

SENATE BILL No. 344

By Legislative Post Audit Committee

1-6

9 AN ACT concerning the Kansas sentencing commission; relating to du-
10 ties and functions; amending K.S.A. 74-9103, 74-9105 and 75-7001 and
11 K.S.A. 2009 Supp. 74-9101 and 75-52,144 and repealing the existing
12 sections; also repealing K.S.A. 74-9104.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. On the effective date of this act, the position of ex-
16 ecutive director of the Kansas sentencing commission is hereby abolished.

17 New Sec. 2. (a) Except as otherwise provided by this act, on the
18 effective date of this act, all of the powers, duties, functions, records and
19 property of the executive director of the Kansas sentencing commission
20 and the Kansas sentencing commission including the power to administer,
21 expend and distribute funds now or hereafter made available in accord-
22 ance with appropriation acts, shall be and hereby are transferred to and
23 conferred and imposed upon the secretary of corrections.

24 (b) Except as otherwise provided by this act, the secretary of correc-
25 tions shall be the successor in every way to the powers, duties and func-
26 tions of the executive director of the Kansas sentencing commission and
27 the Kansas sentencing commission in which the same were vested prior
28 to the effective date of this act. The secretary of corrections shall be a
29 continuation of the executive director of the Kansas sentencing commis-
30 sion and the Kansas sentencing commission, and every act performed by
31 or under the authority of the secretary of corrections shall be deemed to
32 have the same force and effect as if performed by the Kansas sentencing
33 commission in which the authority to perform such act was vested prior
34 to the effective date of this act.

35 (c) Except as otherwise provided by this act, whenever the executive
36 director of the Kansas sentencing commission, the Kansas sentencing
37 commission, or words of like effect, are referred to or designated by
38 statute, contract, memorandum of understanding, plan, grant, waiver or
39 other document such reference or designation shall be deemed to apply
40 to the secretary of corrections.

41 New Sec. 3. (a) On the effective date of this act, all officers and
42 employees who, immediately prior to such date, were engaged in the
43 performance of powers, duties or functions of the Kansas sentencing com-

1 mission which are transferred by this act, and who, in the opinion of the
2 secretary of corrections, are necessary to perform such powers, duties
3 and functions, shall be transferred to, and shall become officers and em-
4 ployees of the department of corrections.

5 (b) All officers and employees of the Kansas sentencing commission
6 who are transferred by this act shall retain all retirement benefits and
7 leave balances and rights which had accrued or vested prior to the date
8 of transfer. The service of each such officer and employee so transferred
9 shall be deemed to have been continuous. The secretary of corrections is
10 responsible for administering any layoff that is a part of the transfer of
11 powers, duties and functions under this act. All transfers, layoffs or abo-
12 lition of classified service positions under the Kansas civil service act shall
13 be made in accordance with the civil service laws and any rules and reg-
14 ulations adopted thereunder. Nothing in this act shall affect the classified
15 status of any transferred person employed by the Kansas sentencing com-
16 mission prior to the date of transfer.

17 (c) All rules and regulations of the Kansas sentencing commission in
18 existence on the effective date of this act shall continue to be effective
19 and shall be deemed to be the duly adopted rules and regulations of the
20 secretary of corrections until revised, amended or revoked or nullified
21 pursuant to law.

22 (d) All orders and directives of the Kansas sentencing commission or
23 of the executive director of the Kansas sentencing commission in exis-
24 tence on the effective date of this act shall continue to be effective and
25 shall be deemed to be orders and directives of the secretary of corrections
26 until revised, amended or nullified pursuant to law.

27 New Sec. 4. (a) When any conflict arises as to the disposition of any
28 power, function, or duty or the unexpended balance of any appropriation
29 as a result of any abolition, transfer or change effected by or under the
30 authority of this act, such conflict shall be resolved by the governor, whose
31 decision shall be final.

32 (b) On the effective date of this act, the secretary of corrections shall
33 succeed to all property and records which were used for or pertain to the
34 performance of the powers, duties and functions transferred to the sec-
35 retary of corrections by this act. Any conflict as to the proper disposition
36 of property or records arising under this section, and resulting from any
37 abolition or transfer of powers, duties and functions effected by or under
38 authority of this act, shall be determined by the governor, whose decision
39 shall be final.

40 New Sec. 5. (a) On and after the effective date of this act, the sec-
41 retary of corrections shall have the legal custody of all records, memo-
42 randa, writings, entries, prints, representations or combinations thereof
43 of any act, transaction, occurrence or event of the Kansas sentencing

1 commission.

2 (b) No suit, action or other proceeding, judicial or administrative,
3 lawfully commenced, or which could have been commenced, by or against
4 the Kansas sentencing commission or by or against any officer of the state
5 in such officer's official capacity or in relation to the discharge of such
6 officer's official duties, shall abate by reason of this act. The court may
7 allow any such suit, action or other proceeding to be maintained by or
8 against the successor of any such state agency or any officer affected.

9 (c) No criminal action commenced or which could have been com-
10 menced by the state shall abate by reason of the governmental reorgan-
11 ization effected under the provisions of this act.

12 New Sec. 6. (a) On the effective date of this act, the balance of all
13 funds appropriated and reappropriated to the Kansas sentencing com-
14 mission are hereby transferred to the department of corrections and shall
15 be used only for the purpose for which the appropriation was originally
16 made.

17 (b) On the effective date of this act, the liability for all accrued com-
18 pensation or salaries of officers and employees who, immediately prior to
19 such date, were engaged in the performance of powers, duties or func-
20 tions of the Kansas sentencing commission or the abolished state office
21 shall be assumed and paid by the secretary of corrections.

22 New Sec. 7. The secretary of corrections may organize the employ-
23 ees transferred to the department of corrections under this act in the
24 manner the secretary deems most efficient, so long as the same is not in
25 conflict with the provisions of law. The secretary of corrections may es-
26 tablish policies governing the transaction of all business and administra-
27 tion of such employees.

28 New Sec. 8. The Kansas sentencing commission, as created by K.S.A.
29 74-9101, and amendments thereto, is hereby continued in existence. Per-
30 sons who are members of the sentencing commission on the effective
31 date of this act shall continue to hold such offices under the conditions
32 and limitations provided under K.S.A. 74-9102, and amendments thereto.

33 Sec. 9. K.S.A. 2009 Supp. 74-9101 is hereby amended to read as
34 follows: 74-9101. (a) There is hereby established the Kansas sentencing
35 commission. *The commission shall advise and consult with the secretary*
36 *of corrections and members of the legislature with reference to any*
37 *changes to the implementation, management, monitoring, maintenance*
38 *and operations of the sentencing guidelines system and in regards to main-*
39 *taining a mechanism to link sentencing guidelines practices with correc-*
40 *tional resources and policies, including but not limited to, the capacities*
41 *of local and state correctional facilities.*

42 (b) The ~~commission~~ secretary of corrections shall:

43 (1) ~~Develop~~ Maintain a sentencing guideline model or grid based on

1 fairness and equity and shall provide a mechanism for linking justice and
2 corrections policies. The sentencing guideline model or grid shall ~~estab-~~
3 ~~lish~~ *be monitored and updated as needed to ensure* rational and consistent
4 sentencing standards which reduce sentence disparity, to include, but not
5 be limited to, racial and regional biases which may exist under current
6 sentencing practices. The guidelines shall specify the circumstances un-
7 der which imprisonment of an offender is appropriate and a presumed
8 sentence for offenders for whom imprisonment is appropriate, based on
9 each appropriate combination of reasonable offense and offender char-
10 acteristics. In ~~developing its~~ *maintaining such* recommended sentencing
11 guidelines, the ~~commission~~ *secretary of corrections* shall take into sub-
12 stantial consideration current sentencing and release practices and cor-
13 rectional resources, including but not limited to the capacities of local
14 and state correctional facilities. ~~In its report,~~ The ~~commission~~ *secretary*
15 *of corrections* shall make recommendations regarding whether there is a
16 continued need for and what is the projected role of, if any, the Kansas
17 parole board and whether the policy of allocating good time credits for
18 the purpose of determining an inmate's eligibility for parole or conditional
19 release should be continued;

20 (2) consult with and advise the legislature with reference to the im-
21 plementation, management, monitoring, maintenance and operations of
22 the sentencing guidelines system;

23 (3) direct implementation of the sentencing guidelines system;

24 (4) assist in the process of training judges, county and district attor-
25 neys, court services officers, state parole officers, correctional officers,
26 law enforcement officials and other criminal justice groups. For these
27 purposes, the ~~sentencing commission~~ *secretary of corrections* shall de-
28 velop an implementation policy and shall construct an implementation
29 manual for use in its training activities;

30 (5) receive presentence reports and journal entries for all persons
31 who are sentenced for crimes committed on or after July 1, 1993, to
32 develop post-implementation monitoring procedures and reporting
33 methods to evaluate guideline sentences. In developing the evaluative
34 criteria, the ~~commission~~ *secretary of corrections* shall take into consid-
35 eration rational and consistent sentencing standards which reduce sen-
36 tence disparity to include, but not be limited to, racial and regional biases;

37 (6) advise and consult with the ~~secretary of corrections~~ *Kansas sen-*
38 *tencing commission* and members of the legislature in ~~developing~~ *main-*
39 *taining* a mechanism to link guidelines sentence practices with correc-
40 tional resources and policies, including but not limited to the capacities
41 of local and state correctional facilities. Such linkage shall include a review
42 and determination of the impact of the sentencing guidelines on the
43 state's prison population, review of corrections programs and a study of

- 1 ways to more effectively utilize correction dollars and to reduce prison
2 population;
- 3 (7) make recommendations relating to modification to the sentencing
4 guidelines as provided in K.S.A. 21-4725, and amendments thereto;
- 5 (8) prepare and submit fiscal impact and correctional resource state-
6 ment as provided in K.S.A. 74-9106, and amendments thereto;
- 7 (9) make recommendations to those responsible for developing a
8 working philosophy of sentencing guideline consistency and rationality;
- 9 (10) develop prosecuting standards and guidelines to govern the con-
10 duct of prosecutors when charging persons with crimes and when engag-
11 ing in plea bargaining;
- 12 (11) analyze problems in criminal justice, identify alternative solu-
13 tions and make recommendations for improvements in criminal law, pros-
14 ecution, community and correctional placement, programs, release pro-
15 cedures and related matters including study and recommendations
16 concerning the statutory definition of crimes and criminal penalties and
17 review of proposed criminal law changes;
- 18 (12) perform such other criminal justice studies or tasks as may be
19 assigned by the governor or specifically requested by the legislature, ~~de-~~
20 ~~partment of corrections~~ *the Kansas sentencing commission*, the chief jus-
21 tice or the attorney general;
- 22 (13) develop a program plan which includes involvement of business
23 and industry in the public or other social or fraternal organizations for
24 admitting back into the mainstream those offenders who demonstrate
25 both the desire and ability to reconstruct their lives during their incar-
26 ceration or during conditional release;
- 27 (14) appoint a task force to make recommendations concerning the
28 consolidation of probation, parole and community corrections services;
- 29 (15) produce official inmate population projections annually ~~on or~~
30 ~~before six weeks following the date of receipt of the data from the de-~~
31 ~~partment of corrections~~. When the ~~commission's~~ *commission's* projections indicate that
32 the inmate population will exceed available prison capacity within two
33 years of the date of the projection, the ~~commission~~ *secretary of correc-*
34 *tions* shall identify and analyze the impact of specific options for (A) re-
35 ducing the number of prison admissions; or (B) adjusting sentence lengths
36 for specific groups of offenders. Options for reducing the number of
37 prison admissions shall include, but not be limited to, possible modifi-
38 cation of both sentencing grids to include presumptive intermediate dis-
39 positions for certain categories of offenders. Intermediate sanction dis-
40 positions shall include, but not be limited to: intensive supervision;
41 short-term jail sentences; halfway houses; community-based work release;
42 electronic monitoring and house arrest; substance abuse treatment; and
43 pre-revocation incarceration. Intermediate sanction options shall include,

1 but not be limited to, mechanisms to explicitly target offenders that would
2 otherwise be placed in prison. Analysis of each option shall include an
3 assessment of such options impact on the overall size of the prison pop-
4 ulation, the effect on public safety and costs. In preparing the assessment,
5 the ~~commission~~ *secretary of corrections* shall review the experience of
6 other states and shall review available research regarding the effectiveness
7 of such option. The ~~commission's~~ *secretary of corrections'* findings rela-
8 tive to each sentencing policy option shall be presented to the governor
9 and the joint committee on corrections and juvenile justice oversight no
10 later than November 1;

11 (16) at the request of the governor or the joint committee on correc-
12 tions and juvenile justice oversight, initiate and complete an analysis of
13 other sentencing policy adjustments not otherwise evaluated by the ~~com-~~
14 ~~mission~~ *secretary of corrections*;

15 (17) develop information relating to the number of offenders on post-
16 release supervision and subject to electronic monitoring for the duration
17 of the person's natural life;

18 (18) determine the effect the mandatory sentencing established in
19 K.S.A. 21-4642 and 21-4643, and amendments thereto, would have on
20 the number of offenders civilly committed to a treatment facility as a
21 sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq.,
22 and amendments thereto; *and*

23 (19) assume the designation and functions of the state statistical anal-
24 ysis center. All criminal justice agencies, as defined in subsection (c) of
25 K.S.A. 22-4701, and amendments thereto, and the juvenile justice au-
26 thority shall provide any data or information, including juvenile offender
27 information, requested by the ~~commission~~ *secretary of corrections* to fa-
28 cilitate the function of the state statistical analysis center; ~~and~~.

29 ~~(20) subject to the provisions of appropriation acts and the availability~~
30 ~~of funds therefor, produce official juvenile correctional facility population~~
31 ~~projections annually on or before November 1, not more than six weeks~~
32 ~~following the receipt of the data from the juvenile justice authority and~~
33 ~~develop bed impacts regarding legislation that may affect juvenile cor-~~
34 ~~rectional facility population.~~

35 (c) *All recommendations and reports prepared by the secretary of*
36 *corrections as outlined by this section shall first be presented at a regular*
37 *meeting of the Kansas sentencing commission for review and assessment*
38 *before being submitted to the legislature, governor or others. If the Kansas*
39 *sentencing commission substantively disagrees with the submission, the*
40 *submission shall include a basis for such disagreement and any alternative*
41 *proposed by the Kansas sentencing commission.*

42 (d) *All proposals for statutory changes under this section that the*
43 *secretary of corrections submits to the legislature shall include a written*

1 *report from the Kansas sentencing commission expressing its concurrence*
2 *or disagreement with the proposal, the basis for any disagreement, and*
3 *any alternative proposals.*

4 Sec. 10. K.S.A. 74-9103 is hereby amended to read as follows: 74-
5 9103. The ~~Kansas sentencing commission~~ *secretary of corrections* shall
6 appoint ~~an executive director and such~~ staff as is necessary to perform
7 such duties *as provided in K.S.A. 74-9101, and amendments thereto*, as
8 directed by the ~~commission~~ *secretary of corrections*. The staff ~~of the com-~~
9 ~~mission~~ shall be in the ~~unclassified~~ *classified* service under the Kansas
10 civil service act and shall receive compensation fixed by the ~~commission~~
11 *secretary of corrections* with the approval of the governor. The staff shall
12 receive reimbursement of all actual and necessary expenses incurred in
13 the performance of its official duties.

14 Sec. 11. K.S.A. 74-9105 is hereby amended to read as follows: 74-
15 9105. In addition to its duties under K.S.A. 74-9101 ~~and 74-9104~~, *and*
16 *amendments thereto*, the ~~Kansas sentencing commission~~ *secretary of cor-*
17 *rections* shall receive, administer and expend any funds available to carry
18 out the purposes of this act.

19 Sec. 12. K.S.A. 75-7001 is hereby amended to read as follows: 75-
20 7001. ~~On January 1, 1997~~, The governor shall appoint a commissioner of
21 juvenile justice. The commissioner may appoint staff assistants and em-
22 ployees as are necessary to enable the commissioner to carry out the
23 transfer of powers, duties and functions of the department of social and
24 rehabilitation services and the secretary of social and rehabilitation serv-
25 ices concerning juvenile offenders to the juvenile justice authority and
26 the commissioner of juvenile justice. ~~On and after July 1, 1997~~, The com-
27 missioner of juvenile justice shall be responsible for the care, custody and
28 control of juvenile offenders and shall be in charge of the juvenile justice
29 authority. The juvenile justice authority shall:

30 (a) Control and manage the operation of the state juvenile correc-
31 tional facilities;

32 (b) *produce official juvenile correctional facility population projec-*
33 *tions annually on or before November 1 and develop bed impacts regard-*
34 *ing legislation that may affect juvenile correctional facility population;*

35 ~~(b)~~ (c) evaluate the rehabilitation of juveniles committed to the au-
36 thority and prepare and submit periodic reports to the committing court
37 for the purposes of:

38 (1) Evaluating the effectiveness of institutional treatment;

39 (2) making recommendations for release where appropriate, and rec-
40 ommending terms and conditions for release; and

41 (3) reviewing the placement of children and recommending alter-
42 native placements such as supervised release into the community, out-of-
43 home placement, or community services work where appropriate with

1 the approval of the court;

2 ~~(e)~~ (d) consult with the schools and courts of this state on the devel-

3 opment of programs for the reduction and prevention of delinquency and

4 the treatment of juvenile offenders;

5 ~~(f)~~ (e) cooperate with other agencies whose services deal with the

6 care and treatment of juvenile offenders to the end that juvenile offenders

7 may wherever possible be assisted to a successful adjustment outside of

8 institutional care;

9 ~~(g)~~ (f) advise local, state and federal officials, public and private agen-

10 cies, and lay groups on the needs for and possible methods of the reduc-

11 tion and prevention of delinquency, and the treatment of juvenile

12 offenders;

13 ~~(h)~~ (g) assemble and distribute information relating to delinquency

14 and report on studies relating to community conditions which affect the

15 problem of delinquency;

16 ~~(i)~~ (h) assist any community within the state by conducting a com-

17 prehensive survey of the community's available public and private re-

18 sources, and recommend methods of establishing a community program

19 for combating juvenile delinquency and crime, but no such survey shall

20 be conducted unless local individuals and groups request it through their

21 local authorities, and no such request shall be interpreted as binding the

22 community to following the recommendations made as a result of the

23 request; and

24 ~~(j)~~ (i) be responsible for directing state moneys to providers in local

25 communities of alternative placements such as supervised release into the

26 community, out-of-home placement, community services work or other

27 community-based service; provide assistance to such providers; and eval-

28 uate and monitor the performance of such providers relating to the pro-

29 vision of services.

30 Sec. 13. K.S.A. 2009 Supp. 75-52,144 is hereby amended to read as

31 follows: 75-52,144. (a) Drug abuse treatment programs certified in ac-

32 cordance with subsection (b) shall provide:

33 (1) Presentence drug abuse assessments of any person who is con-

34 victed of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such

35 sections repeal or K.S.A. 2009 Supp. 21-36a06, and amendments thereto,

36 and meets the requirements of K.S.A. 21-4729, and amendments thereto;

37 (2) treatment of all persons who are convicted of a felony violation

38 of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or K.S.A. 2009

39 Supp. 21-36a06, and amendments thereto, meet the requirements of

40 K.S.A. 21-4729, and amendments thereto, and whose sentence requires

41 completion of a certified drug abuse treatment program, as provided in

42 this section;

43 (3) one or more treatment options in the continuum of services

1 needed to reach recovery: Detoxification, rehabilitation, continuing care
2 and aftercare, and relapse prevention;

3 (4) treatment options to incorporate family and auxiliary support serv-
4 ices; and

5 (5) treatment options for alcohol abuse when indicated by the as-
6 sessment of the offender or required by the court.

7 (b) The presentence criminal risk-need assessment shall be con-
8 ducted by a court services officer or a community corrections officer. The
9 presentence drug abuse treatment program placement assessment shall
10 be conducted by a drug abuse treatment program certified in accordance
11 with the provisions of this subsection to provide assessment and treatment
12 services. A drug abuse treatment program shall be certified by the sec-
13 retary of corrections. The secretary *of corrections* may establish qualifi-
14 cations for the certification of programs, which may include requirements
15 for supervision and monitoring of clients; fee reimbursement procedures;
16 handling of conflicts of interest; delivery of services to clients unable to
17 pay; and other matters relating to quality and delivery of services by the
18 program. Drug abuse treatment may include community based and faith
19 based programs. The certification shall be for a four-year period. Recer-
20 tification of a program shall be by the secretary. To be eligible for certi-
21 fication under this subsection, the secretary shall determine that a drug
22 abuse treatment program: (1) Meets the qualifications established by the
23 secretary; (2) is capable of providing the assessments, supervision and
24 monitoring required under subsection (a); (3) has employed or contracted
25 with certified treatment providers; and (4) meets any other functions and
26 duties specified by law.

27 (c) Any treatment provider who is employed or has contracted with
28 a certified drug abuse treatment program who provides services to of-
29 fenders shall be certified by the secretary of corrections. The secretary
30 *of corrections* shall require education and training which shall include,
31 but not be limited to, case management and cognitive behavior training.
32 The duties of providers who prepare the presentence drug abuse assess-
33 ment may also include appearing at sentencing and probation hearings in
34 accordance with the orders of the court, monitoring offenders in the treat-
35 ment programs, notifying the probation department and the court of any
36 offender failing to meet the conditions of probation or referrals to treat-
37 ment, appearing at revocation hearings as may be required and providing
38 assistance and data reporting and program evaluation.

39 (d) The cost for all drug abuse assessments and certified drug abuse
40 treatment programs for any person shall be paid by the ~~Kansas sentencing~~
41 ~~commission~~ *secretary of corrections* from funds appropriated for such
42 purpose. The ~~Kansas sentencing commission~~ *secretary of corrections* shall
43 contract for payment for such services with the supervising agency. The

1 sentencing court shall determine the extent, if any, that such person is
2 able to pay for such assessment and treatment. Such payments shall be
3 used by the supervising agency to offset costs to the state. If such financial
4 obligations are not met or cannot be met, the sentencing court shall be
5 notified for the purpose of collection or review and further action on the
6 offender's sentence.

7 (e) The community corrections staff shall work with the substance
8 abuse treatment staff to ensure effective supervision and monitoring of
9 the offender.

10 (f) The secretary of corrections is hereby authorized to adopt rules
11 and regulations to carry out the provisions of this section.

12 Sec. 14. K.S.A. 74-9103, 74-9104, 74-9105 and 75-7001 and K.S.A.
13 2009 Supp. 74-9101 and 75-52,144 are hereby repealed.

14 Sec. 15. This act shall take effect and be in force from and after its
15 publication in the statute book.