

# SET UP FOR FAILURE



THE IMPOSSIBLE  
PROBATION SYSTEM  
IN KANSAS

**ACLU** Kansas  
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# INTRODUCTION

If Kansas were a country, its incarceration rate would be second only to that of the U.S.<sup>1</sup> Kansas faces a significant overcrowding issue in its prisons. A notable contributing factor to the state's high rate of incarceration is imprisonment due to technical violations of probation.

Probation is meant to be a sentence that replaces incarceration for low-level, non-violent crimes. Yet many people on probation still end up serving time in a penitentiary due to technical violations of the conditions of their probation. A technical violation is not a crime. It is an act that is not unlawful, but simply violates the conditions of probation.

In 2018, close to 1,250 Kansans' probation was revoked without a new conviction. These Kansans make up over 10% of the total state prison population. In addition to the enormous pressure this number puts on the capacity of the state's prisons, incarcerating individuals for technical supervision violations costs the state \$39 million annually.

In fact, the cost of incarceration is ten times that of probation: The cost to the state of probation per person per day is \$7.10, versus the cost of incarceration which is \$72.36 per inmate per day.

Incarcerating Kansans for technical violations of probation demonstrates an overreliance on the prison system and a failure to utilize rehabilitative resources for the benefit of re-entering Kansans and their communities.

## CONDITIONS OF PROBATION: SET UP TO FAIL

The state law governing conditions of probation<sup>2</sup> grants courts broad discretion in imposing conditions and creates a system whereby conflicting conditions could be imposed. For example, a Kansan on probation may have to report to specific locations several times a week, but may also have a suspended driver's license and face restricted transportation options due to other conditions of their probation.

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1 The Prison Policy Project calculated the number of people in state prisons, local jails, federal prisons, and other systems of confinement from each U.S. state per 100,000 people in that state and the incarceration rate per 100,000 in all countries with a total population of at least 500,000. Institute for Criminal Policy Research's World Prison Brief in May 2018 provided data for comparison. A detailed breakdown of their methodology can be found here: <https://www.prisonpolicy.org/global/2018.html>

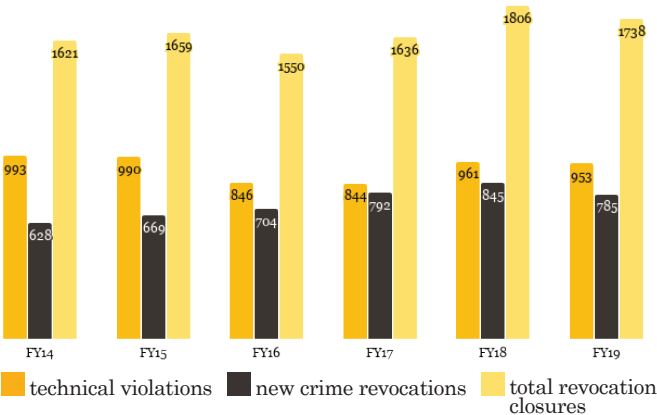
2 [http://www.kslegislature.org/li\\_2012/b2011\\_12/statute/021\\_000\\_0000\\_chapter/021\\_066\\_0000\\_article/021\\_066\\_0007\\_section/021\\_066\\_0007\\_k/](http://www.kslegislature.org/li_2012/b2011_12/statute/021_000_0000_chapter/021_066_0000_article/021_066_0007_section/021_066_0007_k/)

FY 2018 Probation Revocation <sup>3</sup> (includes Court Services and Community Corrections)	Statewide	Sedgwick		Butler	
	Count	Count	Percent of State Total	Count	Percent of State Total
failure to report change of residence/ phone/job	269	104	38.66%	2	0.74%
failure to maintain/secure employment	202	57	28.22%	0	0.00%
curfew violation	62	40	64.52%	0	0.00%
failure to obey established rules	272	138	50.74%	2	0.74%
failure to pay restitution/fines	430	102	23.72%	7	1.63%
failure to report	1184	405	34.21%	16	1.35%
failure of drug test	962	363	37.73%	10	1.04%
failure to abstain from alcohol	291	97	33.33%	2	0.69%
<b>Total revocations</b>	<b>2108</b>	<b>771</b>	<b>36.57%</b>	<b>21</b>	<b>1.00%</b>
<b>Percent of revocations due to technical violations, non-criminal activity</b>	<b>61.30%</b>	<b>43.60%</b>		<b>71.40%</b>	

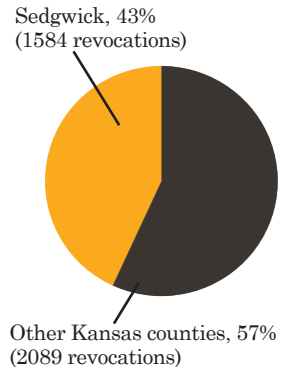
## PROBATION REVOCATIONS IN SEDGWICK (18TH JUDICIAL DISTRICT)

The 18th Judicial District is the biggest contributor to incarceration for technical violations of probation conditions. In the past 6 years of Community Corrections data, the state revoked 3,673 probations for technical violations, 43% of which came just from Sedgwick.

### STATEWIDE PROBATION REVOCATIONS, FY2014-19

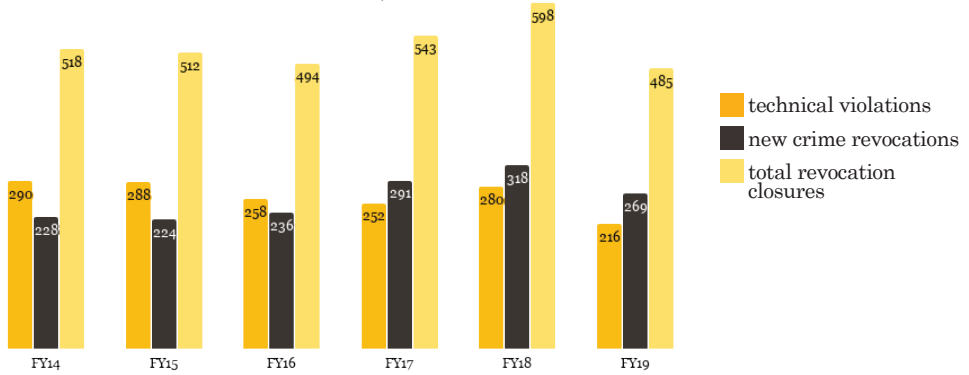


### SEDGWICK VS. STATEWIDE PROBATION REVOCATIONS, FY2014-19



<sup>3</sup> One revocation may have multiple cited violations. Not all types of technical violations are listed in this table. Data provided by the Kansas Sentencing Commission.

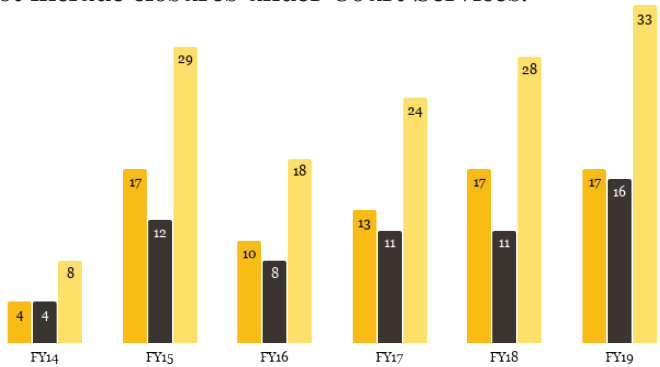
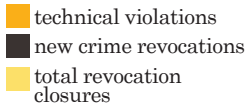
## SEDGWICK PROBATION REVOCATIONS, FY2014-19



## PROBATION REVOCATIONS IN BUTLER/ELK/GREENWOOD COUNTIES (13TH JUDICIAL DISTRICT)

The bar graph below depicts the closures for probation under Community Corrections and does not include closures under Court Services.<sup>4</sup>

### 13TH JUDICIAL DISTRICT PROBATION REVOCATIONS, FY2014-19



## CONCLUSION

Our probation system sets people up to fail by asking the impossible, then punishes them with prison when they fall short. The state legislature can address the incarceration crisis that has been exacerbated by imprisonment for technical violations of probation conditions by passing the Smart Justice Act in 2020. This bill would:

- Prevent revocation for technical violations
- Simplify and standardize the conditions of probation
- Allow Earned Credit Compliance (30 days in compliance=30 days reduction of sentence)
- Allow probationers to use multiple locations for weekly check-ins, such as work, school, or a court-mandated program

<sup>4</sup> This chart was made by compiling data from the Kansas Department of Corrections annual reports for years 2014-2019. It is generally Table 1 in each report titled, "Statistical Summary: Community Corrections Offender Population" where these numbers are found. The reports are accessible at <https://www.doc.ks.gov/cfs/community-corrections/publications>.