
EXECUTIVE SUMMARY

WHAT IS NEW

- FY 2008 Annual Report is the first report which extends its analyses on county jail sentences. The crime of felony DUI is systematically analyzed. Detailed discussions are presented in Chapter One, Chapter Four and Appendices.
- Sentences convicted under Jessica's Law are fully analyzed in Chapter One.
- Sentences applied with special sentencing rules are discussed at the end of Chapter Three.

During FY 2008, the Kansas Sentencing Commission performed the following major activities pursuant to the statutory obligations assigned to the Commission:

1. 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;
2. Providing the legislature and state agencies with prison bed-space impact assessments under any policy change related to sentencing guidelines;
3. Producing annual prison population projections and custody classification forecasts for Kansas Adult Correctional Facilities;
4. Processing statewide felony sentencing journal entries including both prison and non-prison guideline sentences;
5. Processing statewide transactions of 2003 Senate Bill 123 drug treatment

- programs and monitoring the implementation of the programs including the evaluation of recidivism after 36-months implementation of 2003 Senate Bill 123;
6. Updating Kansas Sentencing Guidelines Desk Reference Manual according to sentencing policy changes passed during the 2008 Legislative Session;
7. Participating in the project to establish the Kansas Electronic Sentencing Journal Entry Database sponsored by Kansas Criminal Justice Information System (KCJIS);
8. Conducting training sessions on sentencing guidelines and various sentencing issues;
9. Serving as an information resource to respond to national, state and county requests regarding sentencing data.

The following provides a brief summary of the major sentencing issues presented in the Annual Report. During FY 2008, the Commission received a total number of 13,710 felony sentences, indicating an increase of 2.8% from that of FY 2007. Of the total number of sentences, 4,721 (34.4%) were prison sentences, 8,120 (59.2%) were probation sentences and 869 (6.3%) were county jail sentences. Nondrug sentences represented 70.4% or 9,650 sentences and drug sentences accounted for 29.6% or 4,060 sentences (page 2).

INCARCERATION SENTENCES

A total number of 4,721 offenders were admitted to the Kansas Department of

Corrections (KDOC) in FY 2008. Male offenders represented 88.9% of the total admissions, a percentage increase of 1.7% over that of FY 2007 (87.2%). 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, theft and identity theft (pages 20 & 21). The analysis of drug crimes indicates that male offenders were convicted of more than 80% of drug sales and more than 90% of unlawful manufacture of controlled substance, while most female offenders committed drug crimes of opiates or narcotics possession first offense and opiates or narcotics sale first offense (page 23).

The analysis of offenders by race reveals that white offenders made up 66% of the admissions to state prisons in FY 2008, indicating a decrease by 0.7% from that of FY 2007 (66.7%). The offenders with non-Hispanic origin represented 89.9%, very close to that of FY 2007 (90%). The highest incarceration rates for white offenders (over 70%) were found in the offense categories of most sex offenses, burglary, aggravated assault on LEO, aggravated kidnapping, criminal damage to property, nonsupport of a child or spouse, DUI, failure to register, identity theft and false writing. Nevertheless, blacks were incarcerated more often (over 60%) for the crimes of aggravated robbery, aggravated arson, aggravated false impersonation and drug without tax stamps (pages 20 & 21).

The examination of offenders by age indicates that the largest population of incarcerated offenders (26.1%) was found in the age group ranging from 31 to 40 years

old and the second largest number of offenders (23.8%) was identified in the group from 25 to 30 years old at the time of admission to prison in FY 2008. This age distribution is consistent with those of previous years. As for the educational background of the offenders admitted in FY 2008, more than 49% of the offenders had attained either a high school diploma or GED equivalent.

The analysis of offenders by type of admissions demonstrates that new court commitments, probation condition violators and parole/post-release violators are the three largest groups representing 31.7%, 34.4% and 26.7%, respectively, of the total prison admissions in FY 2008. Most of the drug offenders admitted to KDOC in FY 2008 fell at drug severity level 3 (28.1%) and drug severity level 4 (55.5%), while the largest numbers of nondrug offenders were identified at nondrug severity levels 7 and 9 with admissions of 690 and 635, respectively, in FY 2008 (Pages 24 & 25).

The observation of sex offenders convicted under Jessica's Law discloses that 48 offenders were sentenced and admitted to prison under Jessica's Law during FY 2008. Forty-four of them (91.7%) were new court commitments, 2 (4.2%) were probation violators with new sentences and 2 (4.2%) were parole/postrelease violators with new sentences. While most jurisdictions identify the severity of these crimes as offgrid (77.1%), a few note them as the severity level for a downward departure on the nondrug grid. The analysis of sentence length demonstrates that 50% of the sentences were downward departure to guidelines, with an average sentence length of 95.5 months. In addition, 3 offenders convicted under Jessica's Law were sentenced to probation during FY 2008 with

underlying prison terms of 32 months, 61 months and 147 months respectively. Their major departure reasons are that age of defendant was young with no prior criminal history, victim requested and victim was an aggressor or participant (Page 28).

PROBATION SENTENCES

In FY 2008, the Commission received 8,120 probation sentences. The analysis of the probation sentences reveals that DUI (15.2%), theft (13.8%), burglary (13.3%) and forgery (9.8%) continued to be the top four offenses committed by nondrug probation offenders representing 52.1% of the total nondrug crimes (page 32), a decrease of 3.1% when compared with the percentage of those crimes in FY 2007 (55.2%). The probation sentences for the crime of drug possession accounted for 75.6% of all drug probation sentences, an increase of 1.7% over that of FY 2007 (73.9%), (pages 33 & 35).

The analysis of the criminal history categories of the offenders sentenced to probation in FY 2008 demonstrates that offenders with criminal history category I accounted for 28.6% of offenders on the nondrug grid and 31.2% of offenders on the drug grid. Approximately 85.3% of nondrug offenders were within the presumptive probation boxes (Table 12), while 66.3% of probation drug offenders were sentenced within the presumptive probation boxes (Table 13). Meanwhile, only 4.6% of probation nondrug sentences were found to be within the designated border boxes compared to 17.8% 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 (page 40).

COUNTY JAIL SENTENCES

During FY 2008, a total number of 869 felony jail sentences were reported to the Commission. Of this number, male offenders accounted for 90.8% and female offenders accounted for 9.2%. White offenders represented 89.8%, black offenders represented 7.9% and other races represented 2.3% of the county jail sentences imposed in FY 2008. Their average age at sentencing is 42.1 years old (Page 41).

The analysis of the crimes demonstrates that 97.5% of the jail sentences were convicted of the crime of felony DUI (847 sentences), 1.7% were convicted of the crime of domestic battery (15 sentences), 0.2% were convicted of the crime of cruelty to animals (2 sentences) and 0.5% were convicted of other crimes (5 sentences). The average jail term was 8.4 months. Sedgwick County imposed the most jail sentences (268) representing 30.8%, followed by Johnson County with 206 jail sentences representing 23.7% of the total county jail sentences imposed in FY 2008 (page 43).

DRUG SENTENCES

The number of drug incarceration sentences (1,307) decreased by 14% in FY 2008 compared with that of FY 2007 (1,519) and significantly decreased by 23.3% compared with that of FY 2004 (1,703). When individual drug severity levels were compared, all drug severity levels in FY 2008 demonstrated a decrease from those of FY 2007 and FY 2004 with the exception of drug severity level 2 with an increase of 8.8% over that of FY 2007. The most

significant decrease was identified at drug severity level 1, a decrease of 49.8%, followed by drug severity level 2, a decrease of 44.7% in the past five years (page 78).

In terms of offense types, the analysis of the drug incarceration sentences demonstrates that 57.6% of the incarceration drug sentences were convictions of drug possession, increasing by 0.9% compared with that of FY 2007 (56.7%). More than 93% of the drug possession sentences were found at drug severity level 4, representing a decrease of 1.5% from that (94.5%) of FY 2007 (page 22).

The trend analysis of drug offenders on probation indicates that the total number of drug probation sentences in FY 2008 increased by 2.5% compared with that of FY 2007 and by 12.7% compared with that of FY 2004. The number of drug probation sentences at all levels decreased except for drug level 4, which increased by 24.4% compared with that of FY 2004 (page 80). Probation sentences at drug severity level 4 accounted for nearly 78.2% of the probation drug sentences imposed in FY 2008, very little variation from that (78%) of FY 2007 (page 36).

Further evaluation of probation drug offenders displays that a total number of 1,319 sentences were imposed to Senate Bill 123 (SB 123) drug treatment programs during FY 2008, representing 48% of the total drug probation sentences (2,750), an increase of 1% compared with that of FY 2007 (47%). Of these offenders, more than 80% were convicted of the crime of drug possession under K.S.A. 65-4160 and 19.3% were convicted of the crime of drug possession under K.S.A. 65-4162. The offenders at drug severity level 4 accounted for 99.7%. White male offenders were still

the majority of the treatment sentences. The average age of the drug treatment offenders was 32.7 years old, which remains very close to those of FY 2007 and FY 2006. Sedgwick County imposed the most SB 123 drug treatment sentences (179) followed by Wyandotte (131), Johnson (108), Shawnee (81) and Saline (68) counties (pages 37 and 38). In addition, 443 SB 123 drug treatment sentences were revoked during FY 2008. Of this number, 196 sentences were revoked to prison, representing 14.9% of SB 123 sentences imposed (1,319 sentences) in FY 2008. The average period between original sentence and the first revocation hearing was 14.8 months, 2.4 months longer than that of FY 2007 (12.4 months). The average lag time for the second revocation was 5.4 months, very close to that of FY 2007.

VIOLATORS

A total number of 2,892 condition violators were admitted to prison in FY 2008, accounting for 61.3% of the total prison admission events of the fiscal year. Of this number, 1,624 were probation violators, 1,261 were parole/postrelease supervision violators and 7 were conditional release violators, who are merged with the group of parole/postrelease supervision violators in the analyses of the report. The total percentage of condition violators increased by 0.3% compared with that (61%) of FY 2007 (page 44).

Trend analyses on the admission types of condition violators indicate that the number of parole/postrelease and conditional release violators admitted to prison in FY 2008 decreased significantly by 44.7% compared with that of FY 2004. 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 2008 decreased, as well, which decreased by 5% from that of FY 2004 and represented the second drop in number of admissions in the past five years (page 77).

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 2007 (page 47).

In addition, 2,336 probation condition violators and 201 probation violators with new convictions were sentenced to either continued or extended probation for a violation in FY 2008. This represents 54.7% of the total number of 4,274 condition probation violators and 35.2% of the total number of 571 probation violators with new offenses revoked during FY 2008 (page 55). Compared with the percentages of FY 2007, probation condition violators sentenced to continued or extended probation for a violation increased by 1.4%, while probation violators with new convictions who had their probation sentence either continued or extended decreased by 7.3%.

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. 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. Therefore departures, whether durational or dispositional, serve as a measure of conformity. Only new court commitments of guideline sentences were utilized for this specific analysis.

Consecutive sentences and sentences applied with special sentencing rules related to sentence disposition are excluded from this analysis. In addition, the analysis is based on computed variables regarding departures.

In this Annual Report, a total number of 7,119 pure guideline sentences of FY 2008 were utilized to determine the conformity rates to the sentencing guidelines. Of this number, 1,208 were incarceration guideline sentences and 5,911 were probation sentences. Approximately 85% of the guideline sentences imposed fell within the designated guideline sentence range. Dispositional departures accounted for 9.7% of sentences and durational departures were found in 5.7% of sentences (page 58).

The analysis of incarceration sentences within guidelines discloses that 42.2% of the sentences imposed fell within the standard range of the grid cell; 12.8% of all sentences were within the aggravated range; 21.3% were within the mitigated range and 23.6% were located within designated border boxes (page 59). This distribution of presumptive prison sentences does not fluctuate significantly compared with that of FY 2007.

When reviewing the durational departures of the incarceration guideline sentences, the Commission noticed that 70.3% of the durational departures were downward durational departures, while 29.7% indicated upward durational departures (page 59). The

percentage of downward durational departures decreased by 1.3% compared with that of FY 2007. The comparative study of durational departures between drug and nondrug incarceration sentences indicates that 84.8% of drug durational departure sentences were downward compared to 63.4% for nondrug durational departure sentences (page 61). 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, 4 and 6 of the nondrug grid (page 63). 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 13.7% upward dispositional departure rate while drug sentences only represented a 6.9% upward dispositional departure rate (page 63).

The examination of probation guideline sentences demonstrates that as expected, the majority (90.7%) of probation guideline sentences fell beneath the incarceration line, among which 88.1% were within presumptive probation grids and 11.9% were within border boxes. Downward dispositional departure was identified in 9.3% of the probation guideline sentences imposed in FY 2008 (page 60). Durational departures are not applicable to probation sentences.

Further analysis of downward dispositional departures of probation sentences discloses that drug sentences represented a higher percentage of downward dispositional departures than nondrug sentences (12.4% vs. 7.3%). More drug probation sentences resulted from border boxes than did nondrug probation sentences (19.2% vs. 5.4%), (page 62).

SPECIAL SENTENCING RULES

Special sentencing rules provide special treatment of certain crimes and sanctions. There were small numbers of special sentencing rules at the initial years of implementation of the guidelines, such as five special rules in 1994 and 1995. With the modification of sentencing guidelines and amendments of sentencing policies in each legislative year, the number of special sentencing rules has increased. As of the 2008 Legislative Session, twenty-five special sentencing rules have been established or amended. The most frequently applied special sentencing rules in the past five years were: person felony committed with a firearm; crime committed while incarcerated or on probation, parole, etc. and crime committed while on felony bond.

During FY 2008, a number of 352 pure guideline prison sentences and 602 pure guideline probation sentences were imposed with special sentencing rules, which accounted for 26.7% of prison pure guideline admissions (1,316 admissions) and 10% of pure guideline probation sentences (6,009) imposed in FY 2008. The percentage of offenders admitted to prison with special sentence rules increased from 22.3% in FY 2004 to 26.7% in FY 2008. The percentage of probation sentences imposed with special sentencing rules accounted for 8.9% in FY 2004 and increased to 10% in FY 2008. The

total percentage of both prison and probation sentences applied with special rules increased from 11.5% in FY 2004 to 13% in FY 2008 (page 74).

PRISON POPULATION FORECAST

One of the statutory tasks of the Kansas Sentencing Commission is to produce official inmate population projections annually for the state Department of Corrections. 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 projection 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 areas.

The prison population projection predicts that by the end of FY 2018, a total of 9,477 prison beds will be needed. This represents a total increase of 9.7% or 839 beds over the actual prison population as of June 30th, 2008. 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 had resulted in a continual growth in the state's prison population. The decrease of prison population after FY 2007 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 (Pages 83 and 84). 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 910 offenders or 112.1%. 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 321 offenders or 36.4% over the ten-year forecast period. This is due to the "stacking effect" of long sentence length of most serious offenses.

The largest decrease in number is found at nondrug severity levels 7 and 2 with a deduction of 103 and 64 offenders, respectively, in the next ten years. This decreasing tendency reflects the implementation of House Bill 2576, as well, which reclassifies certain sex 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 except drug severity level 2 with a slight increase of 3 offenders. This tendency may result from the implementation of Senate Bill 123, which reclassifies all drug possession offenses under K.S.A. 65-4160 and K.S.A. 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 83 & 84).

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 2009, KDOC will need 2,905 minimum beds, 2,568 medium low beds, 1,402 medium high beds, 940 regular maximum beds, 243 unclassified beds and 685 beds for special management. By the end of FY 2018, the custodial beds in demand will include 3,049 minimum, 2,674 medium low, 1,715 medium high, 995 regular maximum, 245 unclassified and 799 special management beds (page 85). These projections assume no substantial change in the method or practice of custody decision-making.

REPORT CONTENTS

The FY 2008 Annual Report is presented in four chapters. A descriptive statistical summary of statewide guideline sentencing practices in FY 2008 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 analyzes 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 and offgrid and nongrid crimes in the past five years. Admissions and population of female offenders are analyzed in this section as well.