

Approved 6-7-89  
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by SENATOR AUGUST "GUS" BOGINA at  
Chairperson

11:10 a.m. ~~pm~~ on MARCH 24, 1989 in room 123-S of the Capitol.

All members were present except:

Senator Rock, who was excused

Committee staff present:

Research Department: Diane Duffy, Kathy Porter, Paul West, Russ Mills, Debra DeViney

Revisor: Norman Furse

Committee Staff: Judy Bromich, Pam Parker

Conferees appearing before the committee:

Roger V. Endell, Secretary, Department of Corrections

#### INTRODUCTION OF BILLS

Senator Doyen moved, Senator Gaines seconded, to introduce bill draft 9 RS 1331, an act concerning the grant-in-aid to libraries fund; relating to payments therefrom; and bill draft 9 RS 1342, an act relating to property taxation; concerning exemptions therefrom for governmental properties. The motion carried.

#### MINUTES

Senator Harder moved, Senator Gaines seconded, the approval of the minutes from the February 24, 27, March 1, 2, and 3, 1989 meetings. The motion carried.

#### ANNOUNCEMENTS

The Chairman announced that copies of a memorandum from the Kansas Legislative Research Department dated March 23, 1989 regarding Oil Overcharge Funds had been distributed. (Attachment 1) Also distributed were copies of a list of abbreviations for, and a map illustrating the locations of corrections facilities. (Attachment 2)

Following the Chairman's opening remarks, Senator Johnston reported on a meeting with the Attorney General and a subcommittee on corrections appointed by the LCC where the AG stated he has agreed to entertain questions from the coordinating council and members of the legislature, for the purpose of clarifying any parts of the Federal Order by Judge Rogers concerning the Kansas prison overcrowding issue.

Secretary Endell reviewed his testimony. (Attachment 3) According to Secretary Endell, the Governor, in his state of the state message, stated that the plan at that time was to construct a 752 bed facility which would be expandable to approximately 1400 and that is what they are trying to achieve. During the period of July to October, 1989 the department will have no new space coming on line, it will be the most difficult period, and that is when they anticipate the early release of some prisoners. As to which ones and how many that has not been determined. He pointed out that the Federal court order has complicated the corrections situation in Kansas. At present there is no plan before the legislature to take care of the immediate situation, the next two years. If projections hold as they think they will, in February, 1990 everything in the corrections system in Kansas will be full. Additional community correction space or other kinds of security space might be considered, but there is not any way they will be able to develop long term high security space in that short period.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,  
room 123-S, Statehouse, at 11:10 a.m./~~PM~~ on MARCH 24, 1989

Distributed were copies of a Kansas Department of Corrections Community Residential Centers Briefing Paper dated March 23, 1989. (Attachment 4)

Secretary Endell noted his frustration in trying to negotiate with 165 people and his frustration with not being able to submit a plan he feels is professional. In answer to questions, he said they could start work immediately on a proposal of addressing the February crisis although there are very limited alternatives - house or parole the inmates. It was the opinion of the Secretary that it is hazardous to expand facilities that were not designed for correctional institutions any further than we have right now. One problem he cited was the inability of proper supervision. He noted there will be an increase in the number of AWOL's due to the fact that more and more renovation and remodeling is being done by inmate labor. During discussion it was suggested that additional support services be installed along with double-celling at existing facilities and it was the Secretary's professional opinion it would not be a good idea and it was his guess that it would cost as much or more than building a new facility. He felt this would be putting good money after bad. There was discussion concerning prison population stabilization and the Secretary reported that prisoners are serving longer period of time now than ever in the history of the state and he feels the amount of time must be shortened. Preliminary discussions with officials in the state of Missouri indicate Missouri has excess corrections space and would be willing to rent it for about \$65 per day which the Secretary feels is extremely high.

Distributed was a memorandum to the Senate Ways and Means Committee from Secretary Endell dated March 23, 1989 regarding double celling - Ellsworth Correctional Work Facility. (Attachment 5)

The meeting was adjourned.



## MEMORANDUM

March 23, 1989

TO: Senate Ways and Means Committee  
FROM: Kansas Legislative Research Department  
RE: Oil Overcharge Funds

### I. Status of Funds

Attached is a table reflecting the current status of the Energy Grants Management Fund. As the attached table indicates, an ending balance of approximately \$22 million is anticipated at the close of FY 1989. The attached table also reflects the Governor's recommendations for FY 1990 and the recommendations of the House and Senate to date.

### II. Second Stage Refined Product Moneys

While both the Exxon and Stripper Well cases involved crude oil price violations, there have been several settlements entered into by the Department of Energy and various oil companies for price violations involving refined petroleum products. In these cases, a two-part distribution procedure is followed by OHA at the U.S. Department of Energy whereby funds are first returned to individual consumers who can prove they were injured and then, in a second stage, remaining funds are distributed to provide indirect restitution. State plans for expenditure of these OHA directed distributions need not be tied to existing specific programs. Funds made available to the states have been periodic, since the early 1980s, with the largest single distribution of approximately \$30 million. Expenditures of these funds must meet the following requirements:

- A. energy related;
- B. supplementary;
- C. injured consumers, not governmental entities, must be the primary beneficiaries of direct benefits; and
- D. no disproportionate benefit to any one class of purchasers.

Approval by OHA is required for expenditure of these funds. The funds are deposited with the Department of Energy and made available to the states under the OHA's Subpart V procedures for unclaimed refined product monies. The funds are available upon submission of a plan meeting criteria for energy related restitutionary projects. The funds are to be used for indirect restitution. Plans approved in the past are those which will reduce energy consumption or cost, improve the quality or quantity of transportation services, or provide useful energy conservation information to injured consumers of petroleum products. The intent of the OHA in the expenditure of these

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funds is for the states "to stand in the shoes" of consumers injured by the overcharges who did not file first stage claims.

The state of Kansas received approval in 1985 and 1987 to expend Subpart V funds totaling \$368,185 for the low income consultation program, the Kansas Conservation Bank, a home comfort zone project, and a small business conservation project. In its 1987 approval of Kansas' uses, the OHA noted that the state had devoted a large portion of its second stage monies to the residential sector but that Kansas had submitted few plans for transportation-related programs, such as traffic light synchronization and marketing of public transportation systems, that would specifically benefit Kansas consumers of motor gasoline. The OHA decision suggested that the state may "wish to include proposals for transportation-related conservation projects in its future requests for second stage monies." Currently, \$2 million in principal and \$1.1 million in interest for a total of \$3.1 million is available in five accounts at the Department of Energy for the use of the state of Kansas. The House recommended the expenditure of approximately \$1.1 million from these second stage funds for the purchase of vans for the area agencies on aging for meals programs in FY 1990.

**OIL OVERCHARGE  
ENERGY GRANTS MANAGEMENT FUND  
FY 1990 DEMAND  
STATUS AS OF MARCH 22, 1989**

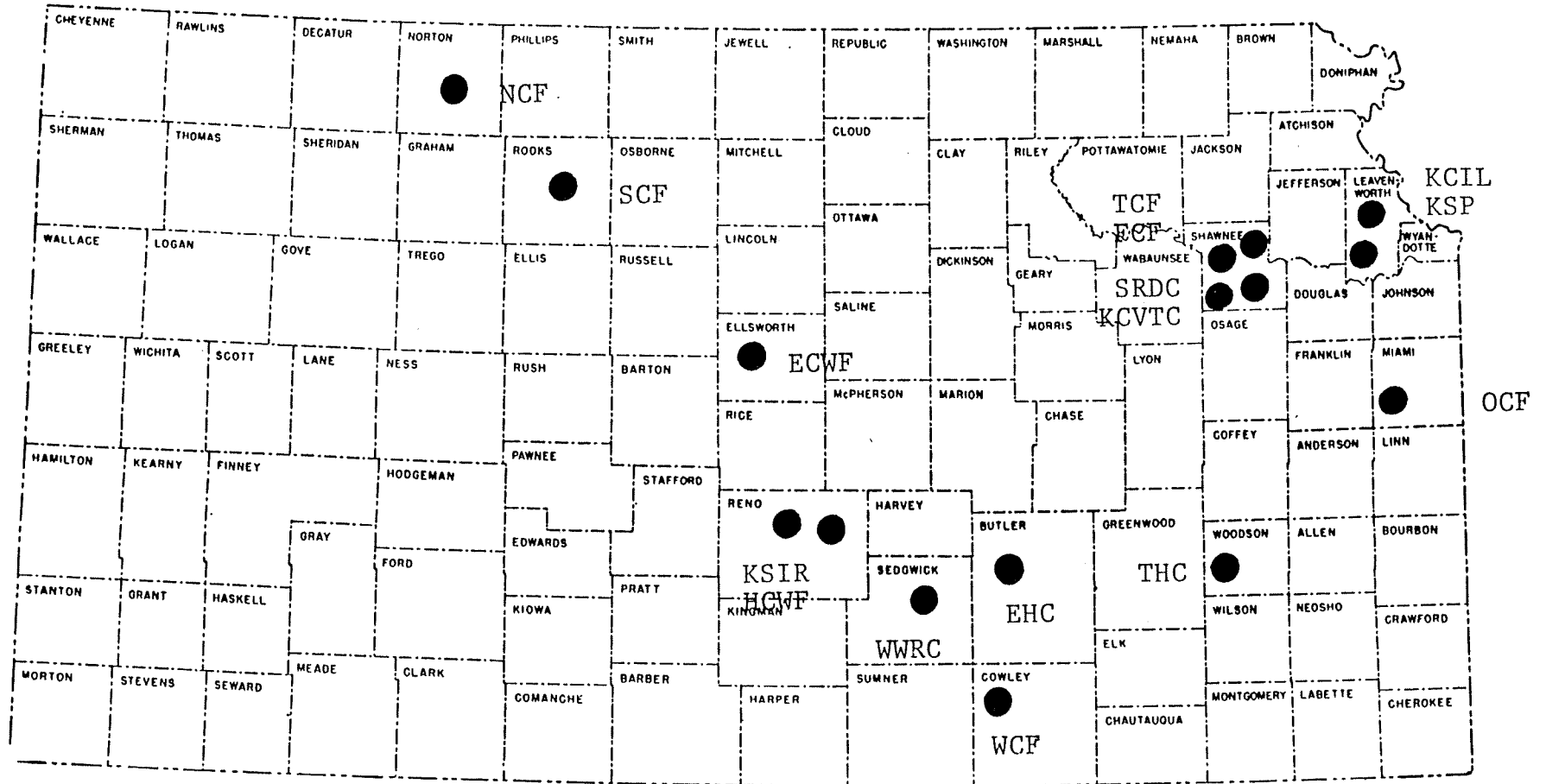
Bill No.	Agency/Project	Gov. Rec.	House Rec.	Senate Rec.
2064	KANSAS CORPORATION COMMISSION:			
	Energy Extension Service	\$ 76,357	\$ 76,357	\$ 76,357
	Instit. Conservation Program	1,679,583	1,679,583	1,679,583
	State Energy Conserv. Program	<u>1,116,098</u>	<u>1,116,098</u>	<u>1,116,098</u>
	Subtotal -- KCC	<u>\$ 2,872,038</u>	<u>\$ 2,872,038</u>	<u>\$ 2,872,038</u>
2029	SOCIAL AND REHABILITATION SERVICES:			
	LIEAP	\$ 5,293,670	\$ 6,487,618	\$
	Weatherization	<u>346,858</u>	<u>1,027,239</u>	<u></u>
	Subtotal -- SRS	<u>\$ 5,640,528</u>	<u>\$ 7,514,857</u>	<u>\$</u>
2031	KANSAS DEPARTMENT OF TRANSPORTATION:			
	Highway Projects	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000
	Subtotal - KDOT	<u>\$ 1,500,000</u>	<u>\$ 1,500,000</u>	<u>\$ 1,500,000</u>
29	BOARD OF AGRICULTURE:			
	Noxious Weeds Control	\$ 40,000	\$ 40,000	\$ 40,000
	Subtotal -- Agriculture	<u>\$ 40,000</u>	<u>\$ 40,000</u>	<u>\$ 40,000</u>
	WILDLIFE AND PARKS:			
	Park Road Construction	\$ --	\$ 1,200,000	\$ --
	Subtotal -- W & P	<u>\$ 0</u>	<u>\$ 1,200,000</u>	<u>\$ 0</u>
67	UNIVERSITY OF KANSAS GEOLOGICAL SURVEY:			
	Dakota Aquifer Study	\$ 200,000	<u></u>	\$ 200,000
	Subtotal -- KU	<u>\$ 200,000</u>	<u></u>	<u>\$ 200,000</u>
2029	DEPARTMENT ON AGING:			
	Vans for Meals Program	\$ 0	\$ 1,100,000 <sup>a</sup>	<u>1,100,000<sup>a</sup></u>
	TOTAL	<u>\$ 10,252,566</u>	<u>\$ 14,226,895</u>	<u>\$ 5,712,038</u>
	RESOURCE ESTIMATE:			
	Beginning Balance	\$ 22,165,164	\$	\$
	Net Receipts	<u>4,271,300</u>	<u></u>	<u></u>
	Total Funds Available	\$ 26,436,464	\$	\$
	Less: Expenditures	<u>10,252,566</u>	<u></u>	<u></u>
	Ending Balance	<u>\$ 16,183,898</u>	<u>\$</u>	<u>\$</u>

a) Estimated expenditures. This "no limit" appropriation would be from "second stage" refined product moneys currently on deposit for the state of Kansas at the U.S. Department of Energy. Expenditure of these funds does not affect the balance of the Energy Grants Management Fund.

KSP	Kansas State Penitentiary	Lansing
KSIR	Kansas State Industrial Reformatory	Hutchinson
SRDC	State Reception & Diagnostic Center	Topeka
KCVTC	Kansas Correctional-Vocational Training Center	Topeka
KCIL	Kansas Correctional Institute at Lansing	Lansing
	Honor Camps	Toronto & El Dorado
	Work Release	Wichita & Hutchinson
	Pre-Release Center	Topeka & Winfield
NCF	Norton Correctional Facility	Norton
WCF	Winfield Correctional Facility	Winfield
OCF	Osawatomie Correctional Facility	Osawatomie
FCF	Forbes Correctional Facility	Topeka
TCF	Topeka Correctional Facility	Topeka
ECF	Ellsworth Correctional Facility	Ellsworth
HCF	Hutchinson Correctional Facility	Hutchinson
SCF	Stockton Correctional Facility	Stockton

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Kansas Correctional Facilities





STATE OF KANSAS



DEPARTMENT OF CORRECTIONS  
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Mike Hayden  
Governor

Roger V. Endell  
Secretary

March 24, 1989

TO: Senate Ways & Means Committee  
**ATTENTION: SENATOR GUS BOGINA, CHAIRMAN**  
FROM: *Roger V. Endell*, Secretary of Corrections  
SUBJECT: Corrections' Status Update

I appreciate the opportunity to address you again on correctional issues. I begin my remarks by recalling the recommendations made one year ago in the paper we delivered to each legislator, to the Governor, and to the Federal District Court, entitled, "CRITICAL ISSUES IN KANSAS CORRECTIONS: A TIME FOR DECISION," and dated March 1, 1988.

We urged at that time that all three branches of government would have to work cooperatively and diligently in order to avoid a crisis situation being fueled by rapid and continuing prison population growth. We stated:

"First, there is an immediate need to develop alternative placements for 2,400 offenders who either are now or will be residing in the state's existing, overburdened correctional facilities" and secondly, "The system must be brought to a position of zero annual population growth if it is to avoid the construction or development of 475 bed spaces each and every year, unless and until a leveling in the incarceration rate is observed. No hint of any downward or even stabilizing trend is on the horizon."

We concluded the overview of the paper by stating, "Correctional reforms may be painful, costly, or both. The correctional dilemma in Kansas is clearly the result of the clash of a punishment-oriented public policy, against hard economic realities. ...while it is relatively easy

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to get tough on crime and criminals through the passage of more restrictive criminal laws, more diligent law enforcement, harsher sentencing practices, and more restrictive parole policies, it is more difficult to appropriate sufficient funds to the correctional system which must cope with the additional hundreds caught up in the broadening criminal justice net."

We cited a variety of population statistics about the growth rate:

"While a plethora of plans, studies, task force and consultant reports have accumulated over the past decade and more concerning the growth in Kansas' correctional population, that population has continued its steady and relentless growth until the entire system is now over capacity. Not only is there insufficient space for additional commitments, the population in several existing institutions must be reduced.

Although the crime rate in Kansas has been relatively steady in recent years, the number of inmates incarcerated in the correctional system has more than doubled since 1981. According to the Bureau of Justice Statistics, Kansas was number one in the nation in its increase in rate of incarceration between 1983 and 1987--a 69% increase. At the same time, the rate of parole of inmates from the correctional system has declined markedly from 80% in 1983 to 43% in 1987. The average annual increase of the inmate population for the years 1978-1980 was 34 offenders a year; but beginning in 1981 a more substantial pattern of growth emerged. In FY 1981 the growth rate was nearly ten times higher than the average yearly increase for the three previous years. Between 1984 and 1987 the population continued to escalate."

<u>Fiscal Year</u>	<u>Average Monthly Increase</u>	<u>Annual Increase</u>
1978 - 1980	2.8	34
1981	27.8	334
1982	28.5	342
1983	31.8	382
1984	53.6	643
1985	42.1	505
1986	37.8	453
1987	55.3	663

"Total system growth for the seven-year period--1981-1987--was 3,322 inmates, above and beyond releases, or an average annual growth rate of 475 per year. Although there were some fluctuations from one year to another, the growth rate has been clearly upward and has caused dramatic pressures on the system. Without any doubt, overcrowding is the root of the correctional problem. The terrible irony is that correctional managers have little or no control or influence over the number of inmates who enter or exit the system, but are expected, nevertheless, to maintain institutional peace and dignity and to rehabilitate offenders so that they are returned to society as better citizens rather than more bitter."

I prepared fresh statistics and a prisoner population profile and presented them to you several weeks ago at a briefing before this committee.

We now have better justice system communication as a result of the establishment of the Governor's Criminal Justice Coordinating Council. We now are completing approximately 1,500 new beds for prisoner at Stockton, Norton, Ellsworth and Hutchinson, and another 400 beds in community residential centers. We have statutory revisions in place that were accomplished by passage last year of HB 3079. We have a better working relationship with the Parole Board and with Community Corrections programs; and, we have significantly improved the quantity and quality of our inmate programs in work, medical care, substance abuse, education and other therapeutic programs. All of these accomplishments can be attributed to a cooperative working relationship between the major branches of government.

Some of our accomplishments since the end of the 1988 Legislative Session were accomplished rapidly and with little or no difficulty. Other tasks have been slower to develop and some have met with opposition; but solutions have been developed across the full correctional spectrum, i.e., from creation of additional court services officers and diversion of "D" and "E" felons away from the state's correctional doors at the

front end, development of additional minimum and medium space for those incarcerated, and development of community-custody programs for inmates nearing the end of their sentences, as well as significant increase in parole officers.

Despite these accomplishments, three significant pieces of work remain to be accomplished. All three were recommended to the legislature by the Governor's Criminal Justice Coordinating Council: First, the expansion of the community corrections program from the current 12 counties to all 105 counties statewide. This recommendation is incorporated in SB 49 and will permit the diversion of additional appropriate offenders from incarceration in state facilities.

Second is the proposal to create a commission on sentencing guidelines to evaluate all crimes and punishments currently in statute. SB 50 will give the legislature better control of determining who should be incarcerated, and for how long. It will also give the Department of Corrections a better ability to predict and manage institutional populations.

Approval of these measures will help the state begin to regain control of inmate population increases.

The Council's third proposal was the recommendation to construct a new maximum-security correctional institution. The State of Kansas is under Federal Court Order to reduce the inmate population to operating capacities at our correctional institutions by July 1, 1991. Judge Rogers specifically spoke to maximum custody, protective custody, and mentally-ill inmates being unconstitutionally housed in our existing facilities. Presuming completion of current expansion projects, at today's inmate population levels, with no growth in population, the state faces shortage of over 500 maximum-security "beds." If the average increase in inmate population over the last 10 years is maintained, the state will need 779 additional maximum-security beds.

The issues involved in this problem are complex and potential solutions are expensive. The state must build more high-security bed space or, it must release hundreds of inmates before their parole

eligibility dates or completion of their sentences and shift hundreds of high-security inmates into inappropriate lower-security housing--housing which cannot economically or safely be converted to maximum-security beds. The safety of other inmates, state employees, and neighboring residential areas is at stake.

The Department of Corrections is taking every step possible to prevent the release of inmates between now and the court-ordered July 1, 1991, deadline. However, releases may have to occur in order to keep the state from being in contempt of court.

Governor Hayden clearly stated in his State of the State address that in resolving the prison overcrowding problem, public safety must be the controlling factor. While the option of constructing a new high-security institution is not attractive from a financial standpoint, the premature release of hundreds of convicted offenders is not an acceptable alternative.

Upon direction and appropriation by this legislature and with approval of the Governor we have developed a program statement and schematic design for a maximum-security correctional institution. The proposed facilities will hold 768 high-security prisoners in one facility, and 256-cell mental-health inmates in a separate unit to be built at Larned. These proposals are now before the legislature for action.

I will, of course, accept full responsibility for any errors which may have been made during the Department's intensive efforts to avoid the federal court appointing a Master to solve the Kansas correctional crisis. We have solid accomplishments in getting more inmates out into the community working and repaying their debt to society; we have humanely and constitutionally housed the minimum and medium security inmates; we are expanding the educational, vocational, and health-care opportunities for the inmates. We are almost out of trouble with the court and with your assistance we can finish the plan this session to end the correctional crisis.

RVE:dja

Kansas Department of Corrections  
Community Residential Centers  
Briefing Paper  
March 23, 1989

As part of the plan developed by the Kansas Department of Corrections and authorized by the Kansas Legislature, a total of two hundred community residential center beds have been brought on line with an additional two hundred scheduled to become operational between March 30 and April 14, 1989. The sequence of events leading to the establishment of these beds is as follows:

April 18, 1988	Original request for proposals issued
May 11, 1988	Response period closed
May 12-13, 1988	All responses reviewed by central office staff and institutional administrators
May 13, 1988	Selected Vendor (VIP Company) notified
May 17, 1988	Procurement negotiating committee consisting of two Dept. of Administration staff members and one KDOC staff member is convened
June 14, 1988	Original contract is signed
July 27, 1988	Inmates enter Topeka CRC
August 29, 1988	Inmates enter El Dorado CRC

Responders to the RFP were instructed to submit full or incremental proposals for any or all of the following geographic locations:

Wyandotte/Johnson County area:	150 beds
Shawnee County:	100 beds
Sedgwick/Reno/Butler/Harvey County area:	100 beds
Montgomery County:	25 beds
Finney County:	25 beds
Saline County:	25 beds

Multiple options were requested by the Department to determine if there was an economically feasible way of determining if a wide geographic dispersment of CRC beds could be achieved. The responses indicated only large programs were economically feasible (the small programs were bid in the \$35 to \$60 per day range). VIP was instructed to proceed in developing programs in Shawnee; Wyandotte/Johnson; and Sedgwick/Butler/Harvey/Reno county areas.

The Federal District Court ordered that the population of Kansas State Penitentiary be reduced at the rate of 100 inmates per month for the months of June, July, August and September, 1988. The original RFP indicated that all programs were to be fully operational on or before September 1, 1988. Two hundred of the proposed CRC beds were needed to assist in meeting the court order. At the Department's insistence, the contractor accepted 100 inmates at its Topeka site on July 27, 1988.

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The contractor experienced considerable community resistance as it attempted to obtain several sites in Sedgwick County, an experience now being repeated by the Sedgwick County Community Corrections Program. After three different siting attempts failed, the contractor obtained a temporary site in Butler County. 100 inmates were placed in the El Dorado CRC on August 29, 1988.

The contractor experienced protracted community and political resistance in the greater Kansas City area and was unsuccessful in obtaining a site even after the geographic area was expanded to include Leavenworth County.

On March 8, 1989, a procurement negotiating committee was reconvened to negotiate the expansion of each existing program to a capacity of two hundred at each site. On March 22, 1989, contract amendments were signed which will allow an additional 100 inmates to move to Topeka CRC beginning March 30, 1989, and admitting 100 new inmates as well as those currently at El Dorado CRC to a new Wichita location on April 14, 1989.

The contract amendment modifies the original program structure to allow inmates to begin work approximately three weeks earlier than previously. The contractor collects 25% of the inmates' net earnings as their contribution towards the cost of their own care. This is similar to KDOC's practice at Wichita Work Release Center which collects a share of inmates' income under a slightly different structure. Wichita Work Release Center can collect up to \$151.67 per inmate per month plus \$.22 per mile for transportation. Hutchinson Work Release Center has similar procedures as well. This is authorized by KSA 75-5268. These payments by the inmates serve two functions: (1) they help defray the cost to the state of housing, funding and clothing inmates; and (2) to provide inmates with supervised experience in managing their earnings by payment of rent and transportation expenses.

The addition of the latest two hundred beds will allow the Department to comply with the court ordered reduction to 1,303 inmates at KSIR by April 1, 1989.

In creating these programs, the Department proceeded as authorized by the legislature to place more inmates judged to be low risk in the communities as productive citizens. Through this program, the Department attempts to protect public safety, provide the greatest return for each state dollar expended, and responsibly implement legislative intent.

Cost Per Inmate

Community Residential Centers

<u>FY 1989</u>		<u>Per Year</u>	<u>Per Day</u>
Operations	\$2,030,887 / 217 =	\$ 9,359	\$25.64
Start-up Improvements	395,000 / 217 =	1,820	4.99
State Cost	2,425,887 / 217 =	11,179	30.63
Inmate Cost	86,851 / 217 =	400	1.10
	\$2,512,738 / 217 =	\$11,579	\$31.73

FY 1990

State Cost	\$3,139,000 / 400 =	\$ 7,847	\$21.50
Inmate Cost	257,220 / 400 =	643	1.76
	\$3,396,220 / 400 =	\$ 8,490	\$23.26

Wichita Work Release

FY 1990

Operations	\$1,128,026 / 100 =	\$11,280	\$30.90
Inmate Reimbursement	(116,800) / 100 =	(1,168)	(3.20)
State Cost	1,011,226 / 100 =	10,112	\$27.70

Honor Camps

FY 1990	\$1,903,369 / 172 =	\$11,066	\$30.32
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Community Corrections Residential Program

Sedgwick		\$11,680	\$32.00
Shawnee		\$15,446	\$42.32
Johnson		\$13,505	\$37.00



STATE OF KANSAS



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Mike Hayden  
*Governor*

Roger V. Endell  
*Secretary*

March 23, 1989

To: Senate Ways and Means Committee  
Re: DOUBLE CELLING - ELLSWORTH CORRECTIONAL WORK FACILITY

The operating capacity of the Ellsworth Correctional Work Facility, as determined by the Department of Corrections, is 516. This operating capacity is comprised of the following components:

96	Bed minimum security dorm
68	Beds - Maximum security - single celled
352	Beds - Medium security - (Double celled
—	in 176 cells, each 80 sq. feet)
516	(Operating Capacity)

In addition, there are twelve maximum security cells which are not counted in the operating capacity. These cells are segregation cells and are reserved for special use situations.

When funding for expansion of the Ellsworth institution was requested during the 1988 Session, Department representatives testified that the medium security areas of the institution (176 cells) would be double celled in order to reach the capacity of 512 designated by the legislature in the appropriation bill. This is the primary reason the cells were designed at 80 sq. feet.

ACA Standard 2-4129 provides as follows:

"For general population housing, only one inmate occupies a room or cell designed for single occupancy which has a floor area of at least 60

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square feet, provided inmates spend no more than 10 hours per day locked in. When confinement exceed 10 hours per day, there are at least 80 square feet of floor space."

To double cell in 80 sq. feet cells at Ellsworth would not be in compliance with this standard. That does not mean that double celling would be unconstitutional or that the Ellsworth institution could not receive ACA accreditation. The above reference standard is an essential rather than a mandatory standard. To receive accreditation an institution must be in compliance with 100 percent of mandatory standards and at least 90 percent of essential standards. While ECWF would not be in compliance with 2-4129, the institution could still be accredited if it otherwise met the required compliance levels.

When the operating capacities for the various institutions were submitted to the Court, a capacity of 516 was listed for the Ellsworth institution. In the order of February 15, 1989, the Court utilized that operating capacity. Thus, operation of the ECWF at that level, including double celling to the extent specified herein, will not be contrary to the Court's order.

With specific reference to ECWF, there are no plans to reduce the operating capacity by 200 or to operate the institution with a permanent operating capacity of less than 516 inmates. The Department is considering, however, as a temporary measure, transferring 128 mentally ill inmates to ECWF. All of these inmates would be single celled. This would reduce the operating capacity to 428 on a temporary basis until a permanent mental illness facility is constructed. When those inmates could be placed at a permanent institution the capacity would again increase to 516.

It is important to note in considering the order of February 15th with respect to the issue of double celling that the court specified that any new construction be in compliance with ACA standards. The Department understands this to mean that a new institution would have to be designed for single cell occupancy. This particular provision of the order has no impact on the institution at Ellsworth.