

Approved 3-29-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 14, 1989 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Winter, Yost, Moran, Bond, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

John Torbert, Kansas Association of Counties
Elwaine Pomeroy, Kansas Parole Board

The chairman announced the tort reform hearings will be held next Monday and Tuesday, March 20 and March 21. The proponents will appear the first day and opponents the second day. The hearings on SCR 1610 will be held at 3:30 P.M. in 313-S on March 20 and 21. A subcommittee has been appointed to hear further testimony on House Bill 2501 and Senate Bill 223.

Senate Bill 49 - Corrections, community corrections, participation by counties.

The chairman announced the final work of the subcommittee is almost completed on the substitute bill. The revisor will soon have the revised subcommittee report and the substitute bill finished.

John Torbert, Kansas Association of Counties, testified the association has long been a supporter of the concept of community corrections. We recognize it as a valuable and effective alternative to incarceration in state institutions. The counties that have community corrections programs now have them due to the fact that they believe in the concept. A copy of his testimony is attached (See Attachment I). Committee discussion was held with Mr. Tolbert.

Senate Bill 335 - Consideration of parole to include district court order regarding inmate population.

Elwaine Pomeroy, Kansas Parole Board, testified one of the factors to consider in making decisions is a court order of prison overcrowding. We should consider prison overcrowding without saying so? He stated House Bill 2199 provides for certain rights of victims; victims to be notified of public comment sessions which amends the same statute that this bill does. You might want to consider incorporating this provision into HB 2199. Victims would be considered and overcrowding would be considered. This wording could be an open invitation to Judge Rogers to release a number of people. It might make us a party to the lawsuit. Judge Rogers has not issued any order telling the state to release any number of persons from the total system. So far his orders has been related to population of specific institutions. A committee member inquired if this would help workings of the board with the policy questions? Chairman Pomeroy replied, if you are going to do it, it should be in tandem with the victims. The results would be a clear direction to us from the legislature as a factor to look at. A committee member inquired if we include language like this, isn't it inappropriate to put into the law a reference to a specific case rather than federal court rulings with regard to overcrowding? Chairman Pomeroy replied

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 14, 1989

Senate Bill 335 - continued

it certainly would be different. Another committee member inquired, you do support it? Chairman Pomeroy replied, I do support it. Another committee member inquired, do you want that responsibility? Chairman Pomeroy replied the secretary of corrections thought it would be a bad idea and would put great responsibility on the parole board. I think this is what you are expecting the sentencing guidelines to do. I don't think a sentencing guidelines commission can do it more efficiently than the parole system. Another committee member inquired without change in state law could the mechanism be there if court would order. Chairman Pomeroy replied it depends on the nature of the order. I would hope that we would be. The committee member inquired if judge ordered so many released what would you do? He replied we would make ourselves available to be of assistance.

Senate Bill 49 - Corrections, community corrections, participation by counties.

The chairman reviewed the revised subcommittee report. Considerable committee discussion was held. It was the consensus of the committee to amend the revised subcommittee report that DOC will draft the sentencing guidelines and be reviewed by the panel. It was also the consensus of the committee that they do not feel that boot camps are community corrections programs and should be considered different.

Senator Gaines moved that Senate Bill 49 be made a substitute bill with with the cleanup amendments in it. Senator Bond seconded the motion. The motion carried. Following committee discussion, Senator Gaines moved to amend the bill to make it clear if a contract will go into the multi-county system, a separate free-standing board is not necessary. Senator Moran seconded the motion. The motion carried. Following committee discussion, Senator Bond moved to report Substitute for Senate Bill 49 favorably as amended. Senator Gaines seconded the motion. The motion carried.

Senator Rock moved to approve the minutes of February 28, 1989, and March 2, 1989. Senator Oleen seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment II).

Copy of Substitute for Senate Bill 49 is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-14-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Paul Shelby	Topeka	OJA
Becky Shirley	" "	Intern
Gene Johnson	Topeka	KA ASAP acsn
Clarence Stomeroy	Topeka	Shirley Board
Alan Steppat	Topeka	Pete McGill Associates
KEN HALE	"	SHAWNEE COUNTY CORRECTIONALS
R.G. FREYS	"	KT.L.A
Timothy L. Stegman	Mayetta	Div. of Budget
Nancy Lindberg	Topeka	A.H. General
Matt Truel	Topeka	AP
Therese Banzert	"	KCCD
Von Shon	"	Doc
JOHN TORBERT	"	KAC
Missie Mathis	Shelton	Judicial Co.
Ruth Walker	Topeka	LWV
Jim Clark	Topeka	KSNAA
Burdett Loomis	Lansing	KAN
Phil Mayhew	Topeka	K.A.C.S.O
Sue Bond	Overland Park	
COLT KNUFFSON	Manhattan	Visitor



"Service to County Government"

212 S. W. 7th Street
Topeka, Kansas 66603
(913) 233-2271
FAX (913) 233-4830

EXECUTIVE BOARD

President
Winifred Kingman
Shawnee County Commissioner
200 S.E. 7th St. - Room 205
Topeka, KS 66603
(913) 291-4040
(913) 272-8948

Vice-President
Gary Hayzlett
Kearny County Commissioner
P.O. Box 66
Lakin, KS 67860
(316) 355-7060

Past President
John Delmont
Cherokee County Commissioner
(316) 848-3717

Mark Hixon
Barton County Appraiser
(316) 792-4226

Marjory Scheufler
Edwards County Commissioner
(316) 995-3973

DIRECTORS

Leonard "Bud" Archer
Phillips County Commissioner
(913) 689-4685

Keith Devenney
Geary County Commissioner
(913) 238-7894

Berneice "Bonnie" Gilmore
Wichita County Clerk
(316) 375-2731

Harry "Skip" Jones III
Smith County Treasurer
(913) 282-6838

Thomas "Tom" Pickford, P.E.
Shawnee County Engineer
(913) 291-4132

Dixie Rose
Butler County Register of Deeds
(316) 321-5750

NACo Representative
Joe McClure
Wabaunsee County Commissioner
(913) 499-5284

Executive Director
John T. Torbert

Testimony
March 14, 1989

For; Senate Judiciary Committee

By; John T. Torbert
Executive Director

Subject; SB 49- Community Corrections

The Kansas Association of Counties has long been a supporter of the concept of community corrections. We recognize it as a valuable and effective alternative to incarceration in state institutions. The counties that have community corrections programs now have them due to the fact that they believe in the concept. They do not make money from community corrections. As a matter of fact, they usually have to devote additional financial and support services at the county level to help keep the program functioning smoothly. That is one reason that the existing programs work so well. They are in place because people want them there, not because of some legislative or court ordered mandate.

When the subcommittee studied this legislation, they were privileged enough to receive considerable input from Kay Harris, associate professor in the Department of Criminal Justice at Temple University in Philadelphia. She is nationally recognized for her work and background in this area and has done extensive study of the Kansas system. Among her advice to the subcommittee was;

- 1) Pure symmetry among the county programs is not necessary or even desirable. One of the nice things about community corrections is that the programs can be shaped to meet local needs and concerns.
- 2) A state mandate for a statewide system would be "clearly inefficient."
- 3) Keep the programs on a volunteer status. Forced participation usually does not achieve the desired results.

Attachment I
JTC
3-14-89

With that background, I was surprised to see an initial draft of the subcommittee report which specifies that each county must either have, contract with or initiate with other counties a community corrections program by January 1, 1990. I understand the prison overcrowding problem that the state is facing. I also understand that community corrections is seen as a logical solution to a part of that problem. However, this statewide mandate in terms of approach is not desirable or even necessary.

I reviewed statistics that show a county by county breakdown of total felony admissions to Kansas prisons from 7/1/86 through 6/30/87. I then designated counties that had five or fewer felony admissions for class C, D, and E felonies since those are the types of crimes for which community corrections would be an alternative. The results are shown on the county outline map which is attached to this testimony. Fifty-eight counties had five or fewer felony admissions in the C, D, and E class. In those 58 counties, the total felony admissions in the classes mentioned were 137. That is only 7.4% of the statewide total of 1,840 C, D and E felony admissions. Numerically, those 58 counties had about the same number of admissions as Shawnee County.

My point is that you could exempt those counties with five or fewer C, D and E felons and still cover more than 90% of your target population. Why then require this statewide approach which seems to contradict the advice of the experts in this subject area? Remember, that the advice was to keep the programs voluntary in nature and that a statewide mandate was called "clearly inefficient." My suggestion is simply that counties at this level of five or under be exempted from the application of this mandate. That would not preclude their involvement however if they were interested in starting their own program. Also, this suggested approach is not really community corrections- it is regional corrections and that is a far different type of program that may not achieve anywhere near the same level of results that a community program does.

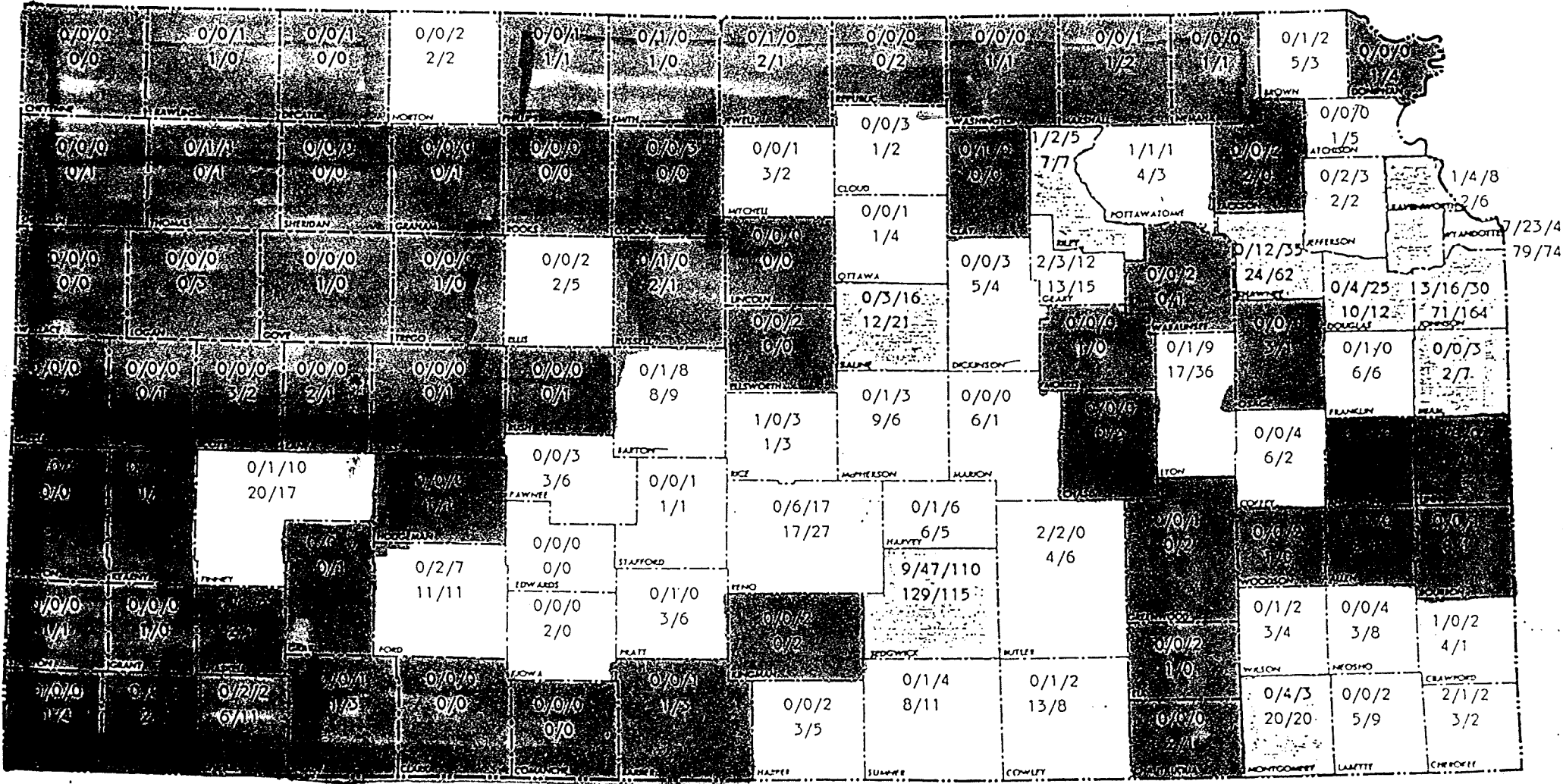
There are other areas of concern with the subcommittee report. First of all, with respect to the state community corrections board, I would suggest that at least one member of that board should be a county commissioner. This should be a requirement of law. With the local administrative role that we will be expected to play, we should be guaranteed at least that much representation.

Finally, our other main concern is that when programs are required for the first time or are significantly expanded that there be an ironclad commitment from the state to provide the necessary funds. We are in the midst of a two year reappraisal budget freeze and a great deal of uncertainty with regard to the property tax system. This is no the time for significant new programs or mandates.

Thank you for the opportunity to testify and I'd be happy to respond to questions.

TSJSJUDC

KANSAS



TOTAL FELONY ADMISSIONS TO KANSAS PRISONS (7-1-86/6-30-87) FY87

A-30 B-151 C-439
D-608 E-793

Substitute for SENATE BILL NO. 49

By Committee on Judiciary

AN ACT concerning corrections; relating to community corrections; requiring participation by counties; creating state community corrections board and prescribing certain powers and duties thereof; relating to composition of corrections advisory boards; grants to counties for correctional services; certain sentence presumptions; conservation camps; amending K.S.A. 21-4603, 21-4606a, 75-5206, 75-5262, 75-5292, 75-5295, 75-5296, as amended by section 306 of chapter 356 of the 1988 Session Laws of Kansas, 75-5297 and 75-52,102 and K.S.A. 1988 Supp. 75-52,103 and repealing the existing sections; also repealing K.S.A. 21-4603a, 75-52,106 and 75-52,108 and K.S.A. 1988 Supp. 75-52,101.

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

New Section 1. (a) Before January 1, 1990, each county in this state, based on the recommendation from the administrative judge of the judicial district in which each such county is located as provided in subsection (b), shall have:

(1) Established a corrections advisory board in accordance with K.S.A. 75-5297 and amendments thereto and adopted a comprehensive plan for the development, implementation, operation and improvement of the correctional services described in K.S.A. 75-5291 and amendments thereto which has been approved by the secretary of corrections and which, in addition to such matters as are prescribed by rules and regulations of the secretary of corrections, provides for centralized administration and control of the correctional services under such plan;

(2) entered into an agreement with a group of cooperating counties to establish a regional or multi-county community correctional services program; established a corrections advisory

*Attachment III
Senate Judiciary Committee*

board in accordance with K.S.A. 75-5297 and amendments thereto; and adopted a comprehensive plan for the development, implementation, operation and improvement of the correctional services described in K.S.A. 75-5291 and amendments thereto which has been approved by the secretary of corrections and which, in addition to such matters as are prescribed by rules and regulations of the secretary of corrections, provides for centralized administration and control of the correctional services under such plan; or

(3) contracted for correctional services described in K.S.A. 75-5291 and amendments thereto from any county or group of cooperating counties, as provided in K.S.A. 75-52,107 and amendments thereto, which are receiving grants under this act.

(b) Before September 15, 1989, the administrative judge in each judicial district shall make a recommendation to the board of county commissioners in each county in such judicial district which has not established a program to provide for the correctional services described in K.S.A. 75-5291 and amendments thereto, as to which option provided in subsection (a) each such county in such judicial district should choose to comply with the provisions of this act.

Sec. 2. On January 1, 1990, K.S.A. 21-4603 is hereby amended to read as follows: 21-4603. (1) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the state reception and diagnostic center or by the state security hospital. If the offender is sent to the state reception and diagnostic center or the state security hospital for a presentence investigation under this section, the institution or hospital may keep the offender confined for a maximum of ~~±20~~ 180 days or until the court calls for the return of the offender. While held at the reception and diagnostic center or the state security hospital the defendant

may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the reception and diagnostic center and the state security hospital. The state reception and diagnostic center or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its finding known to the court in the presentence report.

(2) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(a) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(b) impose the fine applicable to the offense;

(c) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(d) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(e) assign the defendant to a community correctional services program subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(f) assign the defendant to a conservation camp for a period not to exceed 180 days;

(g) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto; or

~~(g)~~ (h) impose any appropriate combination of (a), (b), (c), (d), (e) ~~or~~, (f) or (g).

In imposing a fine the court may authorize the payment

thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(3) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (b) of this subsection (3), at any time within 120 180 days after a sentence is imposed or within 120 days, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits.

(b) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 180 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(4) The court may modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the inmate will be served by such modification. The

court shall have the power to impose a less severe penalty upon the inmate, including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

(5) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp and the secretary of corrections shall file a performance report and recommendations with the court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (2), except to reassign such person to a conservation camp as provided in subsection (2)(f).

{5} (6) Dispositions which do not involve commitment to the custody of the secretary of corrections and commitments which are revoked within ~~±20~~ 180 days shall not entail the loss by the defendant of any civil rights.

{6} (7) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a

forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(7) (8) An application for or acceptance of probation, suspended sentence or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

Sec. 3. On January 1, 1990, K.S.A. 21-4606a is hereby amended to read as follows: 21-4606a. The presumptive sentence for a person who has never before been convicted of a felony, but has now been convicted of a class E felony shall be probation or ~~assignment--to-a-community-correctional-services-program-on-terms the-court--determines,~~ unless the conviction is of a crime specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated. In determining whether to impose the presumptive sentence, the court shall consider any prior record of the person's having been convicted or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult. If the presumptive sentence provided by this section is not imposed, the provisions of section 12 shall apply.

Sec. 4. On January 1, 1990, K.S.A. 75-5206 is hereby amended to read as follows: 75-5206. To carry out the purposes of this act, the secretary shall have authority to order the housing and confinement of any person sentenced to his or her custody to any institution or facility herein placed under the secretary's supervision and management or to any contract facility, including a conservation camp pursuant to section 15.

All institutions of the department of corrections shall be institutions for the incarceration of felons.

Sec. 5. On January 1, 1990, K.S.A. 75-5262 is hereby amended

to read as follows: 75-5262. (a) The primary function and purpose of the Kansas state reception and diagnostic center shall be to provide a thorough and scientific examination and study of all felony offenders of the male sex sentenced by the courts of this state to the custody of the secretary of corrections so that each such offender may be assigned to a state correctional institution having the type of security (maximum, medium or minimum) and programs of education, employment or treatment designed to accomplish a maximum of rehabilitation for such offender. All such offenders shall be delivered to said the center as provided in K.S.A. 75-5220 and amendments thereto, upon being sentenced by the court.

(b) Each inmate ~~so~~ delivered to the Kansas state reception and diagnostic center pursuant to K.S.A. 75-5220 and amendments thereto shall be examined and studied and shall have a rehabilitation program planned and recommended for ~~him~~ the inmate. An inmate shall be held at the Kansas-state-reception-and-diagnostic center for a period not exceeding ~~sixty-(60)~~ 60 days except that an inmate may be held for a longer period of time at said the center on order of the secretary. Upon the completion of the case study, diagnosis and report on an inmate, the inmate shall be assigned to one of the state correctional institutions or facilities for confinement or a conservation camp pursuant to section 15 or 16, which shall be selected as the secretary ~~shall~~ prescribe prescribes, based on the examination and study of the inmate, or the inmate may be paroled or he may be assigned to one of the state hospitals for further treatment not exceeding ~~sixty~~ (60) 60 days where an ultimate parole is indicated at the expiration of said such additional time. If an inmate is assigned to a conservation camp pursuant to section 15 or 16 the chief administrator of such camp and the secretary shall file a performance report and recommendations prior to 180 days after such assignment with the original sentencing court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the

defendant to any of the authorized dispositions provided in subsection (2) of K.S.A. 21-4603 and amendments thereto, except to reassign such inmate to a conservation camp as provided in subsection (2)(f).

Sec. 6. On January 1, 1990, K.S.A. 75-5292 is hereby amended to read as follows: 75-5292. (a) Subject to the other provisions of this act, each county may qualify for grants under this act if:--(1)--it has a population of thirty thousand (30,000) or more;

(2)--it has entered into a cooperative agreement for the purposes of this act with one or two other counties and all such cooperating counties are located within one or more contiguous judicial districts and have a total population of twenty thousand (20,000) or more;

(3)--it has entered into a cooperative agreement for purposes of this act with three or more counties and all such cooperating counties are located within one or more contiguous judicial districts; or

(4)--it has a population of less than thirty thousand (30,000) and the secretary of corrections finds that the county is unable to enter into a cooperative agreement for purposes of this act with one or more counties to meet the conditions in subsection (a)(2) or (a)(3) above after a good faith effort to do so, but that it is able to adequately implement a comprehensive plan which will significantly improve or expand the correctional services described in K.S.A. 75-5291 in that county.

(b)--Each county which is eligible under subsection (a) to qualify for grants under this act, may qualify by itself or in cooperation with other counties to receive such grants by establishing a corrections advisory board, in accordance with K.S.A. 75-5297, and by adopting a comprehensive plan for the development, implementation, operation and improvement of the correctional services described in K.S.A. 75-5291 which has been approved by the secretary of corrections. In addition to such matters as are prescribed by rules and regulations of the secretary of corrections, the comprehensive plan shall provide

for--centralized--administration--and--control--of--the--correctional services--under--the--comprehensive--plan.

(c)--In--any--case--where--one--or--more--counties--which--do--not constitute--an--entire--judicial--district--propose--to--enter--into--a cooperative--agreement--to--qualify--for--grants--under--this--act,--each of--the--other--counties--within--the--judicial--district--shall--be--given the--opportunity--to--enter--into--such--agreement--with--the--proposing counties--to--qualify--for--such--grants.--In--each--such--case,--if--a county--elects--to--not--become--qualified--for--grants--under--this--act, the--board--of--county--commissioners--of--that--county--shall--adopt--a resolution--to--that--effect--and--send--a--copy--of--such--resolution--to the--secretary--of--corrections.--At--any--time--thereafter--and--in accordance--with--rules--and--regulations--of--the--secretary--of corrections,--the--county--may--change--such--election--and--may--enter into--a--cooperative--agreement--with--the--other--counties--in--the judicial--district--and--any--cooperating--counties--in--contiguous judicial--districts--to--qualify--for--grants--under--this--act.

(d)--In--each--case--where--a--county--later--elects--under subsection--(c)--to--enter--into--a--cooperative--agreement--with--the other--county--or--counties--in--its--judicial--district--and--any cooperating--counties--in--contiguous--judicial--districts--which--have previously--qualified--for--grants--under--this--act,--the--corrections advisory--board--shall--be--reconstituted--and--the--comprehensive--plan shall--be--revised--in--order--to--include--the--additional--county.--Each comprehensive--plan--so--revised--shall--be--resubmitted--for--approval to--the--boards--of--county--commissioners--and--to--the--secretary--of corrections.--Prior--to--such--approval--by--the--secretary--of corrections,--the--previous--comprehensive--plan--shall--be--in--effect and--the--county--or--counties--which--had--previously--qualified--for grants--under--this--act--shall--continue--to--be--qualified--to--receive such--grants--with--regard--to--the--previous--comprehensive--plan--in accordance--with--this--act to receive grants under this act by complying with the provisions of section 1.

(e) (b) Subject to the requirements of centralized administration and control of correctional services under

~~subsection-(b)~~ section 1 and the provisions of agreements between cooperating counties under subsection ~~(f)~~ (c), the respective boards of county commissioners shall retain all authority for the expenditure of ~~funds~~ moneys, including grants received under this act, and for the implementation of and the operations under the comprehensive plan approved by the secretary of corrections. The comprehensive plan shall be reviewed and approved by the board of county commissioners of each county to which the plan pertains prior to submission to the secretary of corrections for approval.

~~(f)~~ (c) The boards of county commissioners of ~~two--or--more~~ counties--located--within--or--constituting--one--or--more--contiguous ~~judicial-districts~~ all counties cooperating together to establish a corrections advisory board and to adopt a comprehensive plan pursuant to this act may enter into cooperative agreements to qualify their respective counties for grants under this act. Such counties shall cooperate and enter into such agreements for all purposes of this act in the manner prescribed by K.S.A. 12-2901 ~~to-12-2907,-inclusive,~~ through 12-2907 and amendments thereto, to the extent that ~~said~~ those statutes do not conflict with the provisions of this act. ~~No--group--of--counties--entering--into~~ cooperative-agreements-for-purposes-of-this-act-shall-include-any ~~county-located-within-a-judicial-district-which-is-not-contiguous~~ to-the-judicial-district-in--which--such--group--of--counties--is ~~located.~~

Sec. 7. On January 1, 1990, K.S.A. 75-5295 is hereby amended to read as follows: 75-5295. For the purposes of this act and to provide for the correctional services described in K.S.A. 75-5291, ~~any~~ and amendments thereto, a county or group of cooperating counties ~~electing--to--come--within--the--provisions--of~~ this-act, through their boards of county commissioners, or administrative bodies established by cooperating counties, may:

~~(1)~~ (a) Acquire by any lawful means, including purchase, lease or transfer of custodial control, the lands, buildings and equipment necessary and incidental to such purposes;

~~(2)~~ (b) enter into contracts, which are necessary and

incidental to such purposes;

{3} (c) determine and establish the administrative structure best suited to the efficient administration and delivery of such correctional services;

{4} (d) employ a director and such other officers, employees, and agents as deemed necessary to carry out the provisions of this act;

{5} (e) make grants in accordance with the comprehensive plan of funds provided by grant payments under K.S.A. 75-52,105 and amendments thereto to corporations organized not for profit, for development, operation and improvement of such correctional services; and

{6} (f) use unexpended funds, accept gifts, grants and subsidies from any lawful source, and apply for, accept and expend federal funds.

Sec. 8. On January 1, 1990, K.S.A. 75-5296, as amended by section 306 of chapter 356 of the 1988 Session Laws of Kansas, is hereby amended to read as follows: 75-5296. (a) Except as provided in K.S.A. 75-5293 and amendments thereto, no county ~~electing--to--come--within--the--provisions--of--this--act~~ shall be qualified to receive grants under this act unless and until the comprehensive plan for such county, or the group of counties with which such county is cooperating, is approved by the secretary of corrections.

(b) The secretary of corrections shall adopt rules and regulations establishing additional requirements for receipt of grants under this act and standards for the operation of the correctional services described in K.S.A. 75-5291 and amendments thereto. In order to remain eligible for grants the county or group of cooperating counties shall substantially comply with the operating standards established by the secretary of corrections.

(c) The secretary of corrections shall review annually the comprehensive plans submitted by a county or group of cooperating counties and the facilities and programs operated under such plans. The secretary of corrections is authorized to examine

books, records, facilities and programs for purposes of recommending needed changes or improvements.

(d) When the secretary of corrections determines that there are reasonable grounds to believe that a county or group of cooperating counties is not in substantial compliance with the minimum operating standards adopted pursuant to this section, at least 30 days' notice shall be given the county or to each county in the group of cooperating counties and a hearing shall be held in accordance with the provisions of the Kansas administrative procedure act to ascertain whether there is substantial compliance or satisfactory progress being made toward compliance. If the secretary of corrections determines at such hearing that there is not substantial compliance or satisfactory progress being made toward compliance, the secretary of corrections may suspend all or a portion of any grant under this act until the required standards of operation have been met. Determinations made by the secretary pursuant to this section are subject to review by the state community corrections board as provided in section 13.

Sec. 9. On January 1, 1990, K.S.A. 75-5297 is hereby amended to read as follows: 75-5297. (a) Subject to the other provisions of this section, each corrections advisory board established under this act shall consist of 12 or more members who shall be representative of law enforcement, prosecution, the judiciary, education, corrections, ethnic minorities, the social services and the general public and shall be appointed as follows:

(1) The law enforcement representatives shall be: (A) The sheriff or, if two or more counties are cooperating, the sheriff selected by the sheriffs of those counties, or the designee of that sheriff, and (B) the chief of police of the city with the largest population at the time the board is established or, if two or more counties are cooperating, the chief of police selected by the chiefs of police of each city with the largest population in each county at the time the board is established, or the designee of that chief of police, except that for purposes

of this paragraph (1) in the case of a county having consolidated law enforcement and not having a sheriff or any chiefs of police, "sheriff" means the law enforcement director and "chief of police of the city with the largest population" or "chief of police" means a law enforcement officer, other than the law enforcement director, appointed by the county law enforcement agency for the purposes of this section;

(2) the prosecution representative shall be the county or district attorney or, if two or more counties are cooperating, a county or district attorney selected by the county and district attorneys of those counties, or the designee of that county or district attorney;

(3) the judiciary representative shall be the administrative judge of the district court of the judicial district containing the county or group of counties ~~or, if counties in two or more judicial districts are cooperating, an administrative judge selected by the administrative judges of those judicial districts, or a judge of the district court designated by that administrative judge~~ or, if two or more counties in two or more judicial districts are cooperating, the administrative judge of each such judicial district, or a judge of the district court designated by each such administrative judge;

(4) the education representative shall be an educational professional appointed by the board of county commissioners of the county or, if two or more counties are cooperating, by the boards of county commissioners of those counties;

(5) a court services officer designated by the administrative judge of the district court of the judicial district containing the county or group of counties or, if counties in two or more judicial districts are cooperating, a court services officer designated by the administrative judges of those judicial districts;

(6) the board of county commissioners of the county shall appoint or, if two or more counties are cooperating, the boards of county commissioners of those counties shall together appoint

three additional members of the corrections advisory board or, if necessary, additional members so that each county which is not otherwise represented on the board is represented by at least one member of such board; and

(7) ~~the--remaining~~ three members of the corrections advisory board shall be appointed by cities located within the county or group of cooperating counties as follows: (A) If there are three or more cities of the first class, the governing body of each of the three cities of the first class having the largest populations shall each appoint one member; (B) if there are two cities of the first class, the governing body of the larger city of the first class shall appoint two members and the governing body of the smaller city of the first class shall appoint one member; (C) if there is only one city of the first class, the governing body of such city shall appoint all three members; and (D) if there are no cities of the first class, the governing body of each of the three cities having the largest populations shall each appoint one member; and

(8) if a county has contracted with an existing community corrections advisory board to provide community correctional services as provided in subsection (a)(3) of section 1, one member of such existing community corrections board shall be a representative of the county contracting for community correctional services with such board.

(b) If possible, of the ~~six~~ members appointed by the boards of county commissioners in accordance with subsection (a)(6) and by the governing bodies of cities in accordance with subsection (a)(7), members shall be representative of one or more of the following: (1) Parole officers; (2) public or private social service agencies; (3) ex-offenders; (4) the health care professions; and (5) the general public.

(c) At least two members of each corrections advisory board shall be representative of ethnic minorities and no more than 2/3 of the members of each board shall be members of the same sex.

Sec. 10. On January 1, 1990, K.S.A. 75-52,102 is hereby

amended to read as follows: 75-52,102. (a) The comprehensive plan submitted to the secretary of corrections for approval shall include those items prescribed by rules and regulations adopted by the secretary, which may require the inclusion of the following:

(1) A program for the detention, supervision and treatment of persons under pretrial detention or under commitment;

(2) delivery of other correctional services defined in K.S.A. 75-5291 and amendments thereto; and

(3) proposals for new facilities, programs and services, which proposals must include a statement of the need, purposes and objectives of the proposal and the administrative structure, staffing pattern, staff training, financing, degree of community involvement and client participation which are planned for the proposal.

(b) In addition to the foregoing requirements made by this section, each ~~participating~~ county or group of counties shall be required to develop and implement a procedure for the review by the corrections advisory board and the board or boards of county commissioners of new program applications and other matters proposed to be included under the comprehensive plan and for the manner in which corrections advisory board action shall be taken thereon. A description of this procedure shall be made available to members of the public upon request.

Sec. 11. On January 1, 1990, K.S.A. 1988 Supp. 75-52,103 is hereby amended to read as follows: 75-52,103. (a) Except as provided in K.S.A. 75-5293 and amendments thereto, each grant under this act shall be expended by the county receiving it for correctional services as described in K.S.A. 75-5291 and amendments thereto in addition to the amount required to be expended by such county under this section. Each calendar year in which a county receives grant payments under K.S.A. 75-52,105 and amendments thereto, the county shall make expenditures for correctional services as described in K.S.A. 75-5291 and amendments thereto from any funds other than from grants under

this act in an amount equal to or exceeding the amount of base year corrections expenditures as determined by the secretary of corrections under subsection (b).

(b) The secretary of corrections shall audit and determine the amount of the expenditures for correctional services as described in K.S.A. 75-5291 and amendments thereto of each county applying for a grant under this act during the calendar year immediately preceding the calendar year in which the county will receive its first grant payment under K.S.A. 75-52,105 and amendments thereto. The amount so determined shall be the amount of base year corrections expenditures of the county. In determining the amount of base year expenditures that portion of corrections' personnel salaries actually assumed by the state as described in K.S.A. 20-361 and 20-362, and amendments thereto, shall not be considered as a portion of the base year requirement.

(c) In any case where a county receiving a grant does not make expenditures for correctional services from funds other than from grants under this act as required by this section, the grant to such county for the next ensuing calendar year shall be reduced by an amount equal to the amount by which such county failed to make such required amount of expenditures.

(d) The secretary of corrections may provide, by rules and regulations, procedures for the following, as determined by the secretary to further the purposes of this act:

(1) The transfer, to one or more other counties, of any portion of a county's annual grant which is not included in such county's program budget for the current program year; and

(2) the transfer, to one or more other counties, of any portion of a county's annual grant which remains unused at the end of such county's program year and is not included in such county's program budget for the ensuing program year.

(e) Except as otherwise provided pursuant to subsection (d), if a participating county does not expend the full amount of the grant received for any one year under the provisions of this

act, the county shall retain the unexpended amount of the grant for expenditure for correctional services as described in K.S.A. 75-5291 and amendments thereto during any ensuing calendar year. The secretary of corrections shall reduce the grant for the ensuing calendar year by an amount equal to the amount of the previous year's grant which was not expended and was retained by the county, unless the secretary finds that the amount so retained is needed for and will be expended during the ensuing calendar year for expenditures under the applicable comprehensive plan.

New Sec. 12. (1) On or after January 1, 1990, except as provided in K.S.A. 21-4606a and amendments thereto, the presumptive sentence for a person convicted of a class C, D or E felony shall be assignment to a community correctional services program on terms the court determines.

(2) On or after January 1, 1990, in determining whether to impose the presumptive sentence provided by this section, the court shall consider whether any of the following aggravating circumstances existed:

(a) Whether the crime is a felony violation of K.S.A. 65-4127a and 65-4127b and amendments thereto which involved the manufacture, sale, offer for sale or possession with intent to sell such controlled substances;

(b) whether the crime is a crime specified in article 35 of chapter 21 of the Kansas Statutes Annotated; or

(c) any prior record of the person's having been convicted of a felony or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult.

(3) On or after January 1, 1990, if the presumptive sentence provided by K.S.A. 21-4606a and amendments thereto for a person who has never been convicted of a felony, but has now been convicted of a class E felony is not imposed, the presumptive sentence provided by this section shall apply.

New Sec. 13. (a) There is hereby established the state

community corrections board. The board shall consist of five members who shall be appointed as follows:

(1) Three members appointed by the governor who shall serve at the pleasure of the governor, one of whom shall represent the department of corrections, one of whom shall represent the department of social and rehabilitation services with speciality in juvenile matters and one of whom shall be actively involved with community correctional service programs; and

(2) two members appointed by the chief justice of the Kansas supreme court who shall serve at the pleasure of the chief justice, who shall be chosen from the justices of the supreme court or judges of the court of appeals or of any district court.

All members appointed to fill vacancies in the membership of the board shall be appointed in like manner as that provided for the original appointment of the member.

(b) The governor shall appoint a chairperson. The board shall elect any additional officers from among its members necessary to discharge its duties.

(c) The board shall have the following duties:

(1) To hear appeals from the secretary of corrections on decisions of the secretary regarding grants for expenses of a corrections advisory board which does not have a comprehensive plan approved by the secretary as provided in K.S.A. 75-5293 and amendments thereto;

(2) to hear appeals from the secretary of corrections on decisions of the secretary regarding the determination of grant amounts for community correctional services programs as provided in section 14;

(3) to hear appeals from the secretary of corrections on decisions of the secretary regarding the organization of new community correctional services programs and their plans for services. In hearing such appeals, the board shall encourage counties to enter into agreements with a group of cooperating counties as provided in subsection (a)(2) of section 1 or to contract for correctional services from any county or group of

counties as provided in subsection (a)(3) of section 1; and

(4) to review minimum operating standards established by the secretary of corrections and to establish performance evaluation standards for community correctional services programs to be utilized by the secretary.

(d) The board shall meet on call of the chairperson of the board. Three members of the board shall constitute a quorum for the transaction of business.

(e) Members of the board shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223 and amendments thereto.

(f) The board shall appoint such staff as necessary to perform such duties as directed by the board. The staff appointed by the board shall be in the unclassified service under the Kansas civil service act and shall receive compensation fixed by the board with the approval of the governor.

New Sec. 14. (a) On or before January 1, 1990, the secretary of corrections shall determine annually the amount of the grant for the ensuing fiscal year for each county or group of counties which has qualified to receive grants as provided in this section.

(b) (1) For each county or group of counties entitled to receive grants prior to January 1, 1990, the secretary of corrections shall determine on or before each January 1 the amount of the grant for the ensuing fiscal year based on the fiscal year 1989 per capita costs of such county or group of counties and the budget request of each county or group of counties for additional grant moneys submitted to the secretary as provided by subsection (b)(2). The per capita costs of each county or group of counties shall be determined by dividing the amount of the fiscal year 1989 grant of such county or group of counties by the number of individuals served by the community correctional services program of such county or group of counties during fiscal year 1989. Subject to the other provisions of this subsection, the amount of the ensuing fiscal year grant for a

county or group of counties shall be an amount equal to the fiscal year 1989 per capita costs, as determined pursuant to this subsection, multiplied by the number of individuals to be served by the community correctional services program of such county or group of counties during the ensuing fiscal year. No grant for a county or group of counties which received a grant for fiscal year 1989 shall be less than the amount of the grant received by the county or group of counties during fiscal year 1989, if such county or group of counties continues to serve, or is projected to serve, at least the same number of persons as served during fiscal year 1989 and continues to provide the same community correctional services as provided during fiscal year 1989, as provided by K.S.A. 75-5291 and amendments thereto.

(2) As a part of such county's or group of counties' budget request submitted to the secretary, the county or group of counties may request a higher grant amount than determined as provided in subsection (b)(1) for new or expanded programs as provided in K.S.A. 75-52,102 and amendments thereto. The secretary shall determine such additional grant amount for such new or expanded programs based on existing experience of other programs offering similar programs.

(c) On or before January 1, 1990, each county or group of counties applying to receive a grant for the first time shall submit a budget request to the secretary. The secretary shall determine the amount of the grant for such county or group of counties based on existing experience of similar programs. For each fiscal year thereafter, the amount of the grant for such county or group of counties shall be determined as provided in subsection (b), except that the grant received by such county or group of counties pursuant to this subsection shall not be less than the amount of the grant received by such county or group of counties during fiscal year 1990, if such county or group of counties continues to serve at least the same number of persons as served during fiscal year 1990 and continues to provide the same community correctional services as provided during fiscal

year 1990, as provided by K.S.A. 75-5291 and amendments thereto. The per capita costs of such county or group of counties for the purposes of determining grants for ensuing fiscal years under this section shall be determined as provided in subsection (b), except that per capita costs shall be based on fiscal year 1990.

(d) All determinations of base year per capita costs pursuant to this section, shall include all actual audited costs incurred for approved programs included without limitation as to fixed administrative costs.

New Sec. 15. The secretary of corrections may enter into a contract with Labette and Meade counties to provide for the assignment of inmates under the custody of the secretary to conservation camps established and operated by such counties for a period not to exceed 180 days. Such contract shall be for a period not to exceed one year and may be renewable upon agreement by the secretary and such counties for additional one-year periods. A conservation camp may accept defendants assigned to such camp by the court as provided in K.S.A. 21-4603 and amendments thereto.

New Sec. 16. On or after the effective date of this act, the secretary of corrections may establish conservation camps to provide inmates with a highly structured residential work program. Such conservation camps shall be a state correctional institution or facility for confinement under the supervision of the secretary. A conservation camp may accept defendants assigned to such camp as provided in K.S.A. 21-4603 and amendments thereto.

Sec. 17. On January 1, 1990, K.S.A. 21-4603, 21-4603a, 21-4606a, 75-5206, 75-5262, 75-5292, 75-5295, 75-5296, as amended by section 306 of chapter 356 of the 1988 Session Laws of Kansas, 75-5297, 75-52,102, 75-52,106 and 75-52,108 and K.S.A. 1988 Supp. 75-52,101 and 75-52,103 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.