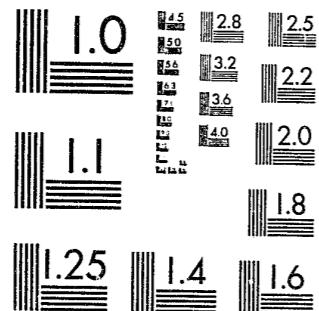


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SPECIAL ANALYSIS

THE CONTEXT FOR CRISIS:
BACKGROUND REPORT ON
THE KANSAS CORRECTIONS SYSTEM

STATE OF KANSAS
Department of Administration
DIVISION OF THE BUDGET

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SPECIAL ANALYSIS

THE CONTEXT FOR CRISIS: BACKGROUND REPORT ON THE KANSAS CORRECTIONS SYSTEM

**U.S. Department of Justice
National Institute of Justice**

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By Jan Johnson
Division of the Budget
January, 1984

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CHAPTER ONE

THE NATIONAL CORRECTIONS CONTEXT

Prison Population Trends

After years of relative stability and only gradual change, the United States prison population began a steep and unprecedented climb in the mid-1970s. The number of federal and state prisoners serving sentences of more than one year rose from a 200,000 count plateau during the early 1970s to nearly double that number, or 394,374, at the end of 1982*. National prisoner counts, which are given in Table 1.1, have expanded every year since 1972, with annual increases ranging from a low of 2.4 percent in 1979 to a high of 11.8 percent in 1981. The 1982 rate of increase also was large, at 11.6 percent, producing the single largest numerical increase in prison population ever recorded -- nearly 41,000.

Prisons and their inmates are predominantly state government responsibilities, as is clear from the data in Table 1.1. Only 6 percent of the 1982 year end prison population was housed in federal institutions. Not only is the federal population comparatively small, it has remained fairly stable during the past decade, especially when viewed against trends in the state inmate population. The number of state inmates more than doubled between 1972 and 1982, while the federal population rose by less than 10 percent. The higher state inmate population cannot be attributed to increases in the population at large. The state incarceration rate, equal to the number of inmates per 100,000 civilian population, nearly doubled during the same time period.

Regional variations in state prison populations, incarceration rates, and their rates of growth, are pronounced. Table 1.2 compares state prisoner numbers and incarceration rates, by region and state, for the years 1970 and 1982. Of greatest significance among regional patterns is the dominance of the south. The region's incarceration rate of 224 per 100,000 population in 1982 far exceeded that of any other region. In 1982, the states in the southern region had nearly half of the total state inmates, but only one-third of the national population. Fully 54 percent of the net increase in state prisoners from 1970 to 1982 was recorded in the southern states.

*Data presented do not include inmates with sentences of less than one year, thus understating somewhat the actual number of persons confined. This is done partly to facilitate data comparisons and partly to exclude the "jail" inmates in states with combined jail and prison systems.

Table 1.1. Inmates in State and Federal Institutions, and State and Federal Incarceration Rates,
1970-1982

<u>Year</u>	<u>Total Inmates</u>	<u>Total Inmates Per 100,000 Population</u>	<u>State Inmates</u>	<u>State Inmates Per 100,000 Population</u>	<u>Federal Inmates</u>	<u>Federal Inmates Per 100,000 Population</u>
1970	196,441	97	176,403	87	20,038	10
1971	198,061	97	177,113	87	20,948	10
1972	196,183	95	174,470	84	21,713	11
1973	204,349	98	181,534	87	22,815	11
1974	218,205	104	195,844	93	22,361	11
1975	242,750	115	218,619	104	24,131	11
1976	263,291	124	236,492	111	26,799	13
1977	284,461*	132	255,811*	119	28,650*	13
1978	294,396	136	268,005	124	26,391	12
1979	301,470	136	278,882	126	22,588	10
1980	314,272	139	293,661	130	20,611	9
1981	353,520	153	331,351	143	22,169	10
1982	394,374	170	370,722	160	23,652	10

Data Sources: American Prisons and Jails, Volume II, page 114. Annual bulletins on year-end prison populations published by the Bureau of Justice Statistics, U.S. Department of Justice.

*Part of the increase in 1977 is caused by changes in reporting methodology. Prior to 1977, prisoners were counted according to physical custody. Beginning with 1977, counts are made by jurisdictional responsibility.

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Diversity among states is even greater than among the regions. The 1982 incarceration rate ranged from 47 inmates per 100,000 population in New Hampshire to 301 per 100,000 in Nevada. On December 31, 1982 the state inmate census varied from a low of 313 in North Dakota to a high of 36,282 in Texas.

All states experienced significant growth in their prison populations during the twelve year period, with extraordinary increases being more the rule than the exception. Since 1970, the number of inmates has doubled, or more, in 31 states. Five of those have seen their prison populations triple and one, Arizona, has had a quadrupling in inmate population. The lowest percentage increases in population during the period occurred in Minnesota, at 31.3 percent and in California, at 33.5 percent.

Table 1.2. Sentenced Prisoners in State Prisons and Incarceration Rates, by State and Region, December 31, 1982

<u>Region and State</u>	<u>Number of Prisoners</u>		<u>Prisoners Per 100,000 Population</u>	
	1970	1982	1970	1982
Northeast	28,595	56,777	59	115
Maine	516	781	52	69
New Hampshire	244	445	33	47
Vermont	162	435	36	84
Massachusetts	2,053	4,431	36	77
Rhode Island	--	782	--	82
Connecticut	1,568	3,606	52	114
New York	12,059	27,910	66	158
New Jersey	5,704	7,925	80	107
Pennsylvania	6,289	10,462	53	88
North Central	41,941	76,339	74	130
Ohio	9,185	17,317	86	160
Indiana	4,137	8,295	79	152
Illinois	6,381	13,594	58	119
Michigan	9,079	14,737	102	162
Wisconsin	2,973	4,568	67	96
Minnesota	1,585	2,081	41	50
Iowa	1,747	2,709	62	93
Missouri	3,413	7,283	73	147
North Dakota	147	313	24	47
South Dakota	391	755	59	109
Nebraska	1,001	1,575	68	99
Kansas	1,902	3,112	86	129

South	69,590	174,877	112	224
Delaware	596	1,507	109	250
Maryland	5,186	10,427	134	244
District of Columbia	1,423	3,351	193	531
Virginia	4,648	9,715	104	177
West Virginia	938	1,496	54	77
North Carolina	5,969	15,358	120	255
South Carolina	2,726	8,653	108	270
Georgia	5,113	13,914	113	247
Florida	9,187	27,139	136	261
Kentucky	2,849	4,051	89	110
Tennessee	3,268	8,046	84	173
Alabama	3,790	8,462	111	215
Mississippi	1,730	5,359	79	210
Arkansas	--	3,792	--	166
Louisiana	4,196	10,935	116	251
Oklahoma	3,640	6,390	144	201
Texas	14,331	36,282	129	237
West	36,277	62,729	106	139
Montana	260	917	38	114
Idaho	411	1,036	58	107
Wyoming	231	677	70	135
Colorado	2,066	3,286	95	108
New Mexico	742	1,707	74	126
Arizona	1,461	5,986	83	209
Utah	491	1,199	46	77
Nevada	690	2,653	143	301
Washington	2,864	6,264	86	148
Oregon	1,800	3,867	86	146
California	25,033	33,410	127	135
Alaska	--	851	--	194
Hawaii	228	876	32	88
Total State Institutions	370,722	87	160	

Source: Prisoners in 1982, Bureau of Justice Statistics, U.S. Department of Justice; and, Prisoners in State and Federal Institutions for Adult Felons, National Prisoner Statistics Bulletin Number 47, as reproduced in American Prisons and Jails, Vol. II, page 115.

The growth in the number of state prisoners has persisted longer than experts anticipated, and signs of abatement have yet to emerge. State prisoners in California, Florida and Texas are increasing at rates nearly equivalent to a 500-bed institution per month, causing enormous management and fiscal pressures. Compounding the difficulty for state governments is the fact that most of them are also under judicial pressure to relieve crowding or otherwise improve conditions of confinement at their prisons. At the end of 1982, 31 states were subject to court order to

improve conditions of confinement, and 9 more were engaged in litigation. In most cases the issue has been violation of the Eighth Amendment prohibition against cruel and unusual punishment, with crowding being a central deficiency.

Crowded prisons present a complex of problems and dangers which grow exponentially with the severity of crowding. The most critical concern, of course, is the enhanced potential for violence and for eruption of full-scale riot conditions, with accompanying loss of life and control of the institution. Consequences short of rioting are still serious, because they represent a deterioration of living conditions for inmates and working conditions for staff. The physiological and psychological stresses induced by crowding manifest themselves in a variety of ways. Illness increases, both in the incidence of communicable diseases and in the occurrence of stress-related conditions such as hypertension. Behavioral problems, present even in the best of circumstances, worsen as heightened tensions produce more aggressive inmate behavior. Staff anxiety grows as the environment becomes more menacing. Staff size rarely grows in the same proportion as the inmate population.

Management capabilities also are stretched when inmate numbers reach the margin of an institution's capacity. Not only must growing needs for shelter, security, food and clothing be accommodated; so also must demands for support services. One of the most difficult of these is provision of activities to occupy inmate time. Inmate idleness aggravates the other effects of crowding because it generally means more time spent unproductively in close-quarter confinement, which tends to increase stress levels and promote disruptive behavior.

States have been ill-prepared for massive increases in their prison populations and the pressures of crowding. Responses have ranged from immediate day-to-day problem solving to plans for new facilities to broad policy changes aimed at reducing the number of persons incarcerated. Of the immediate responses, the most common is double-celling; that is, confinement of two inmates in a cell intended to house one (or, four instead of two, six instead of four).

Most states have acted to expand the capacity of their prison systems. In a survey conducted by the National Institute of Corrections (NIC) in October 1981, states reported that they had completed projects resulting in addition of 19,823 beds during the preceding year. The estimated capital cost of projects underway and authorized was \$1.68 billion; of projects under consideration, nearly \$1.5 billion.

Finally, many states have examined ways of controlling the size of their prison populations either directly -- as by providing emergency early release of inmates when capacity is exhausted -- or indirectly, as through alternatives to

incarceration. These alternatives, as well as those for expanding capacity, will be described and explored more thoroughly in subsequent sections of this report.

Factors Contributing to Population Growth

Criminal behavior is prerequisite to incarceration, but the relationship between crime and incarceration rates is neither proportionate nor simple. A five percent increase in the number of reported crimes does not result in a five percent increase in the number of prison inmates. Similarly, a doubling of prison populations does not imply a doubling in the incidence of crime. The process of apprehending, adjudicating and punishing criminal offenders is so fragmented, and involves decision-makers in so many arenas, that cause-effect relationships become obscured. While attributing or apportioning cause is extraordinarily difficult, correlations and trends provide some insight into what is happening and why.

The number of reported crimes has risen significantly since the early 1970s. This increase is reflected in the "crime index offenses" included in the Federal Bureau of Investigation's annual Uniform Crime Reports (UCR). Index offenses include murder and nonnegligent manslaughter, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft and arson cases reported to appropriate law-enforcement agencies. In 1970, the serious crime rate for the country, as measured by reported index offenses, was 3960.9 per 100,000 civilian population. By 1980, the number of index offenses per 100,000 had risen to 5899.9, a net increase of 49 percent. The upward trend appears to have peaked in 1980, however, because index crime rates have since declined to 5799.9 in 1981 and 5553.1 in 1982. The state incarceration rate for the same period grew from 87 per 100,000 in 1970 to 160 per 100,000 in 1982, an increase of 84 percent or more than twice as rapidly as the crime rate.

Demographics explain some of the patterns in both crime and incarceration. Crimes tend to be committed most often by young males in the 15 to 21 year age group. Not surprisingly, the prison-prone age group is somewhat older, between 20 and 29. The national incarceration rate for males in this group is more than eleven times that of the general population. Given the fact that, in 1982, the largest age cohort in the United States was 22 years, changes in crime and incarceration are consistent with demography-based expectations. Crime has begun to subside because the cohort has passed out of the most intense crime-prone period, but incarceration has not yet peaked because the cohort is still in the early phase of the prison-prone years. If this thesis is valid, we can expect prison populations to continue to be high throughout the 1980s decade.

Prison population increases have been of such a magnitude, however, that they cannot be attributed to crime rates and demography alone. Beyond these factors, the reasons become more state-specific, thus making it difficult to generalize. As mentioned previously, there is tremendous variation in incarceration rates among states, ranging from a low in 1982 of 47 per 100,000 in North Dakota to a high of 301 per 100,000 in Nevada. Studies which have attempted to isolate the reasons for such extremes, though they reveal some interesting correlations, are not conclusive.

They do not explain the gap between growth in crime and incarceration rates nationwide over the past decade. A major part of the answer has to be in the substance and application of individual state criminal justice and corrections policies. Reflecting the public's growing impatience with criminal behavior, many and perhaps most states have taken one or more actions in recent years to increase penalties for criminal offenses. Over the past several years, 37 states have enacted mandatory sentencing laws and several others have enacted determinate sentencing laws.

A number of states have stiffened their penalties for drug offenses, for crimes committed with a firearm, as well as for crimes committed by the habitual offender who has a history of felony convictions. Others have increased the minimum time to be served for whole classes of felonies. Parole authority has been eliminated in ten states and parole discretion restricted in others. Although some policy changes have been adopted which tend to reduce prison populations, especially recently, the preponderant effect of state actions has been to add to prison populations.

Kansas

Trends in Kansas have been consistent with national trends. Between 1970 and 1982, the Kansas prison population increased by nearly 64 percent, from 1902 to 3221.* Incarceration rate over the same period rose 50 percent, from 86 to 129 per 100,000 population. Since May 1980, the Department of Corrections (DOC) has operated under terms of a consent decree to improve the conditions of confinement at Kansas State Penitentiary (KSP), the state's largest penal institution. Tensions at KSP reached near-crisis proportions in the fall of 1981 when, in separate incidents, seven inmates escaped and a corrections officer was killed, precipitating threats of a staff walk out and opening an array of issues and grievances on the part of the staff relating to work conditions at the institution.

Responses have been made to the need for improved living and work conditions at KSP and other institutions. Response has been made difficult, however, by the unrelenting increases in inmate

populations statewide in recent years, particularly since 1980. Virtually every corrections institution is now affected by crowding and its attendant problems.

It is against this background that three major committees have been formed since the fall of 1981, including the Legislature's Special Joint Committee on Prison Building Construction, in January 1982; the DOC's Advisory Committee on Prison Overcrowding, in May 1983; and the Legislature's Special Committee on Corrections, in June 1983. While this report is prepared coincident with, but independent of, the work of the latter two committees, it is complementary in the sense that it responds to the same set of circumstances and attempts to document the considerations which are important to state corrections policy. Among these are the functions of state corrections within the larger context of the criminal justice system; structure, process, population and management of corrections institutions, and opportunities for influencing the size of prison populations through changes in public policy.

*Data in Chapter One are all taken from national sources to permit comparison among states. Minor discrepancies in Kansas data may appear in subsequent chapters, due in most cases to different time periods or data series definition.

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 - "Prisoners in 1982", April 1983, NCJ-87933.
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CHAPTER TWO

THE CRIMINAL JUSTICE SYSTEM IN KANSAS

The number of people confined in Kansas corrections facilities is a constantly changing product of the complex workings of the criminal justice system, nearly all of which is beyond the control of the Kansas Department of Corrections. Consideration of problems resulting from prison population size must include recognition of this fact, and requires an elementary understanding of the criminal justice system and how it operates. An elementary survey of that system is presented in this chapter. The accompanying flow chart shows the "processing" of criminal offenders through four stages: law enforcement, the judiciary, corrections institutions and supervised release. The foundation of the system, however, is the definition of felony crime. Discussion must begin there.

The Kansas Criminal Code

Crime is defined in Chapter 21 of the Kansas Statutes Annotated, beginning with Article 31. Criminal behavior is that which is specifically prohibited by law and which is punishable by imprisonment and/or fine. Crimes are divided into two basic categories: felonies, punishable by imprisonment in any state penal institution; and misdemeanors, defined simply as all other crimes. Felony crimes are the only crimes which can lead to incarceration in a state corrections institution.

Felonies are classified by increasing seriousness from Class E to Class A. Felony offenses, and their statutory citations, are listed as an appendix to Chapter Two. The number of offenses in each category increases as severity decreases. Five offenses are included in Class A; nine in Class B; thirteen in Class C; twenty-six in Class D; and sixty-nine in Class E. Twelve other offenses are identified by statute as felonies, but without classification.

Generic classifications are applied to attempts and conspiracies to commit crimes, as well as to criminal solicitation. Attempts to commit felonies generally are downgraded one class from that of completed acts. For example, an attempt to commit a Class A felony is classified as a Class B felony. Conspiracy to commit a Class A felony is classed as a C felony; all other conspiracies are Class E felonies. Criminal solicitation of a Class A or B felony is a Class D felony; of all others, a Class E felony.

In addition to being classified by severity, felony crimes are categorized statutorily by type. Groupings established by the Kansas Criminal Code are as follow, including statutory chapter, article and title:

CRIMINAL JUSTICE SYSTEM
FELONY OFFENDER - FLOW CHART

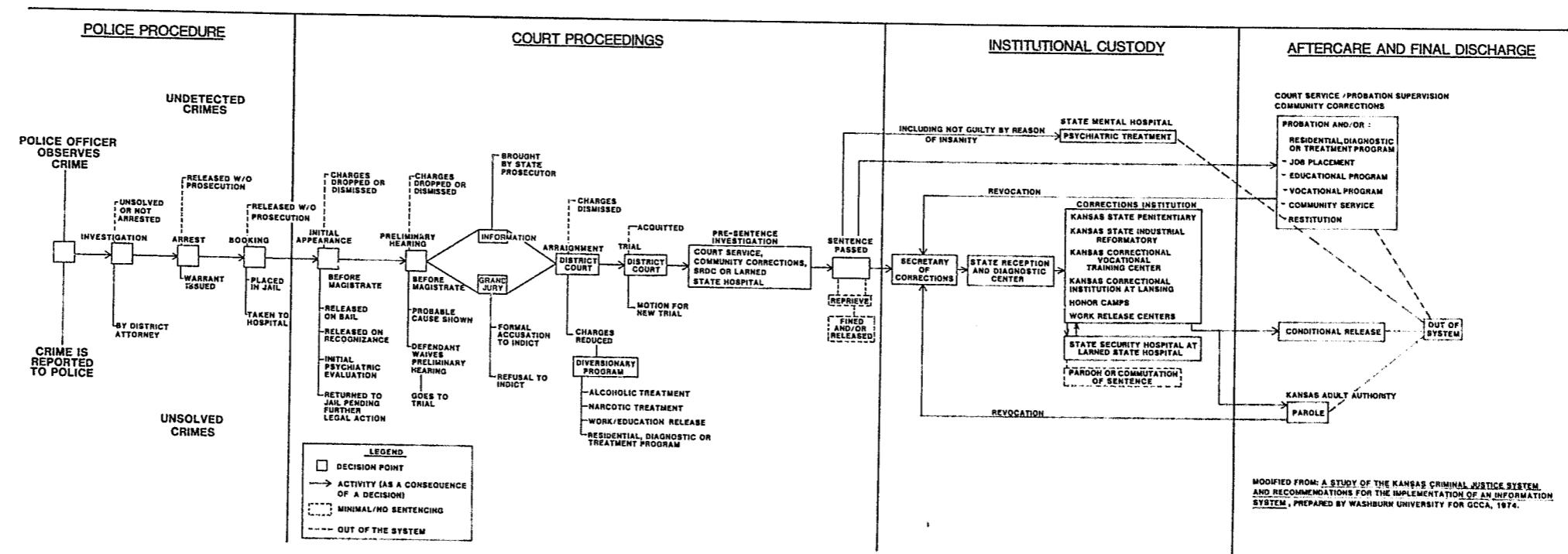


Figure 2.1

Figure 2.1

KSC SYSTEM
INFORMATION

K.S.A. Chapter 21 Art. 33	Anticipatory crimes
21 Art. 34	Crimes against persons
21 Art. 35	Sex offenses
21 Art. 36	Crimes affecting family relationships and children
21 Art. 37	Crimes against property
21 Art. 38	Crimes affecting governmental functions
21 Art. 39	Crimes affecting public trusts
21 Art. 40	Crimes involving violations of personal rights (misdemeanors only)
21 Art. 41	Crimes against the public peace
21 Art. 42	Crimes against the public safety
21 Art. 43	Crimes against the public morals
21 Art. 44	Crimes against business

Not all felony offenses are found in the Kansas Criminal Code. Although others are scattered in various statutory sections, the most notable group of offenses defined outside the criminal code is the drug offense group, found in K.S.A. Chapter 65 Art. 41, the Uniform Controlled Substances Act.

The serious felony classes have been used most frequently for crimes against persons. Of all offenses in the A, B and C classes, approximately 60 percent are crimes of violence, including sex crimes. The D and E classes include some crimes against persons but most of the offenses in these classes relate to property, government functions, family relationships, business, and public trust, peace, safety and morals.

Information is not compiled on the incidence of crime, either actual or reported, by felony classification in Kansas. Data is available, however, on the number of index crimes reported in the state, which in 1982 totaled 119,244. Of that number, 8,088 were violent crimes and the other 111,156 were property crimes.

Law Enforcement and Prosecution

Local law enforcement agencies -- police departments and sheriffs' offices -- have primary responsibility for criminal investigation and for apprehending persons suspected of having committed criminal offenses. In Kansas there are over 300 local agencies, including 105 county sheriff offices and 219 cities who report having police departments. Local agencies surveyed by the Kansas Bureau of Investigation's Statistical Analysis Center reported the total number of law enforcement personnel to be 4,842 in fiscal year 1981. Total police function expenditures by local agencies in the same year was \$99.4 million or 75 percent of all police expenditures in the state.

At the state level, the Kansas Bureau of Investigation has explicit criminal law enforcement responsibilities, supplying supplemental investigative assistance to local law enforcement agencies and support services in laboratory and technical areas. The KBI also initiates and conducts its own investigations in narcotics, white collar crime, organized crime, embezzlement, fraud, racketeering, gambling and securities violations. Except for university police, the Kansas Highway Patrol is the only other state agency which possesses full police powers, but its main mission relates to enforcement of highway and traffic laws.

Although the function of law enforcement agencies is much broader than apprehending suspected felons, that role is the one most directly relevant to state corrections considerations. Arrest of felony suspects creates the first tangible pool of persons from which all state prisoners are drawn, and therefore defines the large end of what is a drastic funneling process. In 1982, Kansas law enforcement agencies arrested 18,663 persons for index crimes; in fiscal year 1983, there were approximately 2,300 new admissions to the Kansas corrections system. Although the 2,300 is not an exact subset of the 18,663, the differential reveals the magnitude of the funneling effect across the entire criminal justice system.

In most instances, the responsibility for prosecuting criminal cases is a local one. In Kansas it is assumed by county attorneys in 101 counties and by district attorneys in the remaining 4 counties of Sedgwick, Shawnee, Wyandotte and Johnson. Duties of county and district attorneys are essentially the same in theory, but in practice the demands tend to be quite different because district attorneys are found in the large urban counties, where nearly two-thirds of the index crimes are committed. Also, the conditions of employment differ. District attorneys are salaried positions, requiring five years of legal experience, and their occupants may not engage in private practice. County attorneys may be paid either by salary or fee and county attorneys may practice privately where no conflict of interest exists. Both posts are elected but the term of office for county attorneys is two years and district attorneys, four years. The Attorney General also has prosecutorial responsibility in criminal cases but the lead role generally occurs in appellate cases rather than in the court of original jurisdiction.

The function of the prosecuting attorney is significant to state corrections in that the prosecutor decides whether evidence is sufficient to support formal charges against a suspect, and for what crime. The prosecutor also is the chief negotiator, acting on behalf of the state, in plea bargaining situations. In felony cases, this role has a direct bearing on the likelihood of a defendant going to prison and the length of stay there, because plea bargaining usually involves pleading guilty to reduced charges.

The District Court

Of all segments of the criminal justice system, the state district court is the most critical in terms of input to the state corrections population. The district court is the court of original jurisdiction for civil and criminal cases and, as such, is the forum where formal charges are entered, guilt or innocence established and punishment determined for all felony cases. District courts, which became state-financed and part of the judicial branch of state government in the mid 1960s, exist in each of the thirty-one judicial districts in the state. Geographically the districts range in size from one county to seven counties. The number of judges assigned to each district varies from a low of one to a high of 22, depending on the caseload of the district. Judges are of three types: district judge, associate district judge and district magistrate judge. The first two types have full judicial powers. Because there is so little distinction between responsibilities of district and associate district judges, the 1983 Legislature, through enactment of HB 2114, agreed to upgrade all associate district judge positions to district judge, effective January 1987. The magistrate judge, however, has jurisdiction limited to trials involving misdemeanor charges, preliminary proceedings involving felony charges, and civil cases with financial stakes of less than \$5,000.

Because the district court is such an important element of the criminal justice system, it is helpful to understand, in basic terms at least, the sequence of procedures employed in felony cases. Post-arrest procedures are presented in simplified form below:

First appearance of the accused before a magistrate of the court, to fix terms and conditions of appearance bond, to commit the accused to jail or, if necessary, to order the accused transferred to the county where the crime was committed;

Preliminary examination, held within 10 days of arrest or first appearance, to determine whether a felony has been committed and whether probable cause exists to believe that it was committed by the accused;

Filing of formal charges with the clerk of the court by complaint, by grand jury indictment or most commonly, by information filed by the prosecuting attorney;

Arraignment, where formal charges are read to the defendant and a plea entered by the defendant. If a plea of guilty or nolo contendre is made, proceedings move directly to the sentencing phase, after acceptance of the guilty plea or a finding of guilt on the nolo contendre plea;

Trial either by jury or by the court, if the right to a jury trial is waived by the defendant and the prosecutor with the consent of the court. In the case of jury trials, questions of law are decided by the court and of fact, by the jury;

Sentencing, the determination and imposition of punishment of convicted persons, is done by the court after completion of a pre-sentence investigation by a probation officer, community corrections officer, community mental health center, or Larned State Hospital.

If the defendant's mental condition is at issue, the court may direct a psychiatric evaluation to establish competency to stand trial, to determine the defendant's legal responsibility for his or her actions, or to complement a pre-sentence investigation. The court may also commit a defendant to a state mental institution for psychiatric treatment if the defendant is found not competent to stand trial, if the verdict is not guilty by reason of insanity or if the defendant is found in need of treatment in lieu of normal sentencing options.

District judges have considerable discretion in making sentencing decisions in felony cases. The major exception involves crimes committed with a firearm, in which case incarceration becomes mandatory. Otherwise, options include committing the defendant to the custody of the Secretary of the Kansas Department of Corrections if the term of incarceration is one year or more or to the local jail if less than one year; fining the defendant; releasing the defendant on probation, subject to conditions deemed appropriate by the court; suspending the imposition of a sentence, again subject to conditions stipulated by the court; or, any combination of the preceding options. If incarceration is the punishment selected by the court, the sentence must conform to statutory requirements which, again, provide the sentencing judge with discretion. Except for Class A felonies, punishment for which is life imprisonment, prison sentences in Kansas are of indeterminate length. The judge is required by law to set minimum and maximum terms within the following guidelines:

<u>Felony</u>	Minimum	Maximum
	<u>Years</u>	<u>Years</u>
Class B	5-15	20-life
C	3-5	10-20
D	2-3	5-10
E	1-2	2-5

Statutory guidelines are given for judicial consideration in fixing the minimum sentence, with the general instruction that it should be the lowest minimum term which "... is consistent with the public safety, the needs of the defendant, and the seriousness of the defendant's crime." Factors to be considered include the defendant's history of prior criminal activity; the extent of harm caused by the defendant's conduct; whether the defendant intended to cause or threaten harm; degree of

provocation; whether grounds existed to excuse or justify the criminal conduct; whether the victim induced or facilitated in the commission of the crime; and, whether the defendant had compensated or planned to compensate the victim for damage or injury done. The practical significance of the minimum sentence is its use, together with application of good time credits, in determining the earliest parole eligibility date of an inmate.

If an offender has been convicted previously of one felony offense the judge is, upon motion of the prosecutor, given discretionary authority to increase both the minimum and maximum terms by up to double the normal terms. If an offender has two prior felony convictions, the judge is required, upon motion of the prosecutor, to triple the minimum and is authorized to increase the maximum by up to three times. In those cases when the court issues multiple sentences to cover a multiple-count verdict, the judge also decides whether the sentences are to be served concurrently or consecutively. Finally, the judge retains jurisdiction in the case for 120 days following imposition of sentence and may modify the sentence during that period after receiving the diagnostic report prepared by the Kansas Reception and Diagnostic Center.

It must be emphasized that the sentence alone, although setting a range, does not provide complete information about the time actually to be served for a given offense. Other determinants of actual time served will be discussed in Chapter Three.

Although not used frequently, fines may also be imposed as punishment for felony offenses. Class B or C felonies may draw fines of up to \$10,000; Class D or E felonies, up to \$5,000. Other statutory limitations are placed on the use of fines as punishment in felony cases. There is a prohibition against using fines as the sole means of punishment unless the court finds that a fine alone is sufficient for protection of the public. Moreover, fines may not be imposed in addition to incarceration or probation unless the defendant gained financially from the crime or, the judge determines that a fine would have a deterrent effect or serve in the correction of the offender.

Probation and suspension of sentence are the other alternatives available to the court. Both are conditioned by the defendant's agreement to obey all laws of the United States and the State of Kansas and any other conditions deemed necessary and appropriate by the court. Usually these include requirements relating to association restrictions, employment, payment of costs, restitution, public service, participation in educational, counseling or treatment programs, and travel. Probationers are always placed under supervision of the court. Those with suspended sentences may or may not be subject to supervision. The maximum period of probation or suspended sentence is five years, with a one-time renewal option of an additional five

years, except that the maximum cannot exceed the maximum prison sentence for the crime committed. Probation or suspension of sentence may be terminated at any time.

In some counties, the probation option includes referral to a community corrections program. Described more fully in Chapter Three, community corrections involves more intensive supervision of the probationer than otherwise would be the case and further, provides individualized treatment in developing support services needed by the probationer. Community corrections programs are locally developed and operated, whereas normal probation supervision is provided by court service officers working for the district court.

State Corrections

The executive branch of state government has responsibility for the "correction" of convicted felons; for incarcerating them and providing treatment and rehabilitation programs, for determining their release via parole, and for supervising parolees. Incarceration and parole supervision are done by the Kansas Department of Corrections. Parole decisions are made by the Kansas Adult Authority. Issues deriving from these functions, particularly incarceration, are the reason for and subject of this report, so the executive role and means of performing it are described in detail in subsequent chapters.

System Characteristics

The criminal justice system is a system in the sense that it is a collection of activities, all connected, directed toward achievement of a societal purpose or goal. Because of the autonomy of its principal parts, however, it is not a system which can be managed as a single entity. There is interaction among segments, but this primarily is a one-way interaction because each component depends on the decisions and behavior of actors in all preceding components. Law enforcement defines prosecution and judicial workloads, which in turn define demands on state corrections. Although the agenda for each group is set in large part by the preceding one, most segments have some flexibility in regulating demands upon them by setting priorities, scheduling, etc. This also is true for the state corrections function--release by parole obviously affects the size of the inmate population--but it is not true for the corrections department. KDOC has virtually no control over how many people are sent to prison, when they arrive, or how long they stay. This puts the department at a tremendous disadvantage, especially at times when demands exceed capacity.

The role of state government in the criminal justice system is greater than that of providing the corrections service. Through the judicial system it also is the chief executor and arbiter of justice. And, more directly relevant to the concerns of this report, state government is through statutory enactments the principal policy-setter for critical segments of the system. It is the responsibility of state government to define criminal behavior, to rate the severity of criminal offenses, to fix penalties, and to establish procedures by which they are administered. Policies in all of these areas have a direct effect on prison population and they are legitimate areas from which to draw options to respond to pressures caused by increasing inmate populations.

Appendix. Felony Offenses in Kansas, By Class

CLASS A FELONY

Murder 1st	K.S.A. 21-3401
Aggravated Kidnapping	21-3421
Aircraft Piracy	21-3433
Treason	21-3801
Sale of Narcotic Drugs (3rd offense)	65-4127a

CLASS B FELONY

Murder 2nd	K.S.A. 21-3402
Aggravated Battery on a Law Enforcement Officer	21-3415
Kidnapping	21-3420
Aggravated Robbery	21-3427
Rape	21-3509
Indecent Liberties with a Ward	21-3502
Aggravated Sodomy	21-3506
Aggravated Arson	21-3719
Sale of Narcotic Drugs (2nd offense)	65-4127a

CLASS C FELONY

Grain Embezzlement	SB 4
Violation of Investment Certificates of Investment Company Act	16-601
Voluntary Manslaughter	21-3403
Aggravated Assault on a Law Enforcement Officer	21-3411
Aggravated Battery	21-3414
Attempted Poisoning	21-3417
Robbery	21-3426
Indecent Liberties with a Child	21-3503
Aggravated Burglary	21-3716
Arson	21-3718
Obtaining a Prescription - Only Drug by Fraudulent Means for Resale	21-4215
Sale of Narcotic Drugs (1st offense)	65-4127a
Sale of Depressant, Stimulant, Hallucinogenic drug	65-4127b

CLASS D FELONY

Aggravated Sexual Battery	HB 2008
Misuse Cemetery Permanent Maintenance Fund	17-1311a
Involuntary Manslaughter	21-3404
Criminal Abortion	21-3407
Aggravated Assault	21-3410
Enticement of a Child	21-3509
Aggravated Incest	21-3603
Theft over \$100	21-3701

Theft of Services Over \$100	21-3704
Habitual Giving of Worthless Checks	21-3708
Forgery	21-3710
Making a False Writing	21-3711
Burglary	21-3715
Throwing or Casting of Rocks or Objects from a Bridge - Damage to Person or Property	21-3742d
Sedition	21-3802
Perjury - Felony Trial	21-3805
Aggravated Interference with Conduct of Public Business	21-3829
Bribery	21-3901
Misuse of Public Funds	21-3910
Incitement to Riot	21-4105
Unlawful Possession of Firearms	21-4204
Unlawful Possession of Explosives	21-4209
Promoting Obscenity to Minors (3rd offense in 2 years)	21-4301a
Racketeering	21-4401
Solid and Hazardous Waste Violation	65-3441
Manufacture, Possession of Depressant, Stimulant, Hallucinogenic Drug (2nd offense)	65-4127b

CLASS E FELONY

Aggravated Intimidation of Victim/Witness	HB 2009
Driving with License Suspended, Cancelled, Revoked	8-262
Habitual Violator - Unlawful Operation of a Vehicle when Prohibited	8-287
Assisting Suicide	21-3406
Terroristic Threat	21-3419
Aggravated Interference with Parental Custody	21-3422
Blackmail	21-3428
Aggravated Indecent Solicitation of a Child	21-3511
Habitual Promoting of Prostitution	21-3514
Sexual Exploitation of a Child	21-3516
Bigamy	21-3601
Incest	21-3602
Abandonment of a Child	21-3604
Nonsupport of a Child	21-3605
Criminal Desertion	21-3606
Abuse of Child	21-3609
Aggravated Juvenile Delinquency	21-3611
Contributing to the Misconduct or Deprivation of a Child	21-3612
Giving of a Worthless Check Over \$50	21-3707
Destroying a Written Instrument	21-3712
Altering a Legislative Document	21-3713
Possession of Forgery Devices	21-3714
Possession of Burglary Tools	21-3717
Criminal Damage to Property (over \$100)	21-3720
Aggravated Tampering with a Traffic Signal	21-3726
Unlawful Use of a Credit Card (over \$50)	21-3729

Criminal Use of Explosives	21-3731
Impairing a Security Interest (over \$50)	21-3734
Fraudulent Release of a Security Agreement	21-3735
Warehouse Receipt Fraud	21-3736
Throwing or Casting Object - Injure Person	21-3742c
Theft of Telecommunication Services (over \$50)	21-3745
Tampering with a Railroad Crossing Signal Device	21-3746
Piracy of Sound Recordings	21-3748
Practicing Criminal Syndicalism	21-3803
Perjury (other than felony trial)	21-3805
Compounding a Crime	21-3807
Obstruction of Legal Process (felony case)	21-3808
Aggravated Escape	21-3810
Aiding Escape	21-3811
Aiding a Felon	21-3812
Aggravated Failure to Appear	21-3814
Attempt to Influence a Judicial Officer	21-3815
Corrupt Conduct by a Juror	21-3817
Aggravated False Impersonation	21-3825
Traffic in Contraband in a Penal Institution	21-3826
Dealing in False Identification Documents	21-3830
Presenting a False Claim (over \$50)	21-3904
Presenting a False Claim (over \$50)	21-3905
Unlawful Use of Weapons	21-4201
Sale or Possession of Plastic-Coated Bullets	(1) (g) 21-4201
Aggravated Weapons Violations	(1) (h)
Obtaining Prescription Only Drugs by Fraudulent Means	21-4202
Promoting Obscenity (3rd offense in 2 years)	21-4214
Promoting Obscenity to Minors (2nd offense in 2 years)	21-4301
Commercial Gambling	(A) (2)
Dealing in Gambling Devices	21-4304
Installing Communication Facilities for Gamblers	21-4306
Unlawful Pit Dog Fighting	21-4308
Commercial Bribery	21-4315
Sports Bribery	21-4405
Tampering with a Sports Contest	21-4406
Issuing Receipt - Warehouseman Grain	21-4408
Negotiating Receipt for Encumbered Grain	34-293
Fraud or cheating in Obtaining Accommodations	34-295
Illegal Disposition of Assistance	36-206
Violation of Natural Death Act	39-717
Solid and Hazardous Waste Violation	65-2810
	65-3441

UNCLASSIFIED FELONY

Identity of Vehicles - Unlawful Acts	K.S.A. 8-113
Fraudulent Transaction - Interstate Commerce (over \$5,000) ...	16-843
Violation of Kansas Securities Act	17-1267
Contracting - Incestuous Marriage	23-103
Violations - Kansas Act Against Discrimination	44-1027

Violation - Labor/Industries Act	44-619
Violation - Meat and Poultry Act	65-6A40
Unlawful Disbursement of Funds by Public Officer	75-4313
Unlawful Receipt of Funds by Public Officer	75-4314
Income Tax Violation	79-3228e
Violation Cereal Malt Beverage Products Act	79-3834b
Violation - Chapter 82 - Warehouses	82-207

List compiled by the Kansas Department of Corrections.

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CHAPTER THREE

CORRECTIONS IN KANSAS

Correctional Facilities

The Kansas Department of Corrections (DOC) operates ten correctional institutions and facilities: Kansas State Penitentiary (KSP), Kansas State Industrial Reformatory (KSIR), Kansas Correctional Vocational Training Center (KCVTC), State Reception and Diagnostic Center (SRDC), Kansas Correctional Institution at Lansing (KCIL), Toronto Honor Camp (THC), El Dorado Honor Camp (EHC), Topeka Work Release Center, Wichita Work Release Center and Hutchinson Work Release Center. Each of these facilities has one or more particular functions to fulfill within the larger correctional context, and they represent nearly all of the options available to the Secretary of DOC in placing persons transferred to his or her custody. The only other placement possibilities are two contract work release facilities and the State Security Hospital at Larned, when space permits.

Kansas State Penitentiary is a maximum security institution for incarceration of adult male felons, including the system's most intractable and difficult offenders. Opened at Lansing in the 1860s, KSP is the oldest and largest of the state's correctional institutions. Remodeled and expanded several times, over a century later it still houses nearly half of the prison population in the state.

The KSP complex includes the main compound, which contains within a walled perimeter four large cellhouses, a segregation unit and a number of service, support and prison industry buildings; the brickyard, a prison industry area immediately adjacent to the main compound; and, two "outside" dormitories, Outside Dorm 1 (OSD-1), located near the main compound and Outside Dorm 2 (OSD-2), located approximately 2 miles away. Under construction is a medium security addition that will include three new dormitories and that will incorporate an expanded OSD-1. The medium security project is adjacent to, but not directly accessible to the maximum security compound. In addition to physical plant, KSP also has over 2,500 acres of land, 1,535 acres of which is cropland and 500 acres, pasture. Of the 2,000 acres of farmland, over 1,500 is leased, with the remainder being used in the revitalized prison farm program.

Housing inside the walls at KSP is provided in A, B, C, and D cellhouses, in the Adjustment and Treatment (A&T) building, and in an orientation area in the old infirmary building. A and D cellhouses were constructed in the 1860s, B cellhouse in the 1880s and C cellhouse in the 1920s. B and C cellhouses have five tiers of cells; A has four and D, three tiers. A, B, and C

cellhouses were designed as maximum security, single-person cell units. D cellhouse was built as a dormitory unit, with bar-less, open-fronted cells.

In 1978 the Legislature authorized a \$4 million renovation program for facilities at KSP and KSIR. The appropriation included funds for planning the renovation of all four cellhouses at KSP, as well as making the improvements at all but A cellhouse. Improvements authorized included the installation of concrete partitions to separate the cellhouse tiers horizontally, structural reinforcements, new fire alarm systems, and improved plumbing, mechanical and electrical systems. Cellhouse renovation at KSP is progressing in stages, largely because it requires vacating the cellhouse (or at least half of it) during the course of a project. Remodeling of B cellhouse has been completed and D cellhouse is underway, with completion expected in February of 1984. Once it is finished, work will begin on C cellhouse. Timing of improvements to A cellhouse is not certain because funds have not yet been appropriated.

Outside dormitories, which also were included as part of the 1978 renovation program, complete the existing KSP capacity. Built in 1935 and 1947, respectively, OSD-1 and OSD-2 are basically minimum security facilities. However, OSD-2 has served a medium security role during cellhouse renovation. Although OSD-2 will revert to minimum security once the major construction projects are complete, OSD-1 will, as mentioned earlier, become part of the new medium-security complex at KSP.

The medium security project, scheduled for completion by January 1985, includes construction of three new dormitories, with a capacity of 96 beds each. Also part of the project are a slightly expanded OSD-1, a new prison industries warehouse, a new vehicle maintenance building, a new recreation building, one new and one relocated guard tower, and renovation of an existing industries warehouse into a kitchen, dining and vocational training facility. All but the new warehouse and vehicle maintenance building are located within the fenced area of the medium security compound. The only component of the project not yet funded and under construction is the support services building, which will not only be used for educational and other services for the medium security population, but also for all of KSP's administrative staff. Total cost of the medium security project, including the support services building, is \$22 million.

Kansas State Industrial Reformatory at Hutchinson also is a large maximum security institution which now houses almost one-third of the state's prison population. It was built in the 1890s as a facility for younger male offenders, aged 16-25, convicted of crimes generally less serious than those committed by inmates at KSP. Inmate population increases have made it more difficult to segregate the young from the seasoned offender, but the KSIR population still tends to be younger and guilty of less serious offenses than that of KSP.

Like KSP, KSIR is secured by a walled perimeter and provides inmate housing through four cellhouses, also designated A-D. Unlike KSP, the KSIR cellhouses radiate from a central rotunda area. Cellhouses A-C each have individual, barred cells; D cellhouse has multi-person cells, two tiers of which are open-fronted. Attached to B cellhouse is the E dormitory which has bunks arranged in open, barracks style. As mentioned before, cellhouse renovation approved in 1978 also included KSIR, and three of the four cellhouses are now being finished. Funds to renovate D cellhouse have been requested by the department, but have not yet been approved.

KSIR also has a capacity addition underway. The 1983 Legislature appropriated almost \$1 million to construct two 48-bed modular units in a project located south of the main institution. It will be a minimum security facility and is scheduled for completion by the end of 1984.

Finally, KSIR operates a work-release facility out of the building which previously served as the warden's residence.

Kansas Correctional Institution at Lansing was established in 1917 as a facility for female offenders convicted of felonies or misdemeanors. KCIL has not accepted female misdemeanants since 1978 but it remains the state's only facility for long-term detention of female felons. Besides the incarceration function shared by all institutions, KCIL also is responsible for diagnostic evaluations, both physical and mental, of all female inmates.

In the fall of 1980 KCIL became co-correctional to facilitate the cellhouse renovation project at KSP. Minimum custody male inmates were moved from KSP to KCIL and placed in the A building, one of the two major residential buildings on the KCIL campus. The governor's budget recommendations for FY 1985, however, anticipate that KCIL will one again become an institution for women.

Housing facilities at KCIL are not cellhouses, as in the men's institutions, but resemble older college dormitories, with individual rooms and shared bathroom accommodations. Besides the A building, mentioned earlier, the other major housing unit is the Perry building. KCIL has underway a renovation project that will expand its residential capacity by remodeling part of the B building, now used for kitchen and dining purposes. The part of B building being renovated previously had been used for cosmetology training and other educational programs.

The State Reception and Diagnostic Center in Topeka occupies a unique position in the state corrections system, because it performs the single function of inmate evaluation and does not provide for permanent custody. SRDC was established in 1961 to conduct diagnostic evaluations of adult male felons entering the state corrections system, with the evaluations being used to make

decisions about inmate placement and program and treatment needs. Although SRDC is a processing center where inmates spend only a few weeks, it does constitute part of the system's overall capacity to hold inmates.

Buildings at SRDC include the administration building, the hospital building and the main building, which is the only one used for confinement of inmates.

With the exception of the El Dorado Honor Camp, the Kansas Correctional-Vocational Training Center is the newest correctional facility in the state system. Located near SRDC in Topeka, KCVTC is a minimum security institution for both male and female offenders who generally are in the corrections system for the first time, who have been convicted of non-violent offenses and who can benefit from the educational and vocational programs offered by KCVTC. Some deviation from these criteria occurred recently, mainly through assignment of female inmates who were older and guilty of more serious crimes than is generally true for KCVTC inmates. Placement of these females at KCVTC was prompted by the rising number of female inmates and lack of space to house them at KCIL. By order of the Secretary of Corrections, placement of females at KCVTC is now confined once again to those who are younger and suited for participation in the institution's training programs.

KCVTC has a campus like setting and its five housing buildings are, though much smaller, similar in layout to college dormitories, with individual rooms and common bathroom facilities. Four of the dorms, labeled H-1 through H-4, are virtually identical, located in close proximity, and have 40 rooms each. The fifth dorm, J dorm, is separated from the others, has only 20 rooms, and is the dorm which DOC is now using for female inmates at KCVTC.

The DOC operates two honor camps, one at Toronto State Lake, opened in 1960, and the other at El Dorado State Lake, opened in 1982. The honor camps are small facilities, each holding 61-64 male inmates with minimum security status. Each of the camps provides work details for the Kansas Park and Resources Authority to perform maintenance and other tasks at the two state parks. Housing is provided in open dormitory settings.

Finally, the state runs three work release centers at Topeka, Wichita and Hutchinson. DOC contracts for work release services at two other centers in Ft. Scott and Topeka, but these are supplemental to, and not part of, the state system. Work release centers are for minimum custody inmates, most but not all of them male, who are in supervised custody but who are released each day for purposes of regular employment. Housing for the inmates is dormitory style, except in Wichita where individual rooms are used. Wichita, with 46 rooms and a maximum 55 participants, is the largest of the centers.

System Capacity

In its most simple use, the term "capacity" connotes a fixed and exact amount. However, when applied to complex systems that depend upon the interrelationship of many components capacity cannot be defined as an absolute limit. Instead it refers to a threshold beyond which performance can only be achieved with significant likelihood of collapse or breakdown. Capacity in this sense is commonly used in the design of buildings, roads, bridges, equipment and engineering applications. The notion of capacity applies to prisons in a similar way. Defining the stress limit of a prison, however, is much more difficult than assigning a weight limit to a bridge. In the case of the prison there is no body of technical data, no series of tests which can be run to ascribe limits of safety. Consequently, capacity ratings for prisons are as much or more a matter of judgment as they are objective determinations. To illustrate, DOC recently rated KSP's optimum capacity at 1133; in 1976, Touche Ross & Co. suggested that 700 was the "upper limit for a 'manageable institution'" at KSP. Facilities then were essentially the same size as they are now, so the difference lies in the judgments made about where the risk of breakdown begins to build.

Prison capacity numbers are not rendered useless because there is no single "right" one waiting to be found. They are critical indicators, especially when population surpasses the lowest credible estimate of capacity -- a point Kansas passed some time ago. Judgments about the stress limit of the prison system, together with expectations about future population trends, define the size and scope of the problem to be addressed.

To dissipate some of the confusion that had developed over changing prison capacity estimates, DOC prepared a report in June of 1983 entitled "Correctional Facility Capacity Report". In it the department presented an inventory of its physical space and, through application of standards, attempted to establish definitive estimates of capacity. The department included in its inventory all space, whether cell, room or open dormitory, which was designed and is available to house inmates, except that the following are excluded:

- space, such as contract space and security beds at Larned State Hospital, which is not under the complete control of DOC;
- incidental housing space, such as beds located at power plants, dog kennels and farm; and
- segregation and infirmary beds which exist for specific management or health care purposes and which are used for temporary placement of inmates.

Exclusion of the latter category is worth noting because the number of segregation beds is significant at KSP, with 127, and at KSIR, with 98. Total beds excluded, at all institutions, is 237 for the segregation group and 15 for the infirmary group.

In its approach to measuring capacity the department recognizes that there is no one correct number and instead establishes the two points on a range, optimum management capacity and maximum capacity, which it considers to be the most meaningful. The department defines optimum management capacity as ". . . the largest number of inmates a facility can accommodate and still maintain management and control" and maximum capacity as ". . . the largest number of inmates a facility can physically house without using non-housing areas such as hallways, recreation, infirmary and segregation space."

When filled to optimum capacity, the corrections facility or system can operate with a "reasonable degree" of security and safety for staff and inmates and can provide all support services, such as food, health care, education and work programs, etc. As populations increase beyond the optimum level ability to manage and control the institution is eroded, and the safety of staff and inmates is increasingly at risk. By the time maximum capacity is reached, that risk becomes intolerable.

Within this conceptual framework, DOC applied the following space standards to each of the capacity levels:

Number of Inmates Housed	Optimum Size of Cell/Room	Maximum Size of Cell/Room
1	90 sq. ft. or less	55 sq. ft. or less
2	91-124 sq. ft.	56-90 sq. ft.
3	125-164 sq. ft.	91-109 sq. ft.
4	165-204 sq. ft.	110-129 sq. ft.
5	205-244 sq. ft.	130-159 sq. ft.
6	245-265 sq. ft.	160 or more sq. ft.

The standard used by DOC for open dormitory-type housing is 50 square feet per person in both the optimum and maximum cases, and is equal to the standard recommended by the American Correctional Association (ACA) for dormitory housing. For cell housing, the ACA standard is 60 square feet per person.

In the process of applying the standards, the department made some exceptions. No space standards were used in the case of the work release centers, where populations are limited more by work availability than by space. More significantly, DOC deviated from the above standards in calculating maximum capacities for KCIL and KCVTC. Because of inadequate bathroom facilities, the maximum populations given for those two institutions are only slightly higher than the optimums. And, at

Table 3.1. Optimum Management Capacity and Maximum Capacity for Kansas Correctional Institutions, 1983

	KSP	Optimum Management Capacity		Maximum Capacity	
		Number	Inmates	Number	Inmates
1 inmate cells	778	778	0	0	0
2 inmate cells	0	0	778	1,156	
3 inmate cells	0	0	0	0	
4 inmate cells	32	128	0	0	
5 inmate cells	0	0	0	0	
6 inmate cells	0	0	32	192	
1,354 sq. ft.	1	27	1	27	
3,312 sq. ft.	1	50	1	66	
4,933 sq. ft.	1	50	1	99	
5,339 sq. ft.	1	50	1	107	
6,039 sq. ft.	1	50	1	121	
TOTAL		1,133			2,168
KSIR		Optimum Management Capacity		Maximum Capacity	
		Number	Inmates	Number	Inmates
1 inmate cells	500	500	500	500	
2 inmate cells	0	0	0	0	
3 inmate cells	0	0	0	0	
4 inmate cells	80	320	0	0	
5 inmate cells	0	0	0	0	
6 inmate cells	0	0	80	480	
2,862 sq. ft.	1	50	1	57	
TOTAL		870			1,037
KCVTC		Optimum Management Capacity		Maximum Capacity	
		Number	Inmates	Number	Inmates
1 inmate rooms	180	180	160	160	
2 inmate rooms	0	0	20	20	
TOTAL		180			200
SRDC		Optimum Management Capacity		Maximum Capacity	
		Number	Inmates	Number	Inmates
1 inmate cells	28	28	0	0	
2 inmate cells	0	0	28	56	
324 sq. ft.	1	6	1	8	
634 sq. ft.	2	26	2	32	
701 sq. ft.	2	28	2	36	
TOTAL		88			132
KCIL		Optimum Management Capacity		Maximum Capacity	
		Number	Inmates	Number	Inmates
1 inmate rooms	100	100	77	77	
2 inmate rooms	0	0	23	46	
TOTAL		100			123

Table 3.1. (Con't)

	Optimum Management Capacity	Maximum Capacity			
		Number	Inmates	Number	Inmates
THC	1,693 sq. ft.	1	1	1	28
	1,982 sq. ft.	1	33	1	33
	TOTAL		61		61
EHC	980 sq. ft.	4	64	4	64
TWRC	1,680 sq. ft.	1	26	1	26
HWRC	996 sq. ft.	1	20	1	20
DC	1 inmate rooms	37	37	37	37
	2 inmate rooms	9	18	9	18
	3 inmate rooms	0	0	0	0
	4 inmate rooms	0	0	0	0
	TOTAL		55		55
GRAND TOTAL		2,597		3,886	

KRDC the standard for open dormitory space was reduced from 50 to 40 square feet. This was deemed acceptable because of the temporary nature of the stay at KRDC.

Results of the DOC analysis are presented in Table 3.1. Totals are 2597 for optimum management capacity and 3886 for maximum capacity. Of the 1289 difference between the two, 1035 or 80 percent is attributed to KSP--despite the fact that KSP equals 43.6 percent of capacity at the optimum management level. The maximum capacity increase at KSP was achieved largely by double-celling in the institution's four main cellhouses. Similar treatment was not given to KSIR because the cells there are so much smaller. All of the "single" cells at KSIR are 44 square feet or less, compared to KSP where most are 59-60 square feet or larger.

The margins of increase between optimum and maximum at the other institutions are: KSIR, 167; KCVTC, 20; KRDC, 44; and KCIL, 23.

The department also calculated the revisions to capacity which will occur once capital expansions and renovations are completed. The revised capacities are given in Table 3.2.

Table 3.2. Corrections Institutions Capacities, Existing and with Approved Expansions

Institution	Optimum		Maximum	
	Existing	Revised	Existing	Revised
Kansas State Penitentiary	1133	1436	2168	2759
Kansas State Industrial Reformatory	870	966	1037	1133
Kansas Correctional Vocational Training Center	180	180	200	200
State Reception & Diagnostic Center	88	88	132	132
Kansas Correctional Institution at Lansing	100	146	123	169
Toronto Honor Camp	61	61	61	61
El Dorado Honor Camp	64	64	64	64
Topeka Work Release Center	26	26	26	26
Hutchinson Work Release Ctr.	20	20	20	20
Wichita Work Release Center	55	55	55	55
Total System	2597	3042	3886	4619

As mentioned earlier, three institutions are affected: KSP, with the medium security complex addition and renovation of OSD-1; KSIR, with the minimum security modular addition; and, KCIL, with the renovation of B building. The KCIL project will be completed

in the spring of 1984; the other two projects will be finished by January 1985. The expansions will increase optimum capacity by 445 and maximum capacity by 733, or 17.1 percent and 18.9 percent, respectively. Again, the majority of the increases to both optimum and maximum capacity will occur at KSP.

The capacity estimates of the department may be somewhat understated, particularly on two counts. The first arises from the exclusion of over 200 segregation beds, which the department contends is necessary because they are used for disciplinary or other management purposes and therefore should not be included as part of the capacity available to carry the "permanent" population. As a practical matter, however, some of the segregation cells are used at least as semi-permanent housing, providing long-term separation of some inmates from the general population of the prison. The extent to which this is the case should, at a minimum, arguably be counted as part of the capacity of the institution. Moreover, the arguments used for excluding these beds could also be used for excluding the SRDC beds, which also exist for management purposes and for short-term temporary placement of inmates.

The reasons given for capacity inflexibility at KCIL and KCVTC--primarily limitations posed by bathroom facilities--also are not entirely convincing. The near doubling of capacity between optimum and maximum at KSP, the largest institution, could bring problems as inhibiting and difficult as the toilet and sink limitations encountered with double-bunking at two of the smaller institutions.

Management of Inmates

The point of entry into the state corrections system is KCIL for female offenders and SRDC for male offenders, where the first order of business is a series of evaluations to help DOC manage the inmate's stay with the department and to benefit the inmate by identifying his or her program needs. The entry evaluation includes a psychiatric examination, psychological testing, educational testing and counseling, and preparation of an inmate case history. Several skilled professionals are involved, including a psychiatrist, psychologist, social worker, chaplain and correctional officer. Each makes contributions to preparation of a diagnostic report, which includes psychiatric findings, and which identifies assets, liabilities, needs and other relevant characteristics of the inmate.

The diagnostic report is used in making placement decisions, particularly in the case of males since there are more options, and in constructing a rehabilitation plan for the inmate once located in an institution. The report also is sent to the sentencing judge who may, if the 120-day period of retained jurisdiction has not expired, modify the inmate's sentence. Sentence modification--which usually means returning the offender

to the community for placement on probation--is not uncommon. SRDC reports that approximately 20 percent of the offenders evaluated are returned for probation.

SRDC performed over 1,700 evaluations in each FY 1982 and FY 1983. Nearly 95 percent of the evaluations are post-sentence, but SRDC will also conduct pre-sentence investigations if local resources are not available. SRDC often works against a several week backlog so male offenders normally are routed first to KSP or KSIR, although they are kept apart from and not mixed with the general population of either institution. To facilitate the work at SRDC, KSP and KSIR usually begin collecting preliminary material, such as social and educational histories, on the incoming inmates. Once they reach SRDC the average stay there is 3 weeks. The only time an inmate is not thoroughly evaluated is if he or she has previously been in the system and been evaluated within the preceding three years. Even then, an evaluation will be done if characteristics of the case compel it, such as a newly-evident tendency towards violence.

Custody classification begins at SRDC or KCIL and continues throughout the duration of an inmate's stay. Custody classification is extremely important because it supplies information needed by prison administrators to successfully manage their populations and to maintain the security of their institutions. For department analysts, the aggregate custody profile gives insights into the adequacy of system facilities and staffing ratios, and if new capacity is needed, to the types of facilities which should be added. For the inmates, custody classification, more than any other single factor, determines where they are placed and the degree to which their movement is restricted within the institution.

The department uses four custody levels in its classification system: maximum, close, medium and minimum. Each is defined by administrative rule, found in K.A.R. 44-5-104, as follows:

- Maximum custody applies to those inmates who have been restricted to administrative segregation, disciplinary segregation, or segregated in holdover status for admission;
- Close custody applies to those inmates whose behavior and attitude, both past and present, indicate that active efforts are likely to be made to escape and that violence might be used in doing so;
- Medium custody applies to those inmates whose behavior and attitude, both past and present, indicate that they are not likely to make active efforts to escape, but would attempt to escape if it were made easy, but are not prone to the use of violence; and

-- Minimum custody applies to those inmates whose behavior and attitude both past and present, indicate that they are unlikely to attempt any escape.

Although the corrections institutions have used custody classification for decades, the system now in use was implemented for the first time in 1981. Through identification of risk criteria and attribution of numerical weights to the elements of risk, the system attempts to standardize classification both among institutions and over time. Nine criteria are identified as important in assessing the security risk of an inmate: length of minimum sentence, length of time served, criminal behavior involved in the offense, past criminal behavior involving violence, escape history, method of escape, unusual escape or assault skills, institutional adjustment during prison and jail, and behavioral characteristics affecting custody. Each inmate is given a point score for each of the nine criteria. The point range is 0-10, but the full range is not applied to each criterion. For example, the point range for length of sentence is 0-3, with zero for a minimum sentence of 1 to 4.9 years and three for a minimum sentence of 29.5 years to life. The institutional adjustment criterion has a point range of 0-10, with zero scored for no recorded behavioral problems and ten scored if the inmate has had more than one serious disciplinary report in the preceding 8 months which resulted in disciplinary segregation or forfeiture of good time. The cumulative score for all criteria then determines custody class. Minimum custody is assigned for scores in the 0-3 range; medium custody, 4-9; and close, 10 or more.

Classification is performed when an inmate first enters the corrections system, then periodically thereafter. The regular review period is either 4 or 12 months, depending on the inmate's proximity to parole eligibility. Unscheduled reviews of custody class also are made if circumstances involving the inmate warrant a revision to his or her custody status.

The classification scoring system is used only for assignment of minimum, medium, and close custody classes. Maximum custody decisions are always made "by exception" to the scoring system. As indicated in the definition, maximum custody inmates are those inmates isolated from the general prison population because of some administrative reason, because they are being punished for a serious disciplinary infraction, or in the case of orientation or holdover inmates, because they are new and have not yet had a diagnostic report and custody classification assignment.

Administrative segregation may be used for several purposes, and although it subjects an inmate to maximum security control it is not intended as a means of punishment. One of the more common uses of administrative segregation is protective custody of an inmate whose personal safety would be in jeopardy if placed in the general population. Other situations in which administrative

segregation can be used involve inmates who are the subject of or are otherwise involved in an investigation; who are being detained prior to a disciplinary hearing; who have a communicable disease; who have consistently displayed bad behavior, as evidenced by verified acts of violence in the institution; or who fall into a special security class. The latter includes inmates who have a history of aggressive homosexual attacks, inmates with tendencies toward suicide or self-mutilation, inmates with mental problems which cause them to be a threat to themselves or others and inmates who pose an extreme escape risk.

Disciplinary segregation is a form of punishment, through isolation and withholding of privileges, for violating the more serious institutional rules. Institutional offenses are organized into four classes of severity, from the least serious Class IV to the most serious Class I. Disciplinary segregation is one of the possible penalties for violation of Class I and Class II offenses only, with maximum segregation for a Class I offense being 90 days and for a Class II, being 15 days. Some of the Class I and II offenses are also criminal offenses -- such as assault, battery, theft, bookmaking -- while others are related strictly to maintaining control of the institution, such as disobedience, intoxication and possession of kitchen utensils or shop tools.

One of the key management elements common to all of the institutions is the use of staff groups referred to as unit teams, through which most institution-inmate transactions take place. Unit teams, whose members include both counseling and security staff, have inmate caseloads which often are assigned on the basis of residential groupings. Responsibilities of the unit team are varied, but the basic charge is to manage and monitor the progress of each assigned inmate throughout the course of his or her stay in the institution. Examples of unit team functions include development and revision of rehabilitation plans, discussed in subsequent paragraphs; reviewing custody classification at regular intervals; serving as a hearing panel for Class IV or less serious offenses; making recommendations for changes in inmate status of placement; helping inmates prepare parole plans; and, when requested, supplying information to the Kansas Adult Authority in its consideration of parole-eligible inmates.

Although not required of them, inmates are encouraged to work out, with the assistance and guidance of unit team members, a rehabilitation plan which includes participation in employment, educational and/or treatment programs. All institutions have at least some offerings in vocational education, adult basic education and GED programs, substance abuse treatment groups, and institutional employment. In FY 1983 the total average daily enrollment in basic and GED education classes was 482 at KSIR, KCIL, KCVTC and KSP; and in vocational education classes, 358, at KSIR, KSP and KCVTC. Types of vocational programs offered at the

latter three institutions include welding, building maintenance, heating and air conditioning systems, building trades, auto mechanics, barbering and food service.

Inmates are compensated, through incentive pay, for jobs they perform and for participation in vocational education programs. The pay scale is divided into four classes: skilled, which reimburses at \$1.05/day; semi-skilled, \$.75/day; unskilled, \$.60/day; and student, \$.45/day. Earnings are deposited in inmate accounts. Inmate positions authorized for each institution are 220 for KCVTC, 770 for KSIR, 1,000 for KSP and 112 for KCIL and 125 for the honor camps. Except for the honor camps, where most jobs are state park maintenance, employment usually is related to operation of the institution or is part of the revenue-generating prison industries program.

Correctional Industries has programs at KSP, KSIR and KCIL which together employ 201 inmates. The largest component of the industries program is production and sale of paint and signs. Sale of paint accounts for over 60 percent of total industries' sales, which in FY 1983 was \$2,974,540. Other industries efforts include soap, clothing, furniture refinishing, upholstering and farming. The farming operation had been terminated and was resumed only in fiscal year 1983, first with beef cattle and later adding a swine program. Besides its current enterprises, Correctional Industries is planning expansions into records conversion, microfilming, word processing and computer programming.

Inmates at KCIL have a unique employment opportunity with a private firm, Zephyr Industries, a metal fabrication company. Now in its sixth year, Zephyr was opened with an explicit plan to use inmate labor for a major component of its work force. At one time, the number of inmates employed by Zephyr topped 50, but the economic recession forced a reduction in the size of the operation. Currently, there are approximately 20 inmates working at Zephyr, each being paid the minimum wage. Also, twelve of the inmates employed at the paint factory inside the walls at KSP work for Zephyr painting that firm's products. Inmates employed by Zephyr -- as well as inmates working regular jobs and housed in work-release centers -- reimburse the state for subsistence costs at a rate of \$5 per day.

Available programs are not sufficient to occupy all or even most of the inmates incarcerated in the system. Although system-wide data is not routinely compiled, the Legislative Division of Post Audit recently completed an audit which contains information about inmate activity and idleness at KSP. At the time of the audit, there were about 1,600 inmates in the institution. Percentage of total inmates involved in various activities broke down in the following manner:

- 54.5 percent, unemployed;
- 13.3 percent, institutional support, including food service, cellhouse and office orderlies, and laundry;
- 10.0 percent, maintenance, including painting, plumbing, electrical work, refrigeration work, garage work and construction;
- 8.0 percent, grounds keeping, including road repair, lawn-mowing, snow removal and landscaping;
- 7.3 percent, correctional industries;
- 4.3 percent, vocational training; and
- 2.6 percent, education.

The high "unemployment" rate at KSP is a result of the rapid expansion in the population, which has outpaced the ability to create inmate programs. The idleness statistic means that a majority of KSP inmates are confined to their cells, many of them doubled-up, most of the time. This situation greatly aggravates the risk of disturbances and outbreaks of violence.

Prison Population Trends

Because the number of inmates incarcerated in the state changes daily, several counting references are possible. Four are commonly used, depending on purpose and the preferences or conventions of the organization compiling the data. These include: average daily population (ADP) for a year, usually a fiscal year; year-end population for a fiscal year; year-end population for a calendar year; and end-of-the-month counts. The Department of Corrections uses all of these on a regular basis, except for the calendar year-end count which is used more often by national and federal organizations.

In Table 3.3, the average daily prison population in Kansas is given for fiscal years 1960 through 1983. The table includes system-wide totals as well as the average daily populations for KSP and KSIR. The prison population range during the twenty-four year period reached its low in FY 1974 at 1,415 and its high in FY 1983 at 3,160. Significantly, the ADP in FY 1983 was more than double the average population in FY 1974 and FY 1975. But it is also important that the FY 1983 average was only 10.5 percent greater than the 1963 average -- establishing a perspective of cyclical swings not apparent by looking only to the 1970s. Throughout the 1960s, KSP held an extraordinarily high average population. At its peak in 1963, the ADP at the penitentiary was 33 percent larger than the average population in FY 1983 of 1,443 -- a level which has been the cause of considerable concern about conditions of crowding.

Table 3.3. Average Daily Inmate Population, Kansas Correctional Facilities, Fiscal Years 1960-1983

Fiscal Year	KSP	KSIR	Other Institutions	Total
1960	1,663	556	49	2,268
1961	1,765	610	66	2,441
1962	1,888	680	115	2,683
1963	1,912	786	162	2,860
1964	1,802	873	184	2,859
1965	1,726	894	197	2,817
1966	1,700	900	225	2,825
1967	1,526	725	227	2,478
1968	1,458	616	223	2,297
1969	1,434	584	234	2,252
1970	1,269	554	232	2,055
1971	1,120	630	234	1,984
1972	968	666	257	1,891
1973	862	560	242	1,664
1974	667	514	234	1,415
1975	636	598	276	1,510
1976	706	698	366	1,770
1977	846	809	413	2,068
1978	946	874	441	2,261
1979	959	869	494	2,322
1980	930	849	469	2,248
1981	992	891	549	2,432
1982	1,235	913	653	2,801
1983	1,443	1,003	714	3,160

Notes: Population counts for 1960 and 1961 are end of the fiscal year counts rather than average daily population for the entire year.

Honor camp inmates are included in the KSIR population until 1967, when they begin to appear in the Other category.

Sources: Governor's Budget Report, selected years; Department of Corrections, "Average Daily Inmate Population by Correctional Facility: FY 1964-FY 1983", July 1983

Recent trends are straining the capacity of the system. The average daily inmate population increased by over 40 percent between FY 1980 and FY 1983. Annual increases during that time were 8.2 percent in FY 1981; 15.2 percent in FY 1982; and 12.8 percent in FY 1983. Because the population has been rising, the year-end counts have been higher than the yearly averages. The year-end or June 30 counts for fiscal years 1980-1983 were: FY 1980, 2,183; FY 1981, 2,666; FY 1982, 3,008; and FY 1983, 3,390.

There has been no thorough analysis of the underlying changes in the Kansas prison population over the past 25 years. William Arnold of the University of Kansas has examined population increases in fiscal years 1981 and 1982 and attempted to account for the increments of change in the June 30 population for those two years. The Arnold analysis is the only one of its kind done to date, and it should be noted that the data sources which he relied on have not been used extensively for this type of analysis. Because data limitations are not yet fully identified and understood, caution should be exercised in drawing definitive conclusions about causal relationships *vis a vis* prison populations.

As mentioned above, the June 30, 1981 population was 483 greater than June 30, 1980; and June 30, 1982, 342 greater than June 30, 1981. Obviously, the admission rate in those years exceeded the release rate and it is the components of both that Arnold analyzed.

Prison admissions are made basically through court commitments and revocation of parole. Court commitments, in turn, are composed of new convictions and violation of probation. Parole revocations include technical violations of the conditions of parole and violations involving commission of a new offense. Statistical data compiled by Arnold and relevant to new prison admissions are given in Table 3.4. Crime and arrest data are given for calendar years; all other data, for fiscal years.

Of the admission sources the largest is new court commitments. In most years, these account for two-thirds to three-fourths of total admissions. New court commitments registered strong increases in both FY 1981 and FY 1982, rising from 1,107 in FY 1980 to 1,297 in FY 1981 and 1,463 in FY 1982. The increase does not appear to be due to more frequent use of imprisonment by sentencing judges. The data suggest that the percentage of convicted felons receiving prison sentences rather than probation remained stable during that period and had actually declined since the late 1970s. The explanation lies in the other key indicators of crime rate, arrests, or convictions.

Reported index crimes in Kansas did increase sharply in 1980 and again, although more moderately, in 1981. Arnold suggests that the crime rate contributed to the prison population increase in both FY 1980 and FY 1981, but it is difficult to determine if this actually was the case. The correlation between crime rate

Table 3.4. Sources of Inmates in Kansas Prison Populations

Year (Calendar)	Index Crimes	Index Arrests	% Index Arrests	Year (Fiscal)	Felony Con- victions	% Con- victions of Arrests	New Con- victions	% Con- victions	Proba- tion	Parole Revocation	% Parole Violator	Admissions	New of Previous Year-end	% Parole on Parole
1970	73,746	14,420	19.5	1971										
1971	75,180	15,057	20	1972			985			95	45			
1972	74,277	14,506	19.5	1973			827			47	84			
1973	77,086	14,652	19	1974			980			61	104	11.2		
1974	94,903	19,261	20	1975			1,311			62	98	11.4		
1975	103,190	18,944	18	1976			1,326			102	131	16.8		
1976	108,097	17,284	16	1977			1,368			189	126	19.6		
1977	104,342	18,534	18	1978	5,676	30.6	1,350	23.7		135	134	15.1		
1978	104,110	17,680	17	1979	5,241	10	1,228	23.4		127	147	14.2		
1979	112,539	17,744	16	1980	5,769	32.5	1,107	19.2	125	104	126	10.9		
1980	125,877	18,496	14.7	1981	7,132	38.6	1,297	18.2	210	215	222	18.8		
1981	128,370	18,434	14.4	1982	7,546	40.9	1,463	19.4	262	125	179	12.5		
1982	119,111													

Sources: "Analysis of the Increase in Inmate Populations in Kansas Prisons, FY 1981", William R. Arnold; update distributed by Arnold to the DOC Advisory Committee on Prison Overcrowding, July 25, 1983.

and arrest rate is not a very strong one and the comparatively modest increase in arrests in 1980 could be attributed to factors other than changes in the incidence of serious crime. Whatever the cause, the increase in arrests in 1980 appears to have been of secondary importance to the year-end prison population count in FY 1981. Applying the conviction and imprisonment rates to the marginal increase in arrests would account for only one-fourth of the incremental increase in new court commitments for FY 1981.

A more important factor seems to have been the conviction rate itself, which rose from 32.5 percent in FY 1980 to 38.6 percent in FY 1981 and 40.9 percent in FY 1982. If the FY 1981 and 1982 conviction rates had remained constant at the FY 1980 level, the new court commitments to prison would have been 203 less in FY 1981 and 301 less in FY 1982. Other factors contributing to admission increases during FY 1981 and FY 1982 were increases in violations of both probation and parole.

Data relevant to inmate release from DOC custody was compiled by Professor Arnold for all years except FY 1983 and is shown in Table 3.5. Data were updated for FY 1983 where available. The most significant release route is parole, which normally accounts for two-thirds of all releases. Although the numbers involved are much smaller, court-ordered release is also important. This generally means sentence modification by the judge and a return of the inmate to the community for probation.

From the standpoint of impact on prison population, perhaps the most revealing statistic in Table 3.5 is parole releases as a percentage of previous year-end population, an indicator of the overall parole exit rate. The parole exit rate slowed markedly over the two year period FY 1982-1983, dropping in FY 1982 from 52 to 47 percent of the previous year-end population and in FY 1983, to 46.5 percent. Two contributing factors are possible, including changes in parole practices of the Kansas Adult Authority and/or a relative decline in parole eligibility of inmates.

In FY 1982-FY 1983, the more important factor seems to have been a relative decline in parole eligibility of inmates, as evidenced by number of regular parole hearings held compared to size of previous year-end population. The reason in FY 1982 is not apparent but Arnold suggests that an increasing population tends to have a moderating effect on parole eligibility, simply because a larger percentage of the total population is "new", with some minimum time to serve. Another factor may have been a trend on the part of judges to increase minimum sentences. An analysis done recently by DOC on the effect of HB 3104, discussed below, suggested that FY 1983 admissions not falling under the terms of HB 3104 had received sentences considerably longer than those of parolees released in FY 1983. Expected time to be served for incoming inmates compared to actual time served for parolees in FY 1983 was: 5.23 years versus 3.3 years for Class B

Table 3.5. Leaving the Kansas Prison Population

Fiscal Year	Released on Parole	Released Year-end Population	% Released of Previous Year-end Population	Regular Parole Hearings	% Hearings of Previous Year-end Population	Paroles Granted	% Paroles Granted of Previous Year-end Population	Parole Hearings Court	% Paroles Granted of Previous Year-end Population	% to Prob. or Court of Conditional Parole bation or Admissions and "Other" Releases
1972	790							434	34.9	177
1973	906							238	24.3	118
1974	742							234	20.8	63
1975	665			1,351		898		66.0	440	27.6
1976	838	49.3	1,456	85.6	977	57.4	67.1	373	22.9	77
1977	944	49.6	1,434	75.3	973	51.1	68.0	413	23.4	92
1978	1,072	47.3	1,671	73.9	1,020	45.0	60.9	539	29.8	170
1979	1,020	44.3	1,381	60.0	1,053	45.8	78.2	425	25.3	217
1980	1,131	48.2	1,480	63.0	1,233	52.6	83.3	351	22.3	180
1981	1,136	52.0	1,440	66.0	1,160	53.1	80.6	376	18.1	175
1982	1,253	47.0	1,594	57.8	1,361	51.0	85.0	438	20.3	207
1983	1,399	46.5	1,762	58.6	1,401	46.6	79.5			

Sources: "Analysis of the Increase in Inmate Populations in Kansas Prisons, FY 1981", William R. Arnold; update distributed by Arnold to the DOC Advisory Committee on Prison Overcrowding, July 25, 1983; Kansas Adult Authority "Parole Actions", Fiscal Year 1983

felonies; 1.72 years versus 1.3 years, for Class C felonies; and 1.26 years versus 1.08 years, for Class D felonies. Although the DOC analysis detected the trend in FY 1983, it perhaps began early enough to have had some effect on the FY 1982 population.

In FY 1983, reasons for lower parole eligibility had to have included the effect of HB 3104, passed in 1982, which increased the minimum sentence for Class C and D felonies and gave judicial discretion for increasing the minimum for E felonies. The effect of the bill on actual time served has been estimated by DOC to be an increase, on average, of 76 percent for Class C offenses; 52 percent for Class D offenses; and 19 percent for Class E offenses. Average years to be served for the affected felony classes are estimated to be 3.03 for Class C, 1.92 for Class D, and 1.02 for Class E. Although not a direct result of HB 3104, actual time served for B felonies is expected to rise to 6.56 years, largely as a result of increased minimum sentences imposed by judges.

It is not possible to easily translate these increased averages into their effects on prison population size at any given point in time. It is certain that the full effect of the act was not felt in FY 1983; of the 2,273 admissions, only 1,000 offenders had been sentenced under HB 3104. But more importantly, the total impact will not be evident until those offenders with the longest sentences affected by the act, the Class C offenders, begin to serve the last additional increment to their sentence which they previously would not have served.

In FY 1984 parole releases have declined sharply. The average number of parole releases during the first five months of the fiscal year was 84.4 per month, compared to the average for FY 1983 of 116.6 per month -- a reduction of more than 25 percent. The monthly average has declined each month in FY 1984, suggesting that the trend has yet to flatten out. If the number of releases each month were to stabilize at the 84.4 level, there would be 386 fewer releases in FY 1984 than actually occurred in FY 1983. The reduction is even more significant in view of the fact that the FY 1984 prison population is considerably higher than that in FY 1983.

The dramatic reduction in parole releases in FY 1984 likely is due to both factors previously identified. Longer sentences caused by enactment of HB 3104 and tougher sentencing by judges have prolonged the period of time served before first achieving parole eligibility. The Kansas Adult Authority also is reducing the number of paroles granted, a trend which, according to preliminary analysis done by DOC, appears to have begun in the second quarter of 1983. Practices of the re-constituted authority also are expected to have the effect of further reducing the number of paroles granted but it is too early to establish the magnitude of that effect.

Inmate Characteristics

The distribution of felony offenses of the June 1, 1983 Kansas prison population is given in Table 3.6 below. On that date Class A felony offenders represented 8.3 percent of the total population; Class B offenders, 27.3 percent, Class C offenders, 20.7 percent; Class D offenders, 35.2 percent; and Class E offenders, 6.3 percent. Eighty percent of all offenders were confined in the two largest institutions, with 46.3 percent at KSP and 33.4 percent at KSIR.

Table 3.6. Kansas Prison Population by Felony Class and Facility of Confinement, June 1, 1983

Felony Class ¹	Total Inmates	Facility of Confinement				
		KSP	KSIR	KCVTC	KCIL	Other ²
A	274	181	67	1	18	7
B	905	495	294	5	40	71
C	687	316	225	22	21	103
D	1,167	405	438	154	30	140
E	207	85	77	24	4	17
Unknown	77	53	7	0	8	9
Totals	3,317	1,535	1,108	206	121	347

¹ Inmates convicted of more than one felony are counted in the class of their most serious offense.

² Includes SRDC, the honor camps and the work release centers.

Source: Planning, Research, Evaluation and Accreditation Section of the Department of Corrections

The differing roles of corrections facilities are reflected in the felony class offender statistics in Table 3.6. Two-thirds of Class A offenders and over half of Class B offenders are kept at KSP, consistent with its function of incarcerating "hardened" and more violent offenders. At the other end of the range, nearly 90 percent of the KCVTC population had been convicted of either D or E felonies, which tend mostly to be crimes against property. The population of KSIR is somewhat more difficult to characterize as to severity of offense, partly because KSIR's function is an intermediate one and partly because its large size requires that it accommodate a significant portion of the population regardless of its composition. Ninety percent of KSIR inmates were convicted of B, C or D felonies.

Of the total June 1, 1983 population, 35 percent had no previous felony conviction, 23.5 percent had one previous conviction, 12.5 percent had two and 13.7 percent had three or

more. A significant portion of the group, 44.3 percent, had never before been incarcerated. As of June 1, nearly one-third of all inmates had been in prison for less than six months and one-half of all inmates, for less than one year.

Custody status of inmates comprising the June 1, 1983 population is described in Table 3.7. Thirty-six percent of the inmates at that time were included in the maximum and close custody classes; nearly all of these inmates were housed at KSP and KSIR, the two maximum security institutions. More than 1,200 inmates were classified as minimum custody; over half of the minimum custody inmates were located at KSP and KSIR.

Table 3.7. Custody Status of the June 1983 Prison Population, by Institution

Custody Class	Number of Inmates By Facility					
	Total	KSP	KSIR	KCVTC	KCIL	Other ¹
Maximum	504	224	223	4	5	48
Close	691	302	345	6	20	18
Medium	892	530	318	15	13	16
Minimum	1,225	479	218	181	83	264
Unknown	5	0	4	0	0	1
Totals	3,317	1,535	1,108	206	121	347

¹ Includes SRDC, honor camps and work release centers

Source: Planning, Research, Evaluation and Accreditation Section of the Department of Corrections

Demographic information on Kansas inmates is presented in Table 3.8. As is true nationally, the Kansas prison population is predominantly male and tends to be young -- nearly two-thirds of the June 1 group was under the age of 30. More than the previous ones Table 3.8 reveals the difference in populations of KSP and KSIR. Nearly all of the reformatory's inmates are under 30, while almost 60 percent of the KSP population is 30 or older.

As a group, inmates are not well-educated. Only 41 percent had received the equivalent of a high school education. Only 6 percent had received any formal education beyond high school.

Among the most important of demographic characteristics is racial composition. At 59 percent of the total, the majority of inmates are white. Minorities, however, are greatly over represented in the prison population compared to their relative

Table 3.8. Demographic Characteristics of the Kansas Prison Population, June 1, 1983

	Facility of Confinement					
	<u>Totals</u>	<u>KSP</u>	<u>KSIR</u>	<u>KCVTC</u>	<u>KCIL</u>	<u>Other</u> ¹
<u>Age Group</u>						
15-19	199	5	129	29	3	33
20-24	1,099	147	702	108	28	114
25-29	834	488	205	34	25	82
30-34	497	355	42	18	28	54
35-39	329	256	17	11	15	30
40 +	359	284	13	6	22	34
Total	3,317	1,535	1,108	206	121	347
<u>Racial/Ethnic Group</u>						
White	1,957	845	690	129	70	223
Black,	1,177	596	358	71	46	106
Hispanic,						
American						
Indian, or						
Asian	183	94	60	6	5	18
Total	3,317	1,535	1,108	206	121	347
<u>Sex</u>						
Male	3,149	1,535	1,108	121	49	336
Female	168	0	0	85	72	11
Total	3,317	1,535	1,108	206	121	347
<u>Education Level</u>						
Grades 0-11	1,494	610	591	112	36	145
High School Graduate	408	199	92	37	22	58
G.E.D.	752	374	231	42	36	69
Greater than High School	204	135	26	6	20	17
Unknown	459	217	168	9	7	58
Total	1,317	1,535	1,108	206	121	347

¹ Includes SRDC, honor camps and work release centers

share of the population at large. This is particularly true in the case of blacks, whose 35.5 percent of the prison population is almost seven times their share of the 1980 Kansas population.

Finally, most inmates were admitted to the system from urban counties. Of the 3,507 inmates on September 28, 1983, 2,005 or 57 percent, had been sent from the state's four largest counties of Sedgwick, Johnson, Wyandotte and Shawnee. These counties represented 40.8 percent of the total 1980 population. If the eight largest counties are considered -- which adds Douglas, Leavenworth, Reno and Riley to the list and represents slightly over half the total state population -- approximately two-thirds of all inmates are accounted for.

Parole

The parole function is a unique one because in deciding to release an inmate on parole, the paroling body both completes the judicial decision of sentence and renders an executive decision that an inmate is "corrected" sufficiently to return to society on a supervised basis. In this sense parole is a crucial part of the corrections responsibility of state government. Its practical significance is even greater because parole is the avenue of exit for most inmates; the rate at which inmates are paroled has a direct and immediate effect on the size of prison populations.

In Kansas, the paroling agency is the Kansas Adult Authority (KAA), an independent commission composed of five members, each appointed by the Governor for four-year terms. Governor Carlin has announced his plan to recommend reorganization of the KAA, including a reduction in size from five to three as well as full board participation in parole hearings. Pending legislative action, the KAA is operating with three members and two slots vacant.

In addition to making parole decisions related to eligible inmates in the custody of the Secretary of Corrections, the KAA performs the related functions of conducting initial hearings with offenders upon their entry into the system, conducting parole revocation hearings, issuing final discharges from parole supervision, and reviewing applications for executive clemency and pardons. Responsibility for supervising parolees is held by the Department of Corrections.

K.S.A. 1982 Supp. 22-3717 requires that the KAA, or one of its members, meet with each entering inmate within six months of sentencing. At this initial hearing, an inmate's parole eligibility date is determined and the inmate is advised of considerations used by the KAA in deciding whether to grant parole. Because statutory changes have occurred at several intervals, parole eligibility depends in part on when the crime

was committed and a rather complex set of regulations has been developed to accommodate the changes in criteria. For crimes committed after July 1, 1982, the following basic policies apply:

- persons convicted of Class A felonies and persons having minimum sentences of 29 years or longer must serve 15 years to achieve parole eligibility; and
- all other persons must serve their minimum sentence, minus earned good time credits.

Good time is commonly used in corrections systems as a behavioral incentive by in effect reducing both the minimum and maximum sentences. Until 1982, the policy establishing maximum good time allowances was set by the KAA; in most cases, parole eligibility was reached after serving half the minimum plus six months. In 1982, however, the Legislature adopted a statutory good time policy whereby one day of good time can be earned for every three days served, plus one month for every year served. To illustrate the effect of this policy, if all available good time is earned, an inmate with a one year minimum sentence would become parole eligible after serving nine months; an inmate with a ten-year minimum would become eligible after serving slightly over seven years. The current policy frequently is referred to as "legislative good time credits" to distinguish it from the KAA good time table, which still applies to offenders who committed crimes between January 1, 1979 and July 1, 1982.

Parole eligibility automatically entitles an inmate to a hearing before the KAA, with the hearing generally being scheduled within 20 days of the date of eligibility. Members of the KAA visit each major corrections institution monthly for the purpose of conducting regular parole hearings, as well as initial hearings and revocation hearings. During the hearing the inmate is interviewed as to the circumstances of the offense, participation in educational, work or treatment programs in the prison, the proposed parole plan, the reasons why the inmate is ready for release, and other factors relevant to the parole decision. A member of the unit team assigned to the inmate also is present at the hearing and is available for consultation with members of the KAA after the hearing.

Parole decisions must be made by the board with a majority of affirmative votes required to grant parole. Under current procedure the KAA is requiring unanimous agreement of the three members to grant parole of offenders convicted of an A, B or C felony. In granting a parole the KAA must, to be consistent with its statutory charge, find that a "reasonable probability" exists that the inmate in question can be released without detriment to the community or the inmate. In its deliberations the KAA is required by statute to consider the following: circumstances of the offense; the presentence report; previous social history and criminal record of the inmate; conduct, employment and attitude of the inmate in prison; and any physical and mental examination

reports which might be available. The KAA also solicits and considers public comment prior to parole hearings, through monthly public meetings in Wichita, Kansas City and Topeka and through direct requests for comment to the sentencing judge, the prosecuting attorney and local law enforcement officials. A final important factor of consideration is the parole plan, including employment and residential arrangements proposed by the inmate.

There are no standard guidelines by which the KAA moves from its considerations to its judgment regarding reasonable probability; the nature of the process makes it a subjective one. As a general rule, however, non-violent, first-time offenders are more likely than others to be paroled upon first achieving eligibility.

Normally the KAA takes one of three actions after a parole hearing: Parole is granted; the inmate is "passed", i.e. parole is denied; or the hearing is continued. Continuances are used when some reason exists to defer a decision for a relatively short period of time, for example, to verify or modify a component of a parole plan. Passes are denials of parole, usually for a specified duration, after which the inmate returns to the KAA for another hearing. Passes vary in length, but most fall in the range of six months to one year.

If parole is granted, the state and the inmate enter a contractual agreement whereby the state, through the action of the KAA, agrees to release the inmate from incarceration to serve the remainder of his or her term, under supervision, in the community. In exchange, the inmate agrees to comply with several standard conditions of parole and perhaps some special ones as well. Standard conditions are stipulated as follows:

- Reporting and travel, whereby the parolee agrees to report regularly to his or her parole officer, to keep the officer informed as to residence and employment, and to seek permission of the officer for travel outside the parole district;
- Laws, whereby the parolee agrees to obey all federal, state and local laws and ordinances;
- Weapons, whereby the parolee agrees not to own, possess or otherwise have contact with any weapons, ammunition or explosives;
- Personal conduct, whereby the parolee agrees not to engage in or threaten assaultive or violent behavior;
- Narcotics/alcohol, whereby the parolee agrees not to possess or use any controlled substance and agrees further to avoid excessive consumption of alcohol;

- Association, whereby the parolee agrees not to associate with persons engaged in illegal activities and further agrees to obtain advance permission before contacting any inmate of a correctional institution; and
- Employment, whereby the parolee agrees to obtain a job and continue steady employment unless excused for some valid reason.

In addition to the standard conditions of parole, the KAA may require that the parolee agree to special conditions. Typical of these are participation in Alcoholics Anonymous, residence at a specified halfway house, participation in an alcoholism or drug abuse treatment program, outpatient mental health counseling, and additional travel restrictions.

The parole period, during which the parolee remains in the custody of the Secretary of Corrections, usually is two years. For D and E felons, the length of parole supervision may be shortened by up to four months if the parolee meets all parole conditions and if so recommended by the parole officer. Parole supervision may be extended beyond two years for offenders convicted of A, B, and C felonies, and those sentenced under the habitual criminal act, depending upon the circumstances of each case. If the parolee stays in Kansas, he or she is assigned to a parole officer employed by DOC. Transfers to other states also are possible through interstate compact agreements.

Satisfactory behavior while on parole results in the discharge of the parolee from the jurisdiction of the department. Violation of conditions of parole may lead, however, to reincarceration. Parole revocations are of two kinds: those resulting from new criminal offenses committed by the parolee; and technical violations which break not the law, but the terms of the parole agreement. In the case of new offenses, the parolee is returned to DOC via the courts. In the case of technical violations, the revocation process is initiated on recommendation of the parole officer to the Secretary of DOC, who issues a warrant for the return of the parolee. Once the parolee is back in a corrections facility, the Kansas Adult Authority holds a revocation hearing, then decides whether to revoke the parole.

Statistical information on the parole process in Kansas was presented in Table 3.5 as part of the discussion on prison population trends. The data in the table make clear the importance of parole in advancing inmates out of the system. To illustrate further, in FY 1983 there were 2,076 releases of inmates from Kansas correctional facilities. Parole accounted for 1,399 of them, or 67 percent and court-ordered releases, mainly for probation, for 574 or 28 percent. Conditional release, which occurs upon serving the maximum sentence minus

good time credits and is sometime referred to as the net maximum, was used only 47 times, equal to 2 percent of all releases. Clearly, any change in the rate of parole release has a direct and immediate effect on the size of the prison population.

Community Corrections

In 1978 the role of state government in providing corrections services was modified somewhat through enactment of the Community Corrections Act. Under its provisions the Department of Corrections is authorized to grant and administer funds to counties for the development and operation of local corrections programs for certain non-violent offenders who otherwise would be incarcerated. The program's premise is that some offenders can be punished and rehabilitated more effectively and more cheaply in the community than in prison, but that a gap exists when there is no sentencing choice between probation and prison. Community corrections is intended to fill that gap by providing more structured supervision of offenders than is possible through regular probation and by providing treatment and other programs designed to meet the needs of individual offenders. The advantage to the state is that community corrections, when working as intended, diverts people from prison and thus saves money not only by reducing operating expenditures but more importantly, by moderating demands to expand capacity.

The statute authorizes a number of program uses for grant funds, including restitution, victim services, preventive or diversionary correctional programs, and facilities and services for the detention, confinement, care or treatment of adult and juvenile offenders. The component mix of each community corrections program is decided locally, except the program proposal in the form of a comprehensive plan must be submitted to and approved by DOC. Formulation and any subsequent modification of the plan, in turn, must involve participation of a local corrections advisory board, composed of twelve members representing law enforcement, prosecution, judiciary, education, corrections, ethnic minority and social service groups, as well as the general public.

Grant amounts are determined by a statutory formula which is population based but which also is weighted for per capita income, adjusted assessed valuation, crime rate and population aged 5-29. During the first year of participation in the program a county or group of counties receives up to 70 percent of the formula entitlement, during the second year, 90 percent and third and subsequent years, 100 percent. Actual amount granted, however, is not the entitlement amount, but the entitlement minus the cost of chargeback offenders sent by the county to the state corrections system.

The chargeback concept is crucial to understanding the operation of community corrections in the state, because it

clearly identifies the target group of offenders to be retained in the community and it provides an immediate although not complete indicator of how each program is faring. A community corrections county is "charged" for all adult felons sent to DOC unless their conviction falls in one or more of the following categories:

- A,B or C felony;
- D or E felony with more than one prior felony conviction;
- aggravated assaults;
- sex offense;
- mandatory firearm sentencing act.

In essence, then, most chargeback offenders are those convicted of D and E felonies with no more than one previous felony conviction. The amount charged by DOC is set by the Secretary and is statutorily required to be equal to the "...total of per diem costs to the state general fund of confinement and rehabilitation of those persons..." The adult chargeback rate through December 1983 is \$29.39 per day; effective January 1, 1984, the rate will be reduced to \$28.70. The lower rate is a direct result of the increased number of inmates, which reduces the average operating cost per capita.

There are now nine counties participating in seven community corrections projects in the state. The counties and their FY 1984 grant entitlements are: Wyandotte, \$1,424,826; Leavenworth, \$362,564; Johnson, \$1,221,091; Bourbon-Linn-Miami, \$227,767; Riley, \$467,212; Shawnee, \$1,105,466; and Sedgwick, \$1,504,528. The amounts are full entitlements, unadjusted for expected chargebacks, for all counties except Riley, Johnson and Sedgwick, who all were in the phase-in period in FY 1984. The department estimates that up to 700 prison-bound offenders will be diverted to these programs during the fiscal year.

The estimate of diversions will prove high, however, because it assumed successful program implementation in Johnson County. In December 1983, Secretary Barbara announced suspension of the Johnson County program, which has developed a history of financial problems due to excessive chargebacks. The program will be phased out, but with some hope of reorganization at a later date.

Program features vary somewhat among counties, but there are several core components which are found in all or most community corrections counties. These include

- screening and evaluation of offenders, including social and psychological evaluations, as a basis for preparing individualized sentence plans for offenders;

intensive supervision of offenders, including daily surveillance, to make sure that the offenders are complying with the terms of their sentence plan, whether that includes work, community service, education, training, treatment programs or restitution;

employment and education services -- such as GED and remedial education and job search and placement assistance -- to help the offender acquire skills necessary to secure and maintain a job;

restitution and community service to compensate the victim and/or the community for the offender's crime; and

substance abuse treatment, including detoxification, short-term inpatient treatment, outpatient treatment and individual, group and family counseling.

Three programs -- Shawnee, Sedgwick and Bourbon/Linn/Miami -- also operate adult work release/residential centers, wherein offenders live in a structured residential setting and are required to work, pay restitution and provide support for their dependents. Examples of other program components include pre-trial screening, bad check writers programs, diversion screening and victim/witness services. As mentioned above, all counties supervise restitution payments to victims. Some counties provide other victim services as well, including counseling for victims of violent crimes and assistance to victims in such areas as recovering confiscated property.

There are many grounds upon which to discuss the merits or evaluate the success of community corrections, but the one of most direct concern to the subject of this report is the effect on prison population. The department's method of measuring this is to compare chargeback offender commitment rates for community corrections counties before and after program implementation, as well as commitment patterns of non-participating counties. The most recent analysis for adult offenders is presented in Table 3.9 below.

Table 3.9. Adult Chargeback Category Admissions, First 3 Quarters of Base Year Compared to First 3 Quarters of FY 1983, Community Corrections Counties and Non-Participating Counties

	<u>First 3 Quarters of Base Year</u>	<u>FY 1983</u>	<u>% Change</u>
<u>STATE TOTALS</u>			
Community corrections, excluding Johnson County	107	73	- 32
Community corrections, including Johnson County	155	127	- 18
Non-participating counties	358	417	+ 13

COMMUNITY CORRECTIONS COUNTIES

Bourbon	5	9	+ 80
Leavenworth	10	3	- 70
Riley	9	1	- 89
Shawnee	30	23	- 23
Wyandotte	53	37	- 30
Johnson	48	53	+ 10

NOTE: The base year varies with each county and refers to the twelve-month period preceding the county's implementation of a community corrections program. The base year for non-participating counties is a weighted average combination of base years corresponding to each corresponding community corrections base year.

State totals are given with and without Johnson County because it has been the least successful program and including it in the totals distorts the magnitude of success in other programs. Also, Sedgwick County is excluded because its program began only on July 1, 1983.

Contrary to concerns expressed that community corrections would serve persons likely to be sentenced to probation anyway, the programs appear to be receiving offenders who would otherwise be sent to prison. The combined admission of chargeback offenders from community corrections counties, excluding Johnson, has declined markedly since implementation of the program.

Chargeback admissions declined by almost one-third for these counties compared to an increase of 13 percent for non-participating counties.

Factors other than community corrections could have contributed to changes in chargeback admissions but other indicators support the role of community corrections. For example, the percentage of D and E felony convictions resulting in prison sentences fell from 22.5 percent in FY 1981 to 16.6 percent in FY 1982 in community corrections counties. The rate rose somewhat in FY 1983, to 18.9 percent, for all community corrections counties, excluding Johnson. In the remainder of the state, prison sentences for D and E offenders rose from 20 percent in FY 1981 to 23 percent in FY 1982 and 24 percent in FY 1983.

Reduced chargeback admissions also are reflected in prison population statistics. In Table 3.10 community corrections counties' shares of the September 28, 1983 prison population are presented. Johnson County is excluded; Sedgwick County data are

Table 3.10. Inmates Originating from Community Corrections Counties, By Felony Class September 28, 1983

<u>County</u>	<u>Felony Class</u>					<u>Total</u>
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D & E Non Chargeback</u>	<u>D & E Chargeback</u>	
Leavenworth	7	18	12	13	3	54
Shawnee	25	66	64	73	44	277
BLM	3	5	8	10	11	37
Riley	1	22	6	4	9	43
Wyandotte	59	174	72	87	55	452
Subtotal	95	285	162	187	122	863
Sedgwick	95	309	197	206	177	998
Total Population	275	895	662	682	871	3,507

Source: Kansas Department of Corrections

presented, but separately, because the effect of their program would not yet be evident in the composition of the population. All of the community corrections counties listed, except Sedgwick, accounted for 20.8 percent of the total prison population identified in Table 3.10. Combined, these were the counties of origin for 34.5 percent of Class A offenders; 31.8 percent of Class B; 24.5 percent of Class C; and 27.4 percent of non-chargeback D and E offenders. In sharp contrast, however, they sent only 14.0 percent of all chargeback D and E offenders.

Table 3.10 also shows the potential significance of Sedgwick County's participation, for its share of inmates is comparable to the other group of counties combined total.

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Chapter Three

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CHAPTER FOUR
CORRECTIONS OUTLOOK AND ISSUES

The Kansas correctional situation as of October 31, 1983 is summarized in Table 4.1, which compares capacity and population information for each institution and facility group. The October 31 population of 3,595 exceeded the optimum capacity of the system by 38 percent and fell only 291 or 7.5 percent short of reaching the maximum. Most correctional facilities were operating near or over maximum capacity. Especially pressed were KSIR, which had a population 12 percent greater than its maximum capacity, and KCIL, which had a population 45.5 percent over maximum. Extreme crowding at KCIL has resulted both from an absolute increase in the number of female inmates -- the October 31 census of 190 was 27 more than a year earlier -- and from a management decision to limit KCVTC females to those participating in vocational training programs. Females at KCVTC numbered 39 on October 31, 1983 compared to 83 on October 31, 1982. Since males are still located at KCIL, all of the increase in females had until recently been absorbed in the one female dormitory. With crowding in the Perry Building reaching unacceptable proportions, DOC in November 1983 transferred the men at KCIL to temporary housing accommodations in the staff dining quarters thus making the A building available to females.

Table 4.1 Kansas Correctional Facility Capacities and Populations, October 31, 1983

<u>Facility</u>	<u>Optimum Capacity</u>	<u>Maximum Capacity</u>	<u>Population</u>
KSP	1,133	2,168	1,662
KSIR	870	1,037	1,162
KCVTC	180	200	191
SRDC	88	132	130
KCIL	100	123	179
Honor Camps	125	125	116
Work Release	101	101	98
Other ¹	--	--	57
	2,597	3,886	3,595

Male Population 3,405
Female Population 190

¹ Includes inmates at Larned State Hospital and contract jail placement.

The apparent incongruity of running KSIR at well over maximum capacity while KSP is 500 under maximum requires explanation. D Cellhouse at KSP has been completely vacated for

renovation, thus making unavailable 280 of KSP's maximum capacity beds until February of 1984. Available capacity will improve only modestly in February, however, because C Cellhouse renovation is scheduled to begin at that time, reducing available capacity by 240 until February 1985. Still, KSP is the only one of the existing facilities capable of accepting incremental increases in the population.

Expectations of the department regarding system-wide population and capacity are presented in Table 4.2 for several points in time ranging from October 1983 to June 1986. In addition to the DOC estimates of capacity, an "adjusted available maximum" is given which adds one-half of the segregation beds at KSP and KSIR and which also reflects the effects of cellhouse renovation on capacity. The inclusion of segregation beds is done in recognition of the fact that maximum capacity represents loss of management flexibility and efficiency. Although cellhouse renovation is a temporary withdrawal of capacity, it too is shown because it occurs during crucial periods. In Table 4.2 the only capacity and renovation projects shown are the ones for which appropriations have been made.

Table 4.2 Population Projections and Facility Capacity, Kansas Correctional System, October 1983 - June 1986

<u>Date</u>	<u>Capacity</u>				<u>Population</u>
	<u>Optimum</u>	<u>Maximum</u>	<u>Adjusted Available Maximum</u>		
Oct 30 1983	2,597	3,886	3,718		3,595
June 30 1984	2,643	3,932	3,804		3,868
Dec 31 1984*	3,042	4,619	4,731		4,041
June 30 1985	3,042	4,619	4,731		4,214
June 30 1986	3,042	4,619	4,731		4,628

* Includes capacity addition due to become available in January 1985.

The population projections in the table warrant elaboration because they represent the set of assumptions most critical to defining the magnitude of the crowding problem. The methodology used by DOC was a straight line projection, extrapolating the trend established over the period July 1, 1981 through May 1, 1983. The extrapolation was then adjusted to incorporate estimated effects of HB 3104, which increased minimum sentences,

and community corrections implementation. Assumptions regarding community corrections included a 34 percent reduction from base year incarceration rates of chargeback offenders from participating counties, plus successful implementation of programs in Johnson and Sedgwick counties. The assumption regarding Johnson County has since proved optimistic, but a more important concern is the trend line extrapolation that propels the forecast.

The base period used in the forecast was a short span and one with an exceptional rate of increase in population. Since the forecast was made in May 1983 the high rate of increase has not only continued but accelerated. Between May and November 1, 1983 the average monthly increase was 51, a rate which if continued would add another 135 to the projected population for June 30, 1984. However, the dynamics of recent population increases are not well enough understood to place confidence in straight line extrapolation. No one expects population increases to continue indefinitely, but neither does anyone know when they will stop and whether population will then stabilize or begin to decline. This uncertainty is the crux of the dilemma because plans and decisions must be made on the basis of assumptions which may prove inaccurate. The disadvantages inherent in these circumstances can be minimized only by consciously acknowledging uncertainty, by carefully monitoring changes in population trends and by explicitly weighing the consequences of alternatives in the context of different assumptions about population.

With these considerations in mind, the data in Table 4.2 suggest two distinct planning horizons, with the break point being January 1, 1985. The department currently is experiencing many of management problems associated with crowding, but options for immediate relief are limited. The department's primary management advantage to date has been the inherent elasticity of capacity. Even this flexibility will be exhausted soon and it appears that the situation will approach crisis proportions during the summer and fall of 1984. By July 1984, the DOC projected population will be very near the system's maximum capacity, and will actually exceed the available portion of maximum capacity because C Cellhouse renovation is scheduled to be in progress at that time. Summer heat will add measurably to the risk potential. By early 1985 the pressures should relax somewhat because of capacity expansions at KSP and KSIR. Nonetheless, the projected population of over 4,000 in January of 1985 is one-third greater than the optimum capacity available at that time, assuming no new capacity additions.

Short Term Responses

Three types of alternatives exist for attempting to avert serious difficulty in the summer of 1984. The no action alternative is the most risky because it means gambling that one of two things will occur: that the population will fall short of

projections; or, that the department can manage its way through a high jeopardy period without violence or destruction of property. The action alternatives are of two kinds: including a) expansion of capacity, or b) emergency measures to control population size, either through early release of inmates or restrictions on new admissions for some period of time. The latter deserves consideration as a major option available to the state, but it represents a major departure from current policy and practice. Any such proposal would generate extensive controversy, making timely acceptance an uncertain and unlikely prospect. The other option, capacity expansion, is the one traditionally exercised by state government in its role as provider of corrections services.

Two possibilities exist for enlarging available capacity by next summer. One which has been considered and rejected by the department is to delay renovation of C Cellhouse until the medium security complex at the penitentiary is completed and occupied. The total maximum capacity of C Cellhouse is 480; since the plan is to renovate first one half then the other, deferring the project would add 240 beds to available capacity during the summer and fall months. Postponing the project would provide relief in the early part of the high risk period, but the projected population would fill all of the adjusted available maximum capacity by the end of 1984.

The option of delaying renovation was rejected for several reasons. The project is scheduled to begin in February 1984, immediately following the re-opening of D Cellhouse, so most of the preparatory work has been done. The improvements need to be made, the money has been appropriated, and a ten to twelve month delay may only serve to add to the total cost. Waiting to start the C Cellhouse renovation also would trigger a delay in renovating A Cellhouse, which is the oldest cellhouse and in the worst condition. Earlier hopes that it might be possible to abandon A Cellhouse seem remote now in light of population pressures, so scheduling its renovation has to again become a consideration. Moreover, there is no assurance that it will be easier to temporarily displace the capacity a year later, even given the projects at KSP and KSIR. Finally, cellhouse renovation is one of the terms of the consent decree entered into by the state in 1980. Interrupting the progress of cellhouse renovation could create doubts about maintenance of a good faith effort to improve conditions of confinement at the penitentiary.

The other method of expanding capacity, adding new facilities to the system, barely exists as an option for the summer of 1984 because of extreme time limitations. In fact, the only realistic means of accomplishing it is not through new construction, but through conversion of existing buildings which originally were designed and used for other purposes. It is this course which the department has proposed be taken.

During the summer and fall of 1983 DOC, with cooperation of other state agencies, especially the Department of Social and

Rehabilitation Services, evaluated the correctional use potential of a number of state buildings. Most of the structures reviewed were vacant buildings at state mental health and retardation hospitals, including those at Osawatomie, Larned, Winfield, Topeka, and Parsons. Also considered were conversion of the entire campus of Norton State Hospital and use of one of the dormitories at the Vocational Rehabilitation Center at Salina. A number of criteria were applied in assessing the appropriateness of each facility, but the following were among the major considerations: physical condition of building, and the cost and nature of needed improvements; timing of availability, assuming expedited procedures; configuration of space within the building and its adequacy from a security standpoint; availability of support services such as dining and laundry facilities; location of the building in the context of the rest of the campus; suitability of the facility relative to characteristics of the inmates available to be housed there and programs to be provided; staffing needs; the effect of the correctional use upon the main function of the campus; and potential for other uses if no longer needed for correctional purposes.

The result of these considerations is a proposal, developed by DOC and SRS, which involves three hospitals: Larned State Hospital, Winfield State Hospital and Topeka State Hospital. The projects would add 209 beds to DOC's capacity by establishing pre-release centers at Winfield and Topeka state hospitals, and would add 80 beds to the State Security Hospital run by SRS at Larned State Hospital. Individual projects are described briefly below.

At Winfield, a 144-bed pre-release center would be established through renovation of the now vacant Valley View and Birch buildings. Food, laundry, utility and maintenance services would be provided by SRS. All other operational responsibility would be assumed by DOC. Inmates to be housed there would be required to have a minimum custody classification and be within 90 days of parole eligibility. Class A offenders would not be placed in pre-release centers, nor would certain sex offenders. A number of programs would be offered to help prepare the inmate for return to society, ranging from basic transactional skills to alcohol and drug abuse counseling. Assistance and encouragement in finding employment would also be given. The capital cost of renovation at Winfield is approximately \$871,000; and annual operating costs are estimated at \$2.0 million.

The Topeka State Hospital project also is proposed as a pre-release facility for minimum custody inmates. Involved is the renovation of the vacant nurses' dormitory/high school building into a 65 bed facility. Two quonset huts near the dormitory would be made available for program and recreational uses. Also, part of the B Annex is to be renovated for kitchen and dining uses. Again, SRS would provide some services, including utilities, maintenance and food, with DOC being responsible for all others. Project costs are \$524,400 for

renovation and \$1.2 million per year for operating the facility.

The Larned project is somewhat different because it does not involve the introduction of a new use or function, but the expansion of a service currently performed by SRS. The State Security Hospital, where the criminally mentally ill and mentally ill offenders are diagnosed and treated, will be expanded by 80 beds. The expansion will be accomplished by renovation of space in the Sellers and Allen buildings to accommodate the Youth Rehabilitation Center, followed by space reassessments for several patient groups. Reorganized space utilization will make possible a 30 bed expansion in the Dillon building and a 50 bed expansion in the Jung building for the State Security Hospital. The project will make available a total of 116 beds at Larned for treatment of DOC inmates.

Because correctional inmates at Larned are transferred to the custody of SRS during their stay at the State Security Hospital, the beds there are not considered part of the capacity of the corrections system. The Larned project, however, will be of direct benefit to DOC because the expansion is proposed to explicitly accommodate mentally ill inmates. Relief offered by this project is greater than simply easing population pressures. DOC has had increasing problems in providing adequate treatment of mentally ill inmates, many of whom simply cannot function in the general prison population. The number of beds at Larned available to DOC has dwindled rapidly, dropping from 104 in 1979 to 36 at the present time, mainly because of increased court referrals for competency evaluations. The Larned expansion will not completely answer the problem of managing and treating inmates who are mentally ill, but it will at least restore bed capacity for those most acutely in need of care on an inpatient basis. DOC estimates that an additional 400 inmates require, but are not now receiving mental treatment on a less-intensive, outpatient basis. Projected costs for the Larned expansion are \$395,000 in capital improvements and \$1.7 million in annual operating expenses.

In addition to the projects involving SRS, the department also is recommending a project to expand the Outside Dorm 2 facility at KSP. Capacity would be increased by 127 by converting a recreational building into a dormitory to house minimum custody inmates. Estimated cost is \$153,000 for the renovation, and \$348,000 for annual operating expenses.

To summarize, the capacity expansion package is detailed in Table 4.3. The full proposal has been endorsed by Governor Carlin, who is recommending that all projects be implemented on an expedited basis. All projects except Larned are included in an emergency corrections supplemental appropriation bill which the governor has requested be passed and ready for signature by the first week in February 1984. If that deadline is met the projects will be completed and operational by July 1, 1984. Although not part of the corrections supplemental bill, the

Larned project also is proposed for supplemental action in FY 1984 to make the additional beds available by the summer of 1984.

Table 4.3 Correctional Capacity Expansion Package, FY 1984

<u>Project</u>	<u>Capacity</u>	<u>Cost</u>	Type of	
		<u>Capital</u>	<u>Operating</u>	<u>Inmate</u>
Winfield State Hospital	144	\$871,000	\$2,000,000*	minimum custody; within 90 days of re-release
Topeka State Hospital	65	524,400	1,200,000*	minimum custody; within 90 days of re-release
OSD 2	127	153,000	348,000	minimum custody
TOTALS	336	\$1,548,400	\$3,548,000	
Larned State Hospital	80	\$395,000	\$1,700,000	mentally ill

* Includes expenses of both DOC and SRS.

INTERMEDIATE AND LONG-TERM RESPONSES

While short-term alternatives are geared to averting a crisis situation in the summer of 1984, the situation in the intermediate term raises a more fundamental question regarding the sustained operating adequacy of existing and planned correctional facilities. Status of correctional facilities compared to projected inmate population is shown graphically in Figure 4.1 and the accompanying Table 4.4. DOC's population projections are shown, including an extrapolation of the DOC trend. Two capacity schedules are given, DOC's optimum capacity estimates and the maximum available capacity, which is DOC's maximum adjusted for segregation beds and cellhouse renovation. Both capacity series assume implementation of the department's emergency capacity expansion package for the summer of 1984. Further, both series assume implementation of the governor's proposals to construct an honor camp in FY 1985, an honor camp in FY 1986, a KCIL renovation project to add 50 beds in FY 1987 and a 73-bed conversion to housing use of modular units now used for administrative purposes at KSP. The maximum available capacity

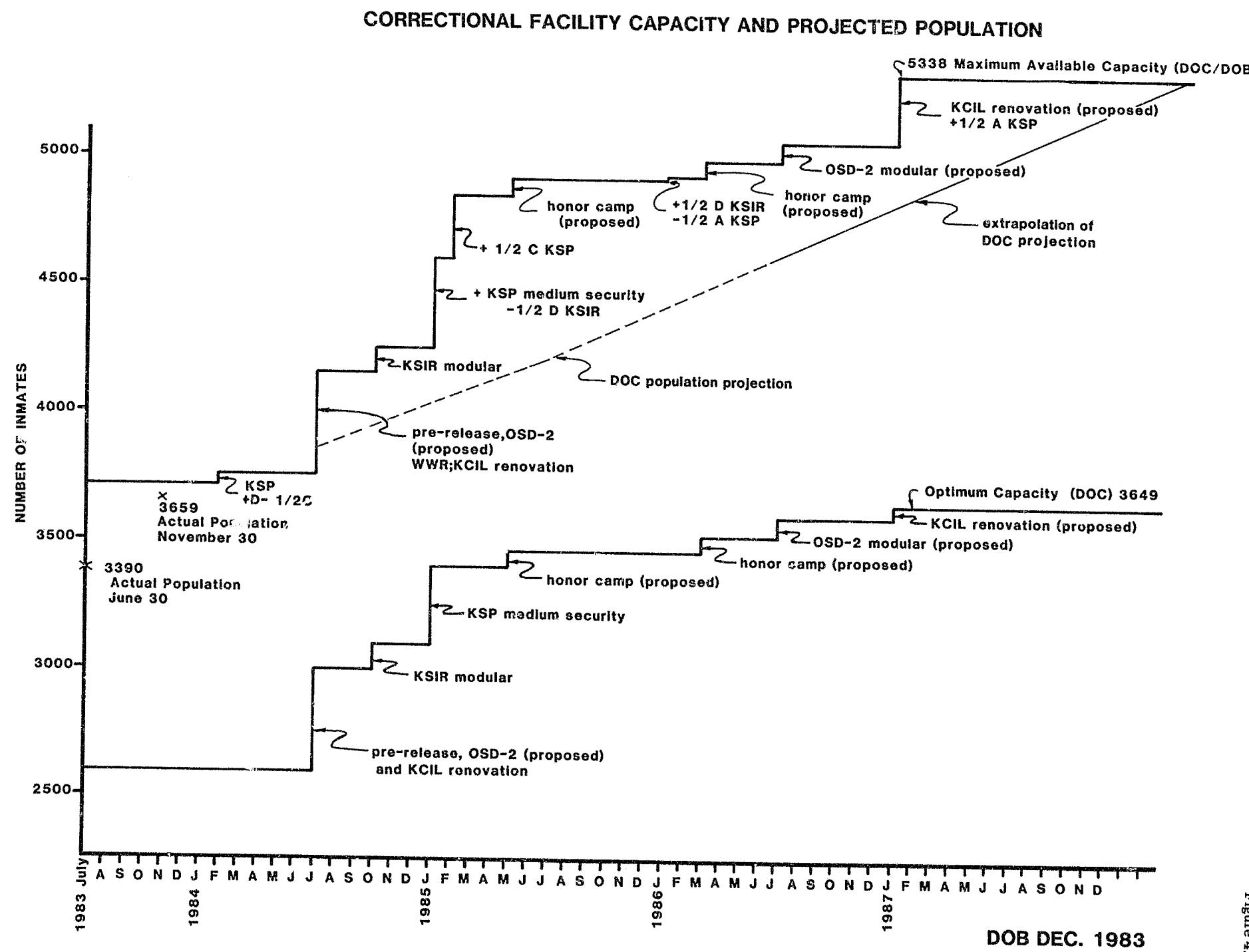
Table 4.4 Correctional Facility Capacity Schedules, Including Approved and Proposed Projects, and Projected Inmate Population

<u>Date/Change</u>	<u>Optimum</u>	<u>Adjusted Available Maximum</u>
July 1983 Beginning Capacities/DOC +112 segregation -280 KSP D Cellhouse	2597 (DOC)	3718
February 1984 +280 KSP D -240 KSP $\frac{1}{2}$ C	2597	3758
July 1, 1984 +46 KCIL +336 pre-release, OSD 2 +20 WWR	2999	4160
October 1984 +96 KSIR modular	3095	4256
January 1985 +KSP medium +303 opt, +591 max -240 KSIR D	3398	4607
February 1985 +240 KSP	3398	4847
March 1, 1985 +64 honor camp	3462	4911
January 1986 +240 KSIR $\frac{1}{2}$ D -224 KSP $\frac{1}{2}$ A	3462	4927
March 1, 1986 +64 honor camp	3526	4991
July 1986 +73 OSD 2	3599	5064
January 1987 +50 KCIL renovation +224 KSP $\frac{1}{2}$ A	3649	5338
<hr/>		
DOC population projections		
June 30, 1984	3868	
Dec. 31, 1984	4041	
June 30, 1985	4214	
June 30, 1986	4628	

*Adjusted Available Maximum equals DOC maximum capacity plus half of the segregation beds at KSP and KSIR and adjustments to reflect timing of cellhouse renovation.

Figure 4.1





line also assumes scheduling of the remaining cellhouse renovation projects on a timetable consistent with the five-year capital improvements plan.

For a two to three year period after July 1, 1984 and particularly after January 1, 1985 the basic focus shifts from the relationship between population and maximum capacity to the relationship between population and optimum capacity. The policy judgment to be made is the significance of optimum capacity as currently defined by the department.

During periods of mounting population pressure there is a tendency to discount optimum capacity and to view maximum capacity as the benchmark against which the situation should be assessed. It should be emphasized again that 80 percent of the difference between optimum and maximum capacities is achieved by double-celling at KSP, including the new medium security complex once it becomes operational. Concentrating the crowding potential in a single institution becomes a consideration in itself. Not only does the likelihood of disturbance increase; so does the system's vulnerability to the effects of a disturbance. Once started, trouble could be more difficult to contain and damage to the facility could remove, literally overnight, a significant portion of the total corrections system capacity.

The issue has other intrinsic considerations, such as the acceptability of double-celling for indefinite periods of time, the importance of occupying inmate time, and safety of security and other institutional staff. These considerations are in part value judgments about how incarcerated persons should be treated and in part assessments of risk to staff, inmates and property. The historic tendency of state governments is to undervalue these and similar considerations, as documented by the fact that so many states--42 at last count--have been subject to some type of court action over conditions of confinement in their correctional facilities. Kansas is no exception, although Kansas has avoided to date any explicit court orders or assumption of jurisdiction over operation of its prison system.

In May of 1980, the state entered a consent decree as a means of settling a lawsuit filed in federal district court on the conditions of confinement at KSP. The state agreed to take a number of actions, highlights of which include: application for accreditation of KSP by the Commission on Accreditation for Corrections by December 15, 1983, and a good faith effort to meet American Correctional Association standards; renovation of OSD-1 and A, B and D cellhouses; good faith effort to meet ACA standards regarding medical and mental health services; implementation by January 1, 1985 of a plan to occupy inmates for 40 hours per week with work, education and/or training programs; and provision of adequate recreational activities. The state has complied with many of the major terms of the consent decree. Some, however, have proved impossible to meet on a timely basis and the department recently has requested of the plaintiffs a

renegotiation of those items. The more important ones are the deadline for accreditation application, made necessary because the accrediting body will hold in abeyance any application for accreditation while renovation of a facility is underway; the shift in the department's priority for cellhouse renovation, reversing the order between A and C; and relaxing the deadline for implementing the 40-hour week plan, a direct result of population increases.

Court intervention is not inevitable, but judicial activism in this area makes it increasingly probable if the gap between optimum capacity and population remains wide for prolonged periods of time. Thus the likelihood of court intervention becomes another factor in assessing the overall adequacy of current and planned correctional capacity.

The information summarized in Figure 4.1 indicates that an initial judgment must be made whether the situation warrants further action by state government. A decision to take no action would require one or more of the following conclusions: that the population projection is too high; that the optimum capacity may be the most efficient operating level, but does not represent the minimum acceptable operating level; that the risk of operating above optimum may be real, but is one that state government is willing to take; or that a decision can be deferred.

The risks of no action carry significant stakes. The population projection might be too low rather than too high. Ignoring optimum capacity is to disregard the best judgment of corrections professionals. It is comparable to placing 40 people in an elevator rated to carry 30 or red-lining the engine of a car. It may be possible to do it successfully once, twice or a dozen times, but prove imprudent as a routine practice. Deferring further action may prevent strategic mistakes, but it may also rob the state of all except short-term emergency options.

The governor is recommending four additions to correctional capacity during this intermediate period: two 64-bed honor camps, a 50-bed renovation project to utilize space vacated after completion of a new dining facility at KCIL, and a 73-bed conversion to housing use of modular units, now used for administrative purposes, upon completion of the Administration/Support Services Building at KSP. Also recommended as a demand reduction measure is expansion of the community corrections program in FY 1985 by awarding planning grants for three new projects and by providing operating funds for Montgomery County.

Figure 4.1 also makes clear that current trends would lead to extreme difficulty relative to maximum capacity again by late 1987. Straight line extrapolation of prison population becomes more tenuous the further it extends into the future; nonetheless, there are no grounds to assume a turnaround or to project the

timing of a turnaround should one occur. If population stabilizes in 1985 or 1986, the question of the importance of optimum capacity remains. If population continues to trend upward, now is the time to begin considering alternatives because any action to restore balance between population and capacity, whichever way defined, will require at least two to three years of lead time to implement.

This imperative is the reason for inclusion of a 500-bed prison in the five-year capital improvements plan which the governor has included in the Budget Report. The intent in this instance is not to commit to construction of such a facility but to portray the magnitude of the problem to be encountered. Discussions preliminary to making a decision must begin now and include exploration of both of the major strategies available--expanding correctional capacity or reducing the need for it.

Expanding Capacity

Capacity expansion is the conventional response to restore equilibrium between population and capacity. Its main advantage is its certainty. Its main disadvantage is its cost and, to a lesser extent, its comparatively lengthy implementation time.

Capital costs of enlarging the capacity of the prison system vary considerably, depending on the kind of facility. A sampling of these costs is presented in Table 4.5, which includes costs of projects either underway or proposed by DOC. For the three projects listed, there is extreme variation in average cost per bed, from a low of \$10,369 for the minimum security modular unit at KSIR to \$69,900 for the medium security facility at KSP.

Table 4.5 Capital Costs of New Correctional Facilities

Project	Total Cost	No. of Beds	Avg. Cost Per Bed
KSP Medium Security	\$21,179,961*	303	\$69,900
KSIR Minimum Security	995,441	96	10,369
Honor Camp (proposed)	1,450,000	64	22,656

* Includes total project appropriation minus expenditures unrelated to capacity expansion

The capital cost, of course, is only part of the total financial demand because each new facility also requires outlays to meet operating costs. The FY 1983 operating costs of several correctional facilities are identified in Table 4.6. Again, there is characteristic variation in operating costs among institutions, with the most expensive facility costing approximately 2.5 times as much as the least expensive, on the

basis of average direct cost per ADP. The table also attempts to

Table 4.6 Operating Costs of Major Kansas Correctional Facilities, FY 1983

Facility (ADP) ¹	Total Operating Expenditures	Average Direct Cost ² (per ADP)	Estimated Variable Cost (per ADP)	% Variable of Total Direct Costs
KSP (1443)	\$13,116,400	\$ 9,090	\$ 1,454	16.0%
KSIR (1003)	9,728,990	9,700	1,358	14.0
KCIL (114)	1,965,947	17,245	2,300	13.3
KCVTC (206)	3,120,184	15,147	2,209	14.6
Honor Camps (112)	986,311	8,806	***	***
SRDC (124)	2,826,381	22,793	***	***

¹Average daily population.

²Includes estimated costs of food, clothing, supplies and health care.

*** Not calculated because populations do not fluctuate significantly.

Source: FY 1985 budget submission of each institution

isolate the variable operating costs; that is, those costs which depend upon and fluctuate with the institutional population level. Costs of food, clothing, supplies and health care typically accounted for 13 to 16 percent of total operating costs in FY 1983, meaning that the bulk of operating expenditures are fixed, at least within a fairly broad band. Staff, utility and other costs within the fixed category do respond to major changes in population but they tend to be more gradual, unless associated with new capacity additions.

Cost is an important but not the only determining factor in an assessment of capacity expansion. Honor camps are among the most attractive ways to add beds, considering their relatively low capital and operating costs. But the potential for adding low cost, honor camp beds is limited by the expected number of inmates suitable for placement in that type of facility, as well as the work available at state parks. At the other extreme, it is important not to overbuild medium and maximum security facilities, because they are very expensive to construct. Their high capital cost is somewhat offset by comparatively low per capita operating outlays, but operating statistics can be misleading when occupancy rates are closer to maximum capacity than optimum capacity. To illustrate, the average cost of incarcerating an inmate at KSP would have been approximately \$11,200 in FY 1983 had the facility been operating with optimum population levels, rather than the actual cost per ADP of \$9,095. This "savings" is a false economy because the higher the

population goes beyond optimum, the greater the pressure for making costly expansions to capacity.

Any capacity expansion must consider the composition of the expected increase in population, with two of the most important characteristics being the male/female split and custody classification distribution.

The prison population is overwhelmingly male--the November 30, 1983 population was 3,458 males to 201 females--but the rate of increase in the female population has been higher than that of males over the past five years. Between July 1978 and November 1983 the number of male inmates rose by 55 percent and female inmates, by 90 percent. If this rate of increase continues, the state soon will have serious problems in accommodating female inmates. When all males are transferred from KCIL and the current renovation project completed, maximum capacity at KCIL will still be only 169. Combining the KCIL capacity with the 40 beds assigned to females at KCVTC and the 6 beds at Wichita Work Release places the total maximum capacity for females in the summer of 1984 at 215. The November 1983 population was only fourteen under this level. Inadequacy of facilities for female inmates is a major reason for the proposed KCIL project which involves construction of a new food service facility followed by renovation of the vacated space into a housing unit.

The department's population projections do not disaggregate the population by custody classification, but if the current profile is maintained as the population grows, the distribution will fall in the following ranges: minimum 35-40%; medium 25-30%; close, 19-20%; and maximum, 10-15%. Existing capacity distribution is 30% minimum/70% close, under optimum capacity; and 26% minimum/74% close, under maximum capacity. Capacity distributions do not, by the department's definition, include maximum custody space, but including it would add 237 beds to the total count. Expansion projects underway, especially the medium security project at KSP, will affect the distribution by custody class. Nonetheless, the data suggest expansion in the minimum security class, partly because there already is something of a deficiency in that category and partly because it appears that at least one-third of additional inmates will have minimum security custody classifications. The emergency capacity package for the summer of 1984, as well as the honor camps proposed for FY 1985 and FY 1986 are consistent with this view.

Beyond these initiatives, the most appropriate way to expand capacity, if deemed necessary, becomes less clear. If population trends continue, another crisis period will emerge beginning in 1987 and responding solely with minimum custody facilities is less attractive. Minimum custody facilities tend to be smaller than other facilities and more dependent upon fully occupying inmate time with work or education programs. Although not completely quantified, there are program limits to the number of honor camps, work release and pre-release centers and vocational

training facilities which can be successfully operated. Defining those limits is even more of a problem when populations are not stable and needs become subject to wide swings within fairly short spans of time. An even greater disadvantage is the fact that minimum security facilities seem to offer less in the way of capacity flexibility, which makes them less of a hedge against population projections that prove too low. It may not even be desirable to siphon all minimum custody inmates out of the larger institutions, because inmates remaining at those institutions might become appreciably more difficult to manage. For these reasons, an array of small minimum custody facilities may be too piecemeal to comprise an adequate response to the situation expected later in the decade.

These considerations, together with the fact that a single large institution more effectively dramatizes the scale of the problem, formed the basis of including the other major expansion alternative--a new prison--in the five-year capital improvements plan. The principal drawback of constructing a large new prison obviously is its cost, especially if population projections prove to be too high. The estimated cost of building a new facility ranges between \$60,000 and \$80,000 per bed depending on a number of variables. The amount used in the capital improvements plan split the difference at \$70,000, producing a total estimated cost for a 500 bed facility of \$35 million. Again, the estimate is to establish the range and not to fix an amount for a particular project. The cost of the project ultimately would depend upon the size and type of facility constructed.

Clearly the state does not want to make an investment of this size then find itself in a position where the facility could not be fully utilized if populations begin to dip downward. If it is not possible to improve our ability to foresee or control future events, the next best approach is to minimize the consequences of being wrong. To do this, priorities for replacing capacity also should be considered. If populations decline subsequent to construction of a new facility, the decline in utilization should not occur at the new facility but at those facilities which are only marginally functional because of their physical condition, outdated purpose or inadequacy in meeting management objectives.

An agenda for reviewing capacity replacement needs should be drawn around two central themes, the condition of physical plant and the appropriateness of existing space configuration to management objectives and needs of the population. Physical condition of facilities is an important consideration at SRDC, where the facility is deteriorating but no renovation has been scheduled, and at KSP, where renovation is in progress but not complete. The current schedule at KSP calls for renovation of A Cellhouse last because of skepticism that it be renovated at all rather than retired from use. Regarding reconfigured capacity, the two most immediate issues relate to adequate accommodation of female inmates, both with space and with programs, and to

provision of care and treatment to mentally ill inmates. In the latter case, a new facility proposal might be combined with a centralized reception and diagnostic function, if the state decides to continue with that practice.

Almost any proposal to expand medium or maximum security capacity would necessitate construction of a new facility. A possible exception would be the conversion of an existing state hospital--Norton State Hospital is the candidate usually mentioned--for use as a women's correctional institution. Conversions to medium or maximum facilities for men would require such high security-related investments as to render them impractical compared to new construction.

Reducing Demand for Capacity

In its role of incarcerating felons, state government occupies a position comparable to that of a public utility. It provides a monopoly service, demand for which it cannot control but which it is obligated to meet. If that demand becomes excessive in the costs it generates, however, the state has a major advantage in being able to reassess and recast the function of incarceration in the criminal justice system. This is so because state government, more than any other entity, is responsible for setting the terms of the structure, functioning and interactions of all of the disparate segments of the criminal justice system.

As a policy setter, state government has fundamental responsibilities to protect the public safety and to promote societal stability by deterring and punishing anti-social behavior. The most effective means of meeting these responsibilities has been debated intensely for years and probably never will be settled. It does seem likely that incarceration will continue as an important part, but never the complete answer to the way society handles those guilty of criminal offenses. If incarceration becomes too expensive compared to competing demands for public resources, then the rest of the criminal justice system can be reviewed for ways in which to reduce overall demands for prison capacity. The objective in this search cannot simply be one of stopping growth in the prison system, but one which considers whether we can continue to meet the broad public purpose by a more prioritized, efficient use of prison resources.

A major difficulty in making this assessment is that incarceration serves several purposes which sometimes run counter to one another. The four functions of prisons generally are identified as: deterrence of criminal activity, through the threat of deprivation of liberty; protection of public safety, through incapacitating persons who would otherwise be committing crimes; rehabilitation, through provision of educational, training and other support and "correctional" services; and, retribution, or punishment for wrongs done to society. There is

considerable disagreement about the effectiveness of prison in performing any of these functions, but the theoretical weighting one gives each of them can yield very different results in opinions about how incarceration should be used. An emphasis on protecting public safety, either through incapacitation or rehabilitation, would produce different utilization patterns, for example, than would an emphasis on retribution or "just desserts." Given the fact that it is not possible to maximize all objectives simultaneously, it would be helpful to reach a consensus about priority of purpose. Otherwise, there will be no common ground on which to evaluate alternatives.

With these considerations as a preliminary, the criminal justice system segments and decision points affecting prison population are recapped below, together with a general ranking of the state's potential for influencing them. Clearly, the greatest areas of influence are in defining crime and in setting

<u>System Segment</u>	<u>Potential for State Influence</u>
Criminal activity definition, classification	High
incidence	Low
Arrest, crime clearance rates	Low
Prosecution	Low
Conviction	Low
Sentencing penalties/options practices	High
probation	Moderate
community corrections	Moderate
incarceration	High
Parole	High

penalties, including the amount of time spent in prison. From either a practical or a theoretical standpoint, revising the definition of criminal activity in order to control prison population size makes little sense. Greater and more reasonable potential exists in standardizing the use of prison as a penalty for criminal behavior, with the objective of rationing, either with or without explicit limits, available prison space. There are two basic approaches to doing this, including sentencing revisions to restrict prison entry and/or length of stay, and revisions to parole practices to accelerate the exit rate.

In Kansas, as in most other jurisdictions, the length of time an offender is incarcerated is a distributed decision. Under most circumstances the sentencing judge decides whether a convicted felon is sent to prison. The judge also sets the sentence range. It can be as wide as 1 to 5 years, 2 to 10 years, 3 to 20 years or 5 years to life, depending on felony class. If sentences for multiple offenses are imposed consecutively, ranges can be even wider. Also, it is important

to recall that minimum time to be served is less than the minimum sentence, due to good time credit potential, which also adds to the range spread. Once the basic conditions are set by the judge, however, and once the offender achieves parole eligibility, the decision to terminate confinement is made by the Kansas Adult Authority.

One of the effects of indeterminate sentencing structures and the discretion vested first with judges, then parole authorities, is the lack of uniformity among those who are sentenced to prison and/or in the length of time served for comparable offenses. Sentencing disparity raises issues independent of effects on prison population size, but in that regard the concern focuses on those offenders at the margins of the prison/no prison decision and the parole/pass decision. A minority of all persons under corrections supervision at any given time--probation, prison or parole--are in prison. Reducing the percentage in prison from 25 percent of the total to 20 percent could, as an example, arguably be achieved by standardizing aspects of either sentence or parole practices while staying inside the boundaries of currently acceptable policy.

On the sentencing side there are several basic options, some of which have numerous variations. Types of alternatives include sentencing guidelines, presumptive sentencing, or reduction of sentence ranges for selected felony classes or offenses. Less direct methods of affecting sentencing changes are also available, such as encouraging probation by increasing court service staffing capability or expanding community corrections.

Establishment of sentencing guidelines is frequently advocated as a method of both reducing sentencing disparity and controlling the size of prison populations. Sentencing guidelines have been developed in several states, but Minnesota is the only state where prison capacity is introduced as an explicit consideration in drawing what is referred to as a "sentencing grid" that displays sentencing instructions to judges. The Minnesota grid, presented in Table 4.7, was created by a sentencing guidelines commission and itemizes penalties according to severity of offense and criminal history of the offender. The heavy black line on the grid is the demarcation between prison and non-prison sentences. Recommended sentences are given for each cell of the grid, but judges may sentence within the italicized ranges and still be in compliance with the guidelines. Deviation from the guidelines is possible but judges must explain in writing their reasons for doing so. The grid was developed only after extensive analysis of sentencing patterns and consideration of the effects of sentencing combinations on prison population.

An approach less ambitious than a complete overhaul of sentencing policy would be to reduce the use of imprisonment to penalize certain types of offenders. From the standpoint of

Table 4.7 Minnesota Sentencing Guidelines Grid

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with nonimprisonment felony sentences are subject to jail time according to law.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVELS OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	13	15	17	19 18-20
Theft Related Crimes (\$250-\$2500) Aggravated Forgery (\$250-\$2500)	II	12*	12*	13	15	17	19	21 20-22
Theft Crimes (\$250-\$2500)	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential Burglary Theft Crimes (over \$2500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Residential Burglary Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Assault, 2nd Degree	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Criminal Sexual Conduct, 1st Degree Assault, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3rd Degree Murder, 2nd Degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree (with intent)	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*one year and one day

(Rev. Eff. 8/1/81; 11/1/83)

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controlling prison populations, this is a short-cut route because any sentencing change aimed at relieving crowding will, sooner or later, propose reduced imprisonment of a targeted group of offenders. Presumably this target group will be composed largely of non-violent offenders who do not have extensive criminal histories. In fact, there already is a close equivalent of this group in the community corrections definition of chargeback offenders, that is, those persons convicted of non-violent D and E felonies who have no more than one prior conviction. On September 28, 1983 there were 871 inmates fitting this description, or nearly one-quarter of the Kansas prison population.

Curtailing the number of these offenders in prison could be achieved in several ways. Provisions of HB 3104 increasing minimum sentences for D and E offenders could be reversed, as could the provision eliminating the possibility of early parole. Presumptive probation could be established as the appropriate sentence for offenders meeting the chargeback definition, with incarceration as an option when accompanied by a written explanation by the judge. Community corrections could be expanded to more counties, thus giving more judges the extra option beyond straight probation or prison; although in this case the potential diminishes as fewer urban counties remain outside the program.

Prison term guidelines can be approached from the exit end as well, through establishment of parole guidelines. Although 16 paroling jurisdictions use some kind of guidelines in making release decisions, here again the practice normally is independent of prison population considerations. An exception exists in Iowa, where a risk assessment system was developed to help accelerate releases in response to prison overcrowding. Some states have placed caps on their prison populations and authorized emergency powers for early release of inmates. An example is Michigan, with its emergency overcrowding act. Under terms of the act, parole eligibility dates are advanced by 90 days if prison population exceeds 100 percent of capacity for a 30 day period.

If the idea is accepted that prison space is a scarce resource and legitimately subject to prioritization of use, the preferred way of setting those priorities will depend on both theoretical and practical considerations. An emphasis on prison as punishment would be achieved through adoption of sentencing guidelines, whereby an offender would pay his or her debt to society, then be released. Prison would be reserved for those guilty of more serious offenses, with the sentence length being proportionate to the severity of the crime and the criminal history of the offender. Time served for an offense would in no way depend on judgments about future behavior of the inmate.

A practical reservation about sentencing guidelines exists. An attempt to implement them or any change which reduces the use

of incarceration, carries the risk that sentences will be increased overall, rather than decreased. If the issue is raised, but the idea of using prison capacity as a constraint is rejected, there is a strong possibility that sentencing uniformity would be achieved by averaging sentence lengths up, not down. If harsher sentences are not accompanied by an expansion in capacity, then the crowding problem is only worsened.

Parole guidelines would, by definition, continue the use of indeterminate sentences and would reflect a greater weighting of the incapacitation function. Although not usually characterized in this way, the indeterminate sentence reflects a split whereby the minimum sentence is equivalent to punishment demanded by society for the crime committed and the release date is a judgment about when it is "safe" to return the inmate to society. Parole guidelines would create more uniformity in assessing risk of returning an inmate to society, as opposed to the uniformity of punishment created by sentencing guidelines. They would be easier to implement than sentencing guidelines because they could be adopted administratively as a decision-making tool. One of the primary disadvantages of parole guidelines, however, is that they do not address the prison/probation question.

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Chapter Four

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6. U.S. District Court for the District of Kansas, Consent Decree, Jonette E. Arney, et al, versus Robert F. Bennett, et al, May 2, 1980.
7. U.S. Department of Justice, Bureau of Justice Statistics, "Setting Prison Terms", August 1983.

SUMMARY OF FINDINGS

As is true for most other states, the prison population in Kansas has been increasing at a phenomenal rate. Between fiscal years 1977 and 1983 the average daily population of the Kansas corrections system increased by more than 50 percent without offsetting adjustments to capacity. Kansas correctional institutions, particularly Kansas State Penitentiary, Kansas State Industrial Reformatory and Kansas Correctional Institution at Lansing are affected by conditions of crowding that include double-celling of inmates, inmate idleness, declining staff to inmate ratios and heightened potential for violence and disruption.

Dynamics of prison population increases over the past several years are not fully understood or documented. Contributing factors in the FY 1981-1983 period appear to have been higher conviction rates and prolonged parole eligibility periods, perhaps due to imposition of longer minimum sentences by judges. Factors appearing more recently make it unlikely that population increases will abate in the near future. Enactment of HB 3104 by the 1982 Legislature increased minimum sentences for persons convicted of Class C, D and E felonies. Because the act applied to crimes committed after July 1, 1982 the full effect of the act on prison population size is not yet apparent.

Another trend which has emerged in recent months is a sharp decline in the number of paroles granted. Parole releases in the first four months of FY 1984 are down by 25 percent from the FY 1983 average. In part this is due to an increase in minimum sentence lengths but also reflects a reduction in rate of paroles granted by the Kansas Adult Authority. The combined effects of HB 3104 and changes in parole practices mean that incoming inmates will, on average, have to wait longer to achieve parole eligibility and once eligible, will be less likely to be granted parole. Unless modified the cumulative effect of these factors on prison population will be substantial and perhaps dramatic.

The state corrections system is approaching a crisis period in the summer of 1984 when it is projected that the number of inmates will exceed the maximum available capacity of the system to accommodate them. A proposal for expedited additions to capacity has been developed by the Department of Corrections in conjunction with the Department of Social and Rehabilitation Services. The proposal, which has been endorsed by Governor Carlin, would add 336 beds to the capacity of the corrections system by converting vacant buildings at Topeka and Winfield state hospitals to pre-release centers and by remodeling for housing purposes a recreation building at the penitentiary's Outside Dorm 2. The proposal also expands the SRS-operated State Security Hospital by 80 beds to increase the capacity of the hospital to treat and care for mentally ill inmates. All four projects are proposed to be complete in the summer of 1984.

Pressures on the corrections system will ease somewhat in January 1985, by which time capacity additions now under construction will be completed. Even with the capacity additions at the penitentiary and the reformatory, plus the projects proposed for the summer of 1984, the projected number of inmates will surpass by 20 percent or more the optimum capacity of the system for the indefinite future. At the beginning of 1985 the inmate population is expected to be 4041 compared to an optimum capacity of 3398 and a maximum available capacity of 4607.

By the end of 1987 the projected population will again reach maximum available capacity of the system, even assuming implementation of modest capacity additions prior to that time. Current trends compel consideration of responses to the growing imbalance expected between population and capacity. The two major strategies available are further additions to capacity or actions to reduce the demand for incarceration. The latter is possible because state government is not only responsible for providing corrections services but also for setting major policies affecting the criminal justice system. Capacity expansion alternatives are embodied by construction of expensive new facilities--a 500 bed prison is estimated to cost at least \$35 million--while alternatives for reducing demand for incarceration focus mainly on sentencing revisions, and to a lesser extent, parole or release policies.

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