

Approved: 2-1-99
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 13, 1999 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statute
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Barbara Tombs, Executive Director, Kansas Sentencing Commission

The Chairman gave an overview to new committee members assigned to the Judiciary Committee.

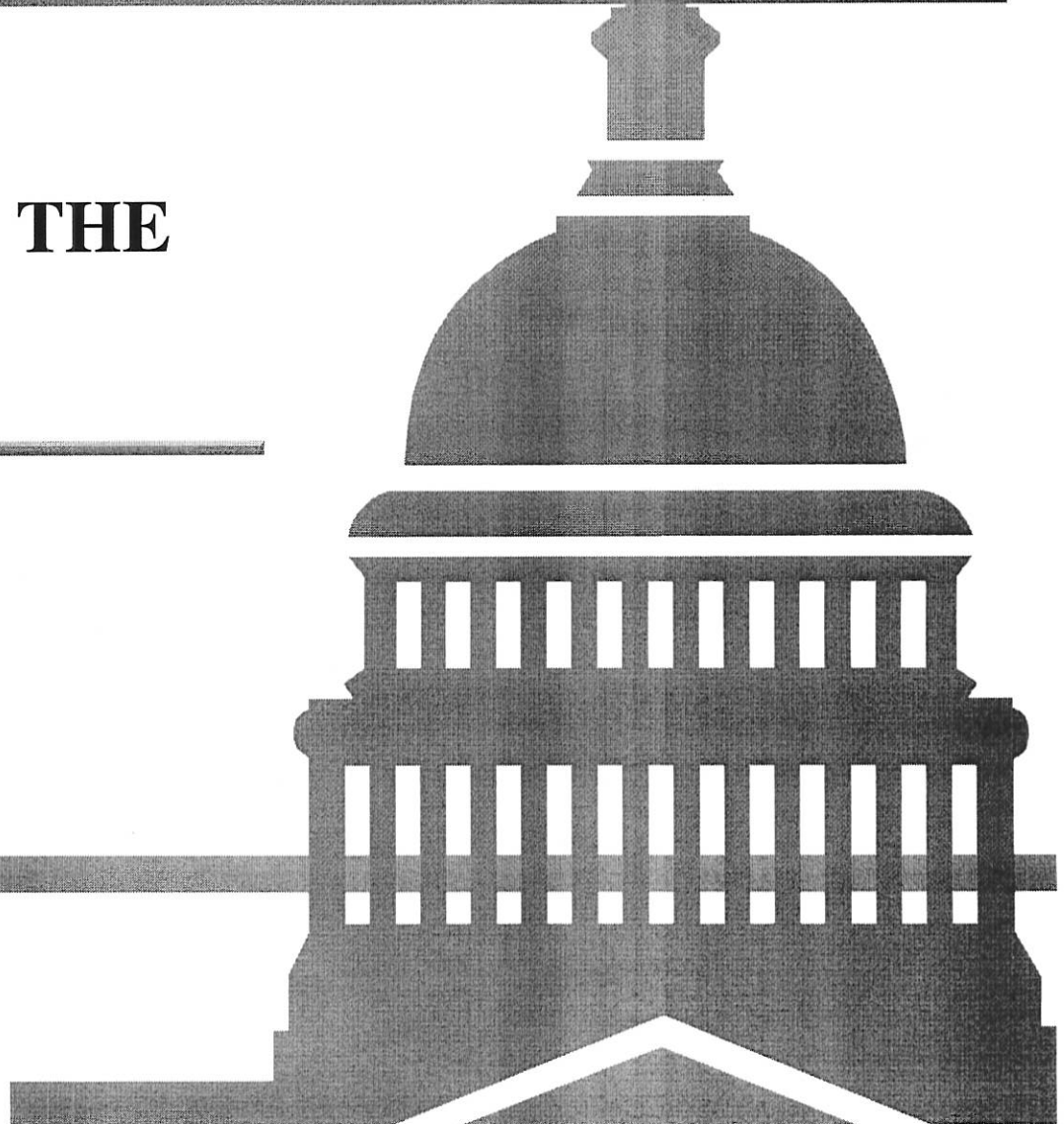
Barbara Tombs, Executive Director, Kansas Sentencing Commission, gave an update on the current sentencing guidelines and how they work. (Attachment 1)

The committee meeting adjourned at 4:30p.m. The next meeting is scheduled for January 14, 1999.

OVERVIEW OF SENTENCING GUIDELINES

■ PRESENTATION TO THE HOUSE JUDICIARY COMMITTEE

Barbara Tombs
Executive Director
Kansas Sentencing Commission



SENTENCING GUIDELINES

MAJOR POINTS

- Crime severity level and criminal history are the main factors
- Sentences imposed are actually served
- Provide objectivity but allow discretion
- Forms a database
- Appeal process available

GUIDELINE BASICS

- Effective date - July 1, 1993

- Felony Offenses Only
 - Person and Nonperson Classifications

- Dual Grids
 - Non-Drug Grid
 - Drug Grid

- Incarceration Line
 - Above the Line: Presumptive Prison
 - Below the Line: Presumptive Nonprison

- Grid Boxes Designate Sentencing Range
 - Outside Designated Range Considered a Departure

- **Border Boxes**
 - Located on both Drug and Non-Drug Grids
 - Presumptive Prison Sentence
 - Option to Impose a Nonprison Sentence and not considered a departure

- **Off-Grid Offenses - Sentence Length Determined by Parole Board**
 - Capital Murder - Death Penalty

 - First Degree Murder
 - ▶ Life with 15 Year Parole Eligibility
 - ▶ Hard 25 Years
 - ▶ Hard 40 Years

 - Intentional Second Degree Murder
 - ▶ Life with 10 Year Parole Eligibility

 - Treason: Life with 15 Years Parole Eligibility

- **Non-Grid Crimes - No Assigned Severity Level**
 - Felony Driving Under the Influence (DUI)
 - ▶ 1995 Supp K.S.A. 8-1567
 - ▶ Cannot Serve Sentence in State Prison

 - Felony Criminal Deprivation of Property/Motor Vehicle
 - ▶ K.S.A. 21-3705(b)
 - ▶ Commonly Known as "Joy Riding Statute"
 - ▶ Cannot Serve Sentence in State Prison

 - Felony Domestic Battery
 - ▶ 1997 Supp K.S.A. 21-3412
 - ▶ Third Conviction in Five Years is Person Felony
 - ▶ Sentence of 90 Days to One Year
 - ▶ Can Serve Sentence in State Prison

- **Criminal History**
 - Represented on the Top or Horizontal Axis
 - Seriousness Goes Left to Right
 - ▶ "A" the Most Serious
 - ▶ "I" the Least Serious
 - Based on Prior Convictions For:
 - ▶ Person and Nonperson Felonies
 - ▶ Person Misdemeanors/City Ordinances/County Resolutions
 - ▶ Class A Nonperson Misdemeanors
 - ▶ Class B Select Nonperson Misdemeanors
 - Criminal History Rules
 - ▶ Only Verified Convictions Counted
 - ▶ No Decay Factor for Adult Convictions
 - ▶ Some Juvenile Convictions Decay if Current Conviction is Past Age 25

● **Crime Severity Level**

- Severity Level Determined by Statute
- Found on Side or Vertical Axis of the Grid
- Non-Drug Grid the Range is from 1 to 10
 - ▶ 1 is the Most Serious
 - ▶ 10 is the Least Serious
- Drug Grid the Range is from 1 to 4
 - ▶ 1 is the Most Serious
 - ▶ 4 is the Least Serious
- Anticipatory Offenses
 - ▶ Attempt or Conspiracy Two Levels Below the Offense
 - ▶ Solicitation-Three Levels Below the Offense
 - ▶ Can Never be Ranked Lower Than Severity Level 10
 - ▶ Drug Grid Reduce Sentence by Six Months

- **Sentencing Criteria**

- Court Must Impose the Complete Prison Sentence
 - ▶ Include Prison Sentence, Good Time and Post-Release
- Presumptive Non-Prison Sentences
 - ▶ Must Indicate Type of Non-Prison Sanction and Duration
 - ▶ Must Indicate Corresponding Prison Sentence, Good Time and Post-Release Supervision Period
- Recommended Probation Periods
 - ▶ 36 Months Non-Drug Levels 1-5
 - ▶ 36 Months Drug Levels 1- 3
 - ▶ 24 Months Non-Drug Levels 6-10
 - ▶ 24 Months Drug Level 4
 - ▶ Can be Extended up to 60 Months
 - ▶ Can be Extended for Child Support and Restitution

- **Good Time**
 - ▶ Prior to 4/20/95 - 20% of Sentence
 - ▶ Post 4/20/95 - 15% of Sentence
 - ▶ Good Time Added to Period of Post-Release Supervision

- **Post-Release Supervision**
 - ▶ Replaces Parole, Except for Off-Grid Offenses
 - ▶ Period of Post-Release Determined by Severity Level
 - **Prior 4/20/95**
 - ▶ 24 Months for Non-Drug Levels 1- 6
 - ▶ 12 Months for Non-Drug Levels 7-10
 - ▶ 24 Months for Drug Levels 1- 3
 - ▶ 12 Months for Drug Level 4
 - **Post 4/20/95**
 - ▶ 36 Months for Non-Drug Levels 1- 6
 - ▶ 24 Months for Non-Drug Levels 7-10
 - ▶ 36 Months for Drug Levels 1-3
 - ▶ 24 Months for Drug Level 4

- Up to 60 Months for Sexually Violent Offenders
- Violation of Conditions of Post-Release Supervision
 - ▶ Prior 4/20/95 90 Days Maximum Incarceration
 - ▶ Post 4/20/95 180 Days Maximum Incarceration
- Commits a New Offense While on Post-Release Supervision
 - ▶ Can Receive Prison Sentence Even if Offense Designates a Non-Prison Sentence.
- **Departures** - Allow for Discretion in Extraordinary Cases
 - Dispositional Departure
 - Durational Departure
 - Dispositional and Durational Departure
 - Judge Must State Reason for Departure
 - Mitigating and Aggravating Factors - Nonexclusive List
 - Departures Are Appealable

- **Retroactivity**

- A Guidelines Provision Applied to Offenders Who Were Incarcerated That Would Have Been Presumptive Non-Prison if the Offense Has Been Committed After July 1, 1993.
- Focused on Specific Grid Cells
 - ▶ Non-Drug Grid 5H, 5I, or 6G
 - ▶ Drug Grid 3H or 3I
- Department of Corrections Determined Eligibility
- If Eligible, Sentence Converted and Inmate Released After Serving Mid-Point of the Guideline Sentence.
- If on Parole for a Retroactivity Offense and Parole is Revoked, Sentence is Converted to Guideline Sentence and Post-Release Supervision Time.

The Prophet Prison Population Projection Model

- Computer based simulation model
- Based on offender identification groups
- Utilizes the various statuses of custody
- Assumptions provided by Consensus Group
- Capable of a Ten Year forecast
- Ability to produce individual bill impacts

SENTENCING RANGE - NONDRUG OFFENSES

Category⇒	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	816 776 740	772 732 692	356 340 322	334 316 300	308 292 276	282 268 254	254 244 230	232 220 208	206 194 184
II	616 584 552	576 548 520	270 256 242	250 238 226	230 218 206	210 200 190	192 182 172	172 164 154	154 146 136
III	206 194 184	190 180 172	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Border Box

Recommended probation terms are:

- 36 months for felonies classified in Severity Levels 1 - 5
- 24 months for felonies classified in Severity Levels 6 - 10

Postrelease terms are:

For felonies committed before 4/20/95

- 24 months for felonies classified in Severity Levels 1 - 6
- 12 months for felonies classified in Severity Level 7 - 10

For felonies committed on or after 4/20/95

- 36 months for felonies classified in Severity Levels 1 - 6
- 24 months for felonies classified in Severity Level 7 - 10

SENTENCING RANGE - DRUG OFFENSES

Category ⇒	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
<div style="background-color: #cccccc; border: 1px solid black; padding: 2px; display: inline-block;">Presumptive Probation</div> <div style="background-color: #cccccc; border: 1px solid black; padding: 2px; display: inline-block; width: 50px; height: 10px; margin: 2px 0;"></div> Border Box <div style="background-color: #cccccc; border: 1px solid black; padding: 2px; display: inline-block;">Presumptive Imprisonment</div>

Recommended probation terms are:

36 months for felonies classified in Severity Levels 1 - 3

24 months for felonies classified in Severity Level 4

Postrelease supervision terms are:

For felonies committed before 4/20/95

24 months for felonies classified in Severity Levels 1 - 3

12 months for felonies classified in Severity Level 4

For felonies committed on or after 4/20/95

36 months for felonies classified in Severity Levels 1 - 3

24 months for felonies classified in Severity Level 4

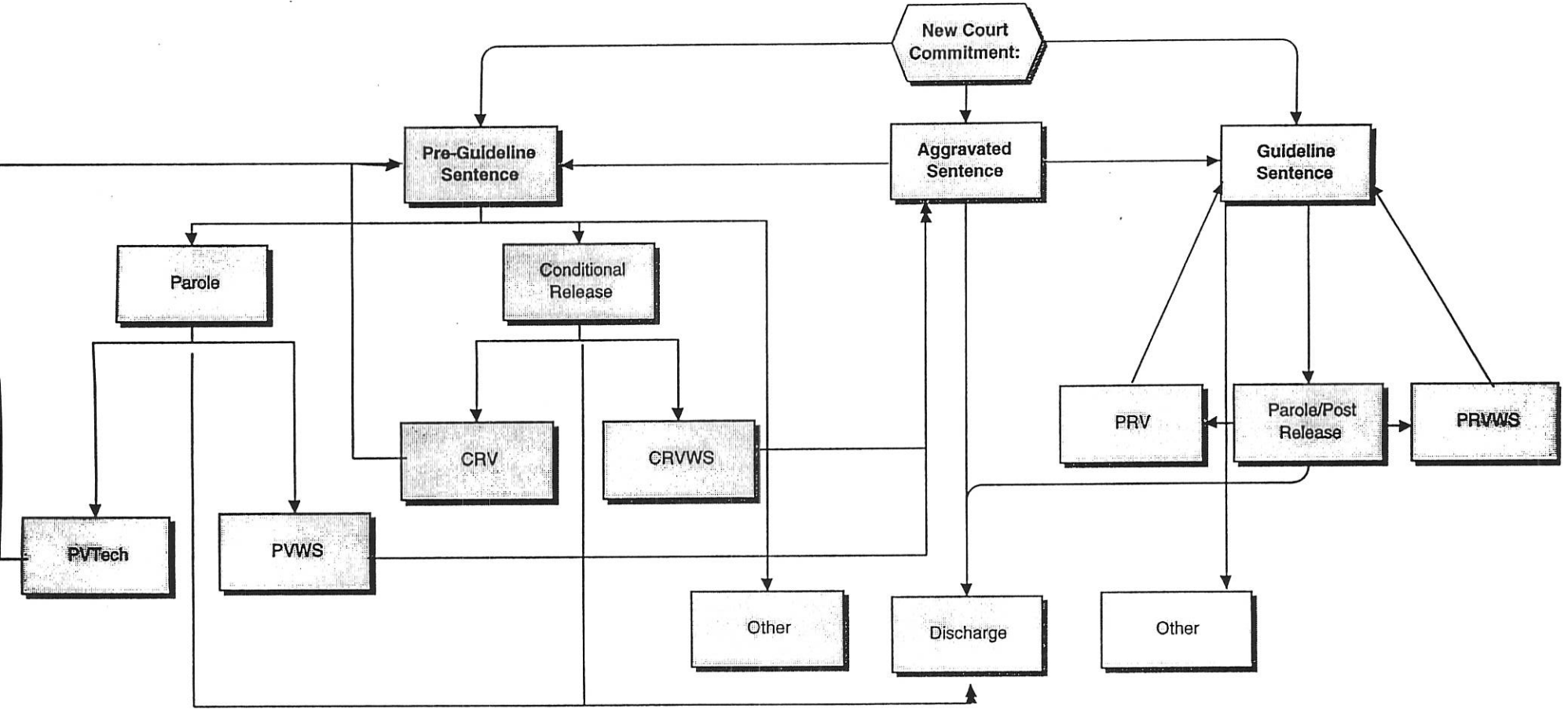
**KANSAS SENTENCING COMMISSION
 FY 1999 OFFICIAL ADULT INMATE PRISON POPULATION PROJECTIONS-WITH GOOD TIME RESTORATION***

ID Group	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL # INCREASE	PERCENT INCREASE
D1	32	39	44	58	51	55	56	55	60	59	62	30	93.8%
D2	213	200	198	193	191	209	217	222	231	247	251	38	17.8%
D3	507	352	383	428	474	511	522	499	498	519	519	12	2.4%
D4	396	336	347	357	363	364	358	343	363	385	381	-15	-3.8%
N1	358	353	354	350	355	360	371	379	381	386	388	30	8.4%
N2	635	631	630	642	643	638	645	652	658	661	674	39	6.1%
N3	1321	1302	1281	1274	1281	1278	1283	1295	1300	1313	1317	-4	-0.3%
N4	285	299	320	329	322	310	312	313	327	321	320	35	12.3%
N5	890	982	1006	1039	1027	999	997	990	966	956	938	48	5.4%
N6	154	164	161	153	156	156	157	148	157	157	174	20	13.0%
N7	730	687	700	696	701	674	671	674	684	692	692	-38	-5.2%
N8	275	276	285	296	292	289	295	306	278	281	287	12	4.4%
N9	428	586	597	597	546	507	496	461	455	469	472	44	10.3%
N10	53	64	54	49	47	51	50	61	69	62	58	5	9.4%
OFF GRID	570	616	676	739	801	865	926	991	1053	1117	1180	610	107.0%
Conditional Parole Violators	1207	1138	952	852	837	715	707	693	607	627	615	-592	-49.0%
Total	8054	8025	7988	8052	8087	7981	8063	8082	8087	8252	8328	274	3.4%
Drug Border Boxes Bed Savings	-225	-208	-269	-251	-260	-287	-299	-313	-318	-320	-324		

* Based on the resent Kansas Supreme Court decisions.

Kansas Prisoner Movement Simulation Model

1-16



PV=parole violator; PVWS=parole violator with new sentences; CRV=conditional release violator; CRVWS=conditional violator with new sentences; PFV=parole/postrelease violator; PRVWS=parole/postrelease violator with new sentences.

PRISON POPULATION PROJECTION CONSENSUS GROUP

The operation of the PROPHET Simulation Model is based on a combination of data analysis and key operational assumptions. In an attempt to formulate the most accurate assumptions, the Sentencing Commission utilizes a Prison Population Consensus Group to review and establish the final set of assumptions that are utilized in building the simulation model. Members of the Consensus Group represent various criminal justice agencies that play a role in the processing of an individual through the criminal justice system. Members contribute their agencies' expertise regarding formal and informal procedures and provide specific information on specific issues or practices that may affect prison population.

Current members of the Prison Population Consensus Group include:

Secretary Charles Simmons	Department of Corrections
Patricia Biggs	Research Analyst, Department of Corrections
Marilyn Scafe	Chairperson, Kansas Parole Board
Director Larry Welch	Kansas Bureau of Investigation
Judge Eric Rosen	Third Judicial District
Judge Donald Noland	Eleventh Judicial District
Doug Irvin	Office of Judicial Administration
Stuart Little	Legislative Research Department
Jim Murphy	Eighth Judicial District Community Corrections
Barbara Tombs	Executive Director, Sentencing Commission
Kunlun Chang	Research Director, Sentencing Commission

The Consensus Group held two meetings to review, discuss and make modifications to the assumptions to be incorporated in the Prophet Simulation Model. The final set of assumptions adopted by the group are as follows:

FY 1999 Prophet Prison Population Projection Assumptions

1. Model begins on July 1, 1998.
2. Model is based on FY 1998 data (July 1997 - June 1998).
3. The prison population projection is for a ten year forecasting period - FY 1999 to FY 2008.
4. Phase-In for new law (guideline admissions) was completed in FY 1998. The projection model is now designed to simulate all new court commitments to prison, from FY 1999 forward, under sentencing guidelines, with a determinate sentence length.
5. New commitments to prison (offenders not on any type of supervision at time of conviction

and subsequent admission to prison) continue to decline for the third straight year. FY 1996 data indicates a monthly average of 113 offenders; FY 1997 shows a monthly average of 109 offenders; and FY 1998 data to date, indicates a monthly average of 98 offenders. The data would indicate that there is a declining trend in the number of first time offenders sentenced directly to prison. Members agreed that Kansas, following the national trend, would continue to utilize incarceration for violent offenders. Incarceration of non-violent offenders should be limited due to the structure of the sentencing grids, implementation of sentencing alternatives and adequate probation supervision. In addition, the state's focus on juvenile offenders has the potential to impact on future admissions to adult prisons. It was the general agreement of the Consensus Group that direct new commitments to prison would either remain stable or possibly show a slight decline.

6. The New Court Commitment growth assumption utilized in last year's model was a 2.1% yearly increase through the year 2007. The same 2.1% yearly increase is derived from the nine year average change (FY 1989 to FY 1998) in new court commitments. Historic growth rates for new court commitments (which include new direct court admissions, conditional probation violators, and probation violators with new sentences) are as follows:

FY 1989 to FY 1990	+5.80%
FY 1990 to FY 1991	-8.90%
FY 1991 to FY 1992	+3.10%
FY 1992 to FY 1993	-0.22%
FY 1993 to FY 1994	-11.22%
FY 1994 to FY 1995	+11.80%
FY 1995 to FY 1996	+17.40%
FY 1996 to FY 1997	+6.98%
FY 1997 to FY 1998	+1.35%

The 2.1% rate used last year reflects a decrease from the 4.3% yearly increase utilized in the previous year's model and the 3.2% increase that was utilized in original projections based on FY 96 data. In reviewing the FY 1998 data, the yearly growth from the previous year was 1.35%, less the projected 2.1%. Given this reduced growth rate, coupled with the additional beds at the Labette Correctional Conservation Camp, the implementation of the new female boot camp and the intermediate sanction centers, the agreement was reached that the average yearly growth rate should be adjusted to 1%. To further support the reduced growth rate, the allocation of additional substance abuse beds should have an impact on limiting prison population growth, since the courts would consider this alternative prior to incarceration in a state correctional facility.

7. New Law or Guideline sentenced offenders will lose an average of 25% of eligible good time credits. This rate reflects an increase over the 15% good time lost that was utilized in the original projections based on FY 1996 data, but is consistent with the 25% good time lost that was used in last year's projections.

8. Old Law or Pre-Guideline offenders are assumed to earn approximately 25.5 days per month of good time credit. This assumption is changed from 24.5 days used in the original and subsequent years population projections. This modest average increase is a function of the restored good time that resulted from recent court decisions.
9. Arrest rates factored into the projection model are based on historical increases over the previous ten years. It was noted by members of the Consensus Group that arrests for Methamphetamine Labs and related offenses would increase, thus a slight increase is projected for drug offenses.
10. New law conditional violators of post-release supervision for offenses committed before 4/20/95 serve a period not to exceed 90 days.
11. New law conditional violators of post-release supervision for offenses committed after 4/20/95 may serve up to 180 days. It is assumed that 75% of this group of offenders will earn back to 90 days of incarceration through good time earnings; 25% will serve between 90 and 180 days. Based on this assumption, an average of 135 days was incorporated into the model for this group of offenders. This assumption remains unchanged for the projection period.
12. FY 1998 data indicates Conditional Parole and Post-release violators were returned at an average rate of 163 violators per month, which was an increase from the projected rate of 110 violators used in FY 1996 and 130 violators used in FY 1997 and the 150 used in FY 1998. Secretary Simmons indicated that he did not feel there would be significant growth in the admissions for this specific offender group and they should be factored in the model at a rate of 160 inmates per month. With the additional funding appropriated for "Transitional Beds" the current number of violators returned to prison should be maintained.
13. Parole and post-release violators returned to prison with a new sentence are projected at a rate of 280 annually in the current Prophet Model. This annual rate was a decrease from the original rate projected to be 425 per year, but consistent with the rate that was used in the previous year's model. The fiscal year 1998 data indicates 284 returns with new sentences. Given that the previous fiscal year's admissions for this offender group varies only slightly from the 280 utilized in the Prophet Model, this assumption will remain unchanged.
14. Information provided by the Parole Board for the FY 1998 projections established a parole rate of 25% for all pre-guideline cases. This rate was an increase from the 22% parole rate utilized in FY 1997 projections but consistent with the rate that was used in the original FY 1996 projections. Marilyn Scafe, Chairperson of the Parole Board, indicated that a 28% parole rate would be appropriate due to the number of old law offenders being paroled to begin serving their new law or guideline sentence.

15. Conditional conditional-release violators are treated the same as conditional post-release and parole violators in the projection model. This is an unchanged assumption from the previous year.
16. Old law inmates serving aggregate sentences serve their old law sentences until their designated parole eligibility date and then begin to serve their new law sentence.
17. Post-release violators with a new sentence will serve the remaining 15/20% of their old sentence (from good time earnings) and then start serving their new charge sentence.
18. FY 1998 data indicated that 1,487 conditional probation violators were sentenced to prison, at an average monthly rate of 124 per month or an increase of 14.3% over the previous year. FY 1997 data showed an average monthly admission of 110 per month, which was also an increase from the 103 per month used in the original projections released in FY 1996. During FY 1998, the Consensus Group reduced the number of conditional probation violators entering prison from 110 to 100 per month from January 1, 1998 to July 1, 1998, to reflect the \$700,000 legislative allocation to Community Corrections to develop programs to divert this specific population. Absent any certainty that funding would continue beyond the current fiscal year, the number of violators was returned to 110 per month for the remainder of the forecast period. As noted earlier, a review of the FY 1998 data demonstrates continual growth in admissions for this specific offender population. The Consensus Group discussed the issues surrounding conditional probation violators and the impact of the 1998 Legislative resource allocations for sentencing alternatives for this offender population, specifically the intermediate sanction centers and substance abuse beds. Utilization of these alternatives is not expected to occur until late FY 1999. Given the lag time to implement the alternative sentencing options and using an average percentage growth rate for this specific offender population, a monthly admission rate of 130 conditional probation violators was programmed into the model.
19. Last year the Consensus Group reviewed the data available pertaining to utilization of the border boxes on the drug grid. The FY 1997 data indicated that 76.6% of offenders who fell within the drug boxes were sentenced to probation and the remaining 23.4% were given prison sentences, a change from the original 50/50 diversion rate. Analysis of the FY 1998 data indicates that for this same offender group, 78.5% of offenders were sentenced to probation and 21.5% were sentenced to prison. The model will be adjusted to reflect the 80/20 diversion rate but the 50/50 failure rate will remain unchanged since sufficient data is not available to warrant any change in the rate at this time.