



KANSAS

KATHLEEN SEBELIUS, GOVERNOR

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman
Helen Pedigo, Executive Director

Minutes of the Kansas Sentencing Commission Meeting November 13, 2008

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting to order on November 13, 2008, at 1:35 p.m. The meeting was held in the Senate Room of the Jayhawk Tower Building, Topeka, Kansas.

Participants:

Members:

Honorable Ernest L. Johnson, Chairman
Honorable Richard M. Smith
Senator John Vratil
Representative Kevin Yoder
Chuck Simmons, Designee for Department of Corrections
Patricia Biggs, Kansas Parole Board
Chris Mechler, Office of Judicial Administration
Annie Grevas, Director of Community Corrections, 28th District
Kevin Graham, Designee for Attorney General's Office
Thomas Drees, Ellis County Attorney
Reverend Junius Dotson, Public Member

Staff:

Helen Pedigo, Executive Director
Ed Britton, Staff Attorney
Janice Brasher, Fiscal Director
Marty Schmiedeler, Accountant
Jennifer Dalton, Accountant
Brenda Harmon, Public Service Administrator
Chris Chavez, Research Analyst

Guest:

Chief Ed Klumpp, Retired, Topeka Police Dept., Recodification Vice-Chair
Brett Watson, Kansas Criminal Code Recodification Commission, Staff Attorney

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Approval of the Minutes

Chairman Johnson referred to the minutes of the September 25, 2008, Kansas Sentencing Commission meeting. A motion was made to approve the minutes as written by Ms. Chris Mechler and seconded by Mr. Thomas Drees. The motion carried.

Recodification Commission

Mr. Thomas Drees provided an overview of the Kansas Criminal Code Recodification Commission (KCCRC) Recommendations. Handouts were provided. Recodification has requested a bill be drafted regarding proportionality measures. Mr. Ed Klumpp explained that the proposals of the Kansas Sentencing Commission that are outside the scope of the KCCRC legislative mandate will be included in the bill being drafted. The Commission reviewed the remaining measures identified in the Memorandum to the KCCRC and the Kansas Sentencing Commission Proportionality Subcommittee, dated November 13, 2008, and took the following action:

Of the proposals tabled or rejected by the KCCRC:

1. Adopt crime severities based on level of harm to the victim and offender culpability (premeditation, intent, heat of passion, recklessness, and negligence).

A motion was made by Chairman Johnson to approve as stated and was seconded by Judge Richard Smith. The motion carried.

2. Information would be provided to the court and considered in determining the appropriate disposition of cases in PIB boxes. Any party requesting the nonprison sanction would be required to notify the court and opposing counsel, at least 10 days prior to sentencing, regarding the proposed placement in a treatment program and/or a behavior modification program. The notice would provide a reasonable opportunity before sentencing for the presentence investigator to confirm and verify the availability and adequacy of the proposed treatment provider(s) and plan.

After a brief discussion, a motion was made by Judge Smith and seconded by Ms. Mechler to strike the language "at least 10 days". The motion carried. Mr. Kevin Graham opposed. After more discussion a motion was made by Mr. Kevin Graham to add the word "must" in place of "would," and was seconded by Judge Smith. The motion carried.

Of the proposals modified by the KCCRC section:

1. K.S.A. 21-3609 –Abuse of a child; Intentionally torture, cruelly beat, or shake resulting in great bodily harm. Penalties would be amended from a severity level 5 person felony to a severity level 6 person felony if the infliction of cruel and inhuman corporal punishment is present; and a severity level 4 person felony, if torture, cruel beating, or shaking results in great bodily harm.

A motion was made by Mr. Kevin Graham to approve as stated and was seconded by Ms. Chris Mechler. The motion carried.

2. K.S.A. 21-3608a-Aggravated Endangering a Child;

A motion was made by Ms. Patricia Biggs to approve as stated and seconded by Senator John Vratil. The motion carried.

3. Amend language throughout from "within 1,000 feet of a school," to "to a minor or in the presence of a minor" and increase one severity level to more clearly meet the intent to protect children regardless of their location.

A motion was made by Judge Smith and seconded by Reverend Junius Dotson to amend the definition of presence of a minor to change paragraph to from "the illegal activity is conducted in a building" to "the illegal activity is conducted in a place". A motion was made by Pastor Junius Dotson to approve as amended and seconded by Annie Grevas. The motion carried.

4. Adopt drug quantity thresholds based on four categories of small, medium, large and super for sale, distribution, and possession with intent to distribute. K.S.A. 65-4161 and 65-4163 (Sale or distribution of opiates, opium, narcotic drugs or designated stimulants) would be categorized as follows: Small quantity, severity level 9 person felony; medium quantity, severity level 7 person felony; large quantity, severity level 4 person felony; and super quantity, severity level 3 person felony. Only the weight of drug, not purity, shall be considered.

A motion was made by Chairman Johnson and seconded by Senator John Vratil to approve the approach of the KCCRC on the drug proposals and urged them to further refine their recommendations. The motion carried.

5. Drug repackaging would be removed from the definition of "manufacturing" and included in the definition of "distribution".

A motion was made by Senator John Vratil and seconded by Chairman Johnson to approve as stated. The motion carried.

Of the Independent proposals by the KCCRC section:

1. Last year the KCCRC adopted two policy recommendations. The first was to amend K.S.A. 65-4155, representation that a noncontrolled substance is a controlled substance. The revision clarifies that an offender can be convicted and punished for this offense and theft by deception. (The reference to 21-515 is the organization of the revised drug code.)

2. The second recommendation was to incorporate the precursor and paraphernalia possession offense into the law of attempts. Under this proposal the precursor or paraphernalia offenses would become overt acts sufficient to establish attempted violation of another drug crime. For example, possession of a meth precursor would be attempted manufacture. Under this proposal there would be no separate precursor or paraphernalia possession offense; distribution of precursors or paraphernalia would still be a crime.

A motion was made by Senator John Vratil and seconded by Ms. Patricia Biggs to approve both independent proposals. The motion carried.

Chairman Johnson made the motion and Mr. Kevin Graham seconded the recommendation to change repeat domestic battery to severity level 7 to maintain consistency. Senator John Vratil made a motion to amend the earlier motion to recommend that the Recodification Commission also revisit the location where the offender would serve incarceration. The amended motion was seconded by Chairman Johnson. The amended motion carried.

Ms. Patricia Biggs made a motion to recommend that the Proportionality Committee reconvene to look at postrelease supervision in light of proportionality and sentencing. The motion was seconded by Mr. Kevin Graham. The motion carried. There was some discussion regarding consideration of probation terms in the scope of the Committee's work.

Mr. Thomas Drees recommended that failure to register as an offender be amended to a severity level 9 person felony. Chairman Johnson made the motion to approve the recommendation and Senator Vratil seconded it. The motion carried.

SB 123 Report/Presentation

Ms. Helen Pedigo gave a brief overview of the SB123 savings. Handouts were provided. A quorum was no longer present, so a vote was not possible. The Commission will need to take future action on the Stemen/Rengifo SB123 36-month Evaluation.

KCDAA Legislative Response to State v. Holt

The Commission discussed State V. Holt. The Commission will likely need to determine whether to support the Kansas County and District Attorney Association recommendation to include a normal probation term of 18 months on SB 123 cases.

LSI-R Committee

Ms. Patricia Biggs suggested that the LSI-R Committee suspend its work at the present time due to the State's financial situation. The Commission will request legislation to be drafted indicating that until the rest of the state implements the risk needs assessment instrument, the Johnson County Project shall remain in effect.

Reentry Policy Council

Captain Dale Finger attended the most recent meeting and gave a report. No action was taken.

Substance Abuse Policy Board

Ms. Chris Mechler provided an update on the Substance Abuse Policy Board. SRS would like the Substance Abuse Policy Board to adopt the KCPC as the state-wide assessment tool. Chairman Johnson stated that Ms. Mechler is the Commission's vote. Since there are no known validation studies of the KCPC, the vote will be no.

2009 Proposed Meeting Dates

A handout was provided and the meeting dates for 2009 were adopted by the Chairman.

Agency Report

Ms. Pedigo provided and discussed the agency report. A handout was provided.

Next Meeting

The next Kansas Sentencing Commission meeting is scheduled for Thursday, December 18 2008, at 1:30 p.m. in the Senate Room of the Jayhawk Tower.

Chairman Johnson adjourned the meeting at 4:45 p.m.