



Justice Reinvestment in Kansas: Strengthening Probation Supervision and Promoting Successful Reentry

Facing a projected 23-percent growth in the state prison population by FY2021, policymakers from across the political spectrum in Kansas enacted House Bill (HB) 2170 in April 2013. The law implements policy recommendations developed through “justice reinvestment,” a data-driven approach designed to reduce corrections spending and reinvest savings in strategies that can reduce recidivism and improve public safety. Throughout the process, the state received intensive technical assistance from the Council of State Governments (CSG) Justice Center, in partnership with The Pew Charitable Trusts and the U.S. Department of Justice’s Bureau of Justice Assistance (BJA). With continued support, Kansas leaders have been working to implement this legislation and track the impact of the new policies. This report reflects on the progress Kansas has made to date and the continued efforts that are necessary to meet the state’s goals.

Background

Between FY2009 and FY2012, the number of people in Kansas prisons increased by almost 9 percent, and was projected to increase an additional 15 percent by FY2018.¹ Accommodating this growth would cost at least \$81 million in prison construction and operating costs.² In June 2012, Governor Sam Brownback, Chief Justice Lawton Nuss, Attorney General Derek Schmidt, Department of Corrections Secretary Ray Roberts, and legislative leaders requested technical assistance from the CSG Justice Center to pursue justice reinvestment.

To guide this effort, the bipartisan, interbranch Justice Reinvestment Working Group made up of state lawmakers, corrections and court officials, and other stakeholders in the criminal justice system was established to review analyses conducted by the CSG Justice Center and to discuss policy



Governor Sam Brownback signs Kansas’s justice reinvestment legislation.

Key Public Safety Provisions in HB 2170

- Requires probation agencies to respond to minor probation violations with swift, certain, and cost-effective sanctions
- Imposes progressive sanctions for repeat probation violations
- Invests a total of \$5 million in the expansion of behavioral health treatment services
- Focuses supervision resources on people at the highest risk of reoffending

options that would slow the growth of the prison population and reduce recidivism.

In preparing its analysis, the CSG Justice Center drew on data systems maintained by state agencies across Kansas and analyzed more than 1.2 million individual records. The CSG Justice Center also convened focus groups and meetings with numerous criminal justice system stakeholders, including more than 75 in-person meetings with nearly 250 people, and conducted online surveys of county sheriffs, chiefs of police, and probation directors.

Based on these quantitative and qualitative analyses, the working group developed a policy framework designed to strengthen community-based supervision, promote successful reentry, and target scarce resources more effectively. This report provides a summary of the justice reinvestment policy framework and the resulting legislation.³

Summary of Challenges

The number of felony probationers revoked to prison increased significantly between FY2009 and FY2012. This trend was the single biggest driver of growth in the state's prison population.

- Revocations to prison for felony probationers increased 20 percent between FY2009 and FY2012, and represented almost 4 of every 10 admissions to prison in FY2012. [See Figure 1]
- In FY2011, probationers revoked to prison for violating the conditions of their supervision spent an average of 11 months incarcerated before being released again.
- Between FY2009 and FY2012, 94 percent of people revoked to prison from probation did so for violating conditions of supervision, not for committing a new crime. Between FY2009 and FY2011, revocations to prison from probation cost the state almost \$100 million.⁴

Justice Reinvestment Policy Framework

Strengthen Probation Supervision

- Increase access to community-based treatment and programming
- Enable probation officers to apply swift and certain responses for technical violations of supervision
- Create a new sanctioning procedure to respond to repeat violations
- Prioritize supervision resources based on risk of reoffending

Promote Successful Reentry

- Allow the Prisoner Review Board to focus resources on higher-risk cases and reduce the length of time on post-release supervision for lower-risk individuals
- Require that people who are reincarcerated for a probation revocation and subsequently released to the community receive post-release supervision
- Increase access to community-based programming for people on post-release supervision who are at the highest risk of reoffending
- Create a task force to study ways to improve the crime victim restitution collection process

Build Safer Communities

- Provide law enforcement agencies with competitive grant funding to help them analyze crime data and improve responses to people with mental health disorders
- Enhance the Kansas Bureau of Investigation's ability to process crime scene evidence and more efficiently apprehend and prosecute people committing crime

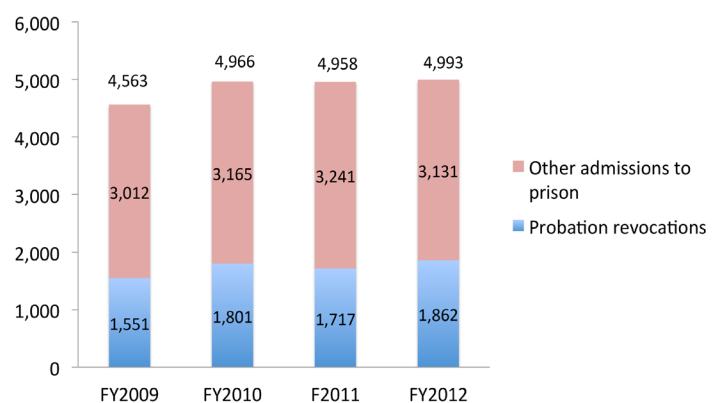
A large number of people who failed on probation and were revoked to prison were subsequently released from prison without any community-based supervision.

- Of the total number of probationers who had been revoked to prison and were released between FY2007 and FY2011, almost 60 percent had completed their underlying sentences in prison and therefore left without post-release supervision requirements. These individuals accounted for almost 80 percent of all people released from prison with no supervision requirements.⁵
- This loophole allowed probationers revoked to prison for violating the terms of their supervision to avoid post-release supervision entirely. Releasing these individuals from prison to the community without supervision created a public safety concern, as they had already demonstrated problems adhering to conditions of supervision in the community.

Failure to adhere to the terms of probation often stemmed from an individual's substance use, yet few probationers received community-based treatment after their release.

- Of probationers revoked to prison in FY2011, 58 percent were identified as needing treatment. Substance use treatment resources were focused on people in prison, not on those released to the community. Research shows that substance use treatment provided in the community has a greater impact on reducing recidivism than treatment provided in prison,⁶ yet funding for community-based treatment for felony probationers declined by 56 percent from FY2009 to FY2012.⁷

FIGURE 1. PROBATION REVOCATIONS TO PRISON



Source: Kansas Sentencing Commission, Felony Sentencing Case Data and FY2013 Prison Population Projection, August 2012.

Developing Policy Solutions

Legislation

To address these challenges, the working group developed a policy framework designed to strengthen probation supervision and promote successful reentry. State leaders then decided which provisions of the policy framework to include in legislation, which was introduced as HB 2170 by the House Committee on Corrections and Juvenile Justice. The working group also supported funding additional policies, including providing local law enforcement with competitive grant funding, expanding the Kansas Bureau of Investigation's capacity for analyzing forensic evidence, and increasing restitution collection. These policies have not received appropriations to date, however.

To strengthen felony probation supervision, HB 2170 granted probation officers authority to respond to supervision violations with swift, certain, and cost-effective sanctions. Supervision officers were authorized to impose two- to three-day jail stays in response to minor violations without being required to return to court for a hearing to approve the sanction.⁸

HB 2170 also provided progressive sanctions to respond to violations of conditions of felony probation supervision. The working group's policy recommendation was to require that judges first use a 120-day prison sanction following at least one 2-to 3-day jail sanction, and use a 180-day sanction as a penultimate response to violations before revoking someone to prison. Instead HB 2170 allowed judges to use either a 120- or 180-day sanction after a short-term jail stay sanction,⁹ and permitted judges to revoke probationers to prison as a subsequent response to violations after either a 120- or 180-day sanction.

To promote successful reentry, the legislation required post-release supervision for individuals who complete their underlying sentence while in prison for violating the terms of their supervision. HB 2170 also allowed low-risk individuals on felony probation and post-release supervision to earn their discharge from supervision after 12 months, upon satisfaction of restitution obligations and compliance with supervision conditions. These changes gave supervision officers the ability to prioritize probation and post-release supervision resources for individuals who are most likely to reoffend.

HB 2170 passed with bipartisan support by votes of 75-44 in the House and 35-4 in the Senate. In a ceremonial bill signing on May 8, 2013, Governor Brownback said, "I've made it a priority during my time in Congress and now as governor to ensure that we keep our communities safe and allow those individuals who are reentering society to positively contribute to society once they return from prison or jail. These reforms will reduce recidivism, cut corrections costs, and increase public safety. They also ensure that even in these tough fiscal times we are making prudent decisions on behalf of Kansas taxpayers."

Projected Impact

Prior to passage of the legislation, the Kansas Sentencing Commission had forecast that without changes to current policies and practices, the prison population would increase 15 percent over a 6-year period, growing from 9,370 people in FY2012 to 10,819 people in FY2018. HB 2170 is expected to reduce the projected growth in the prison population by 841 by the end of FY2018. [See Figure 2] To help reduce revocations that are driving prison growth and improve the likelihood of probationers' success on supervision, Kansas has invested \$2 million in FY2014 and \$3 million in FY2015 in community-based behavioral health treatment. If the state implements the legislation effectively and continues to increase its level of reinvestment, HB 2170 is projected to avert \$56 million in prison operating costs and \$25 million in construction costs between FY2014 and FY2018. [See Figure 3]

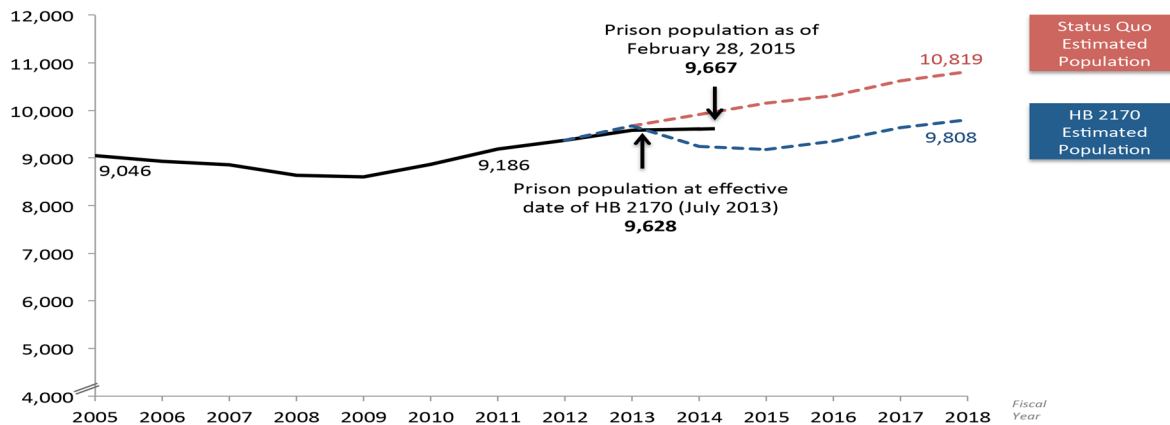
Looking Ahead

There is still significant work to be done in Kansas. Despite the projected impact of the justice reinvestment policies to curb the growth of the prison population, the state is still expected to exceed its prison capacity by FY2016. So policymakers must continue their intensive efforts to address this critical challenge, as well as to ensure that the state will realize the full benefits of the policy changes they have already made.

For example, when the state began to implement HB 2170, there was an unexpectedly low utilization of the new intermediate jail and prison sanctions due to confusion over how to apply the sanctions to probationers who had violated supervision conditions prior to the law going into effect, which required clarifying legislation to be enacted. Additionally, some judges and probation officers whose practices were particularly affected by HB 2170 required training on the implementation of the new sanctioning options, which also held up the adoption of the sanctions. These delays caused a more modest impact on slowing the growth of the prison population than projected for the first year after enactment of the legislation; however, after training is completed, the use of these sanctions is expected to increase to the projected levels.

Kansas has received funding from BJA to support additional training, education, upgrades to data systems, and quality assurance efforts. The CSG Justice Center has been working with officials from across the criminal justice system to help facilitate the trainings described above to increase the use of sanctions to projected levels, as well as to develop a statewide training program for correctional staff and behavioral health treatment providers to improve interventions for individuals with behavioral health needs. These trainings, as well as more targeted interagency trainings at the county level, are crucial to achieving the state's objective of increasing access to quality behavioral health treatment.

FIGURE 2. ACTUAL AND ESTIMATED IMPACT OF HB 2170 ON KANSAS'S PRISON POPULATION



Source: Projections were provided by the Kansas Sentencing Commission (2012). Actual prison population totals can be found in the Kansas DOC's annual reports and represent FY populations. The February 28, 2015 figure came from the end-of-month population reports on the KDOC website.

FIGURE 3. SUMMARY OF FULL PROJECTED IMPACT, SAVINGS, AND RECOMMENDED REINVESTMENT

	2014	2015	2016	2017	2018	Total
Estimated Impact on Prison Population Projection						
• Working Group Policy Framework	-611	-892	-880	-905	-928	-928
• HB 2170	-593	-830	-797	-820	-841	-841
HB 2170 Impact on Operating Costs	-\$2.2M	-\$14.0M	-\$12.9M	-\$13.3M	-\$13.7M	-\$56.1M
Total Impact on Construction Costs*	-\$25.0M					-\$25.0M
HB 2170 Total Cost Impact	-\$27.2M	-\$14.0M	-\$12.9M	-\$13.3M	-\$13.7M	-\$81.1M
Total Recommended Reinvestment	\$5.0M	\$5.0M	\$5.0M	\$5.0M	\$5.0M	\$25.0M
HB 2170 Net Cost Impact	-\$22.2M	-\$9.0M	-\$7.9M	-\$8.3M	-\$8.7M	-\$56.1M

*Estimated construction costs would span five years.

Endnotes

1. Kansas Sentencing Commission, "Fiscal Year 2013 Adult Inmate Prison Population Projections," (Topeka: Kansas Sentencing Commission, August 2012).
2. Projected impact estimate updated by CSG Justice Center February 2015.
3. Additional information is available in the CSG Justice Center's report: *Justice Reinvestment in Kansas: Analyses & Policy Options to Reduce Spending on Corrections & Reinvest in Strategies to Increase Public Safety*. The full report is available at csjusticecenter.org/jr/ks/.
4. CSG Justice Center analysis of Kansas Department of Corrections admissions and releases data.
5. *Ibid.*
6. Steve Aos et al., "Return on Investment: Evidence-Based Options to Improve Statewide Outcomes," (Olympia: Washington State Institute for Public Policy, April 2012).
7. CSG Justice Center analysis of Kansas Department of Corrections budget data.
8. At sentencing, judges determine if an individual convicted of a felony offense whose sentence includes probation will be eligible for these two- to three-day jail stays as determined by a probation officer; however, a probationer who is eligible for these short jail-stay sanctions may waive or request the court hearing when the sanction is imposed by a probation officer.
9. Individuals sanctioned to prison for 120 days may be eligible to earn up to 60 days of credit to reduce their incarceration time, and individuals sanctioned for 180 days may be eligible to earn up to 90 days of credit.



those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. To learn more about the Bureau of Justice Assistance, please visit bjaj.gov.

This project was supported by Grant No. 2013-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are



government. The CSG Justice Center provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities.

The Council of State Governments (CSG) Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of

The CSG Justice Center's work in justice reinvestment is done in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance. These efforts have provided data-driven analyses and policy options to policymakers in 21 states. For additional information about Justice Reinvestment in Kansas, please visit csjusticecenter.org/jr.



Research and analysis described in this report has been funded in part by the public safety performance project of The Pew Charitable Trusts. Launched in 2006, the project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs. To learn more about the project, please visit pewtrusts.org/publicsafety.