the care and treatment act for mentally ill persons** – The bill amends current law by adding a provision allowing a court in a temporary care and treatment case to issue a temporary custody order to prohibit the named person from possessing a firearm. If a prohibition is contained in the order, the court would direct the district court clerk to send a copy of the order to the Kansas Bureau of Investigation. The KBI would enter the order into the National Instant Criminal Background Check System (NICS) and other appropriate databases. The court would also be required to notify the person affected by the custody order of their right to petition the court to reinstate their right to possess a firearm.

In summary, we provide a list of options we believe are consistent with the goals of the Kansas Sentencing Guidelines Act to promote public safety by incarcerating violent offenders, reducing improperly biased sentence disparity, and establishing sentences that are proportionate to the seriousness of the offense and the degree of injury to the victim.

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

Sincerely,



Honorable W. Lee Fowler
Chair

CC: Representative Stephen Owens, Chair
Senator Kellie Warren, Vice Chair
Senator Oletha Faust-Goudeau
Senator Kristen O'Shea
Senator Ethan Corson
Senator Elaine Bowers
Senator Beverly Gossage
Senator Renee Erickson

Representative Sydney Carlin
Representative Jo Ella Hoye
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Representative Kyle Hoffman
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Executive Director Scott Schultz