

M I N U T E S

SPECIAL COMMITTEE ON CORRECTIONAL INSTITUTIONS

September 11, 1975

Senator Winter presided. Other members in attendance included Representatives Burgess, Hayden, Jones, Reeves and Sutter and Senators Meyers and Mulich.

Staff members included John Schott and Carl Tramel from the Legislative Research Department and Bill Edds of the Revisor of Statutes Office.

Conferees

Mr. Robert Raines, Secretary, Department of Corrections
Mr. John Hazelet, Department of Corrections
Mr. Dick Davis, Department of Corrections
Mr. Wayne Kelpin, Department of Corrections
Mr. John Greening, Touche-Ross and Company
Mr. Bernard Dunn, Department of Corrections

Department of Corrections

Mr. Raines began the presentation by explaining to the Committee the administrative organizational chart of the Department of Corrections. (See Attachment No. 1). Mr. Raines noted that the Management Services Section of the Department is the most overworked and understaffed and also that the Department is considering the establishment of a central purchasing operation for the various institutions in the Department of Corrections.

In responding to questions from the Committee, Mr. Raines noted that intensive parole is a more supervised type of parole than is normally given and that an inmate must be designated as needing such a program before he receives it. The pre-release program is conducted at the various institutions for inmates who are to be released, and involves examination and discussion of problems they will face outside the institution.

The Committee then discussed the honor camp situation. Mr. Raines explained that the Department is considering the establishment of a "super-camp" at Toronto, which would be properly equipped and would have an extensive inmate program and counseling operation. If such a camp were to be successful, the Department could proceed with the establishment of additional camps as needed. In responding to a complaint voiced at KSIR concerning the fact that inmates feel the Adult Authority does not look favorably upon those prisoners who have attended the honor camps, Mr. Raines indicated he has discussed this problem with the appropriate officials, and that such is not generally the case.

In discussing the various ramifications and problems which have developed relative to the required jail inspections conducted by the Department of Corrections, Mr. Raines indicated that if a jail is unable to meet the safety standards, it has the option of contracting for housing services from a nearby county until the situation is corrected. He also pointed out that in several instances city and county law enforcement officials have combined their resources to establish a joint city-county jail facility, which he felt was an appropriate move from both a law enforcement and economic viewpoint.

The Committee discussed at length the expungement of criminal records in Kansas. Mr. Raines explained to the Committee that while Kansas is required to expunge certain criminal records, the federal, local and other authorities who have similar records do not necessarily expunge their records, thus creating a conflict for a person who would have no criminal record at state level but could have a record at federal and local levels.

In response to a direct question from the Chairman, the Topeka central office staff includes the following: Probation and Parole, 7; Operation, 5; Institutions, 7; Management services, 3; Administrative services, 1; Personnel, 3; and Research, 6.

Three of the six research positions are supported by grant funds, and in the Division of Probation and Parole, 50 employees serve in the capacity of parole officers.

In responding to a question concerning budgeting, Mr. Raines explained that their current budget for FY 1976 is approximately \$20.4 million. He informed the Committee that he would be requesting one additional position in the central office as well as funds for making the three research positions on the grant permanent department positions.

In response to a question from the Chairman, Mr. Raines indicated that he felt the existing central staff was adequate for administrative control of the institutions. While Mr. Raines believed that certain areas might need additional emphasis, he was not anticipating any significant reorganization until the Touche-Ross study of Kansas correctional needs has been completed.

Following limited discussion the Committee turned its attention to the correctional needs survey which is to be conducted by Touche-Ross. Mr. Raines explained the procedure through which Touche-Ross was selected. The Department of Corrections requested bids for the survey through the central purchasing office of the Department of Administration, with specifications as to what the Department was looking for in such a study. A pre-bid conference was held with all those who might possibly be interested in bidding for the project, and four organizations submitted bids, including American Justice Institute, Midwest Research Institute, National Clearing House for Criminal Justice Planning and Architecture and Touch-Ross. Of the four bids submitted, the bid from Touche-Ross was the lowest with \$109,000.

In response to questions from the Committee as to what the legislature would expect from their activities, Mr. John Greening, the Touche-Ross project manager explained that the work product of the study will be a document type booklet which will make recommendations in four areas, including facility planning, institutional programming, field services and management operations. Mr. Greening indicated that the survey results and recommendations would serve as a working document over the next eight years, and will allow the Department of Corrections to plan appropriately and to determine and achieve specific goals in the area of corrections. In order to keep the program current, Mr. Greening indicated that the survey will need updating from time to time.

He was unable to give any specific answers as to whether or not substantial statutory changes will be required in order to implement the program. He stated that an initial preliminary report concerning the project would be available December 1, 1975, and that the final document would be available by the 1976 Legislative Session. Mr. Greening emphasized that the development of a comprehensive corrections program for Kansas will involve as many people in Kansas corrections as possible, that the philosophical differences in the area of corrections would be debated and alternative plans of action established, and that the final product of Touche-Ross will be a plan that will be useful and effective for Kansas corrections.

Following Mr. Greening's presentation, the Committee adjourned for lunch.

Afternoon Session

During the afternoon session Mr. Raines and the staff attorney for the Department of Corrections, Mr. Bernard Dunn, discussed at length with the Committee the proposed correction legislation for 1976. (See Attachment No. 2). As a result of extensive Committee discussion, the Revisor's office was asked to prepare legislation relative to items 3, 5 and 6. Two items which received

considerable Committee attention were item number 4, relating to restitution of inmates who have committed property offenses and who are included in a work-release program, and item number 20, concerning the sentencing structure and computation of sentences. The Chairman indicated that perhaps the question of restitution of inmates for property offenses could be taken up during the next legislative interim period. The sentencing structure and computation system, along with the other statutory requests made of the Revisor of Statutes Office, will be discussed at the next meeting of the Committee in October.

In response to a question from the Chairman, Mr. Raines indicated that name changes of several institutions would be appropriate. Mr. Raines was requested to have those name changes prepared by the next Committee meeting.

It was the decision of the Committee that the October meeting should be a two-day meeting in order to have ample time to discuss proposed legislation and to prepare the final report of the Committee. As a result, the Committee will meet on October 9 and 10 beginning at 9:30 a.m. each day. At that time the Department will hear the final legislative proposals from the Department of Corrections, review the legislation drafted by the Revisor's Office, and will review an institution outline to be prepared by the Research Department to assist the Committee in the preparation of its final report.

There being no further business the meeting was adjourned.

Prepared by John Schott

Approved by Committee on:

10-9-75

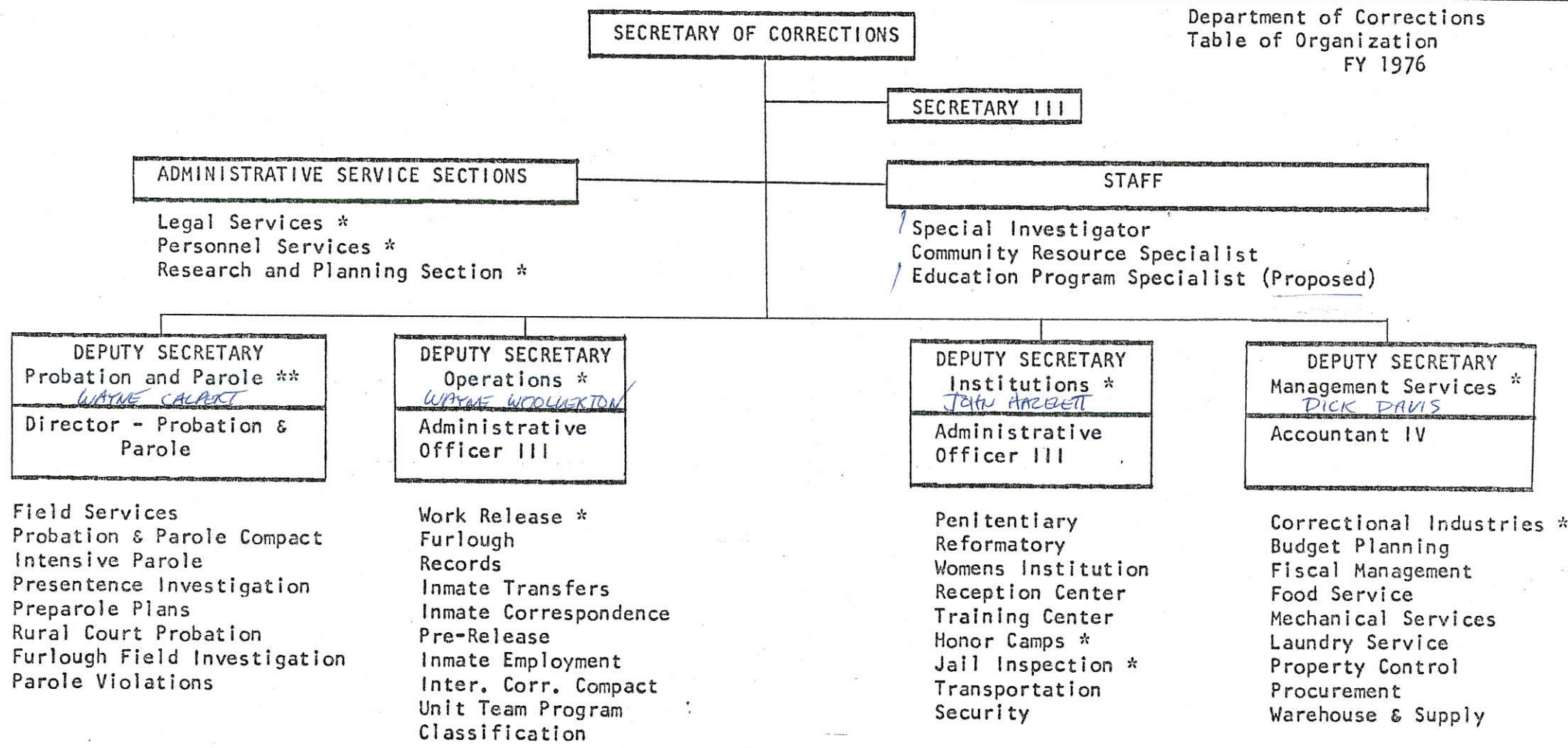
Date

EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

ATTACHMENT #1

Department of Corrections
Table of Organization
FY 1976

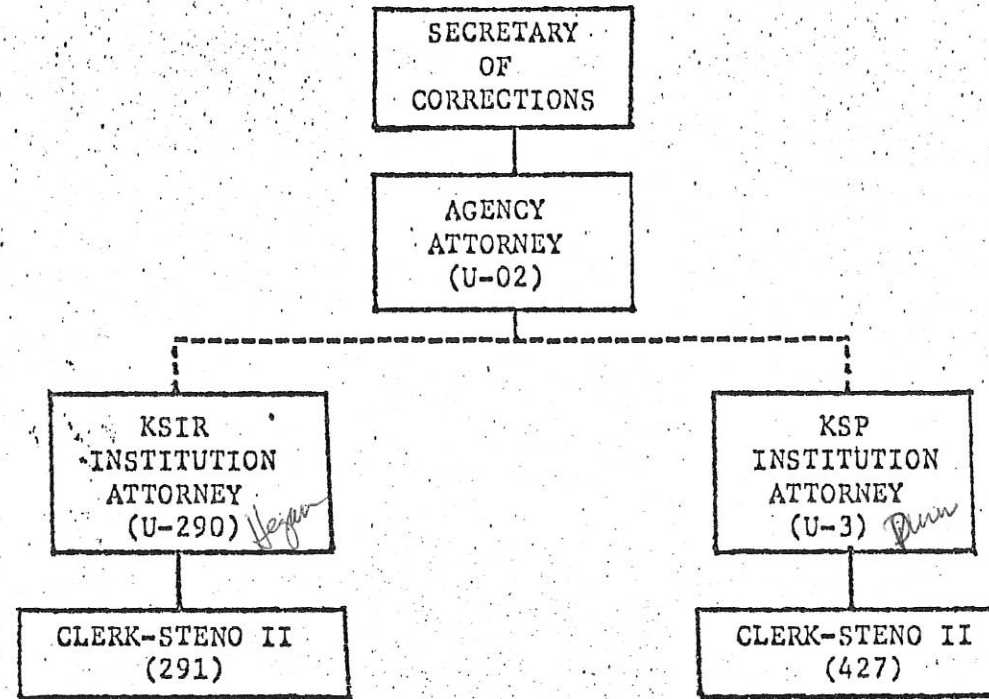


* See following Table of Organization
**See Activity #3 for Table of Organization

EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

Department of Corrections
Legal Services
Table of Organization
Fiscal Year 1976



-----Denotes joint supervision with Directors of Institutions

EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	4	Administration

RESPONSIBILITIES:

- Departmental Personnel Management
- Manpower Information Systems
- Institutional Personnel Staffs
- Labor Relations
- Personnel Policies and Standards
- Personnel Actions
- Personnel Program Evaluations
- Manpower Planning
- Personnel Training Programs
- Morale

Department of Corrections
Personnel Services
Table of Organization
FISCAL YEAR 1976

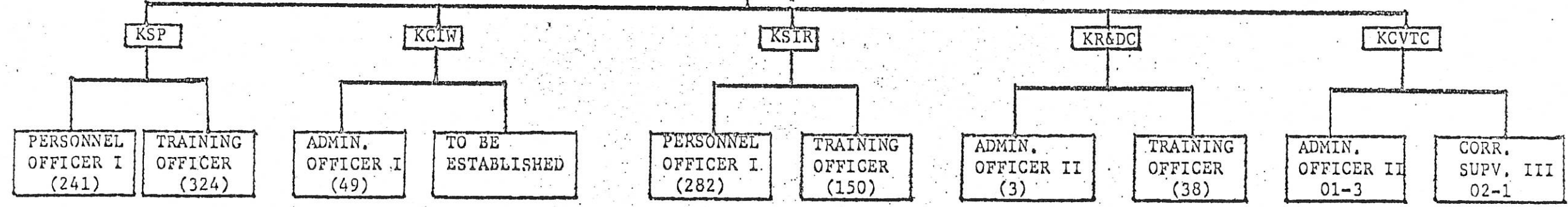
SECRETARY OF CORRECTIONS

PERSONNEL SERVICES
PERSONNEL OFFICER III (8)

PERSONNEL OFFICER II (18)

SECRETARY I (10)

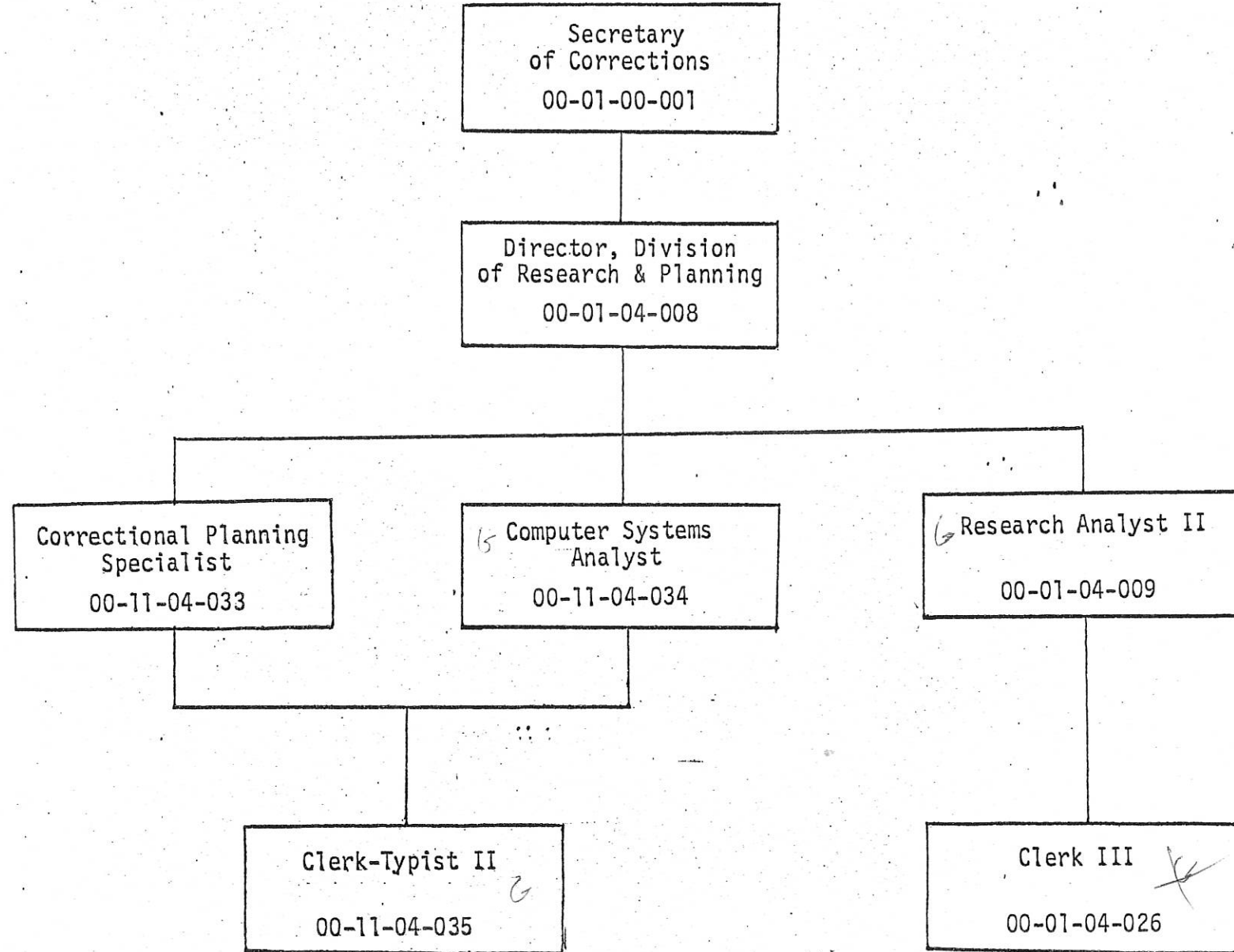
- Central Offices
- Correctional Industries
- Honor Camps
- Field Services
- Citizen Advisory Board
- Work Release Centers



-----Denotes joint supervision with Directors of Institutions
 - - - - -Denotes alternate authority as delegated

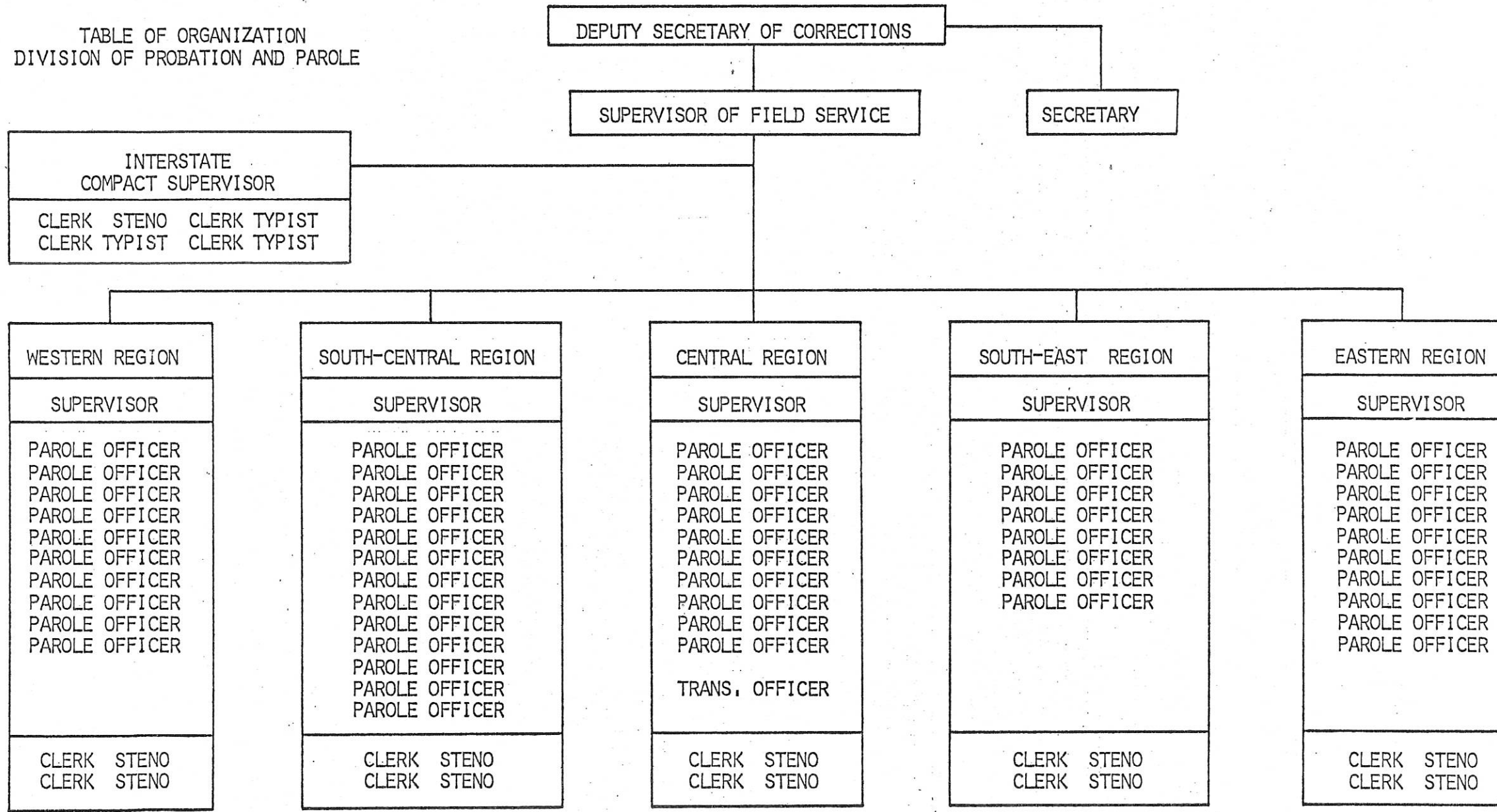
AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	Department of Corrections				

ORGANIZATIONAL CHART FOR THE DIVISION OF RESEARCH AND PLANNING

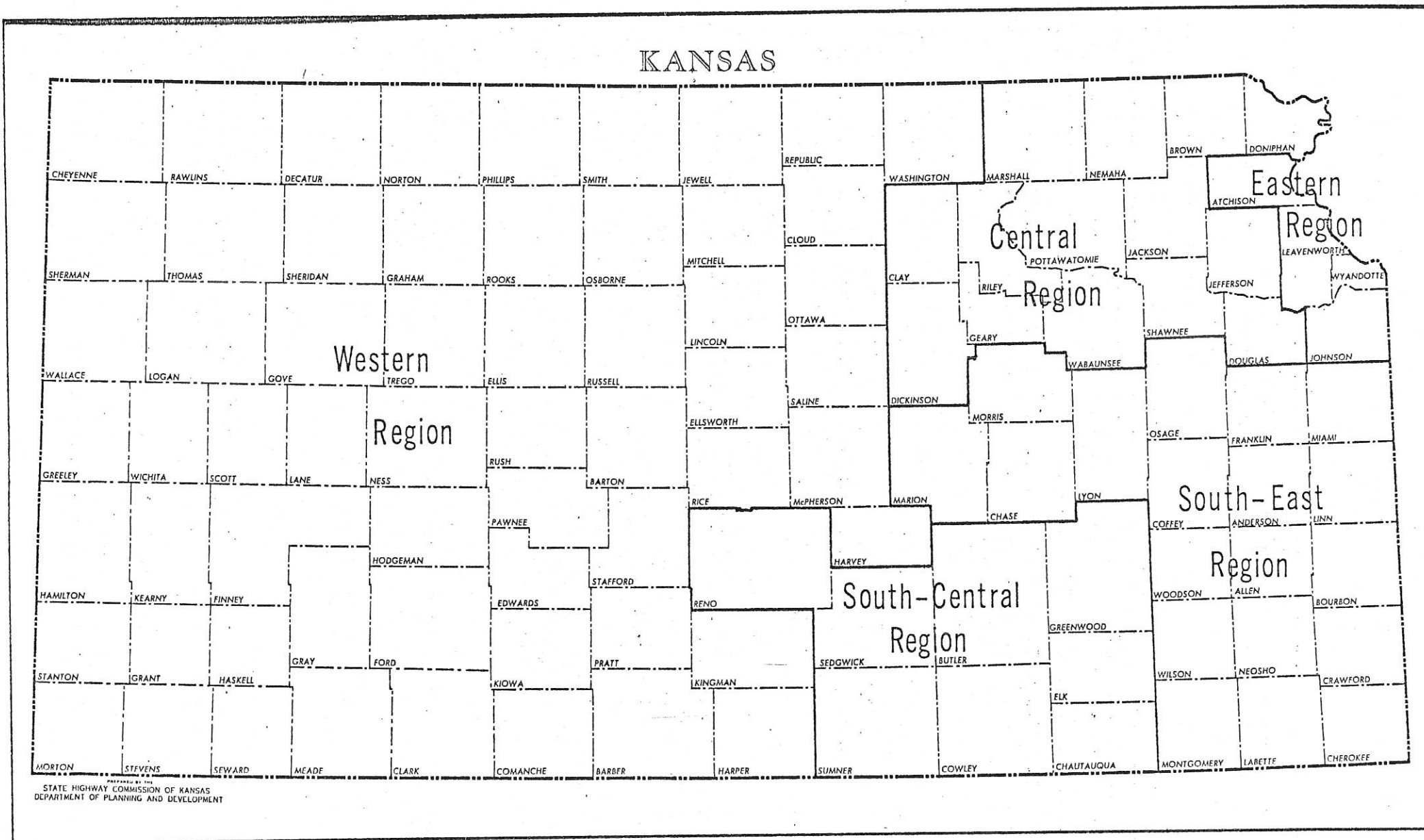


AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
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TABLE OF ORGANIZATION
DIVISION OF PROBATION AND PAROLE



AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
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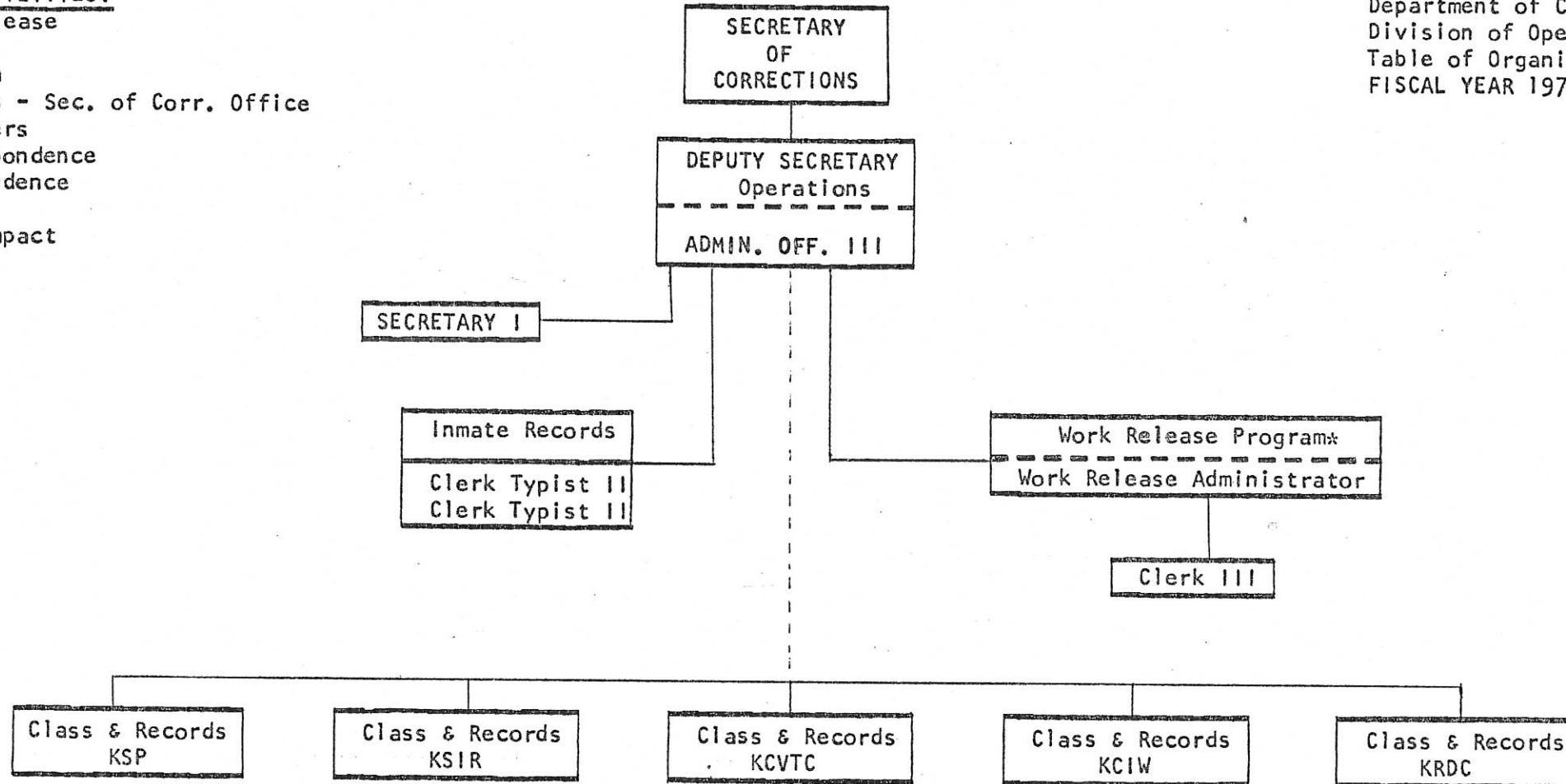
EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

DIV. RESPONSIBILITIES:

Work Study Release
Furloughs
Classification
Inmate Records - Sec. of Corr. Office
Inmate Transfers
Inmate Correspondence
Gen. Correspondence
Pre-Release
Interstate Compact

Department of Corrections
Division of Operations
Table of Organization
FISCAL YEAR 1976

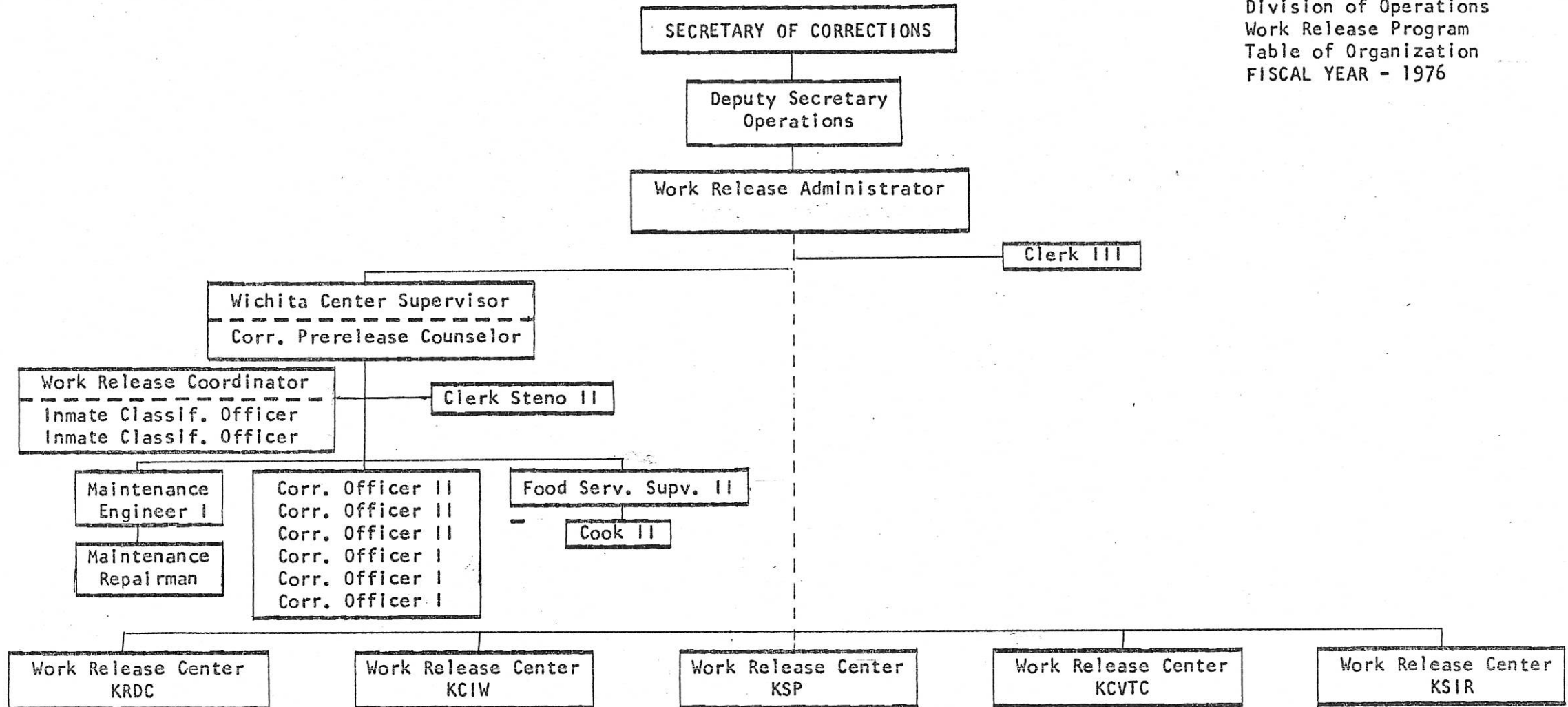


-----Denotes joint supervision with Directors of Institutions

* See following Table of Organization

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

Department of Corrections
Division of Operations
Work Release Program
Table of Organization
FISCAL YEAR - 1976



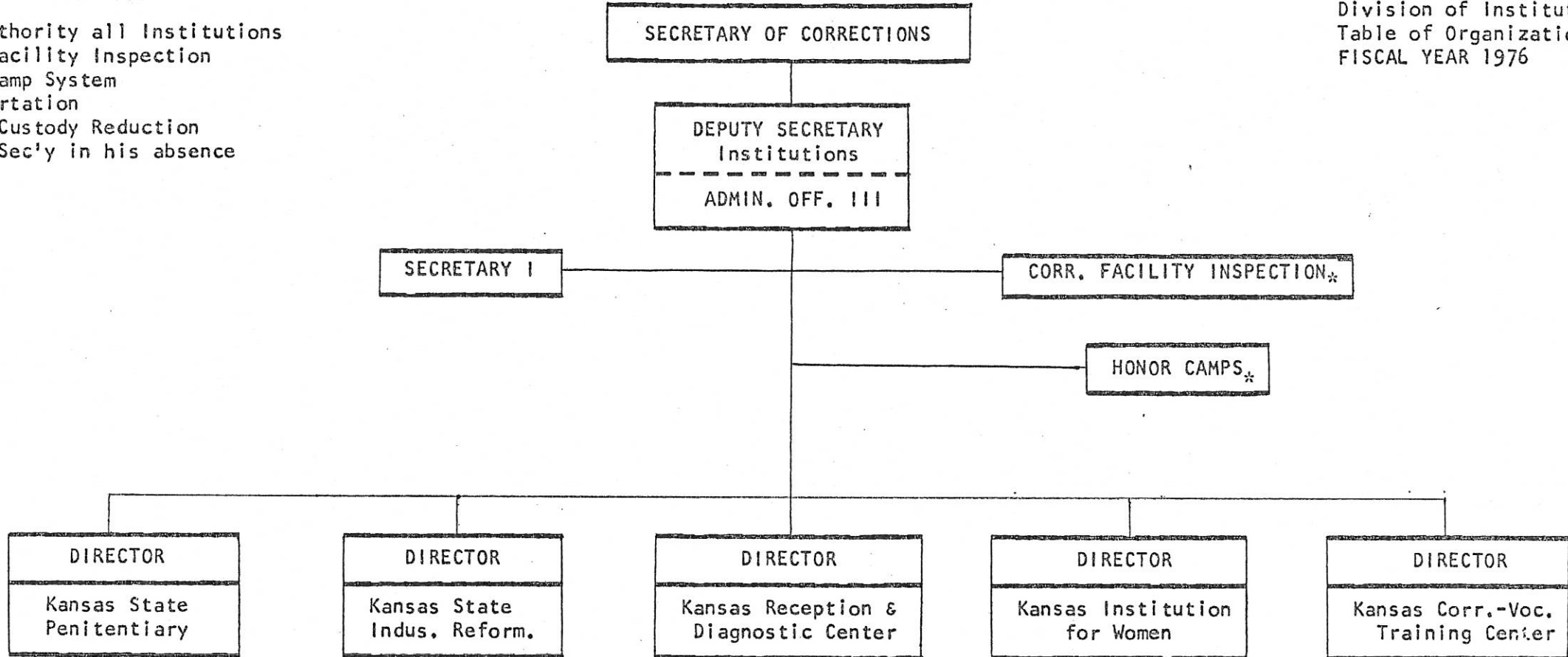
-----Denotes joint supervision with Directors of Institutions

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

DIV. RESPONSIBILITIES:

Line Authority all Institutions
 Corr. Facility Inspection
 Honor Camp System
 Transportation
 Inmate Custody Reduction
 Acting Sec'y in his absence

Department of Corrections
 Division of Institutions
 Table of Organization
 FISCAL YEAR 1976



*See following Table of Organization

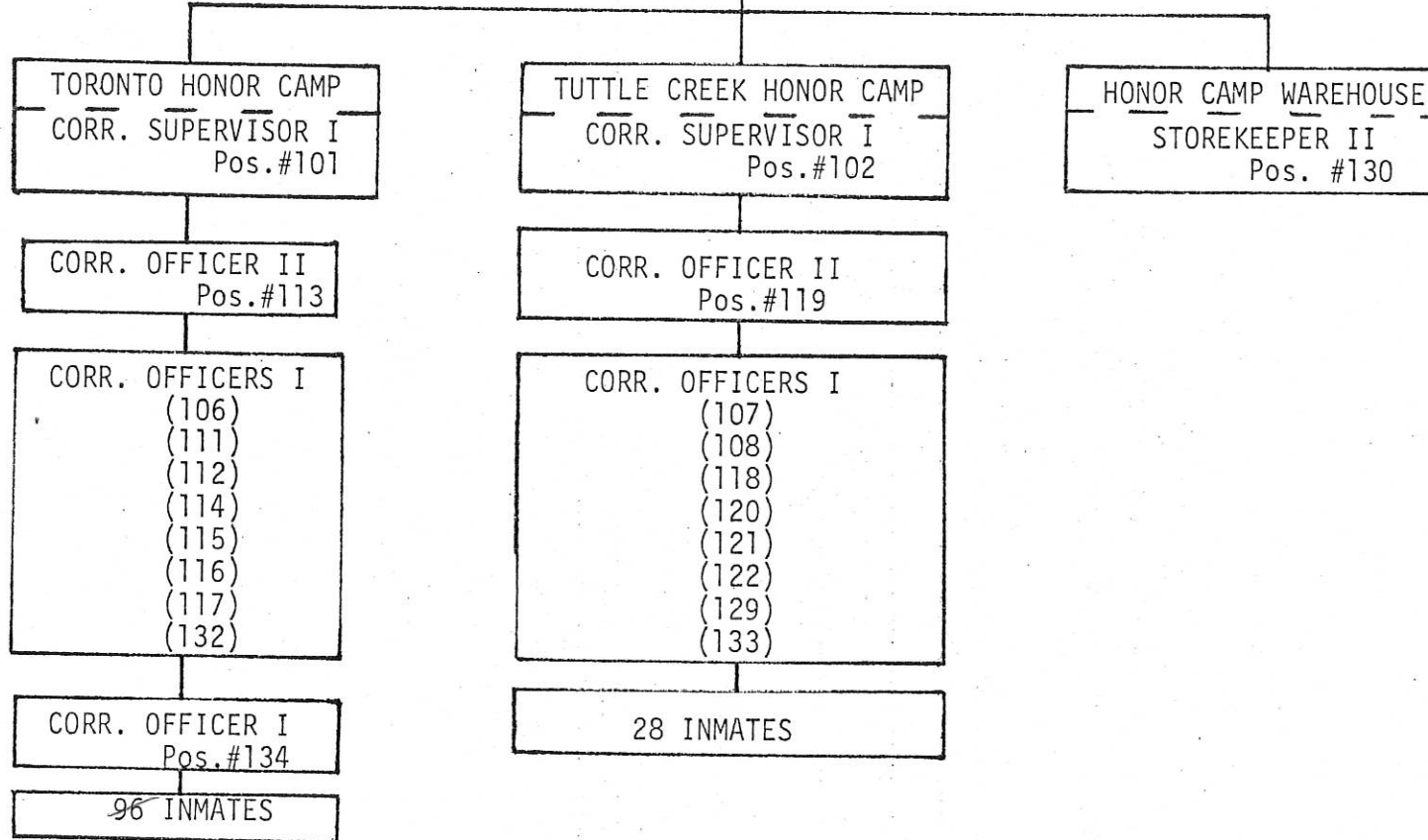
EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	Department of Corrections	4	Public Safety	02	Honor Camps

DIVISION OF INSTITUTIONS
 DEPUTY SECRETARY OF CORRECTIONS
 (Admin. Officer III) Pos.#15

DIRECTOR OF HONOR CAMPS
 (Corr. Supv. III) Pos.#100

Division of Institution - Honor Camps
 Honor Camp Program
 Table of Organization
 Fiscal Year - 1976

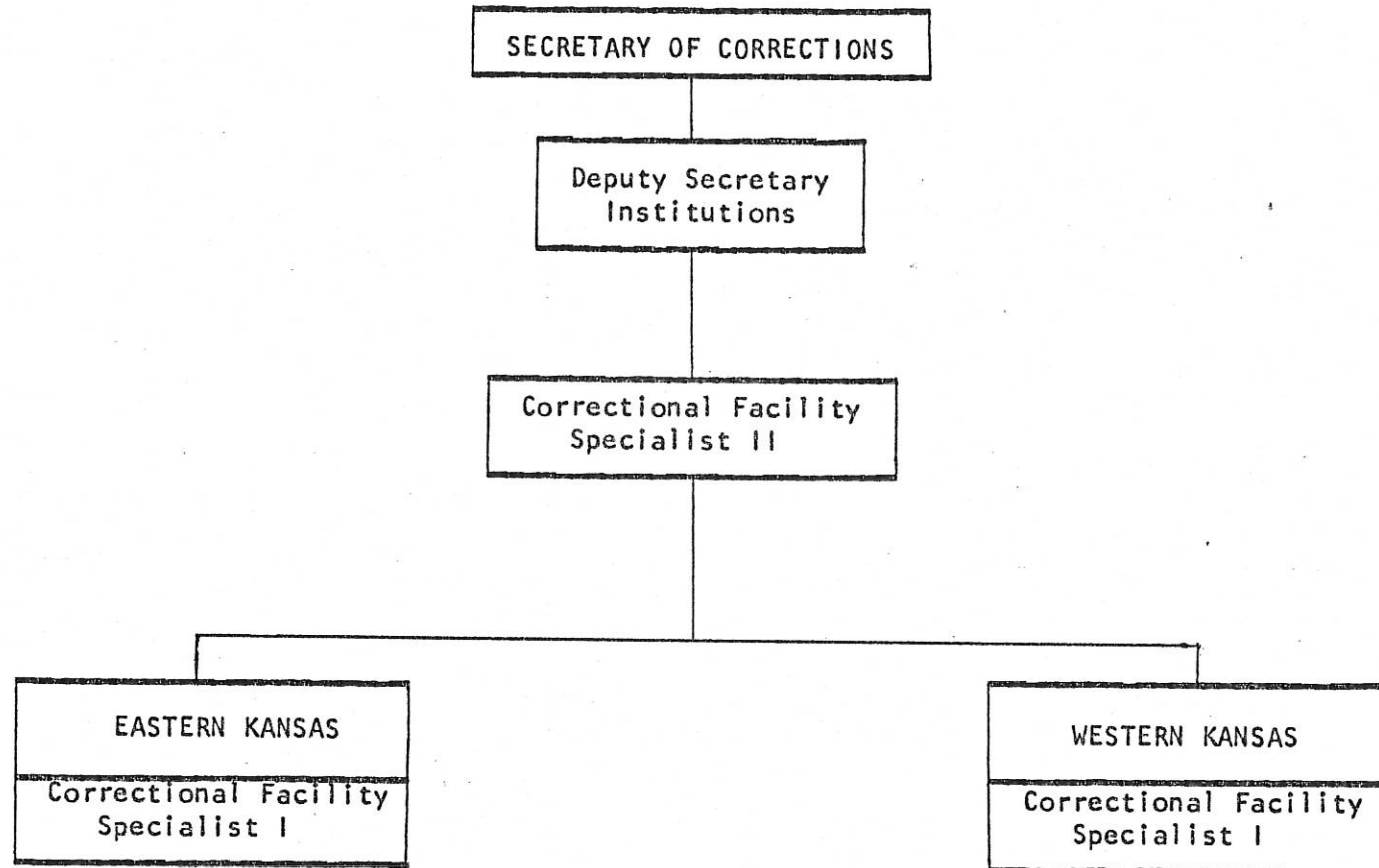


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EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

Department of Corrections
 Division of Institutions
 Correctional Facility Inspection
 TABLE OF ORGANIZATION
 FISCAL YEAR - 1976

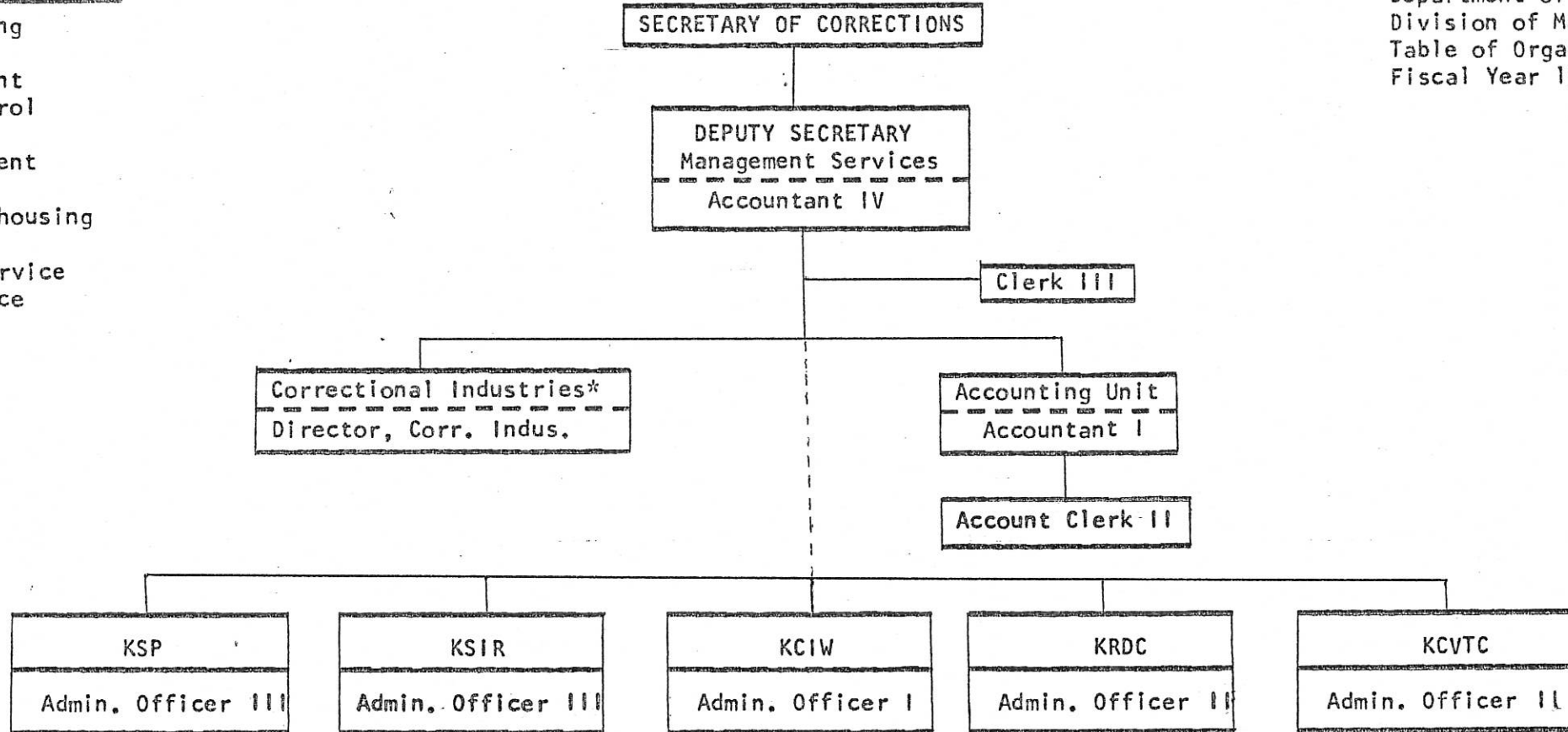


AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety	01	Administration

DIV. RESPONSIBILITIES:

- Budget Planning
- Procurement
- Fund Management
- Property Control
- Accounting
- Grant Management
- Payroll
- Supply & Warehousing
- Food Service
- Mechanical Service
- Laundry Service

Department of Corrections
Division of Management Services
Table of Organization
Fiscal Year 1976



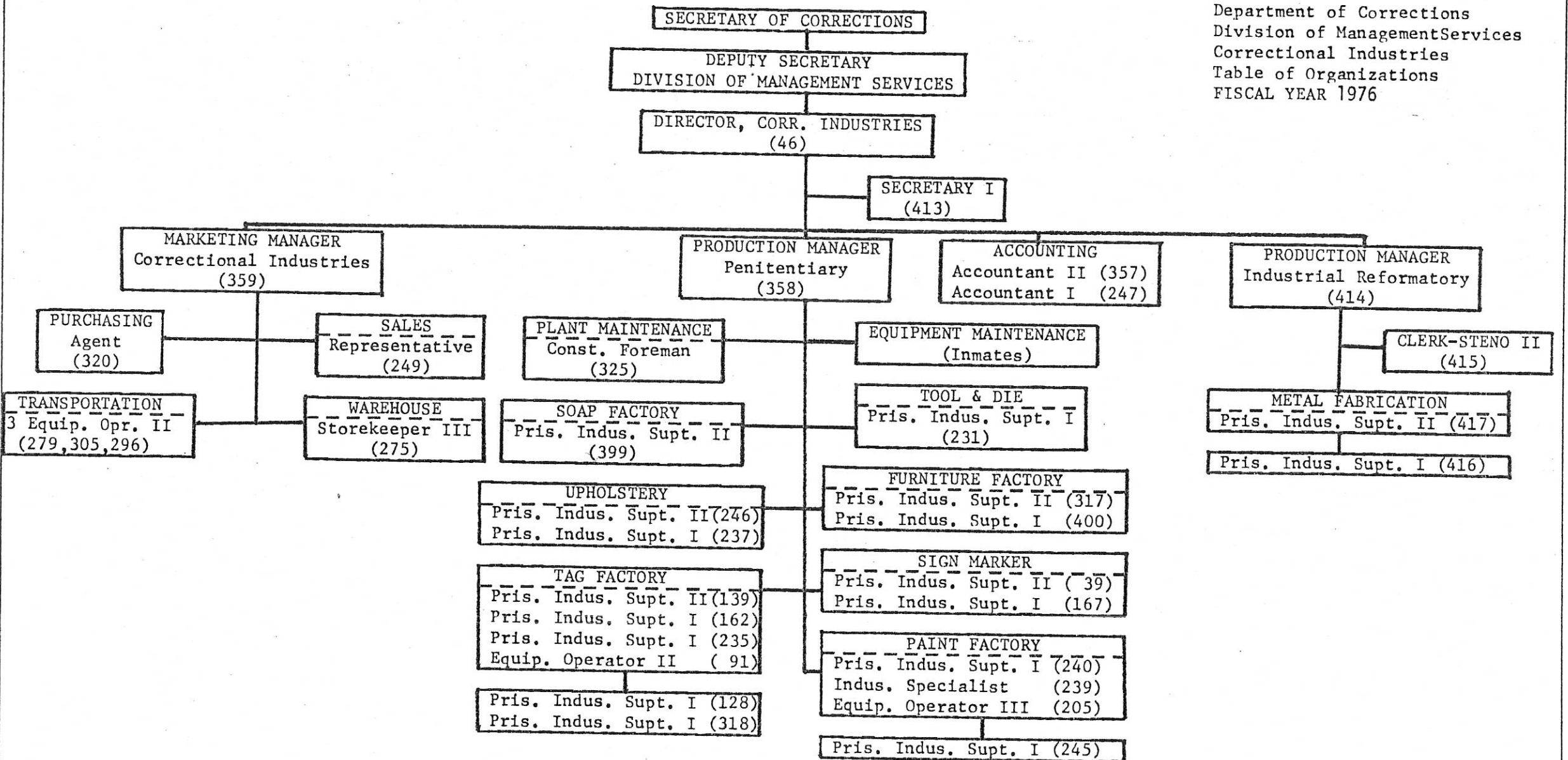
*See following organization table

---Denote joint supervision with Directors of Institutions

EXPLANATION AND JUSTIFICATION

AGENCY NO.	AGENCY NAME	FUNCTION NO.	FUNCTION NAME	ACTIVITY NO.	ACTIVITY NAME
521	DEPARTMENT OF CORRECTIONS	4	Public Safety		Kansas State Industries

Department of Corrections
Division of Management Services
Correctional Industries
Table of Organizations
FISCAL YEAR 1976



PROPOSED LEGISLATION 1976

1. As a result of the Morrissey and Scarpelli cases relating to parole and probation revocations respectively, some consideration must be given to reflecting the intentions of these decisions in the Kansas statutes. While we have proceeded under the dictates of Morrissey, KSA 75-5217 is silent concerning Morrissey. Further the District Court Judges of this state continue to operate as though the Scarpelli Decision was never handed down and have followed the language contained in KSA 22-3716. It is my opinion that a significant revision on these two statutes is in order.
2. Although the state's expungement and annulment statutes, KSA 21-4616 and 4617, are quite liberal and far reaching they do not specifically consider the individual's arrest record. Frequently the existence of such a record is tantamount to a conviction in the eyes of an employer and would have the same affect. Even though Attorney General Opinion #75-107 is extended to include arrest records, it is my belief that the language should be specific in this regard.
3. The statutes regarding the adoption issuance and publication of regulations of state agencies especially KSA 77-421a and 77-421 should be considered for possible changes. Under 77-415 (f) the statute exempts from publication regulations regarding the discipline and management of inmates. However, 77-421 and 77-421a require that even exempt regulations be formally adopted by the agency, that 15 days advance notice be given, that a hearing be held at which all those parties who are interested having been notified are allowed to appear on the regulations. Logical construction on this statute would require that the department and possibly have hearings for inmates to comment on regulations. While this interpretation has not in fact been placed on this statute it appears certainly to be a possibility under the wording of the statute and should be considered for possible clarification.
4. Restitution should be required of those inmates who have committed property offenses and who are on a work release program and gainful employment. Restitution should be made to the victim of the property offense.
5. The statutes in the criminal code should be clarified to show that misdemeanants are excluded from the jurisdiction of the Department of Corrections and specifically are excluded from the services of the Kansas Reception and Diagnostic Center. KSA 21-4603 and KSA 21-4604, among others statutes, used the general term crime, and thus leave open the possibility that not only felons but also misdemeanants under the jurisdiction of the Department of Corrections and especially that they could be sent to the Kansas Reception and Diagnostic Center for pre-sentence evaluations and other services. Misdemeanants should be excluded specifically in the statute.

6. The issue has been raised regarding the sending of female misdemeanants to a felony institution, namely Kansas Correctional Institution for Women. The contention is that while females who commit misdemeanors are sent to a felony institution, males who commit misdemeanors are incarcerated in county jails. It is argued that this causes an unconstitutional discrimination.
7. A specific exemption should be placed in the statute for parole officers who, as law enforcement officers are required under the motor pool statutes to drive 18,000 miles a year in order to require a state vehicle.
8. Statutory language should be provided for the processing of orders of courts which cause the release of inmates from prisons. The orders from the courts should be directed to the Secretary of Corrections at the office in Topeka. The Secretary of Corrections should then send a court production order to the institution based on the order received from the court.
9. It has been suggested that in criminal cases the judge of the district court should be required to acknowledge on the face of the journal entry that he has in fact read the journal entry and is aware of the contents thereof.
10. Senate Bill 510 of the 1975 Session should be re-introduced as to its provisions regarding the minimum sentence and good time allowances for life sentence basis. It has also been suggested that in conjunction with this provision the criminal code be amended to raise the sentence on 2nd degree murder to approximately 15 to 30 years with a maximum of life. The sentence for 2nd degree murder is now 5 to 15 minimum with a maximum of life.
11. Senate Bill 503 of the 1975 Legislature Session subsequently incorporated in House Bill 2618 amending the statute on traffic on contraband in the correctional institutions (KSA 21-3826) should be re-introduced for possible modification and passage.
12. Senate Bill 510 of the 1975 Legislature should be re-introduced as to all aspects which did not pass in the last session. Senate Bill 510 was referred for interim study.
13. Senate Bill 503 of the 1975 Legislature Session subsequently House Bill 2618 amending KSA 21-4201 regarding the use of weapons by correctional officers should be re-introduced.
14. Senate Bill 510 of the 1975 Legislature Session as it amends KSA 22-3718 defining the conditional release time computation should be re-introduced.
15. Senate Bill 503 subsequently House Bill 2618 as it amends 21-4610 concerning the conditions of probation in the promulgation of such conditions should be re-introduced.
16. Senate Bill 476 concerning the implementation of the jail standard enforcement should be considered for re-introduction in this session.

17. Remodel KSIR cellhouses to put hot water in cells - appropriation
18. Establish vocational training programs, and education courses, and volunteer programs at Honor Camps - appropriation (contracts for services)
19. Consider the expungement and annulment statutes for possible clarification or change.
20. The sentencing structure and computation system needs reconstruction
Pertinent references: KSA 21-4501 et seq.
KSA 21-4608, 21-4603
KSA 22-3716, 22-3717

R. S. 1923, 21-109 repealed in 1969 by L. 1969 Ch. 180 Old KSA 62-2245

Case: 1. 98 Kan 186 at 192 on 21-109
1. Case #28831

Re: KSA
21-4608

1. 13 March 1973 to W. C. Henry from Jack Williams (Vern Miller) re: 72 Supp. 21-4608 (1); 22-4401 Art. III (e), 22-3717 (4)
2. Opinion #70-21-1, 24 June 1970 re: 21-4608 (5)
3. Opinion #74-389, 16 December 1974 re: 70 Supp. 21-4614 73 Supp. 21-4614
4. 4 May 1970 to W. C. Henry from Frizzell re: 22-3717
5. #70-22 18 June 1970 re: 22-3717
6. #70-21-1 24 June 1970 re: K.S.A. 21-4608 (5)
7. #70-22-2 6 November 1970 re: 22-3717 (2) (a) 1969 Supp. 21-4608 Consecutive Sentence
8. 11 May 1972 to W. C. Henry re: 21-4603 from Vern Miller 62-2239
9. 3 June 1971 to W. C. Henry re: 21-4608 from Bill Honeyman Vern Miller
10. 8 July 1971 to W. C. Henry re: 21-4608 from Honeyman 22-3717 from Vern Miller
11. 7 September 1971 re: 21-4603 and 22-3717
12. 9 March 1973 to W. C. Henry from Vern Miller re: G.S. 1949 62-1512 and K.S.A. 21-4608
13. 11 April 1973 to W. C. Henry from Vern Miller re: K.S.A. 21-4608 and K.S.A. 62-1512
14. #74-257; K.S.A. 21-4603, 21-403
15. #74-389; K.S.A. 21-4614
16. #75-95; 21-4608 (5)
17. #75-121 (flat sentences) K.S.A. 21-450
18. #75-232 (16 month rule) 22-3717



KANSAS DEPARTMENT OF CORRECTIONS

INTERDEPARTMENTAL MEMORANDUM

TO: Bernard J. Dunn
Legal Counsel

DATE: December 23, 1974

SUBJECT: Intrepretation of 21-4608

FROM: Gary C. Hagan
KANSAS STATE INDUSTRIAL REFORMATORY

PROBLEM:

Above referenced statute apparently provides definitive consideration to cases where:

1. seperate sentences are imposed on the same date,
2. when record is silent on two or more sentences imposed at the same time, and
3. when a crime is committed while on parole or conditional release.

But in subsection (1) and subsection (2) do not give definitive treatment to situations where a person is sentenced at different times to sentences of varying length and the latter sentencing record is silent as to how to calculate those items included in subsection (3) of 21-4608 K.S.A. 1973 Supp.

The Records Section of this Institution has been summarily treating these as though subsection (1) would apply, which has the effect of running such sentences concurrently. It is my opinion, as outlined below, that such action is incorrect and, in fact, may be unlawful.

A careful reading of subsections (3), (A), (B), (C), (D), and (E) do not allow for calculation of parole eligibility, conditional release, and net maximum dates where a person is sentenced at two different times for two different crimes, and the records do not refer one to the other. Of course, the same may be said about subsection (4) and subsection (5).

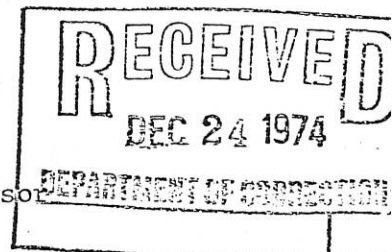
It is my very strong conviction, that where the court imposes the latter or second of two or more sentences which involve two or more crimes committed at different times, that the intent of the court imposing the latter of two or more sentences is to have such a sentence run consecutively to any sentences which resulted from a prior conviction. We know that a court preparing itself to impose a sentence, after having arrived at a conviction, is fully aware of prior convictions and the sentences which may have been imposed therefrom. I think we must also attribute a knowledge of the controlling Kansas Statutes to the court at the time it is declaring a sentence based upon a conviction. Therefore, if it was the intent of such a court to order or allow it's sentencing to run concurrently it would be a simple matter to order it to be shown in the court's journal entry when it remands the convicted felon to the care and custody of the Department of Corrections.

I feel that this Institution should have clear statutory authority, or authority from a court order, before sentences which are imposed consecutively by virtue of chronological order should be automatically treated, or in fact, transformed as concurrent terms.

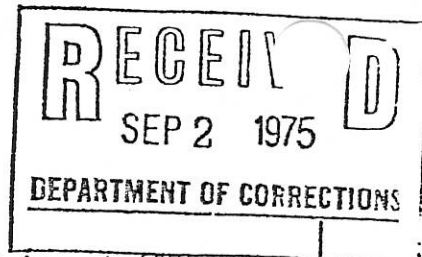
I would appreciate an intrepretation of 21-4608, or if necessary, request that you seek an intrepretation from the Attorney General's office.

Sincerely yours,

G. C. Hagan,
K.S.I.R. Legal Advisor



INTER-OFFICE COMMUNICATION
Kansas State Penitentiary



From Office of: Kenneth D. Doyle, Institution Attorney Date: 29 August 1975

To: Bernard Dunn, Agency Attorney Subject: Kansas Sentencing Statutes

This memorandum is in reference to our telephone conversation concerning K.S.A. 21-4608, Multiple Sentences. Under K.S.A. 21-4603, a person convicted of a felony in the State of Kansas may be committed to the custody of the Secretary of Corrections for confinement for the term provided by law. This is the statute that authorizes an individual to be sentenced to prison for his crimes.

K.S.A. 21-4608 concerns the imposition of more than one (1) sentence on a convicted felony. This statute provides that (1) when an individual receives separate sentences imposed (for different crimes) on the same date, such sentences (imposed on same date) shall run concurrently or consecutively, as the court directs. That (2) If an individual commits a crime while he is on parole or conditional release, upon conviction, the sentence for the new crime may run concurrently or consecutively with the sentence under which he was released on parole or conditional release, as the court directs.

This statute goes on to state five (5) rules to be followed in calculating time on concurrent and consecutive sentences. Rule A and rule B affect concurrent terms only. Rule C and D refer to consecutive terms. Rule C states that indeterminate terms imposed on the same date to run consecutively will be aggregated. Thus, rule C, speaking of terms imposed on the same date, gives instruction to situation #1 (Supra) which also speaks of separate sentences imposed on the same date, and directs the method of computing the sentence. It does not confer additional authority.

Rule D speaks of indeterminate sentences to be served consecutively to sentences imposed at an earlier date. This rule relates back to

(CONTINUED)

situation #2 (Supra) concerning the imposition of a sentence on an individual who has been released from a previous sentence by parole or conditional release. It does not grant authority, but merely guides computation of the sentence received.

It is my opinion, based strictly on a reading of the statutes, that courts may not impose consecutive sentences except when said sentences are imposed on the same date or the new sentence is to run consecutively to a sentence previously imposed and from which the individual has now been released by parole or conditional release. This would preclude an individual from receiving a consecutive sentence on the crime of escape from custody or for any sentence received as a result of a detainer.

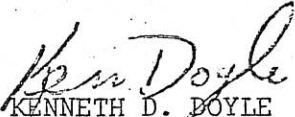
On 21 July 1975, I sent to your office a request for an Attorney General's opinion on K.S.A. 21-4608(d). Recently you informed me that you were preparing to send this to the Attorney General's office. Based upon this memorandum, it is my opinion that this said request is now moot. After reviewing the American Bar Association standards on sentencing procedures, it is my opinion that Kansas statutes have closely adopted many American Bar Association recommendations. I am now requesting that you forward a request to the Attorney General's office to determine whether my opinion of K.S.A. 21-4608 as outlined in this memorandum is correct or incorrect. I am sure you are aware that numerous sentences have been imposed consecutively to previous sentences as a result of the disposition of detainers against inmates incarcerated in the Kansas Penal System. Likewise, escape charges have resulted in sentences being imposed consecutively to the sentences previously imposed upon the individual and which he was serving at the moment of escape. If my opinions are correct as stated, many inmates may

have been sentenced illegally as a result of the imposition of consecutive sentences.

As a side issue in your request for an interpretation of this statute, I would appreciate it if you would inquire into the issue of splitting sentences so that one portion runs consecutively and one portion runs concurrently to other sentences. It is my opinion that this can not be done and we now have one (1) journal entry at Kansas State Penitentiary in which a court has directed the imposition of a sentence in this manner. (State of Kansas vs. Marvin D. Nicolay, case #2905, KSP #18491).

I have not researched Kansas case laws on the issue of sentences nor its affect upon this statute. Please keep me informed on the outcome of this request as it could have serious implication to many inmates. I would appreciate if this request could be expedited in order for us to know where we stand on this issue. If you have any questions, please contact me.

KDD:gmd


KENNETH D. DOYLE
Institution Attorney

(As Amended by Senate Committee)

Session of 1975

SENATE BILL No. 503

By Committee on Federal and State Affairs

2-26

pg 5

AN ACT concerning certain crimes and punishments; amending K. S. A. 21-3826, 21-4201, 21-4603 and 21-4610 and repealing the existing sections.

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

1 Section 1. K. S. A. 21-3826 is hereby amended to read as follows:
2 21-3826. Traffic in contraband in a ~~penal~~ *correctional* institution
3 is introducing or attempting to introduce into or upon the grounds
4 of any institution under the supervision and control of the ~~director~~
5 ~~of penal institutions~~ *secretary of corrections* or any jail, or taking,
6 sending, attempting to take or attempting to send therefrom or ~~any~~
7 ~~distributing~~ or unauthorized possession while in ~~aforesaid~~ *the in-*
8 *stitution or upon the grounds of the* institution ~~or distributing~~
9 ~~within any aforesaid such institution~~, any narcotic, synthetic
10 narcotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler,
11 alcoholic liquor, intoxicating beverage, firearm, ammunition, gun
12 powder, weapon, hypodermic needle, hypodermic syringe, currency,
13 coin, communication, ~~or~~ *writing, explosive, or any ingredient or*
14 *component intended to be used as a part of or in the production of*
15 *the above listed items; any writing, literature or instruction*
16 *on how to produce or handle any of the above listed items*
17 *or components or ingredients thereof; any device, item or*
18 *substance which might be used to effect an escape, or any*
19 *other item, communication or writing the possession of*
20 *which would be contrary to rules adopted by the secretary*

1 ~~of corrections~~ without the consent of the warden, superintend-
2 ~~ent director of the institution~~ or jailer ~~of the institution~~, or any
3 ~~device, item or substance intended to be used to effect an escape.~~

4 Traffic in contraband in a ~~penal~~ *correctional* institution is a class
5 E felony.

6 Sec. 2. K. S. A. 21-4201 is hereby amended to read as follows:
7 21-4201. (1) Unlawful use of weapons is knowingly:

8 (a) Selling, manufacturing, purchasing, possessing or carrying any
9 bludgeon, sandclub, shotgun with a barrel less than eighteen (18)
10 inches in length, metal knuckles or any knife, commonly referred
11 to as a switch-blade, which has a blade that opens automatically by
12 hand pressure applied to a button, spring or other device in the
13 handle of the knife, or any knife having blade that opens or falls
14 or is ejected into position by the force of gravity or by an outward,
15 downward, or centrifugal thrust or movement; or

16 (b) Carrying concealed on one's person, or possessing with intent
17 to use the same unlawfully against another, a dagger, dirk, billy,
18 blackjack, slung shot, dangerous knife, straight-edged razor, stiletto
19 or any other dangerous or deadly weapon or instrument of like
20 character: *Provided*, An ordinary pocket knife with no blade more
21 than four (4) inches in length shall not be construed to be a dan-
22 gerous knife, or a dangerous or deadly weapon or instrument; or

23 (c) Carrying on one's person or in any land, water or air vehicle,
24 with intent to use the same unlawfully, a tear gas or smoke bomb
25 or projector or any object containing a noxious liquid, gas or sub-
26 stance; or

27 (d) Carrying any pistol, revolver or other firearm concealed on
28 the person except when on his land or in his abode or fixed place of
29 business; or

30 (e) Setting a spring gun; or

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1 (f) Possessing any device or attachment of any kind designed,
2 used or intended for use in silencing the report of any firearm; or

3 (g) Selling, manufacturing, purchasing, possessing or carrying
4 any firearm designed to discharge or capable of discharging auto-
5 matically more than once by a single function of the trigger.

6 (2) *Exemptions.* (a) Subsections (1) (a), (b), (c), (d) and (g) of
7 this section shall not apply to or affect any of the following: (i)
8 Law enforcement officers, or any person summoned by any such
9 officers to assist in making arrests or preserving the peace while
10 actually engaged in assisting such officer; (ii) ~~wardens directors,~~
11 ~~superintendents and keepers of prisons, penitentiaries correc-~~
12 ~~tional institutions,~~ jails and other institutions for the detention of
13 persons accused or convicted of crime *while acting within the scope*
14 *of and pursuant to their respective duties;* (iii) members of the
15 armed services or reserve forces of the United States or the Kansas
16 national guard while in the performance of their official duty; (iv)
17 manufacture of, transportation to, or sale of weapons to person
18 authorized under (i) through (iii) of this subsection to possess such
19 weapons.

20 (b) Subsection (1) (d) of this section shall not apply to or affect
21 the following: (i) Watchmen while actually engaged in the per-
22 formance of the duties of their employment; or (ii) licensed
23 hunters or fishermen while engaged in hunting or fishing; or (iii)
24 persons licensed as private detectives by the state of Kansas, detec-
25 tives or special agents regularly employed by railroad companies
26 or other corporations to perform full-time security or investigative
27 service.

28 (3) It shall be a defense that the defendant is within an exemp-
29 tion.

30 (4) Violation of subsections (1) (a) through (1) (f) of this section
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1 is a class B misdemeanor; violation of subsection (1) (g) of this sec-
2 tion is a class E felony.

3 Sec. 3. K. S. A. 21-4603 is hereby amended to read as follows:

→ 4 21-4603. (1) Whenever any person has been found guilty of a crime
5 upon verdict or plea and a sentence of death is not imposed, the
6 court may require that a presentence investigation be conducted by
7 the Kansas reception and diagnostic center, the Kansas reception
8 and diagnostic center may keep him confined for a maximum of
9 one hundred twenty (120) days or until the court calls for the return
10 of such offender. The Kansas reception and diagnostic center shall
11 compile a complete mental and physical evaluation of such offender
12 and shall make its finding known to the court in the presentence
13 report.

14 (2) Whenever any person has been found guilty of a crime and
15 a presentence report has been compiled and submitted to the court,
16 the court may adjudge any of the following:

17 (a) Commit the defendant to the custody of the secretary of cor-
18 rections or, if confinement is for a term less than one (1) year, to
19 jail for the confinement for the term provided by law;

20 (b) Impose the fine applicable to the offense;

21 (c) Release the defendant on probation;

22 (d) Suspend the imposition of the sentence;

23 (e) Impose any appropriate combination of (a), (b), (c) and (d).

24 In imposing a fine the court may authorize the payment thereof
25 in installments. In releasing a defendant on probation the court
26 shall direct that he be under the supervision of the secretary of
27 corrections or the probation or parole officer of the court or county.

28 The court in committing a defendant to the custody of the secre-
29 tary of corrections shall not fix a maximum term of confinement,
30 but the maximum term provided by law shall apply in each case.

31 In those cases where the law does not fix a maximum term of con-

1 finement for the crime for which the defendant was convicted, the
2 court shall fix the maximum term of such confinement. In all cases
3 where the defendant is committed to the custody of the secretary
4 of corrections, the court shall fix the minimum term within the
5 limits provided by law.

6 Any time within one hundred twenty (120) days after a sentence
7 is imposed or within one hundred twenty (120) days after probation
8 has been revoked, the court may modify such sentence or revoca-
9 tion of probation by directing that a less severe penalty be im-
10 posed in lieu of that originally adjudged within statutory limits. If
11 an appeal is taken and determined adversely to the defendant,
12 such sentence may be modified within one hundred twenty (120)
13 days after the receipt by the clerk of the district court of the man-
14 date from the supreme court. The court may reduce the minimum
15 term of confinement of *any sentence imposed under K. S. A. 21-4501,*
16 *et seq., whether or not such minimum term is a life term and*
17 *whether or not such minimum term is also the maximum term at*
18 any time before the expiration thereof when such reduction is
19 recommended by the secretary of corrections and the court is satis-
20 fied that the best interests of the public will not be jeopardized and
21 that the welfare of the inmate will be served by such reduction.
22 The power here conferred upon the court includes the power to
23 reduce such minimum below the statutory limit on the minimum
24 term prescribed for the crime of which the inmate has been con-
25 victed. The recommendation of the secretary of corrections and
26 the order of reduction shall be made in open court.

27 Dispositions which do not involve commitment to the custody
28 of the secretary of corrections and commitments which are revoked
29 within one hundred twenty (120) days shall not entail the loss by
30 the defendant of any civil rights.

31 (3) At the time of committing an offender to the custody of the

1 secretary of corrections the court shall submit to said officer recom-
2 mendations on a program of rehabilitation for said offender, based
3 on presentence reports, medical and psychiatric evaluations and
4 any other information available. Such recommendations shall in-
5 clude desirable treatment for correction of physical deformities or
6 disfigurement that may, if possible, be corrected by medical or
7 surgical procedures or by prosthesis. The court may recommend
8 further evaluation at the reception and diagnostic center, even
9 though defendant was committed for presentence evaluation.

10 (4) This section shall not deprive the court of any authority con-
11 ferred by any other section of Kansas Statutes Annotated to decree
12 a forfeiture of property, suspend or cancel a license, remove a per-
13 son from office, or impose any other civil penalty as a result of con-
14 viction of crime.

15 (5) An application for or acceptance of probation or suspended
16 sentence shall not constitute an acquiescence in the judgment for
17 purpose of appeal, and any convicted person may appeal from his
18 conviction, as provided by law, without regard to whether he has
19 applied for probation or suspended sentence.

20 Sec. 4. K. S. A. 21-4610 is hereby amended to read as follows:
21 21-4610. The ~~Kansas adult authority~~ *secretary of corrections*
22 may adopt general rules or regulations concerning the conditions
23 of probation or suspension of sentence. The conditions shall apply
24 in the absence of any inconsistent conditions imposed by the court.
25 Nothing herein contained shall limit the authority of the court to
26 impose or modify any general or specific conditions of probation or
27 suspension of sentence.

28 The probation officer may recommend and by order duly entered
29 by the court may impose and at any time may modify any condi-
30 tions of probation or suspension of sentence. Due notice shall be
31 given to the probation officer before any such conditions are modi-

1 fied and he shall be given an opportunity to be heard thereon.
2 The court shall cause a copy of any such order to be delivered to
3 the probation officer and the probationer.

4 The court may include among the conditions of probation the
5 following and any other that it deems proper:

6 The defendant shall (a) avoid injurious or vicious habits;

7 (b) Avoid persons or places of disreputable or harmful character;

8 (c) Report to the probation officer as directed;

9 (d) Permit the probation officer to visit him at his home or else-
10 where;

11 (e) Work faithfully at suitable employment insofar as possible;

12 (f) Remain within a specified area;

13 (g) Pay a fine or costs, applicable to the offense, in one or several
14 sums as directed by the court;

15 (h) Make reparation or restitution to the aggrieved party for the
16 damage or loss caused by his offense in an amount to be determined
17 by the court;

18 (i) Support his dependents;

19 (j) Obey the laws of the United States, the state of Kansas or any
20 other jurisdiction to whose laws he may be subject.

21 Sec. 5. K. S. A. 21-3826, 21-4201, 21-4603 and 21-4610 are hereby
22 repealed.

23 Sec. 6. This act shall take effect and be in force from and after
24 its publication in the statute book.

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SENATE BILL No. 510

By Committee on Federal and State Affairs

2-26

P 4+5

AN ACT concerning criminal procedure; relating to certain release procedures; amending K. S. A. 22-3432, 22-3706, 22-3711, 22-3712, 22-3717 and 22-3718 and repealing the existing sections.

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

1 Section 1. K. S. A. 22-3432 is hereby amended to read as follows:
2 22-3432. It shall be the duty of the county attorney of the county
3 in which a person has been convicted of a felony and sentenced
4 to imprisonment to furnish to the ~~state board of probation~~
5 ~~and parole~~ *secretary of corrections* information pertaining to
6 the facts and circumstances surrounding the commission of the
7 offense, including any aggravating or mitigating circumstances,
8 and such other information which has come to the attention of
9 the county attorney which might have a bearing in determining
10 the possibility of the ~~prisoner inmate~~ thereafter becoming a
11 useful citizen. This information shall be set forth on forms pro-
12 vided by the ~~board~~ *secretary* and shall be submitted at the time
13 the ~~prisoner inmate~~ is committed. *Such information shall be*
14 *forwarded by the secretary to the correctional institution receiving*
15 *such inmate.*

16 Sec. 2. K. S. A. 22-3706 is hereby amended to read as follows:
17 22-3706. No person acting as agent or representative for an
18 applicant seeking pardon, commutation of sentence, or parole
19 shall contract for or receive a fee contingent upon the granting
20 of such application. Such agent or representative shall submit

1 his statement on the applicant's behalf to the Kansas adult authority
2 *or the secretary of corrections, as the case may be*, in writing and
3 shall submit therewith an affidavit stating his name; place of
4 residence; the name of the applicant he represents or has repre-
5 sented; the fee, if any, paid to him or to be paid to him by any
6 person for such services; that such fee is not or was not contingent
7 upon the granting or denial of such application for pardon, com-
8 mutation of sentence, or parole. If any person representing any
9 applicant for pardon, commutation of sentence, or parole shall
10 fail to file such affidavit the application shall not be considered.
11 Any affidavit filed as provided in this section shall be a public
12 record.

13 Sec. 3. K. S. A. 22-3711 is hereby amended to read as follows:
14 22-3711. The presentence report, the preparole report and the
15 supervision history, obtained in the discharge of official duty
16 by any member or employee of the authority *or the secretary*
17 *of corrections*, shall be privileged and shall not be disclosed
18 directly or indirectly to anyone other than the authority, *the*
19 *secretary*, the judge, the attorney general, or others entitled to
20 receive such information, except that the authority, *the secretary*
21 or court may in its discretion permit the inspection of the report
22 or parts thereof by the defendant or ~~prisoner~~ *inmate* or his
23 attorney, or other person having a proper interest therein, when-
24 ever the best interest or welfare of a particular defendant or
25 ~~prisoner~~ *inmate* makes such action desirable or helpful.

26 Sec. 4. K. S. A. 22-3712 is hereby amended to read as follows:
27 22-3712. The ~~authority~~ *secretary of corrections* may establish
28 and maintain residence facilities for the housing of probationers
29 or parolees, or may contract for such housing in facilities approved
30 by ~~it~~ *him*; ~~it~~ *the secretary* may establish and maintain diagnostic
31 and treatment facilities for persons referred during presentence

1 investigation or on probation or parole, or may contract for such
2 facilities. As a condition of probation or parole, a probationer
3 or parolee may be placed in such residence, diagnostic, or treatment
4 facility by order of the court or, *the Kansas adult authority or*
5 *the secretary*. Placement in a diagnostic or treatment facility
6 shall not exceed ninety (90) days, but may be renewed for further
7 ninety-day periods on certificates presented to the court by the
8 director of such facility.

9 Sec. 5. K. S. A. 22-3717 is hereby amended to read as follows:
10 22-3717. (1) The authority shall have power to release on parole
11 those persons confined in institutions who are eligible for parole
12 when, in the opinion of the authority, there is reasonable prob-
13 ability that such persons can be released without detriment to
14 the community or to themselves.

15 (2) After expiration of one hundred twenty (120) days from
16 the date of sentence, the Kansas adult authority is hereby granted
17 the authority to place upon intensive supervised parole any inmate
18 classified in the lowest minimum security classification who has
19 achieved such status under rules and regulations promulgated
20 by the secretary of corrections, except in the case where a death
21 sentence or life imprisonment has been imposed as the minimum
22 sentence or where the minimum sentence imposed aggregates
23 ~~more than fifteen (15)~~ *twenty-eight and one-half (28½)* or
24 ~~more years, after deduction of work and good behavior~~
25 ~~credits~~. Persons confined in institutions shall be eligible for
26 parole after fifteen (15) years ~~less earned incentive good time~~
27 ~~credits awarded in allotments of five (5) days per month~~ if
28 sentenced to life imprisonment or to a minimum term which,
29 ~~after deduction of work and good behavior credits~~, aggre-
30 ~~gates more than fifteen (15)~~ *twenty-eight and one-half (28½)*
31 *or more years. Such incentive good time credits shall be awarded*

1 on an earned basis to such inmates by the director of the institution
2 with approval of the secretary of corrections. Records of such
3 awards shall be furnished to the authority on an annual basis.
4 No other good time credits of any kind shall be applicable to
5 any inmate.

6 (3) Within one year after his admission and at such intervals
7 thereafter as it may determine the authority shall consider all
8 pertinent information regarding each inmate, including the cir-
9 cumstances of his offense; the presentence report; his previous
10 social history and criminal record; his conduct, employment, and
11 attitude in prison; and the reports of such physical and mental
12 examinations as have been made.

13 (4) Before ordering the parole of any inmate, the authority
14 shall have the inmate appear before it and shall interview him
15 unless impractical because of the inmate's physical or mental
16 condition or absence from the institution. A parole shall be
17 ordered only for the best interest of the inmate, not as an award
18 of clemency; it shall not be considered a reduction of sentence
19 or a pardon. An inmate shall be placed on parole only when the
20 authority believes that he is able and willing to fulfill the obligations
21 of a law-abiding citizen or that he should be released for hospitali-
22 zation, deportation or to answer the warrant or other process of
23 a court. Every inmate while on parole shall remain in the legal
24 custody of the secretary of corrections and is subject to the orders
25 of the secretary.

26 The first year of each parole shall constitute a period of
27 Any parolee may be placed on intensive supervised parole. The
28 person released on parole during this time Any such parolee
29 shall have at least once a week a direct meeting with an intensive
30 supervising parole officer. No intensive supervising parole
31 officer shall be assigned more than twenty (20) cases at

1 ~~any one time.~~ Such parolee may be removed from intensive
2 supervised parole when, in the supervising parole officer's judgment,
3 such removal would not jeopardize public safety and would
4 be beneficial to the parolee's interests.

5 The authority may adopt such other rules not inconsistent
6 with the law as it may deem proper or necessary, with respect to
7 the eligibility of inmates for parole, the conduct of parole hearings,
8 or conditions to be imposed upon parolees. Whenever an order
9 for parole is issued it shall recite the conditions thereof. As
10 used in this section, the term "minimum security" shall be de-
11 fined by rules and regulations of the secretary of corrections.

12 Sec. 6. K. S. A. 22-3718 is hereby amended to read as follows:
13 22-3718. The conditional release date of an inmate shall be
14 computed as one-half ($\frac{1}{2}$) the net maximum sentence plus six
15 (6) months from the effective sentence begins date of the sen-
16 tence as imposed by the court. The conditional release date of
17 an inmate may be adjusted by the disciplinary board of an insti-
18 tution for misconduct by such inmate. An inmate who has served
19 his ~~maximum term or terms~~, less such work and good
20 behavior credits as have been earned, until his conditional
21 release date as determined pursuant to this section shall, upon
22 release, be subject to such written rules and conditions as the au-
23 thority or the secretary of corrections may impose, until the
24 expiration of the maximum term or terms for which he was
25 sentenced or until he is otherwise discharged.

26 Sec. 7. K. S. A. 22-3432, 22-3706, 22-3711, 22-3712, 22-3717 and
27 22-3718 are hereby repealed.

28 Sec. 8. This act shall take effect and be in force from and after
29 its publication in the statute book.

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SENATE BILL No. 476

By Committee on Federal and State Affairs

2-25

AN ACT concerning the department of corrections; relating to certain standards of jails or correctional institutions; amending K. S. A. 1974 Supp. 75-5228 and repealing the existing section.

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

1 Section 1. K. S. A. 1974 Supp. 75-5228 is hereby amended to read
2 as follows: 75-5228. (a) No person shall be incarcerated in any
3 correctional institution or jail or any part thereof that has been
4 deemed unsanitary, unsafe or a detriment to human life by the
5 secretary of corrections. The secretary is hereby authorized to
6 promulgate standards relating to the sanitation and safety of such
7 institutions and jails. In promulgating such standards and in inspect-
8 ing such institutions and jails, the secretary shall request assistance
9 from the state board of health and the state fire marshal.

10 (b) *As used in this section, the following words and phrases shall*
11 *have the meanings respective ascribed to them unless the context*
12 *requires otherwise: (1) "jail" means any individual facility operated*
13 *by a unit of local government including municipalities, townships,*
14 *and counties, for the detention or correction of adults suspected or*
15 *convicted of a crime. Hospitals for the criminally insane are not*
16 *included. (2) "detention facility" means a jail which is used to hold*
17 *adults for periods not longer than seventy-two (72) hours. (3) "cor-*
18 *rectional institution" means any institution operated by or under*
19 *the control and management of or on a contract to the department of*
20 *corrections of the state of Kansas, for the detention or correction of*

1 adults convicted of a crime for which they have been sentenced to
2 the custody of the secretary of corrections.

3 (c) The secretary of corrections shall establish for the operation
4 of county and municipal jails, detention facilities and correctional
5 institutions minimum standards for the physical condition of such
6 jails, detention facilities and correctional institutions and for the
7 treatment of inmates with respect to their health and safety and for
8 the security of the community and the inmates. The secretary shall
9 make recommendations to the operators of such jails, detention
10 facilities and correctional institutions to assure compliance with the
11 requirements of such minimum standards. At least once a year, the
12 department of corrections shall inspect each jail, detention facility
13 and correctional institution for compliance with the standards estab-
14 lished by the secretary and the results thereof shall be made avail-
15 able to the department of corrections for public review. If any jail
16 or detention facility does not comply with the standards established,
17 the secretary of corrections shall give notice to the county board
18 or to the corporate authorities of the municipality, as the case may
19 be, of such non-compliance, specifying the particular standards that
20 have not been met by such a jail or detention facility. In the case
21 of correctional institutions, the secretary of corrections shall give
22 notice of any non-compliance to the governor. If the jail, detention
23 facility or correctional institution is not in compliance with such
24 standards after six (6) months have elapsed from the giving of such
25 notice, the secretary of corrections may issue an order for the closing
26 of that jail or for other appropriate action. The secretary, upon
27 closing a jail, detention facility or correctional institution, may order
28 that the inmates of such institution be transferred to the nearest
29 approved facility meeting the standards of the secretary of correc-
30 tions, and such facility shall accept such inmates if it has space and
31 facilities available for housing them according to the standards set

1 by the secretary. The governmental unit operating the jail, deten-
2 tion facility or correctional institution from which inmates are
3 removed shall reimburse the governmental unit operating the facility
4 or facilities receiving such inmates for all expenses for which the
5 sending institution would have been liable if they had remained
6 therein, and including transportation to and from the receiving
7 facility.

8 (d) The secretary of corrections may, upon request of a govern-
9 mental unit operating a jail within the state of Kansas, provide
10 consultation on the design, construction and administration of jails,
11 detention facilities or correctional institutions, and on programs and
12 services for adults. The secretary of corrections may make studies
13 and surveys of the programs and of the administration of such jails,
14 detention facilities and correctional institutions. Personnel of the
15 department of corrections shall be admitted to any jail, detention
16 facility or correctional institution deemed necessary by him for the
17 accomplishment of the purposes set out in subsections (c) and (d)
18 of this section. The secretary of corrections may provide assistance
19 for the training of personnel of jails, detention facilities or correc-
20 tional institutions within the state of Kansas.

21 Sec. 2. K. S. A. 1974 Supp. 75-5228 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after
23 its publication in the statute book.

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