
EXECUTIVE SUMMARY

Pursuant to the statutory obligations assigned to the Kansas Sentencing Commission, during FY 2007, the Commission performed the following major activities:

- A. Processing statewide felony sentencing journal entries including both prison and non-prison guideline sentences;
- B. Presenting recommendations to the state legislature relating to modification and improvement of current sentencing guidelines through the functions of the Proportionality Subcommittee, Recodification Commission and the Sentencing Commission;
- C. Providing the legislature and state agencies with prison bed-space impact assessments under any policy change related to sentencing guidelines;
- D. Producing annual prison population projections for both Kansas Adult Correctional Facilities and Kansas Juvenile Correctional Facilities;
- E. Monitoring the implementation of 2003 Senate Bill 123 drug treatment programs including the evaluation of recidivism after 36-months implementation of 2003 Senate Bill 123;
- F. Revising the forms of sentencing journal entry of judgment carried out by the Journal Entry Subcommittee;
- G. Participating in the project to establish the Kansas Electronic Sentencing Journal Entry Database

- sponsored by Kansas Criminal Justice Information System (KCJIS);
- H. Conducting training sessions on sentencing guidelines and various sentencing issues;
 - I. Serving as an information resource to respond to national, state and county requests regarding sentencing data.

This section provides a brief summary of the major sentencing issues presented in the Annual Report. During FY 2007, the Commission received a total number of 12,646 felony sentences, indicating a decrease of 6% from that of FY 2006. Of the total number of sentences, 4,899 were prison sentences and 7,747 were probation sentences. Nondrug sentences represented 66.8% (8,443 sentences) and drug sentences accounted for 33.2% (4,203 sentences).

INCARCERATION SENTENCES

In FY 2007, 4,899 offenders were admitted to the Kansas Department of Corrections (KDOC). Male offenders represented 87.2% of the total admissions, a percentage decrease of 0.7% from that of FY 2006 (87.9%). More than 90% of the violent and sex offenses were committed by male offenders, such as, aggravated assault, aggravated battery, aggravated robbery, burglary, murder, rape and aggravated indecent liberties with a child. However, female offenders were incarcerated more frequently for the crimes of forgery, criminal use of financial card and identity theft (pages 18 & 19). The analysis of drug

crimes indicates that male offenders were convicted of more than 85% of drug sales and unlawful manufacture of controlled substance, while female offenders committed over 20% of offenses in drug possession and sale of opiates or narcotics for the third or subsequent offense (page 21).

Racial analyses of offenders reveal that white offenders made up 66.7% of the admissions to state prisons in FY 2007, indicating an increase by 0.7% over that of FY 2006 (66%). The offenders with non-Hispanic origin represented 90%, a decrease of almost 1% compared with that of FY 2006 (90.9%). The highest incarceration rates for white offenders (over 70%) were found in the offense categories of most sex offenses, burglary, involuntary manslaughter, failure to register, DUI, nonsupport of a child or spouse and traffic in contraband. Nevertheless, black offenders were incarcerated more often (over 50%) for the crimes of aggravated battery on LEO, aggravated robbery, kidnapping, possession of firearm and drug without tax stamps (pages 18 & 19).

When examining the age of offenders, the Commission noticed that the largest population of incarcerated offenders (26.7%) was found in the age group ranging from 31 to 40 years old at the time of admission to prison in FY 2007, which is consistent with those of previous years. As for the educational background of the offenders admitted in FY 2007, nearly 50% of the offenders had attained either a high school diploma or GED equivalent.

In terms of admission types, new court commitments, probation condition violators and parole/post-release violators are the three largest groups representing 32.7%,

35.7% and 24.9%, respectively, of the total prison admissions in FY 2007. Most of the drug offenders admitted to KDOC in FY 2007 fell at drug severity level 3 (28.8%) and drug severity level 4 (55.4%), while the largest numbers of nondrug offenders were identified at nondrug severity levels 7 and 9 with admissions of 675 and 662, respectively, in FY 2007 (Pages 22 & 23).

House Bill 2576 became law (Jessica's Law) in the 2006 Legislative Session. During FY 2007, seven offenders were sentenced to prison under Jessica's Law based on the sentencing journal entries of judgment reported to the Commission. As FY 2007 is the initial year for the implementation of this law, the number of sentences received is too small for statistical analysis. However, the sentencing practice of this law is being closely monitored by the Commission.

PROBATION SENTENCES

A total number of 7,747 probation sentences were reported to the Commission in FY 2007. The analysis of the probation sentences discloses that DUI (15.5%), theft (14.2%), burglary (14.1%) and forgery (11.4%) were the top four offenses for nondrug probation offenders representing more than 55.2% of the total nondrug crimes (page 28), which does not fluctuate much when compared with that of FY 2006 (55%). The probation sentences for the crime of drug possession accounted for 73.9% of all drug probation sentences, an increase of 1.3% over that of FY 2006 (72.6%), (pages 29 & 31).

The analysis of the criminal history categories of the offenders sentenced to probation in FY 2007 demonstrates that offenders with criminal history category I accounted for 30.2% of offenders on the

nondrug grid and 32.9% of offenders on the drug grid. Approximately 86% of nondrug offenders were within the presumptive probation boxes (Table 12), while 66.5% of probation drug offenders were sentenced within the presumptive probation boxes (Table 13). Meanwhile, only 4.1% of probation nondrug sentences were found to be within the designated border boxes compared to 18% of probation drug sentences. This significant percentage difference indicates that drug offenders were more likely to receive probation sentences than nondrug offenders when their offense types and criminal history categories fell within the border boxes. The data also implies that downward dispositional departures were another primary source of non-prison sentences found on the drug grid.

DRUG SENTENCES

In FY 2007, the number of drug incarceration sentences (1,519) decreased by 7.5% compared to that of FY 2006 (1,642) and decreased by 16.7% compared to that of FY 2003 (1,824). When individual drug severity levels were compared, all drug severity levels in FY 2007 demonstrated a decrease from those of FY 2006 and FY 2003 with the exception of drug severity level 4 with an increase of 2.6% and 9.5% respectively. The most significant decrease was identified at drug severity level 2, a decrease of 55.4%, followed by drug severity level 1, a decrease of 36.6% in the past five years (page 69).

The analysis of the drug incarceration sentences in terms of offense types demonstrates that 56.7% of the incarceration drug sentences were convictions of drug possession, increasing by 5.4% compared with that of FY 2006 (51.3%). Almost 95% of the drug possession sentences were found

at drug severity level 4, representing an increase of 3% over that (92%) of FY 2006 (page 20).

The trend analysis of drug offenders on probation indicates that the total number of drug probation sentences in FY 2007 decreased by 5.7% compared with that of FY 2006 but increased by 9.6% compared with that of FY 2003. The number of drug probation sentences at all levels decreased except for drug level 4, which increased by 18.3% compared with that of FY 2003 (page 71). Probation sentences at drug severity level 4 accounted for nearly 78% of the probation drug sentences imposed in FY 2007, an increase of 1% over that (77%) of FY 2006 (page 32).

Further evaluation of probation drug offenders displays that a total number of 1,261 sentences were imposed to Senate Bill 123 (SB 123) drug treatment programs during FY 2007, representing nearly 47% of the total drug probation sentences (2,684), a decrease of 1% compared with that of FY 2006 (48%). Of these offenders, 79% were convicted of the crime of drug possession under K.S.A. 65-4160 and 20% were convicted of the crime of drug possession under K.S.A. 65-4162. The offenders at drug severity level 4 accounted for 99.5%. White male offenders were still the majority of the treatment sentences. The average age of the drug treatment offenders was 32.6 years old, which remains very close to those of FY 2006, FY 2005 and FY 2004. Sedgwick County imposed the most SB 123 drug treatment sentences (137) followed by Johnson (130), Wyandotte (109), Shawnee (76), Geary (68) and Saline (67) counties (pages 33 and 34). In addition, 451 SB 123 drug treatment sentences were revoked during FY 2007. Of this number, 187 sentences were revoked to prison. The

average period between original sentence and the first revocation hearing was 12.4 months and 5.2 months for the second revocation.

VIOLATORS

In FY 2007, a total number of 2,989 condition violators were admitted to prison, accounting for 61% of the total prison admission events of the fiscal year. Of this number, 1,750 were probation violators, 1,221 were parole/postrelease supervision violators and 18 were conditional release violators. The total percentage of condition violators decreased by 4.6% compared with that (65.6%) of FY 2006 (page 37).

The analyses on the admission types of condition violators indicate that the decrease of condition violators primarily resulted from the decrease of parole/postrelease violators, who decreased by 25.2% compared with FY 2006 and by 49.3% compared with FY 2003. Senate Bill 323, which has modified the periods of postrelease supervision and was passed into law in May 2000, continues its impact on the admission rate of parole/postrelease condition violators returned to prison. The number of probation condition violators admitted to prison in FY 2007 decreased, as well, which decreased by 14.1% from that of FY 2006 and represented the first drop in number of admissions in the past five years. However, conditional release violators, though small in number, increased by 100% compared with those of FY 2006 (page 68).

The analysis of offenders by gender demonstrates that male condition violators sentenced to prison represented the largest number of offenses at severity level 7 of the nondrug grid and severity level 4 of the drug grid. However, females were most often

revoked and placed in prison for condition violations of offenses designated at severity level 8 of the nondrug grid and severity level 4 of the drug grid, which is consistent with the findings of condition violators observed in FY 2006 (page 40).

In addition, 2,472 probation condition violators and 204 probation violators with new convictions were sentenced to either continued or extended probation for a violation during FY 2007. This represents 53.3% of the total number of 4,634 condition probation violators and 42.5% of the total number of 480 probation violators with new offenses (page 49). Compared with the percentages of FY 2006, probation condition violators sentenced to continued or extended probation for a violation increased by 2%, while probation violators with new convictions who had their probation sentence either continued or extended increased by 8.6%.

CONFORMITY TO SENTENCING GUIDELINES

The comparison of the actual sentence imposed to the sentence identified under the Sentencing Guidelines Act provides a measure of whether the designated sentence is viewed as appropriate. Therefore, the conformity rate of sentences is an important monitor to evaluate the effectiveness of implementation of sentencing guidelines. Under sentencing guidelines, departures may be imposed to sentence an offender to a sentence length or type that differs from the sentence set forth under the guidelines. Thus departures, whether durational or dispositional, serve as a measure of conformity.

A total number of 7,261 pure guideline sentences of FY 2007 were utilized to

determine the conformity to the sentencing guidelines in this Annual Report. Of this number, 1,459 were incarceration guideline sentences and 5,802 were probation sentences. More than 81% of the guideline sentences imposed fell within the designated guideline sentence range. Dispositional departures accounted for 12.8% of sentences and durational departures were found in 5.9% of sentences (page 52). No significant changes were found when comparing the total conformity rates of FY 2007 with those of the past three years.

The examination of presumptive prison sentences within guidelines discloses that 44.8% of the sentences imposed fell within the standard range of the grid cell; 9.7% of all sentences were within the aggravated range; 20.1% were within the mitigated range and 25.3% were located within designated border boxes (page 53). This distribution of presumptive prison sentences does not fluctuate significantly compared with that of FY 2006.

The analysis of durational departures of the incarceration guideline sentences reveals that 71.6% of the durational departures were downward durational departures, while 28.4% indicated upward durational departures (page 53). The percentage of downward durational departures increased by 1.3% compared with that of FY 2006. The comparative study of durational departures between drug and nondrug incarceration sentences indicates that 84.7% of drug durational departure sentences were downward compared to 62.2% for nondrug durational departure sentences (page 55). Downward durational departures were most frequently identified at severity levels 1 and 2 of the drug grid. Upward durational departures were found most frequently at severity levels 1, 2, 3 and 4 of the nondrug

grid (page 57). This pattern of durational departures has remained fairly consistent over the past five years.

Dispositional departures are identified when the sentence imposed, prison or nonprison, is different from the sentence disposition designated under the sentencing guidelines. Upward dispositional departures are only applicable when prison sentences are imposed. When drug and nondrug sentences were compared, nondrug sentences indicated a 27.5% upward dispositional departure rate while drug sentences only represented a 6.9% upward dispositional departure rate (page 57).

In evaluating probation guideline sentences, the Commission noticed that, as expected, the majority (89.4%) of probation guideline sentences fell beneath the incarceration line, among which 88.4% were within presumptive probation grids and 11.6% were within border boxes. Downward dispositional departure was only identified in 10.6% of the probation guideline sentences imposed in FY 2007 (page 54). The conformity rates of the total sentences remain constant compared with those of FY 2006.

Further analysis of downward dispositional departures of probation sentences discloses that drug sentences represented a higher percentage of downward dispositional departures than nondrug sentences (14.5% vs. 8.1%). More drug probation sentences resulted from border boxes than did nondrug probation sentences (18.8% vs. 4.9%), (page 58).

PRISON POPULATION FORECAST

Producing official inmate population projections annually for the state

Department of Corrections is one of the statutory tasks of the Kansas Sentencing Commission. Sentencing data from felony journal entries, prison admission files, inmate stock population files and release files are analyzed and programmed into a simulation projection model known as Prophet, which is used to forecast prison population over a ten-year projection period. The information of prison population projections is utilized by the Kansas Department of Corrections and various legislative committees in planning resource allocations, as well as policy development involving sentencing and other criminal justice related areas.

The prison population forecast projects that by the end of FY 2017, a total of 9,251 prison beds will be needed. This represents a total increase of 4.5% or 397 beds over the actual prison population as of June 30th, 2007. Although the total number of admissions has dropped compared with those of the past five years, a combination of developing admission trends with the impact of the pronounced stacking effect and new sentencing policies have been resulting in a continual growth in the state's prison population. The decrease of prison population after 2009 results from the implementation of House Substitute for Senate Bill 14, passed during the 2007 Legislative Session, which promotes 20% reduction of probation revocation rate, modifies some good time rates from 15% to 20% and provides potential credit for program completion. The effective date is January 1, 2008 (Pages 73 and 74).

When looking into projected population at individual severity levels over the next ten years, the most significant increase in both number and percentage of incarcerated population is identified in the group of

offgrid offenders, an increase of 792 offenders or 108.9%. This significant growth is primarily due to the implementation of Jessica's Law (House Bill 2567) passed in the 2006 Legislative Session.

The second largest increase in number falls at nondrug severity level 1, an increase of 184 offenders over the ten-year forecast period. This is due to the "stacking effect" of long sentence length of most serious offenses, even though the number of admissions at this level is decreasing (Table 38).

The largest decrease is found at nondrug severity levels 3 and 7 with a deduction of 198 and 128 offenders, respectively, in the next ten years. This decreasing tendency reflects the implementation of House Bill 2576, as well, which reclassifies certain sexual offenses at these levels as offgrid felonies.

The prison population of drug offenders at all severity levels displays a declining trend in the ten-year forecast period. This tendency may result from the implementation of Senate Bill 123, which reclassifies all drug possession offenses under KSA 65-4160 and KSA 65-4162 to drug severity level 4 and establishes a non-prison sanction of certified drug abuse treatment programs for the eligible drug offenders supervised by community correctional services (Pages 73 & 74).

In terms of types of prison beds needed for custody over the next ten years, custodial classification projections demonstrate that by the end of FY 2008, KDOC will need 3,059 minimum beds, 2,638 medium low beds, 1,438 medium high beds, 936 regular maximum beds, 249 unclassified beds and

695 beds for special management. By the end of FY 2017, the custodial beds in demand will include 2,996 minimum, 2,604 medium low, 1,535 medium high, 1,028 regular maximum, 225 unclassified and 863 special management beds (page 75). These projections assume no substantial change in the method or practice of custody decision making.

REPORT CONTENTS

The FY 2007 Annual Report is presented in four chapters. A descriptive statistical summary of statewide guideline sentencing practices in FY 2007 is illustrated in Chapter One. Chapter Two describes the types and characteristics of violators incarcerated in the state correctional facilities. In Chapter Three, the pure prison and probation sentences imposed under the sentencing guidelines are examined to evaluate the conformity to the sentencing guidelines. Chapter Four contains analyses on sentencing trends and prison population projections.

Appendix I analyses sentences of felony convictions from the top four contributing counties of the State of Kansas. Appendix II tracks the trends of the top five felonies, UCR offenses, offgrid and nongrid crimes in the past five years. Female offenders are analyzed in this section as well.