

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Melvin Neufeld at 9:00 a.m. on February 4, 2003, in Room 514-S of the Capitol.

All members were present:

Committee staff present: J. G. Scott, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Amy Deckard, Legislative Research Department  
Martha Dorsey, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Nikki Feuerborn, Administrative Analyst  
Sue Fowler, Committee Secretary

Conferees appearing before the committee: Barbara S. Tombs, Executive Director, Sentencing Commission  
Roger Werholtz, Secretary, Kansas Department of Corrections

Others attending: See Attached

Representative Pottorff moved for the introduction of legislation for Board of Barbering regarding fees. Motion was seconded by Representative Shriver. Motion carried.

Barbara S. Tombs, Executive Director of the Sentencing Commission, presented an overview of the Kansas Sentencing Commission (Attachments 1 and 2). Director Tombs reported on the Kansas prison admission trends regarding condition probation violators by severity level and parole/post-release condition violators by severity level. The actual projected population will have a very steady increase from the years 2003 - 2012. Ms. Tombs stressed the desperate need for long-term policy changes as the "quick fix" approach will no longer suffice. Sentencing guidelines regarding drug offenders is the main cause of the bed shortages. Of the 1500 plus beds needed in the next eight years 600 will be used by drug offenders and those offenders who are returned for parole violations. Without drug treatment programs and education programs, these numbers will all rise.

For the past two years, the Kansas Sentencing Commission has studied and examined numerous options that would reduce the state's prison population. The goal of the alternative drug policy is to provide community punishment and the opportunity for treatment to nonviolent offenders with drug abuse problems in order to more effectively address the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders. The target population for placement in the mandatory treatment program is defined within Attachment 2 (Kansas Sentencing Commission, Report to the 2003 Kansas Legislature).

There was a request for the results of a study on the success rate of prison ministries which are comprised of Chuck Colson program and other local faith-based groups which participate in such ministries

Ms. Tombs reminded the Committee of their past actions in passing sentencing laws nearly every year and the impact this has on projections. Many times these new laws negate each other and past legislation. She recommended all sentencing and judiciary bills be reviewed and handled as a package with a thorough examination and understanding of their possible repercussions.

Roger Werholtz, Secretary of the Department of Corrections gave an overview of the Department of Corrections (Attachment 3). He, too, addressed the issue of the prison population, as compared to capacity. The real issue has to do with the prison capacity for males. According to the projections and to the adjusted baseline capacity we will be out of maximum security male beds by June 30, 2005, out of medium security beds by June 30, 2003, and out of minimum security male beds by June 30, 2004.

At any given time, there are minimum security inmates with medical problems housed in higher security beds

CONTINUATION SHEET

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE at 9:00 a.m. on February 4, 2003, in Room 514-S of the Capitol

due to the proximity of hospitals or clinics. Those clinics are located in the maximum security units at Lansing, El Dorado and Hutchinson.

There may be lower security inmates occupying higher security beds on any given day because individuals are reclassified on a daily basis, or they may be in that higher security bed awaiting transport to a lower security facility or lower security setting. Another reason could be that the prisoner may be in the higher security bed because they are finishing up a program requirement that is only available at a higher security facility or they may be going through the Reception and Diagnostic process. That process typically lasts three to four weeks. The prisoners are classified during the first week so they can double cell those individuals that are identified as medium or minimum security, thus maximizing the use of the beds. This explains the difference between the reported capacity and the actual adjusted or functional capacity. Secretary Werholtz restated the position that the Department of Corrections is rapidly running out of male beds at all custody levels.

There should be sufficient capacity at least through 2012 to house the women that are projected to come into the system. The Department of Corrections is currently leasing up to 25 beds at any given time to the Federal Bureau of Prisons to house some of their female prisoners. Even though there are currently an excess of female beds within the system, these beds cannot be used to house male prisoners for security reasons.

The budget for the balance of this fiscal year represent \$3.3 million. That \$3.3 million is part of the \$4 million included in the supplemental recommendation that the Governor made for the Department of Corrections. The other \$700,000 of that appropriation covers shortfalls in the medical and food service contract that resulted from using a lower projected average daily population at the time the budget was built, as compared to what happened to the prison population now.

This last fall, the Department issued a request for proposal for the purchase or lease of bed space from private prison vendors. The Department has done this once before while the cell house at Ellsworth was under construction. Last spring and summer, inmates were housed at the Kit Carson Correctional facility in Burlington, Colorado, for a short period of time. Once the cell house was completed, the inmates were brought back and the cell house was essentially filled the day that it opened. The figures that have been seen from the vendors, so far, look fairly encouraging.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for February 5, 2003.

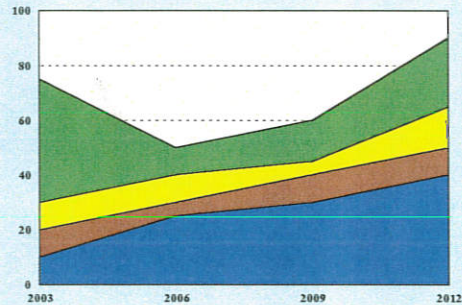
  
Melvin Neufeld, Chair



# KANSAS SENTENCING COMMISSION

## Fiscal Year 2003 Adult Inmate Prison Population Projections

House Appropriation Committee



February 2003

GUIDELINE (NEW LAW) ADMISSION CHARACTERISTICS-FISCAL YEAR 2002

ID GROUP	NUMBER ADMITTED	PERCENT ADMITTED	AVERAGE SENTENCE (MONTHS)	JAIL CREDIT (DAYS)	CONDITION PROBATION VIOLATORS (%)	PROBATION VIOLATORS W/NEW SENT (%)
D1	209	6.2%	91.1	148.0	2.4	4.8
D2	110	3.3%	53.1	139.1	12.7	6.4
D3	265	7.9%	26.8	128.1	36.2	7.2
D4	451	13.4%	20.0	121.0	58.1	4.7
N1	61	1.8%	245.7	202.7	4.9	3.3
N2	37	1.1%	178.8	306.5	N/A	N/A
N3	239	7.1%	91.2	179.8	8.8	3.8
N4	74	2.2%	66.5	190.0	12.2	N/A
N5	287	8.5%	51.6	187.5	24.0	6.3
N6	69	2.0%	35.0	167.2	31.9	10.1
N7	550	16.3%	24.0	156.3	60.5	10.2
N8	261	7.7%	16.0	129.5	59.0	11.9
N9	547	16.2%	11.1	110.4	63.4	6.0
N10	166	4.9%	7.4	89.5	63.3	3.0
OFF GRID	28	0.8%	-	-	N/A	N/A
TOTAL NEW LAW	3354	99.3%	65.0	142.8	43.1	6.6
TOTAL OLD LAW	19	0.6%				
MISSING/ NONGRID	4	0.1%				
TOTAL ADMITS	3377	100.0%				

Source: DOC admission file

HOUSE APPROPRIATIONS

DATE 2-4-03  
ATTACHMENT 1

**PRE-GUIDELINE (OLD LAW) ADMISSION CHARACTERISTICS  
FISCAL YEAR 2002**

ID GROUP	NUMBER ADMITTED	PERCENT ADMITTED	MINIMUM SENTENCE (MONTHS)	MAXIMUM SENTENCE (MONTHS)	JAIL CREDITS (DAYS)	PROBATION VIOLATORS (%)
D1	0	0.0%	0.0	0.0	N/A	N/A
D2	1	5.3%	180.0	999	N/A	N/A
D3	4	21.1%	36.0	120.0	59.8	N/A
D4	0	0.0%	0.0	0.0	N/A	N/A
N1	0	0.0%	0.0	0.0	N/A	N/A
N2	0	0.0%	0.0	0.0	N/A	N/A
N3	2	10.5%	90.0	240.0	145.5	N/A
N4	0	0.0%	0.0	0.0	N/A	N/A
N5	1	5.3%	60.0	240.0	40.0	N/A
N6	1	5.3%	36.0	120.0	75.0	100.0
N7	0	0.0%	0.0	0.0	N/A	N/A
N8	1	5.3%	12.0	48.0	N/A	100.0
N9	4	21.1%	9.0	30.0	85.0	100.0
N10	3	15.8%	4.0	20.0	12.7	66.7
OFF GRID	0	0.0%	0.0	0.0	N/A	N/A
AGGREGATE	2	10.5%	999	999	N/A	N/A
TOTAL OLD LAW	19	100.0%				

Source: DOC admission file.

**PRISON POPULATION CHARACTERISTICS JUNE 30, 2002**

ID GROUP	OLD LAW		NEW LAW		TOTAL	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
D1	3	0.0%	358	4.1%	361	4.1%
D2	6	0.1%	325	3.7%	331	3.8%
D3	15	0.2%	398	4.5%	413	4.7%
D4	1	0.0%	457	5.2%	458	5.2%
N1	242	2.8%	371	4.2%	613	7.0%
N2	199	2.3%	289	3.3%	488	5.6%
N3	199	2.3%	984	11.2%	1183	13.5%
N4	26	0.3%	238	2.7%	264	3.0%
N5	46	0.5%	819	9.4%	865	9.9%
N6	12	0.1%	140	1.6%	152	1.7%
N7	7	0.1%	719	8.2%	726	8.3%
N8	1	0.0%	191	2.2%	192	2.2%
N9	1	0.0%	256	2.9%	257	2.9%
N10	1	0.0%	44	0.5%	45	0.5%
OFF GRID	351	4.0%	164	1.9%	515	5.9%
Parole Conditional Violators	832	9.5%	505	5.8%	1337	15.3%
Aggregate Sentence	534	6.1%	0	0.0%	534	6.1%
SUBTOTAL	2476	28.3%	6258	71.4%	8734	99.7%
MISSING/NONGRID					25	0.3%
TOTAL					8759	100.0%

Source: DOC prison population file.

**COMPARATIVE ANALYSIS ON ADMISSION TYPE  
FY 1998 THROUGH FY 2002**

Admission Type	FY 1998		FY 1999		FY 2000		FY 2001		FY 2002	
	N	%	N	%	N	%	N	%	N	%
New Court Commitment	1247	22.9	1340	22.7	1328	20.4	1601	26.7	1702	28.4
Probation Condition Violator	1515	27.9	1579	26.8	1441	22.1	1330	22.2	1454	24.2
Probation Violator With New Sentence	204	3.8	226	3.8	212	3.3	203	3.4	221	3.7
Inmate Received on Interstate Compact	11	0.2	10	0.2	16	0.2	8	0.1	9	0.2
Parole/Post-release Condition Violator	1847	34.0	2236	37.9	3084	47.4	2552	42.6	2396	39.9
Parole/Post-release Violator With New Sentence	262	4.8	295	5.0	284	4.4	145	2.4	136	2.3
Paroled to Detainer Returned With New Sentence	19	0.3	28	0.5	32	0.5	30	0.5	19	0.3
Conditional Release Violator	113	2.1	118	2.0	104	1.6	109	1.8	57	1.0
Conditional Release Violator With New Sentence	15	0.3	13	0.2	7	0.1	10	0.2	3	0.1
Offender Returned to Prison in Lieu of Revocation	206	3.8	56	0.9	5	0.1	1	0.0	2	0.0
<b>Total</b>	<b>5439</b>	<b>100.0</b>	<b>5901</b>	<b>100.0</b>	<b>6513</b>	<b>100.0</b>	<b>5989</b>	<b>100.0</b>	<b>5999</b>	<b>100.0</b>

Source: DCC admission file.

**COMPARISON OF GUIDELINE NEW COMMITMENTS BY SEVERITY LEVEL  
ADMISSIONS AND AVERAGE LENGTH OF SENTENCE (LOS)  
FY 1998 THROUGH FY 2002**

Severity Level	FY 1998		FY 1999		FY 2000		FY 2001		FY 2002	
	Admission Number	LOS in Month	Admission Number	LOS in Month	Admission Number	LOS in Month	Admission Number	LOS in Month	Admission Number	LOS in Month
D1	5	124.2	10	104.9	26	95.8	101	91.6	209	91.1
D2	67	53.3	84	53.8	97	52.3	83	56.2	110	53.1
D3	263	25.0	277	25.7	255	27.1	258	28.1	265	26.8
D4	366	16.6	397	21.0	398	17.8	440	19.5	451	20.0
N1	17	308.5	48	391.1	52	299.0	77	335.0	61	245.7
N2	65	268.1	42	186.8	48	193.4	37	180.1	37	178.8
N3	187	90.2	190	78.8	204	89.8	211	99.4	239	91.2
N4	64	69.1	56	70.0	55	68.0	57	67.8	74	66.5
N5	224	50.1	236	53.6	226	54.0	276	55.7	287	51.6
N6	62	34.6	72	32.9	71	29.9	61	31.2	69	35.0
N7	427	23.7	448	27.5	439	26.4	515	25.5	550	24.0
N8	269	15.7	289	16.5	295	15.5	261	16.3	261	16.0
N9	576	11.5	623	12.2	568	10.5	553	11.2	547	11.1
N10	129	7.7	141	9.1	125	7.0	135	7.8	166	7.4
<b>Total</b>	<b>2721</b>		<b>2913</b>		<b>2859</b>		<b>3065</b>		<b>3326</b>	

Source: DOC admission files.

Note: Guideline new commitment admissions include new court commitments, probation condition violators and probation violators with new sentence.

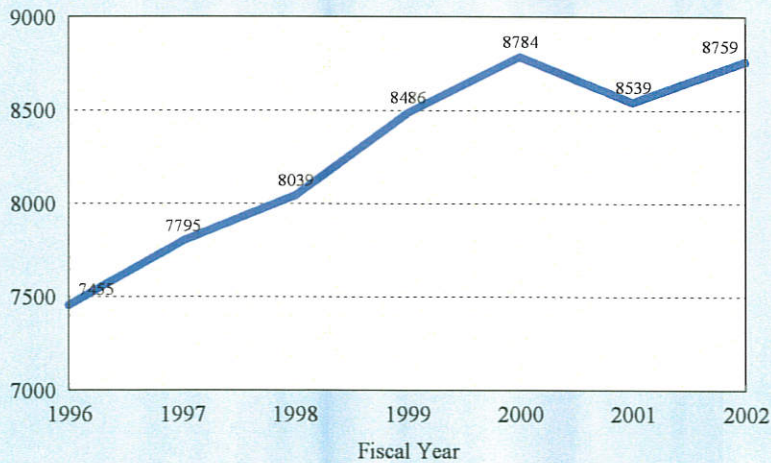
**COMPARATIVE ANALYSIS OF  
CONDITION PAROLE/POST RELEASE SUPERVISION VIOLATORS  
BETWEEN FY 2001 AND FY 2002**

Law	Admission Number				Average Length of Stay in Month			
	FY 2001	FY 2002	Increase #	Increase %	FY 2001	FY 2002	Increase #	Increase %
Both/Agg	83	81	-2	-2.4%	11.58	9.90	-1.68	-14.5%
New	1758	1749	-9	-0.5%	3.62	3.36	-0.26	-7.2%
Old	819	621	-198	-24.2%	13.78	15.29	1.51	11.0%
<b>Total</b>	<b>2660</b>	<b>2451</b>	<b>-209</b>	<b>-7.9%</b>				

Source: DCC admission files.

**KANSAS PRISON POPULATION TRENDS**

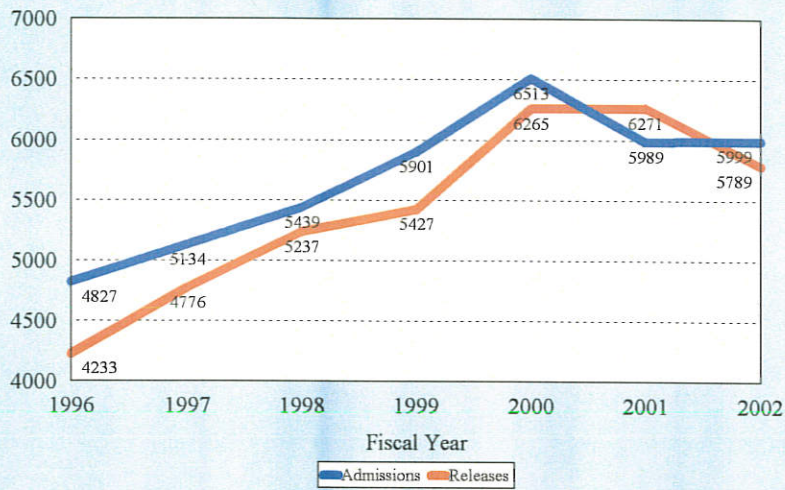
**Total Prison Population**



Source: DOC prison population files

## KANSAS PRISON POPULATION TRENDS

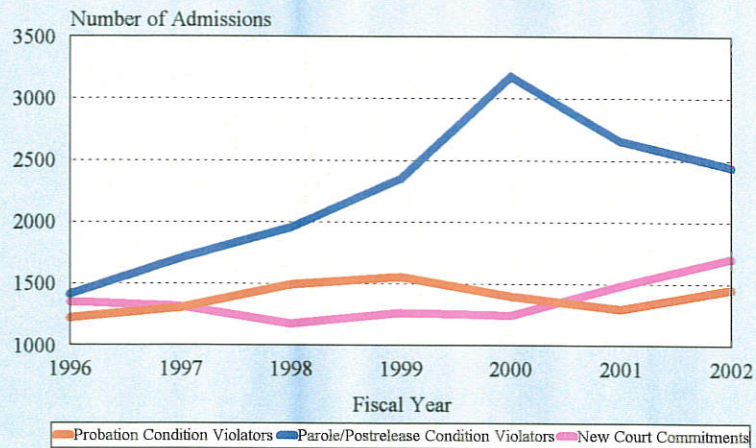
### Admissions and Releases



Source: DOC admission and release files

## KANSAS PRISON ADMISSION TRENDS

### Admissions by Type

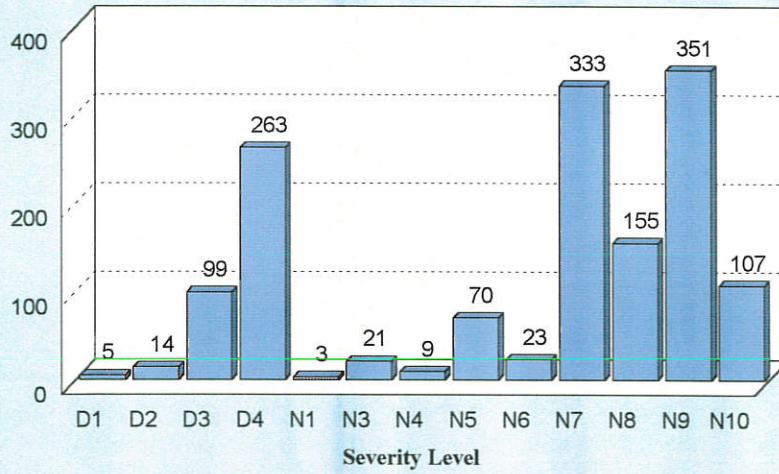


Source: DOC monthly report



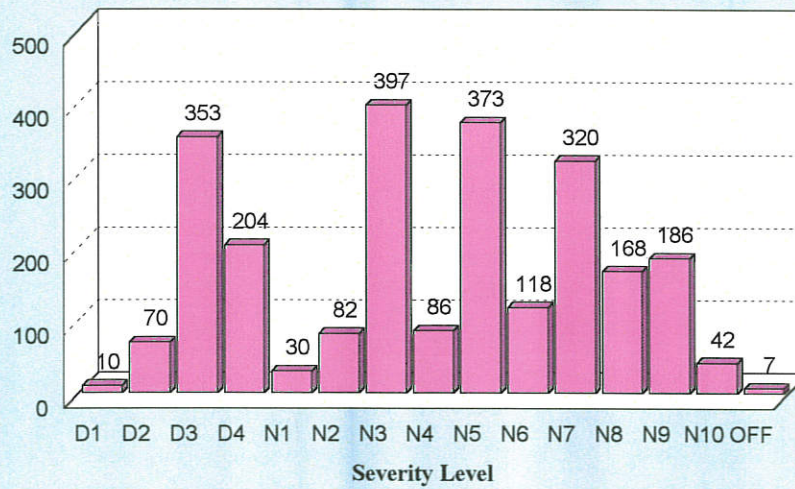
## KANSAS PRISON ADMISSION TRENDS

### Condition Probation Violators by Severity Level FY 2002



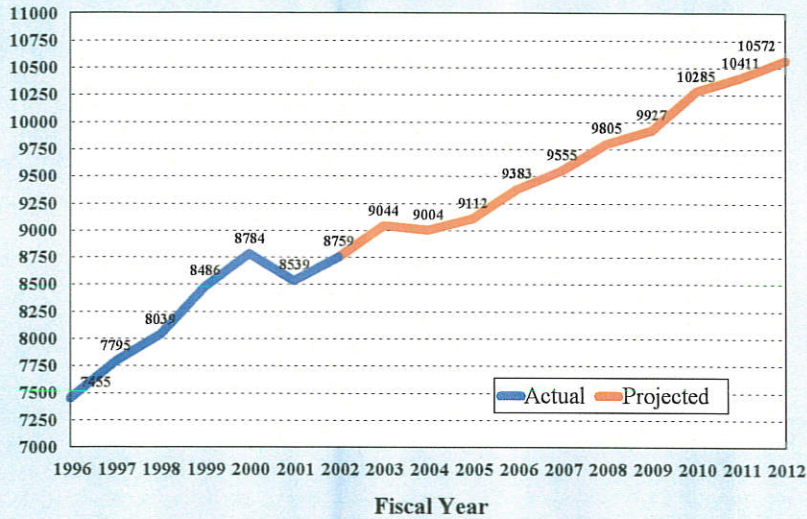
## KANSAS PRISON ADMISSION TRENDS

### Parole/Postrelease Condition Violators by Severity Level FY 2002



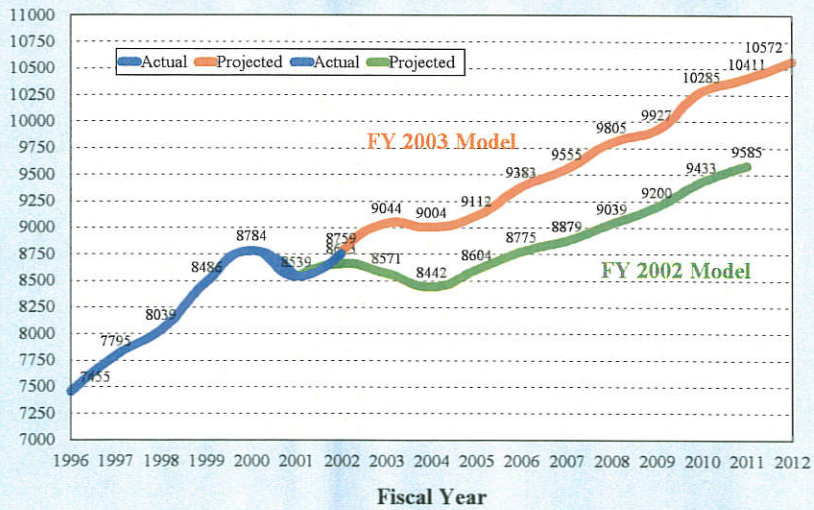
## KANSAS PRISON POPULATION TRENDS

### Actual and Projected Population



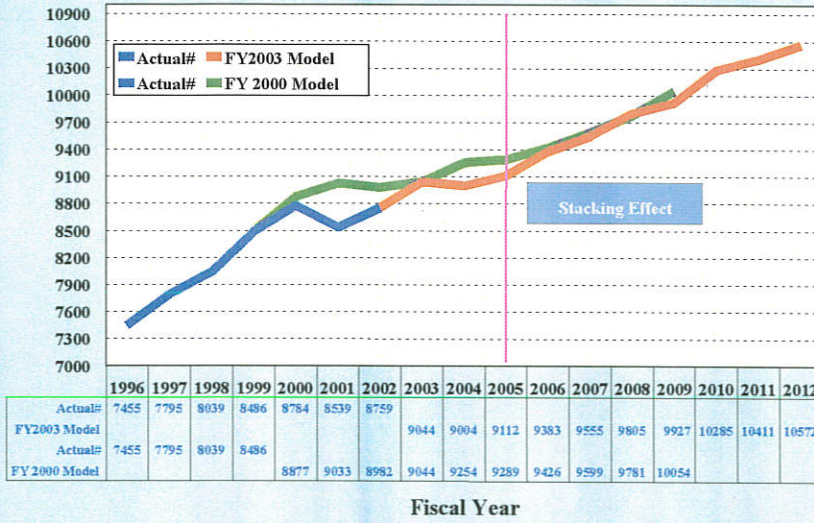
## KANSAS PRISON POPULATION TRENDS

### Actual and Projected Population Comparison between FY 2002 and FY 2003 Models

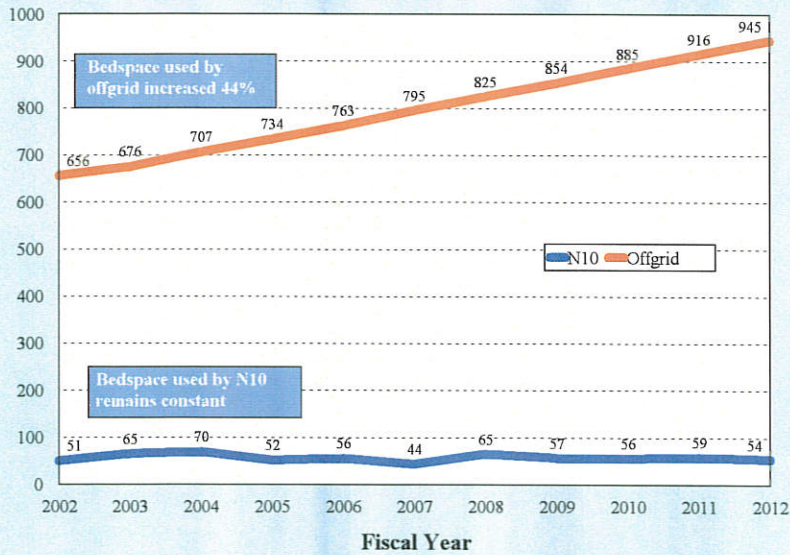


## KANSAS PRISON POPULATION TRENDS

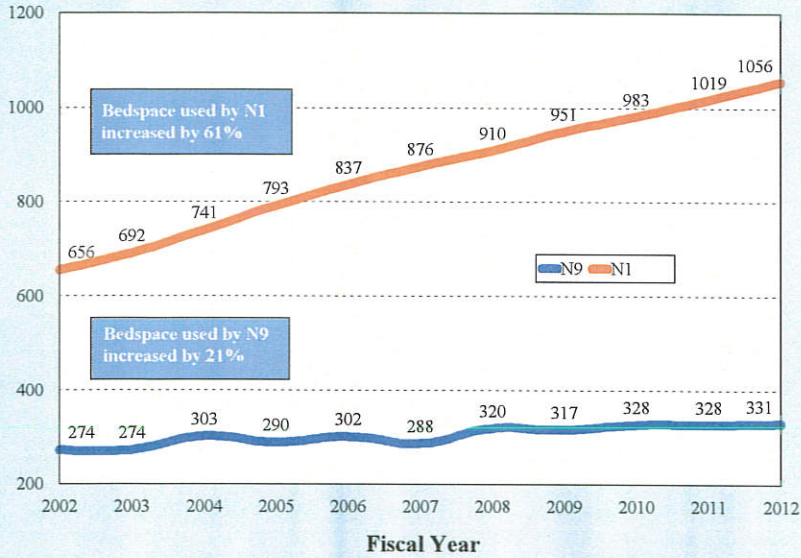
**Actual and Projected Population  
FY 2000 and FY 2003 Models**



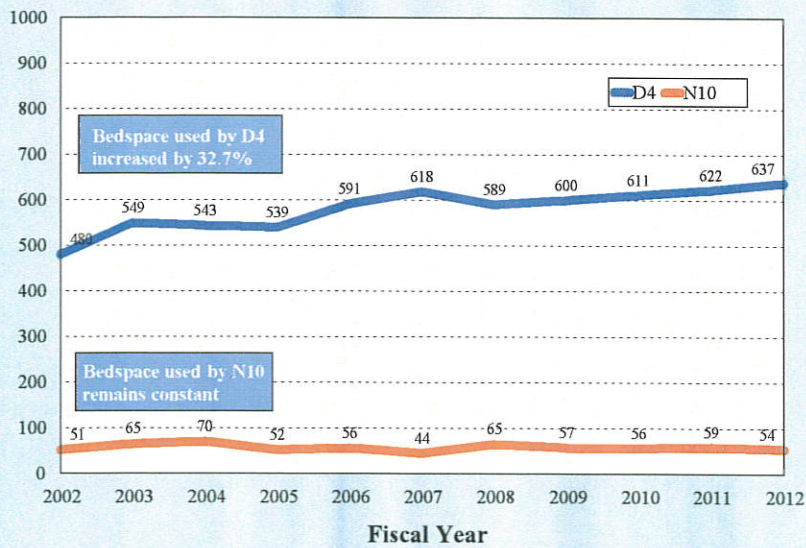
## PROJECTED BEDSPACE FOR OFFGRID AND NONDRUG LEVEL 10 OFFENDERS



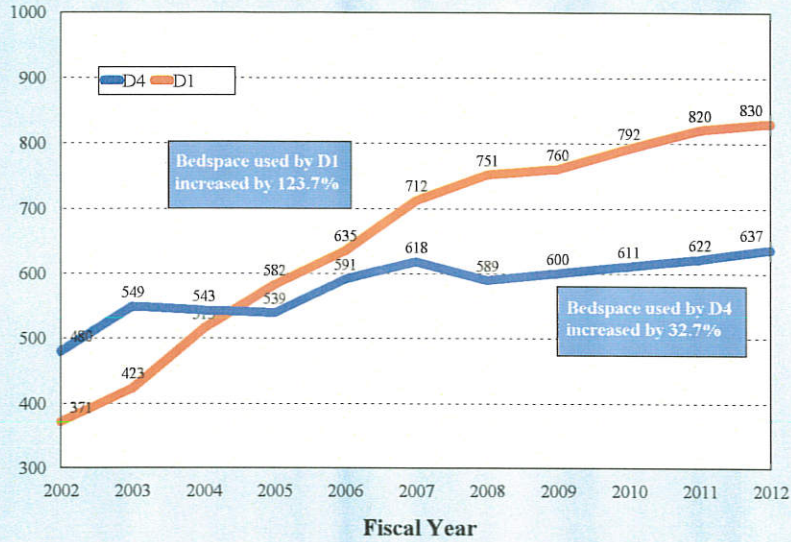
### PROJECTED BEDSPACE FOR NONDRUG LEVEL 1 AND NONDRUG LEVEL 9 OFFENDERS



### PROJECTED BEDSPACE FOR DRUG LEVEL 4 AND NONDRUG LEVEL 10 OFFENDERS



### PROJECTED BEDSPACE FOR DRUG LEVEL 1 AND DRUG LEVEL 4 OFFENDERS



**OLD**

#### KANSAS SENTENCING COMMISSION FY 2002 OFFICIAL ADULT INMATE PRISON POPULATION PROJECTIONS Half Percent Admission Growth Rate

ID Group	June 30 2001*	June 30 2002	June 30 2003	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008	June 30 2009	June 30 2010	June 30 2011	TOTAL # INCREASE	PERCENT INCREASE
D1	164	243	294	328	335	363	375	382	387	415	410	246	150.0%
D2	303	288	288	292	311	314	327	342	335	324	322	19	6.3%
D3	435	420	438	426	453	492	485	471	472	494	493	58	13.3%
D4	440	451	451	500	547	541	519	511	501	501	526	86	19.5%
N1	618	668	738	799	849	899	936	973	1023	1070	1102	484	78.3%
N2	512	512	523	532	546	556	555	569	571	577	595	83	16.2%
N3	1247	1275	1289	1322	1360	1385	1404	1454	1473	1503	1554	307	24.6%
N4	276	275	277	272	278	280	274	274	275	277	276	0	0.0%
N5	894	842	865	881	881	876	899	917	949	1002	1031	137	15.3%
N6	167	142	130	124	126	123	123	117	121	132	107	-60	-35.9%
N7	764	722	697	697	735	739	763	792	793	793	790	26	3.4%
N8	242	257	256	270	244	255	247	249	249	261	267	25	10.3%
N9	295	258	211	161	153	144	158	146	159	163	168	-127	-43.1%
N10	48	54	47	47	54	62	55	57	59	68	54	6	12.5%
OFF GRID	599	626	651	682	710	743	775	806	843	872	900	301	50.3%
Condition Parole Visitors	1535	1630	1416	1109	1022	1003	984	979	990	981	990	-545	-35.5%
<b>Total</b>	<b>8539</b>	<b>8663</b>	<b>8571</b>	<b>8442</b>	<b>8604</b>	<b>8775</b>	<b>8879</b>	<b>9039</b>	<b>9200</b>	<b>9433</b>	<b>9585</b>	<b>1046</b>	<b>12.3%</b>

\* Based on the actual prison population on that date (for the purpose of forecasting, non-grid and missing are analyzed and assigned to each level).

**NEW**

**KANSAS SENTENCING COMMISSION  
FY 2003 OFFICIAL ADULT INMATE PRISON POPULATION PROJECTIONS  
One Point Five Percent Admission Growth Rate**

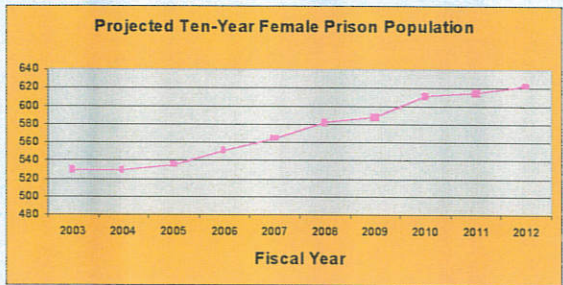
ID Group	June 30 2002*	June 30 2003	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008	June 30 2009	June 30 2010	June 30 2011	June 30 2012	TOTAL# INCREASE	PERCENT INCREASE
D1**	371	423	515	582	635	712	751	760	792	820	830	459	123.7%
D2	340	337	345	367	374	405	442	445	460	439	435	95	27.9%
D3	427	433	445	450	464	475	485	458	481	478	488	61	14.3%
D4**	480	549	543	539	591	618	589	600	611	622	637	157	32.7%
N1	656	692	741	793	837	876	910	951	983	1019	1056	400	61.0%
N2	509	511	520	532	548	562	576	596	594	608	612	103	20.2%
N3	1246	1323	1380	1431	1487	1514	1529	1592	1638	1651	1689	443	35.6%
N4	276	278	295	305	323	319	339	331	345	356	358	82	29.7%
N5	921	946	907	900	896	912	925	937	982	994	998	77	8.4%
N6	160	165	170	177	183	182	189	171	189	186	198	38	23.8%
N7	758	758	778	808	829	835	841	828	843	864	852	94	12.4%
N8	212	213	207	205	195	190	193	210	222	214	211	-1	-0.5%
N9	274	274	303	290	302	288	320	317	328	328	331	57	20.8%
N10	51	65	70	52	56	44	65	57	56	59	54	3	5.9%
OFF GRID	656	676	707	734	763	795	825	854	885	916	945	289	44.1%
Condition Parole PIS Violators	1422	1401	1077	947	900	828	826	820	876	857	878	-544	-38.3%
<b>Total</b>	<b>8759</b>	<b>9044</b>	<b>9003</b>	<b>9112</b>	<b>9383</b>	<b>9555</b>	<b>9805</b>	<b>9927</b>	<b>10285</b>	<b>10411</b>	<b>10572</b>	<b>1813</b>	<b>20.7%</b>

\*. Based on the actual prison population on that date (for the purposes of forecasting, general and minimum are analyzed and assessed to each level).

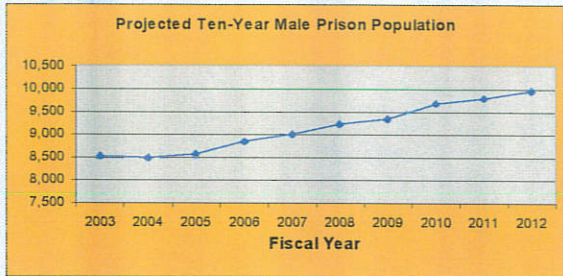
**Kansas Sentencing Commission  
Ten-Year Custody Classification Projections  
FY 2003 Through FY 2012**

June 30, Each Year	Unclassified	Minimum	Medium	Maximum	Special	Total
2003	148	2966	3921	1405	604	9044
2004	134	2975	3910	1355	629	9003
2005	145	2977	3932	1418	640	9112
2006	145	3071	4044	1446	677	9383
2007	139	3150	4153	1449	664	9555
2008	139	3247	4298	1466	655	9805
2009	139	3267	4380	1509	632	9927
2010	160	3439	4510	1500	676	10285
2011	149	3437	4560	1572	693	10411
2012	156	3447	4687	1578	704	10572

Fiscal Year	
2003	530
2004	529
2005	535
2006	551
2007	564
2008	582
2009	588
2010	611
2011	615
2012	621



Fiscal Year	
2003	8,514
2004	8,474
2005	8,577
2006	8,832
2007	8,991
2008	9,223
2009	9,339
2010	9,674
2011	9,796
2012	9,951



**Prison Population Projections by Severity Level and Gender**

	2,003	2,004	2,005	2,006	2,007	2,008	2,009	2,010	2,011	2,012
<b>Female</b>										
D1	49	60	68	74	83	87	88	92	95	96
D2	48	49	52	53	58	63	63	65	62	62
D3	32	33	34	35	36	36	34	36	36	37
D4	53	52	52	57	59	57	58	59	60	61
N1	21	23	25	26	27	28	29	30	32	33
N2	15	16	16	16	17	17	18	18	18	18
N3	36	37	39	40	41	41	43	44	45	46
N4	9	10	10	11	11	11	11	11	12	12
N5	39	37	37	37	37	38	38	40	41	41
N6	6	6	7	7	7	7	6	7	7	8
N7	36	37	39	40	40	40	40	40	41	41
N8	42	41	41	39	38	38	42	44	43	42
N9	19	21	20	21	20	22	22	23	23	23
N10	8	8	6	7	5	8	7	7	7	6
OFF	31	33	34	35	37	38	39	41	42	43
PVTECH	84	65	57	54	50	50	49	53	51	53
<b>Subtotal</b>	<b>530</b>	<b>529</b>	<b>535</b>	<b>551</b>	<b>564</b>	<b>582</b>	<b>588</b>	<b>611</b>	<b>615</b>	<b>621</b>
<b>Male</b>										
D1	374	455	514	561	629	664	672	700	725	734
D2	289	296	315	321	347	379	382	395	377	373
D3	401	412	416	429	439	449	424	445	442	451
D4	496	491	487	534	559	532	542	552	562	576
N1	671	718	768	811	849	882	922	953	987	1,023
N2	496	504	516	532	545	559	578	576	590	594
N3	1,287	1,343	1,392	1,447	1,473	1,488	1,549	1,594	1,606	1,643
N4	269	285	295	312	308	328	320	334	344	346
N5	907	870	863	859	875	887	899	942	953	957
N6	159	164	170	176	175	182	165	182	179	191
N7	722	741	769	789	795	801	788	803	823	811
N8	171	166	164	156	152	155	168	178	171	169
N9	255	282	270	281	268	298	295	305	305	308
N10	57	62	46	49	39	57	50	49	52	48
OFF	645	674	700	728	758	787	815	844	874	902
PVTECH	1,317	1,012	890	846	778	776	771	823	806	825
<b>Subtotal</b>	<b>8,514</b>	<b>8,474</b>	<b>8,577</b>	<b>8,832</b>	<b>8,991</b>	<b>9,223</b>	<b>9,339</b>	<b>9,674</b>	<b>9,796</b>	<b>9,951</b>
<b>Total</b>	<b>9,044</b>	<b>9,003</b>	<b>9,112</b>	<b>9,383</b>	<b>9,555</b>	<b>9,805</b>	<b>9,927</b>	<b>10,285</b>	<b>10,411</b>	<b>10,572</b>

**SENTENCING RANGE - NONDRUG OFFENSES**

Category →	A	B	C	D	E	F	G	H	
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	Mis. No.
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61
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

**HOUSE APPROPRIATIONS**  
**DATE 2-4-2003**  
**ATTACHMENT 2**

**Probation Terms are:**

- 36 months recommended for felonies classified in Severity Levels 1 - 5
- 24 months recommended for felonies classified in Severity Levels 6 - 7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9 - 10

**Postrelease terms are:**

- 36 months for felonies classified in Severity Levels 1 - 4
- 24 months for felonies classified in Severity Level 5 - 6
- 12 months for felonies classified in Severity Levels 7 - 10

**Postrelease 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

LEGEND	
Presumptive Probation	
Border Box	
Presumptive Imprisonment	

**HOUSE APPI**



### 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
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms:

- 36 months recommended for felonies classified in Severity Levels 1 – 2
- 18 months (up to) for felonies classified in Severity Level 3
- 12 months (up to) for felonies classified in Severity Level 4

Postrelease supervision terms are:

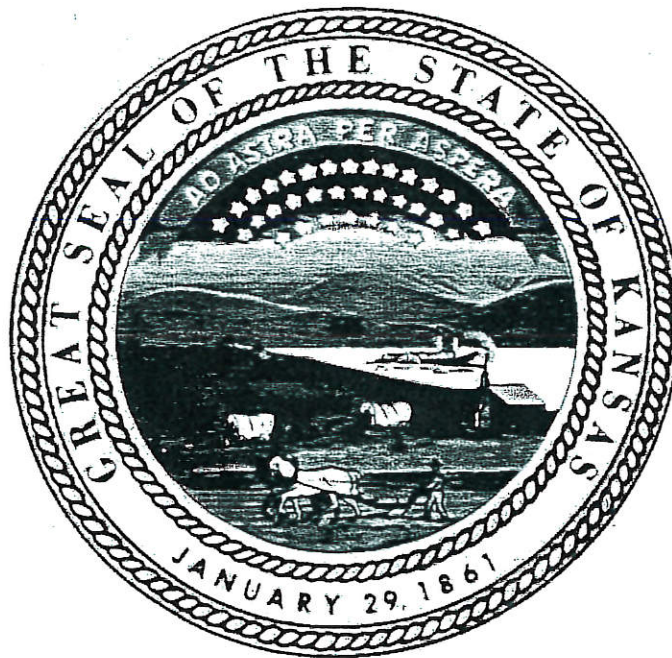
- 36 months for felonies classified in Severity Levels 1 – 2
- 24 months for felonies classified in Severity Level 3
- 12 months for felonies classified in Severity Level 4

Postrelease 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

# **KANSAS SENTENCING COMMISSION**

## **REPORT TO THE 2003 KANSAS LEGISLATURE**



Submitted  
February 2003

## Introduction

Pursuant to K.S.A. 74-9101(b) (15), the Kansas Sentencing Commission is directed to identify and analyze the impact of specific options to reduce prison population, when the prison population projections indicate that the state's prison population will exceed capacity within two years. The FY 2003 Prison Population Projections released by the Sentencing Commission in September 2002, forecast the state's prison population to reach 9,044 by June 30, 2003, with a slight decline in the prison population to 9,003 indicated for FY 2004. However, from FY 2005 through FY 2012, the state's prison population demonstrates a continual and consistent growth from 9,112 to 10,572 inmates (Attachment A). This projected growth pattern means the state will have 1,183 more inmates housed in state correctional facilities at the end of FY 2012 than at the end of FY 2002, if current policies remain unchanged.

Prison population growth is directly correlated with two primary variables – admissions (who enters prison) and lengths of stay (how long a prison bed is occupied). Although there are numerous additional variables that have some indirect impact, such as good time earnings, jail time credits, revocation rates, these variables will impact either admissions or the length of stay (LOS). In analyzing areas of growth in the prison population in relation to either admissions or lengths of stay, specific trends can be identified. The Nondrug Grid demonstrates either a decline in the number of offenders admitted to prison or a lower average sentence imposed for every severity level except Severity Level 6. However, when the Drug Grid is examined the same pattern is not present. All four severity levels indicate a growth in admissions and/or lengths of sentence imposed over the past five years (Attachment B). The Drug Grid new commitments represented about 31% of the total new commitments to prison in FY 2002. The greatest impact on prison population growth is present when there is growth in both admissions and length of stay as indicated on Drug Level 4, which represents the lowest level of the Drug Grid and contains sentences for drug possession only. Although Drug Severity Level 4 contains a number of non-prison and border box cells, the number of condition violators admitted to prison has had a significant impact on prison population.

In considering various options to reduce prison population to present to the Legislature, the Sentencing Commission is faced with the complex task of balancing public safety needs with sentence proportionality issues and adherence to the underlying goal of the Sentencing Guidelines, in that incarceration should be reserved for the most serious and violent offenders. The Sentencing Commission has devoted the past two years to the development of a comprehensive Alternative Sentencing Policy for Drug Offenders that has dual approaches. The first is to more effectively address the increasing number of non-violent offenders with substance abuse problems who are recycled through our state court and correctional systems by holding the offender accountable for his/her criminal behavior while simultaneously providing meaningful and necessary treatment to address the underlying substance abuse problem. The second approach is to ensure that the state is utilizing its correctional facilities for the serious and violent offenders who pose a significant threat to public safety. The Commission projects that proper implementation and required funding for this proposed policy would result in 438 to 455 fewer offenders admitted to prison yearly and a reduction in the number of prison beds currently required of between 383 to 571 over the same ten year forecast period.

The Department of Corrections reports a current prison capacity of 9,114 as of December 31, 2002. With a projected prison population of 9,044 by the June 30, 2003, the state is faced with a difficult choice. The legislature must consider whether to construct new inmate housing units within a correctional facility or to implement the proposed alternative sentencing policy for drug

offenders. The total number of prison beds identified is comparable between the construction of two new cell houses and the implementation of the alternative sentencing policy for drug offenders. In addition, there are identified costs associated with both the construction of a new housing unit within a correctional facility and the implementation of the alternative sentencing policy for drug offenders to be considered by this legislature.

This report outlines the Sentencing Commission option for reducing prison population for your consideration. The proposal involves a shift in sentencing philosophy, which provides for offender accountability, public safety while providing for meaningful treatment to address the underlying cause of the criminal behavior at a cost-effective manner for the State of Kansas. A short-term fix or approach will not adequately address the state's projected increasing prison population. However, a well developed and properly implement sentencing policy can have a significant long-term impact on the state's prison population.

### **Impact of Substance Abuse**

Substance abuse and addiction impact virtually every aspect of American Society. We may choose to deny or ignore its presence but its impact is all to apparent as families, schools, social services, medical profession and the criminal justice systems are forced to deal with the reality of the problem. Substance abuse and addiction involving illegal drugs is interwoven with an array of domestic problems faced by our state including, child abuse and neglect, domestic violence, teen pregnancy, medical conditions such as heart disease, AIDS, cirrhosis and cancer, chronic welfare, the rise in learning disabled and conduct-disordered children, disrupted classrooms and criminal activity. Every part of our society expends significant amounts of resources trying to deal with the aftermath of substance abuse.

A report issued by the National Center on Addiction and Substance Abuse at Columbia analyzed the impact of substance abuse and addiction on the 1998 state's budget of 45 states and the District of Columbia and Puerto Rico (including Kansas) and identified some stunning results.<sup>1</sup> The report states of the \$620 billion total dollars spent, \$81.3 billion, about 13.1%, was used to deal with substance abuse and addiction. In addition, of every dollar states spent, 96 cents went to cleaning up the aftermath of substance abuse and addiction, while only 4 cents was used to prevent or treat the problem. Finally, each American paid \$277 per year in state taxes to deal with the impact of substance abuse and addiction in social programs but only \$10 a year for treatment and prevention. Kansas's figures indicate that the percentage of state spending related to substance abuse represented 9.4% of the state budget or \$223.42 per citizen in taxes, slightly lower than the national average.

These figures represent identified state costs only and do not take into account the indirect costs such as federal matching funds, costs to local government for law enforcement activities, lost employee productivity, lost tax revenues generated, or human suffering experienced by addicts, their families, and victims of their offenses. Substance abuse continues to be an extremely complex problem that society cannot ignore but struggles to find an effective means to overcome.

The impact of substance abuse and addiction is especially pronounced in the criminal justice system. It is estimated that 65% to 75% of the offenders incarcerated in state correctional facilities have varying levels of substance abuse problems. In addition, offenders who receive presumptive non-prison sentences are often placed on waiting lists for participation in community

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<sup>1</sup> Report entitled "Shoveling Up: The Impact of Substance Abuse on State Budgets" can be accessed at [http://www.casacolumbia.org/newsletter1457/newsletter\\_show.htm?doc\\_id=4744](http://www.casacolumbia.org/newsletter1457/newsletter_show.htm?doc_id=4744)

based treatment programs or placed in substance abuse programs that do not adequately address the needs of the offender. Seldom is the continuum of substance abuse treatment options required for successful recovery available, but rather the offender is often faced with either/or situations. Court Service officers, Community Corrections officers and Parole officers face daily the frustrations and the lack of resources to provide the necessary treatment and support services needed to assist offenders in avoiding relapse and maintaining a drug free lifestyle.

Ultimately the lack of options and resources lead to revocation of the non-prison sentences and incarceration in a state correctional facility. Even the revocation process itself consumes court and judicial time. Judges oversee probation revocation hearings and are faced with the frustration of dealing with repeated dirty UA's, failure to report issues and limited or non-existent treatment options. Often the Judge is left with the choice to ignore the drug related behavior of the offender or to revoke the offender to prison with the hope or belief that the offender will receive drug treatment while incarcerated; the offender enters one of the state's correctional facilities.

In 1993, the percentage of offenders incarcerated in Kansas correctional institutions for which a drug offense represented the most serious offense totaled 15.5%; by December 31, 2002 that percentage had increased to 22.6%. During calendar year 2002, 2,739 offenders were sentenced for drug offenses, with 1,571 of that total number of offenders sentenced for the offense of drug possession only. Of the total number of offenders sentenced for all drug offenses, 731 offenders were sentenced directly to prison, with 2,008 receiving non-prison sentences. These figures represent convictions for drug offenses only and do not take into consideration the number of offenders sentenced to prison for property or violent crime, for which substance abuse or addiction was a primary contributing factor to the criminal act. Drug offenders are very close to representing a quarter of our state's prison population.

While the number of drug offenders incarcerated in state correctional facilities continues to grow, the availability of treatment programs in prison has declined. The Department of Corrections reports in FY 2001, there were 290 short-term substance abuse treatment slots, which resulted in 1,753 offenders participating in treatment programs and 1,433 offenders successfully completing treatment. In FY 2002, the number of short-term substance abuse treatment slots was reduced to 266, with 1,203 offenders participating in treatment programs and 1,103 offenders successfully completing the program. FY 2003, short-term substance abuse treatment programs have been reduced to 40 slots, with only a projected 238 offender participating.

The institutional based Therapeutic Communities (TC), which offer intense long-term substance abuse treatment, have experienced similar reductions in state prisons. In FY 2001, there were 184 treatment slots in the TC's with 416 offenders participating and 168 successful completions. By FY 2002, the numbers of TC slots were reduced to 188, with 425 offenders participating and 167 successful completions. However in FY 2003, the number of TC slots has been drastically reduced due to budget cuts to only 124, with a projected participation rate of 347 offenders.

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~~State correctional facilities are facing an increasing number of offenders admitted with substance abuse or addiction problems and notable decrease in the number of treatment programs available due to funding reductions. Merely incapacitating offenders with substance abuse problems, at an average cost of approximately \$20,000 per year, does little to reduce future criminal activity and the potential for recidivism when the offender is released from prison with the same substance abuse problem that brought them to prison initially. Except for a small number of inmates, most offenders incarcerated in state correctional facilities will be eventually released back to their families, their communities and to society as a whole. Without the proper treatment, an offender is at risk to continue to be drug dependent and commit new offenses, resulting in further injury to~~

victims, loss of property, and the expenditure of limited resources to identify, apprehend, prosecute and return the offender to confinement.

## The Dynamics of Substance Abuse

Substance abuse and/or addiction are very complex disorders that can impact almost every aspect of a person's life, including family, work and community. The diagnostic criteria for addiction used by the American Psychiatric Association and the World Health Organization include a presence of physical effects, such as a developed tolerance and symptoms of withdrawal. The physical effects are combined with psychological consequences such as cravings and a mental focus on obtaining and using drugs, even in the face of extremely negative consequences. This addiction fuels destructive behavior patterns that become increasingly difficult to break, often resulting in criminal behavior and activities. Many individuals even though not technically "addicted" regularly use mind-altering drugs and find it difficult to simply cease using drugs. This group also faces varying degrees of the problems experienced with addiction.

The comprehensive approach of drug treatment recognizes that drug addiction begins with the act of taking a drug. Over time, an individual's ability to choose not to take drugs can be compromised. Drug seeking becomes compulsive, in a large part, as a result of the effects of prolonged drug use on brain functioning and consequently on behavior. The compulsion to use drugs takes over the individual's life. Thus the addiction often involves not only compulsive drug taking but also results in a large number of dysfunctional behaviors. Since addiction is so multi-dimensional and disrupts so many aspects of an individual's life, treatment of this illness is not simple. Drug treatment must include stopping the drug usage, promoting a drug-free lifestyle, while simultaneously achieving a level of productive functioning in the family, at work and in society. Since many people equate addiction with simply using drugs there is an expectation that the addiction should simply be "cured" in a short period of time. However, because addiction is a chronic disorder the goal should be a long-term abstinence from drug use that often requires sustained and repeated attempts at treatment, where episodes of relapse are common and treated as part of the overall rehabilitation process.

The criminal justice system views the behavior of the drug addict or abuser as a violation of criminal statute and subject to appropriate and designated sanctions, including incarceration. Although treatment is often prescribed for the offender's addiction or abuse problem, the incorporation of the relapse principle is not viewed as acceptable. It is often believed that if the individual had enough will power the drug use would simply stop or the use of drugs is just a bad habit resulting from some type of moral weakness or over indulgence. Others believe drug abusers simply do not want to stop because they enjoy it. Regardless, the criminal justice system is designed to hold an individual accountable for their behavior even if the behavior may be rooted in a biological cause because the source of the behavior is not the issue of contention; it is the illegal behavior itself that is the focus of the criminal justice system. Thus control is exerted over the offender in the belief that the addiction can be cured, when in reality there is no known "cure" for drug addiction. ~~What research has indicated is that drug addiction can be controlled~~ through treatment and an individual's genetic predisposition, social circumstances, personal behavior traits and interpersonal relationships will affect the impact of treatment, all of which the criminal justice system has a limited ability to impact.

Research had demonstrated that substance abuse and addiction are treatable within the offender population and appropriate actions by criminal justice professionals can foster the effectiveness of treatment. It does involve a shift in the philosophy of how the criminal justice system handles offenders with substance abuse problems. The effectiveness of treatment is directly related to

length of stay in treatment and the use of criminal justice sanctions have been proven to be successful in motivating offenders to enter and remain in treatment programs. Offender accountability is another factor proven to be a contributing variable to successful treatment including frequent drug testing and the immediate and consistent imposition of sanctions for violations of the treatment plan. Finally access to the continuum of treatment options will allow an offender to participate in varying levels of substance abuse treatment dependent on the offender's needs and address the potential for relapse faced by all individuals with substance abuse or addiction problems.

### **Overview of Current Sentencing Policies for Drug Offenders**

The majority of states and the Federal Government have begun to review their sentencing policies related to drug offenders. Through much of the late 1970's through the mid 1990's the popular approach to dealing with the increasing number of drug offenders was to impose lengthy, sometimes draconian sentences for drug convictions often in the form of mandatory minimum sentences. The Federal Sentencing Guidelines led the charge in developing a sentencing structure for drug convictions that was both extremely difficult to comprehend and produced very long sentences for even first time offenders. The imposition of lengthy mandatory minimum sentences was believed to be an effective approach to combating the nation's growing substance abuse problem. Many states followed suit with the Federal Guidelines, such as the New York's Rockefeller Drug Laws, adopting various mandatory minimum or sentencing schemes that also resulted in significant sentence lengths for drug offenses. Again, the underlying philosophy was that significant periods of incarceration would serve as a deterrent to involvement or consumption of illegal substances. Often little differentiation was noted between offenders who were drug traffickers and offenders with substance abuse problems. Law enforcement efforts aimed at interdiction of drugs at our national borders and within the state of Kansas are crucial and necessary. Impacting the source of illegal drugs does play a role in reducing the number of individuals involved in illegal drug consumption. However, addressing the growing number of individuals with substance abuse problem/addictions requires the broader dual approach of interdiction efforts combined with the necessary treatment.

As many states throughout this country faced increasing prison populations during the late 1990's, it became apparent that sentences for drug offenses were one of the primary contributing factors to the growth. In addition, convictions for drug offenses and the impact of those sentences began to permeate all sectors of our society. It wasn't just society's definition of a "criminal" who was involved with illegal drug usage now but family members, friends, co-workers, neighbors, sport figures, celebrities and even politicians. When sentencing practices for drug offenders were compared to other types of criminal offenses, both violent and nonviolent, the disparities were notable and states began to re-examine their sentencing practices for drug offenders. For example, both Utah and Michigan have revised their mandatory sentencing laws for drug offenses. California and Arizona through public initiatives have implemented mandatory treatment for some drug offenders in lieu of incarceration. Hawaii and Washington State both have legislation pending focusing on treatment instead of incarceration for non-violent drug offenders. Efforts to revisit the Rockefeller Drug Laws in New York, and the Federal Sentencing Guidelines for drug offenses are underway. It is becoming more and more apparent that modifications to current sentencing policies for drug offenders combined with an emphasis on treatment is a more effective approach to address the recycling of drug offenders through our criminal justice system.

Just recently, the Department of Justice Programs announced that it will seek a \$16 million increase for a total of over \$68 million for Drug Courts in this county to ensure that the drug

courts can fully support the demand for their services in local communities. John Ashcroft is quoted as saying, "The long-term viability of the existing drug courts is critical, and can best be accomplished by ensuring that the courts are able to support the full range of services – especially treatment and training – that are needed by drug court clients if they are to break the cycle of drug abuse and criminal activity."

Finally, President Bush in his "State of the Union Address" just last week addressed the problem of drug addiction in this country and the increasing need for drug treatment. Acknowledging the need for interdiction and drug education programs, President Bush stated, "Too many Americans in search of treatment cannot get it." He proposed \$600 million dollars to enable an additional 300,000 Americans to receive treatment over the next three years.

### **Kansans' Attitudes Toward Sentencing for Drug Possession**

The Sentencing Commission contracted with the University of Kansas Communication Department to conduct a public survey of Kansans' attitudes towards drug treatment versus incarceration for non-violent offenders convicted of drug possession. A total of 670 residents were contacted with a comparable distribution by congressional district, gender, party affiliation, age, income levels and education levels. A 5-point Likert scale was used for all but two of the questions. The respondents were asked 24 different questions to elicit general attitudes about drug use and punishments and specifically attitudes towards the substitution of mandatory treatment for the current sentence of incarceration.

Survey results indicated that 69.2% of respondents either agreed or strongly agreed that individuals convicted of drug possession should receive community punishment that includes treatment for their drug addiction rather than incarceration. Respondents (72%) agreed or strongly agreed that if drug treatment is not being done in prison, then a mandatory drug treatment program for offenders is preferable to prison. Surprisingly, 85.9% of the respondents either disagreed or strongly disagreed with the statement that drug users cannot be rehabilitated.

Respondents were asked they feelings on the statement - if Kansas could empty 400-600 prison beds by using community punishment that includes drug addiction treatment instead of incarceration for possession convictions, then we should do it. Respondents either agreeing or strongly agreeing represented 72.9%; 10.8% of respondents answered they didn't know and only 16.3% of respondents indicated they disagreed or strongly disagree with the statement. Finally, they were asked that given that our current prisons are at capacity, would you be willing to support a tax increase to either build prisons, fund drug treatment programs instead of incarceration for drug users, both or neither? Only 7.9% of respondents favored tax increases to build prisons; 34.3% favored tax increases to fund drug treatment programs instead of incarceration for drug offenders; 31.6% favored tax increases for both; and 26.3% favored tax increases for neither.

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Respondents did indicate strong support that offenders should be responsible for the cost of mandatory drug treatment and that multiple attempts at drug treatment may be necessary for success. Respondents also reported a distinct difference between the seriousness of drug manufacturing and drug usage.

The need for a shift from merely incarcerating drug offenders to providing treatment to address the underlying cause and behavior that often results in criminal activities and social havoc is being acknowledged at the national level, as well as throughout states across this country and in Kansas. Although there may be some individuals who view this approach as being "soft on



crime” perhaps a more accurate analysis would be that of being “smart about crime.” If the source of the criminal behavior is not addressed then the likelihood that the criminal activities will cease are minimal and cycle of addiction will continue to result in the recycling of offenders though our criminal justice system and state correctional facilities.

### **Proposed Alternative Sentencing Policy for Drug Offenders**

For the past two years the Kansas Sentencing Commission has studied and examined numerous options that would reduce the state’s prison population. An area of the Sentencing Guidelines Act that has remained fairly untouched, with the exception of border box placements in 1996, is the Drug Grid and sentencing policies for drug possession. The Commission’s proposed policy should not be viewed as a backdoor attempt to legalize drug use in any manner. The Sentencing Commission has taken a strong position that drug possession, even if it is the result of an addiction, is an illegal activity classified as a felony offense in Kansas and should continue to remain a felony offense. What the proposed alternative sentencing policy for non-violent drug possession offenders changes is that the current standard presumptive non-prison or border box sentence will be replaced with a mandatory substance abuse treatment period of up to 18 months.

As the Commission worked on the development of this alternative sentencing policy, representatives from California (Prop 36) and Arizona (Prop 200) met with the Commission and openly discussed issues related to the implementation and success they had experienced since the passage of their legislation. Both pieces of legislation were implemented as the result of public initiatives and contained a number of implementation and operational concerns. Although the representatives from both states strongly supported the underlying concepts of their legislation, they clearly identified issues that if they had the opportunity to enact the policy change through legislation they would have done differently. In addition, they freely shared the lessons learned both implementing and monitoring the new policy. This information was evaluated and incorporated in the development of the Sentencing Commission’s proposed policy. Outlined below is an overview of the Proposed Alternative Sentencing Policy for Drug Offenders:

**Goal of the Alternative Drug Policy** – The goal of the alternative drug policy is to provide community punishment and the opportunity for treatment to nonviolent offenders with drug abuse problems in order to more effectively address the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

**Definition of Target Population** – The Sentencing Commission believed it was critical to clearly define the target population of “nonviolent drug offenders” since prior criminal history and potential public safety issues are of great concern. The target population for placement in the mandatory treatment program is defined as follows:

- A. Current offense of conviction is for drug possession only, does not include manufacturing, drug trafficking or drug possession with intent to sell offenses
- ~~B. Criminal history classifications of I to E only, no prior person felony convictions~~
- C. No prior convictions for drug trafficking, drug manufacturing or drug possession with intent to sale
- D. Offenders with prior convictions for drug possession would be eligible
- E. Offenders with prior conviction for person felonies on Non-Drug Severity Level 8, 9, and 10 would be eligible upon the finding of the court that the offender does not pose a significant threat to public safety
- F. Current Departure procedures would be applicable

**Proposed Sentencing Policy Changes** - Mandatory treatment in lieu of incarceration would result in several changes in our current sentencing practices for offenders convicted of drug possession. These policies would focus on various levels of treatment options, establishment of certain and immediate sanctions for continued drug usage, and a comprehensive continuum of sanctions that include offender accountability, while safe guarding public safety. Since this is a post conviction sentencing policy, all offenders sentenced under the proposed policy would result in a felony conviction.

- A. All drug possession convictions would be sentenced on Severity Level 4 of the Drug Grid instead of the current practice that enhances the severity level to severity level 1 and 2 for second, third and subsequent possession convictions
- B. Border Boxes on Severity Level 4 of the Drug Grid would be replaced with presumptive non-prison boxes
- C. Offenders sentenced under this policy would be subject to a mandatory drug treatment program of up to 18 months
- D. Possession of marijuana – First conviction for this offense is classified as a misdemeanor and second and subsequent are classified as a felony. The misdemeanor classification will remain in effect for the first conviction but all subsequent simple possession of marijuana convictions would be sentenced as a drug severity level 4 felony offense
- E. Upon successful completion of the substance abuse treatment program, the offender would be discharged and not subject to a period of postrelease supervision.

#### **Offender Accountability**

- A. If the offender is unsuccessfully discharged or voluntarily quits the mandatory treatment, the offender would be subject to the entire underlying prison sentence, with no credit for time served in the mandatory treatment program
- B. Establishment of criteria that would result in the dismissal of the offender from the mandatory treatment program:
  - a) Conviction of a new felony offense other than felony drug possession
  - b) Judicial finding that the offender has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the terms of treatment and supervision

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- c) Absent a judicial finding, condition violations alone will not result in discharge from the treatment program
- d) Each and every condition violation shall be subject to some form of non-prison sanctions as defined by statute. Non-prison sanction may include, but not limited to, county jail time, fines, community service, intensified treatment, house arrest, electronic monitoring, etc

## Retroactivity Provision

- A. Applicable to Felony Drug Convictions under the Sentencing Guidelines Act only.
  - B. The Bill will become effective upon publication in the Kansas Register
  - C. Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of minimum custody will be converted within 60 days of the Bill becoming effective
  - D. Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of medium custody will be converted within 90 days of the Bill becoming effective
  - E. Offenders convicted of drug possession who are incarcerated in a state correctional facility at the time the bill is enacted and fit the definition of the established target population and have more than 180 days to serve before their initial release and have a custody classification of maximum custody will be converted within 120 days of the Bill becoming effective
  - F. All reviews for placement in the mandatory treatment program will be completed within 180 days from the enactment of the bill.
  - G. Upon the effective date of the Bill, all sentencing for new drug possession cases and condition revocations for drug possession, which fit the designated target population, will be subject to the mandatory treatment criteria contained in the Bill
  - H. All possession sentence conversions that result in an offender being eligible for release from a state correctional facility and sentenced to a mandatory treatment program will be subject to review under a "public safety provision" prior to release. The state will have 60 days to bring forth the public safety concern before the District Court and burden will be on the state to prove the public safety issue at hand
  - I. All possession sentence conversions that result in an offender being released from a state correctional facility will be placed under the supervision of Community Corrections while participating in mandatory substance abuse treatment.
- 

## Sentencing Conversion Issues

For offenders whose current sentence is for a second, third and subsequent drug possession offense and fall within the target population defined and are determined eligible to have that sentence converted under this proposed policy, the following procedure will be followed:

- A. First, the offender will be screened under the public safety provision prior to determining release from prison. The offender will then be released to the custody of Community Corrections for placement in the appropriate drug treatment program
- B. If the offender voluntarily quits the drug treatment program or is unsuccessfully discharged from the treatment program, the offender will be returned to prison to serve the entire remainder of the "original" sentence imposed, with no credit for time served in the treatment program
- C. Upon completion of the original sentence imposed, the offender will not be subject to a period of postrelease incarceration but be discharged.

#### Assessment Issues

- A. Target population will define which offenders will be assessed for placement in a drug treatment program
- B. Assessment will be done prior to sentencing and will be part of the pre-sentence investigation report (PSI) and available to the Court at the time of sentencing.
- C. All assessments will be standardized and completed using the
  - 1. Level of Service Inventory-Revised (LSI-R) to determine risk of re-offending
  - 2. ASI and SASI to determine level and degree of substance abuse problem
  - 3. Clinical interview with mental health screening to assess dual diagnosis offenders
- D. Higher Risk offenders will be placed under the supervision of Community Corrections and Lower Risk offenders will be placed under the supervision of Court Services

#### Treatment Issues

Comprehensive treatment programs will be required to have components that address the four phases of recovery: detoxification, rehabilitation, continuing care/aftercare and relapse prevention. The Commission is recommending the establishment of a state-wide comprehensive drug treatment program to include a continuum of services that allows the offender to move up or down the continuum as the recovery process requires. The statewide treatment program should include at a minimum:

- A. Core treatment options must be available in every jurisdiction
- B. Individual jurisdictions should tailor treatment programs to meet specific needs of the local community
- C. Initially, it may be necessary for residential placements to be outside of an offender's local community especially in rural areas, given the current limited number of facilities available and their geographic locations
- ~~D. Alcohol treatment will be available in addition to drug treatment when needed or required~~
- E. Regardless of the level of substance abuse treatment assessed, all treatment plans will include an aftercare component
- F. Current Drug Courts should be expanded or established to accommodate a post-plea drug offender population and should utilized for the most serious non-residential drug offenders
- G. Treatment programs should incorporate family and auxiliary support services

- H. Establishment of Regional Residential Treatment Facilities will be required. It is recommended that four Community Based Therapeutic Communities be established for offenders with the most severe substance abuse problems. In addition, current residential treatment facilities will require bed expansion to accommodate the projected increase in clients.

### Treatment Providers

It is recognized that this specific target population will provide a challenge to many drug treatment providers due to the extent of their anti-social behavior and the criminal component of their drug abusing lifestyle. It is recommended that treatment providers under this policy comply with the following:

- A. Treatment providers will be required to obtain additional certification through the Department of Corrections in addition to any other state licensing or certification requirements to provide Drug and Alcohol Treatment. Certification will focus on case management, cognitive behavior training and other requirements currently utilized by the Department of Corrections
- B. Certified Treatment Providers will be placed on a statewide "Preferred Provider List" for the courts and/or the supervising agency for placement of offenders for the appropriate substance abuse treatment
- C. It will be imperative that Mental Health providers work in unison with Drug and Alcohol Treatment Providers to address the needs of the significant number of anticipated "Dual Diagnosis" offenders and medication requirements of this population. Offenders with both mental illness and substance abuse problems must have both conditions treated simultaneously for effective recovery.

### Impact of Proposed Sentencing Policy

As noted earlier, during the calendar year 2002, a total of 2,739 offenders were sentenced for all drug offenses. Of that total, 1,571 offenders were sentenced for the offense of drug possession. The distribution of those 1,571 drug possession sentences indicates that 731 were prison sentences and 1,236 were presumptive non-prison or probation sentences. When the established criteria identifying the target population for placement in the mandatory treatment program is applied (criminal history categories E to I and no prior convictions for drug trafficking or manufacturing), the target population for placement in the mandatory treatment policy totals 1,255 offenders, of which 1,109 offenders received presumptive non-prison sentences and 281 received prison sentences.

Prison admissions during the calendar year 2002 indicate 472 offenders were admitted for drug possession offenses that meet the target population criteria.<sup>2</sup> Of the total number of drug possession offenders admitted to prison 108 offenders were direct court commitments, 239 offenders were condition probation violators and 125 offenders were condition postrelease

<sup>2</sup> The number of offenders sentenced for drug possession offenses will not equal the number of offenders admitted to prison for drug possession offenses for the same time period due to the lag time between sentencing and actual admission to a state correctional facility.

violators. The distribution of target population calendar year 2002 admissions by severity level<sup>3</sup>, criminal history classification, gender and average length of stay in prison is presented below:

**Target Population Prison Admissions by Drug Severity Levels**

Severity Level	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
D1	6	2	7	15
D2	35	12	26	73
D4	67	225	92	384
<b>Total</b>	<b>108</b>	<b>239</b>	<b>125</b>	<b>472</b>

**Target Population Prison Admissions by Criminal History Category**

Criminal History Category	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
E	46	34	49	129
F	20	18	27	65
G	20	49	25	94
H	11	55	18	84
I	11	83	6	100
<b>Total</b>	<b>108</b>	<b>239</b>	<b>125</b>	<b>472</b>

**Target Population Prison Admissions by Gender**

Gender	Direct Court Commit	Probation Violator	Postrelease Violators	Subtotal
Male	92	185	105	382
Female	16	54	20	90
<b>Total</b>	<b>108</b>	<b>239</b>	<b>125</b>	<b>472</b>

**Target Population Admissions - Average Length Stay**

Admission Type	Minimum	Mean	Maximum
Direct Court Commit	5 months	35 months	308 months
Probation Violator	3 months	17 months	150 months
Postrelease Violators		92 days	

In calculating the project prison beds savings, certain assumptions were applied in order to ensure that the impact of the policy did not over state the number of anticipated prison beds saved. An 8% public safety detainment in prison rate was applied to second, third and subsequent

<sup>3</sup> There are no drug possession offenses classified as Drug Severity Level 3

possession convictions currently serving prison sentences. A 24% failure rate was applied to successful completion of the drug treatment program and return to prison, with 33% failing after 6 months in the program, 33% failing after 12 months in the program and another 33% failing after 15 months in the program. It is assumed that upon admission to prison, the average length of sentence served will be 15 months. In addition, within 120 days of the implementation of the proposed policy, condition postrelease violators are factored out of the projections. The table below presents the projected prison bed savings if the alternative drug sentencing policy is implemented as proposed.

#### Total Prison Bed Impact Assessment

June of Each Year	If Current Policy Unchanged, Beds Required	If Current Policy Changed, Beds Required	Total Beds Saved
2004	432	49	383
2005	508	96	412
2006	540	87	453
2007	547	93	454
2008	589	93	496
2009	628	97	531
2010	658	87	571
2011	629	88	541
2012	655	98	557
2013	670	99	571

#### Projected Substance Abuse Treatment Program Needs

In defining the anticipated increase for substance abuse treatment under this proposed policy, both offenders sentenced to prison and offenders who initially received a presumptive non-prison sentence must be considered since the policy mandates treatment for all nonviolent drug possession offenders defined in the target group. Calendar year 2002 sentences identify 1,255 offenders eligible for placement in treatment. Of that total, 89% (1,109) were currently sentenced to presumptive non-prison sentences and may currently be receiving some level of substance abuse treatment, although probably not an appropriate level of treatment. Only 12% (146) of the target group were sentenced directly to prison by the courts. In addition, any one in prison on the date of enactment of this bill, who meets the re-sentencing criteria, would also be placed in a mandatory treatment program.

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On December 31, 2002, we had 317 offenders incarcerated in a state correctional facility who would be eligible for potential re-sentencing under the proposed drug policy. The distribution of 317 offenders indicates that 139 were incarcerated as direct court commitments; 151 were condition probation violators and 27 were condition parole violators. Again, violators accounted for 57% of the incarcerated drug possession population on that date, demonstrating the need for treatment.

The Commission projects that the total population for treatment will total 1,439 offenders per year. This figure includes a 5% error rate as to minimize the possibility of under estimating the

treatment population. It should be noted that approximately 77% of this total number of offenders have non-prison sentences now are either in some level of treatment or on a waiting list to enter treatment. Thus, the policy itself does not create a significant increase in the demand for treatment, but rather attempts to ensure that an appropriate level and volume of treatment services are available to meet the current demands and needs of this population.

As stated earlier, the effectiveness of treatment is closely aligned with matching the level of treatment to the substance abuse needs of an offender. There is no one perfect drug treatment program that will work for every offender. To elevate the chances of successful treatment the level of substance abuse problem must be matched with the appropriate treatment, whether that treatment is defined as long-term residential, intensive outpatient, substance abuse education or relapse prevention. Placing an offender in the wrong type or level of treatment does little to address the underlying substance abuse problem. In addition, a continuum of treatment needs to be available so that an offender can move up and down the spectrum of treatment options depending on the needs of that offender.

The Sentencing Commission included treatment providers in discussions relating to level of substance abuse seen by providers and the projected costs of treatment options to adequately provide the required treatment. In addition, the Commission reviewed substance abuse levels encountered from states that have enacted similar drug policy reforms. Information provided to the Commission indicated that:

- 20% of the target population would require extremely high levels of treatment
- 20% of the target population would require high levels of treatment
- 30% of the target population would require medium levels of treatment
- 30 % of the target population would require low levels of treatment

The Commission, with the assistance of treatment providers, assigned an average cost to each level of treatment identified using three scenarios that project different lengths of stay in specific programs, as well as movements up and down the continuum of treatment services available. A total costs and an average annual cost per offender are calculated:

<b>Projected Treatment Costs</b>			
Level of Treatment Assessed	Full Range Of Treatment Options	Medium Range Of Treatment Options	Minimal Range Of Treatment Options
Extremely High – 20% 288 Offenders	\$4,406,400	\$2,937,600	\$1,872,000
High – 20% 288 Offenders	\$1,555,200	\$1,324,800	\$1,008,000
Medium – 30% 432 Offenders	\$1,944,000	\$1,512,000	\$ 864,000
Low – 30% 432 Offenders	\$ 972,200	\$ 648,000	\$ 518,400
Relapse Prevention – 100% 1,432 Offenders	\$ 518,040	\$ 518,040	\$ 518,040
Less Current Treatment Costs 358 Offenders	\$ (179,000)	\$ (179,000)	\$ (179,000)
<b>Projected Total Cost 1,432 Offenders</b>	<b>\$9,216,840</b>	<b>\$6,761,440</b>	<b>\$4,601,440</b>
Annual Cost Per Offender	\$ 6,436	\$ 4,722	\$ 3,213



The projected total cost of treatment includes costs for relapse prevention for every offender regardless of the level of treatment assessed. The Commission believes it is critical that aftercare and relapse prevention be provided and funded to enable offenders to successfully reach and maintain a lifestyle that is no longer dependent on drug usage. A cost for offenders currently receiving some level of drug treatment was also factored into the annual costs that were assessed. Information provided to the Commission indicated that approximately one fourth of the offenders who need substance abuse treatment are receiving a minimal level through either participation in Alcoholics Anonymous, Narcotics Anonymous or limited outpatient services, which are in most situations not adequate to address the offender's level of substance abuse. It was projected that the average cost of treatment for this specific population is approximately \$500 per offender. Since this cost is currently being assumed by the criminal justice system, the total cost of the projected treatment was adjusted to reflect that amount.

It was indicated by treatment providers that annual treatment costs vary depending on the volume of offenders participating in treatment, which can reduce the cost per offender. In addition, co-payments from offenders participating in treatment also can impact the total costs of treatment provided. The Commission has attempted to provide a preliminary overview of projected treatment costs, which are in no way to be interpreted as all inclusive but rather as a basis for cost consideration of this proposed alternative sentencing policy for nonviolent drug offenders.

#### Cost Benefit to the State

The projected prison bed savings from the enactment of this proposed sentencing policy is between 381 to 571 prison beds. The initial projected costs for substance abuse treatment, depending on the level of treatment provided, range from \$4.6 million to \$9.2 million annually or \$3,213 to \$6,436 dollars per offender. The Department of Corrections has indicated that construction of a cell house at the El Dorado correction facility that would house between 128 to 256 offenders depending on custody classification of the offenders would cost an estimated \$7.1 million dollars; the construction of two cell houses at that same facility would house between 256 to 512 offenders would cost an estimated \$14.4 million dollars. In addition, annual operating costs (minus the one-time start-up costs) would be as follows:

	One Cell House		Two Cell Houses <sup>4</sup>	
	128 cell/ 128 inmates	128 cell/ 256 inmates	256 cell/ 256 inmates	256 cell/ 512 inmates
Salaries & Wages	\$2,257,000	\$2,405,000	\$3,258,000	\$3,509,000
Other Operating	286,000	525,000	705,000	1,024,000
Programs	143,000	286,000	286,000	573,000
Health Care	317,000	549,000	549,000	1,355,000
Food Service	191,000	382,000	382,000	764,000
<b>Total</b>	<b>\$3,194,000</b>	<b>\$4,147,000</b>	<b>\$5,180,000</b>	<b>\$7,225,000</b>
<i>Ave\$/Inmate</i>	<i>\$25,000</i>	<i>\$16,200</i>	<i>\$20,200</i>	<i>\$14,100</i>

<sup>4</sup> Table contained in the Department of Corrections "Committee Overview" to House Committee on Corrections and Juvenile Justice.

The Department of Corrections projects the average cost per inmate, without consideration of the \$7.2 to \$14.4 million dollar construction costs, would range from \$14,100 to \$25,000. When compared to the projected average treatment costs per offender of \$3,213 to \$6,436 that involve approximately the same number of prison beds, the direct cost savings to the state is notable. Even if a 25% increase in the cost of treatment per offender is added to cover expansion and administrative expenses, the cost per offender of treatment only becomes \$3,994 to \$8,045 per offender depending of the level of treatment provided. Again, without consideration of the construction and one-time start-up costs, the average cost to incarcerate per inmate ranges between \$14,100 and \$25,000 per year, whereas to place the same number of offenders in treatment would range between \$3,994 and \$8,045 dollars.

In addition, there would be indirect cost savings to the state, such as child support paid, continued employment and taxes paid, less usage of aid to dependant families, less demand on our health care system and more families remaining intact and contributing to their communities. Given the strong correlation that research has shown between drug usage and criminal activity, there is a strong potential to experience a decrease in many property and financial crimes that are closely linked to drug addiction. Will every offender that participates in a drug treatment program be successful? The answer is no. The proposed alternative drug sentencing policy contains provisions and sanctions for those offenders who choose to drop out or are expelled from program. The policy provides for meaningful treatment and the potential for offenders to overcome their substance abuse problems, become productive citizens, while reserving our limited prison beds for serious, violent offenders.

Several approaches could be taken to fund the projected costs of treatment including: accessing federal grant funds for treatment activities, such as Drug Court Grants, Residential Substance Abuse Grants and Byrne Grants which all support treatment related programs. Probation fees could be increased by \$5 to \$10 dollars to address the expansion of treatment programs and a half cent tax increase in the state's alcohol tax could be designated to fund treatment programs. Although some state general dollars will be required to leverage federal funds, funding for treatment programs can be drawn from multiple sources. What is imperative to the success of the proposed policy is that adequate funding be available on an ongoing basis for the level and types of treatment required to appropriately address the escalating substance abuse problem. If sufficient funding isn't identified and dedicated for substance abuse treatment, then the impact of the policy is negated and the criminal justice system will revert back to its current process of recycling drug offenders and utilizing expensive prison beds to house non-violent offenders.

## Conclusion

The Sentencing Commission's proposed alternative sentencing policy for non-violent drug offenders focuses on several issues. First is providing the opportunity for appropriate treatment to non-violent offenders who would most likely not be involved in the criminal justice system if it weren't for their substance abuse problem, which not only impacts the criminal justice system, but their families, employers and communities. By providing the level of treatment required in a timely manner, the potential for successful recovery is enhanced.

Second is the issue of offender accountability for his criminal actions and behavior. The policy is directed at offenders who have been convicted of felony drug possession and treatment is mandatory, not an option for the offender. In addition, the offender is held accountable with clearly defined consequences for his behavior while participating in treatment and under the supervision of the criminal justice system.

Finally, the proposed policy enhances public safety. The vast majority of offenders convicted of drug possession receive presumptive non-prison sentences. They are currently living in our communities without the benefit of the necessary drug treatment. With an insufficient number of treatment programs available and long waiting list to enter a program, these offenders continue to use drugs and are at risk to commit other offenses to finance their drug problem, which increases the cost of their substance abuse problem to both society and to their victims. Eventually their presumptive non-prison sentence is revoked and the offender is placed in prison at an estimated cost of approximately \$20,000 per year. Given the limited number of substance abuse programs currently available in prison, the likelihood of an offender leaving prison with the same substance abuse problem that ultimately resulted in the period of incarceration is high. The cycle will begin all over again. By providing adequate treatment opportunities, this cycle can be broken for a large portion of these offenders.

This proposed policy is intended to combine the criminal justice model and the medical model approach towards substance abuse and treatment. Understanding that treatment is not a quick process and that periods of relapse often occur, the policy provides for an appropriate length of treatment, development of a continuum of treatment options and provides for the necessary aftercare or relapse prevention that is often critical for successful recovery. At the same time the policy requires supervision of the offender by the criminal justice system while in treatment, designates criteria for removal from a treatment program and provides for consequences for drug related behavior. The offender is accountable for his behavior regardless of his substance abuse problem. The Sentencing Commission believes this balanced approach can decrease the number of offenders entering the criminal justice system with substance abuse problems and reduce the numerous social costs of substance abuse to the State. Finally, enactment of the proposed policy will result in additional prison beds being available to incarcerate the serious and violent offenders who pose the greatest threat to public safety.

Although the Sentencing Commission is required by statutory mandate to bring forth recommendations to the legislature on ways to reduce prison population, the two year process that Commission went through in developing this proposal was enlightening and educational for its members. Given the backgrounds of the various members, the discussions on this topic were often frank and intense. As priorities were identified, criteria established and implementation issues worked through, a heightened sense of awareness was reached by members that this proposed alternative sentencing policy was the right thing to do independent of the economic situation faced by the state given the governing goals of the Sentencing Guidelines. Sentencing Guidelines are effective; the state of Kansas now has more violent offenders incarcerated serving longer sentences than before Sentencing Guidelines were enacted. However, for this specific target population of non-violent drug offenders, alternative sentencing options need to be available that include meaningful treatment. President Bush acknowledged the power of addiction in his recent State of the Union speech when he stated that "Addiction crowds out friendship, ambition, moral conviction and reduces the richness of life to a single destructive desire."

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The Sentencing Commission respectfully submits this proposed Alternative Sentencing Policy for Drug Offenders for your consideration and review. The Commission is available to answer any questions or provide any additional information at your request.

Barbara Tombs, Executive Director  
785-296-0923  
[btombs@ink.org](mailto:btombs@ink.org)

**Overview of KDOC Issues**  
*presented to the*  
**House Appropriations Committee**

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*Roger Werholtz*  
*Secretary of Corrections*

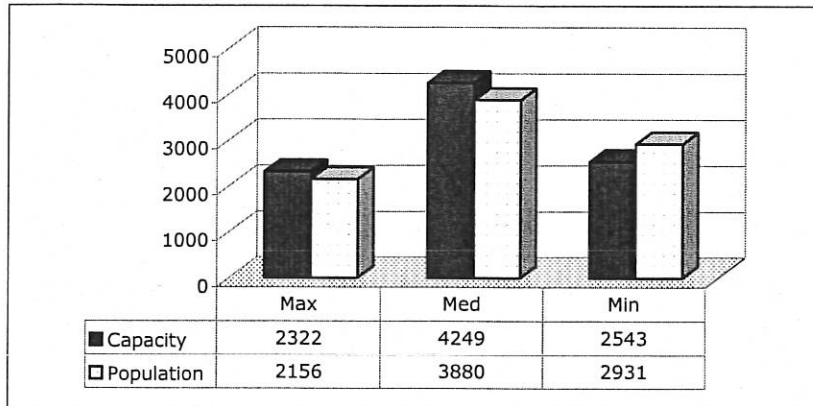
February 4, 2003

**HOUSE APPROPRIATIONS**

DATE 2-4-03  
ATTACHMENT 3

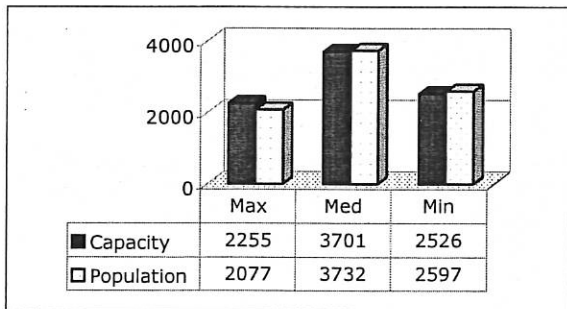
**CURRENT KDOC ISSUES—Capacity & Population**

**Capacity & Population Breakdowns, by Gender & Custody  
 December 31, 2002**



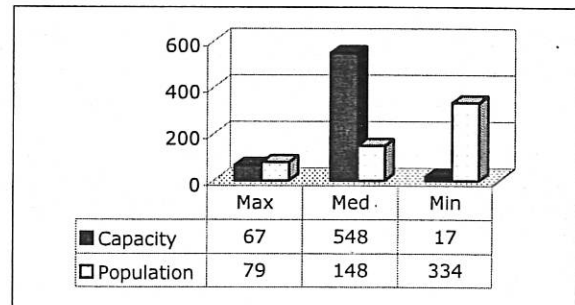
**CAPACITY VS. POPULATION — SYSTEMWIDE TOTAL**

Capacity = 9,114 Population = 8,967



**CAPACITY VS. POPULATION — MALES**

Capacity = 8,482 Population = 8,406



**CAPACITY VS. POPULATION — FEMALES**

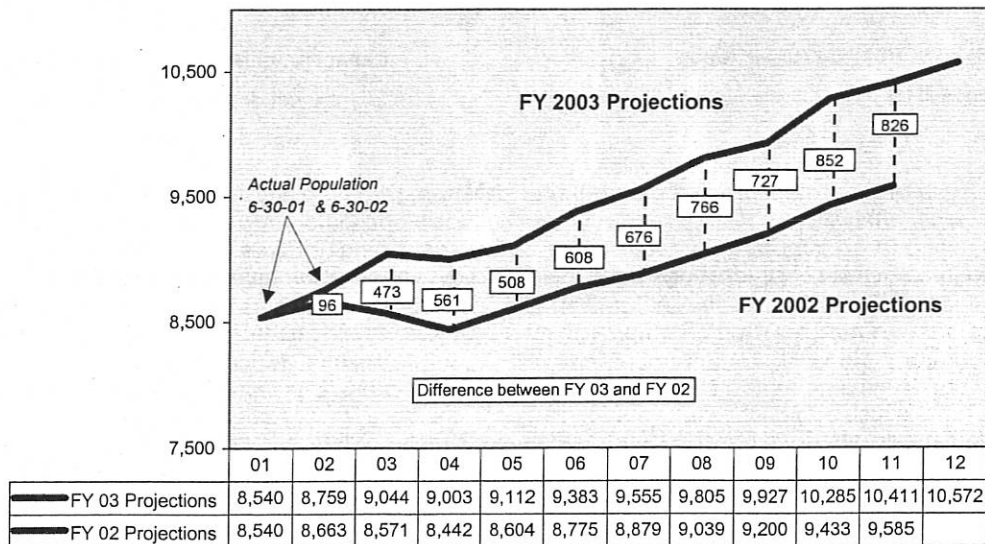
Capacity = 632 Population = 561

While systemwide totals provide general information regarding trends and correctional system status, analysis of capacity requirements cannot be based on systemwide totals, but must take into account both inmate gender and custody requirements. Inmates can be placed in higher security locations than their custody classification level would indicate (minimum custody inmates in medium security housing, for example) but the reverse cannot happen. Inmates with higher custody classifications cannot be placed in locations with a lower security designation. Moreover, capacity in an all male or all female facility is not available for housing inmates of the opposite gender. Finally, there are facility-specific considerations which come into play. As an example, the security designation of much of the female capacity at TCF's Central Unit is medium security. While this capacity is suitable for housing medium custody females, it would not be appropriate for housing medium custody males.

### Kansas Sentencing Commission FY 2003 Inmate Population Projections Population as of June 30 each year

ID Group	fiscal year (population as of June 30 each year)											Total Change	% Change
	Actual 02	03	04	05	06	07	08	09	10	11	12		
<b>Off Grid</b>	656	676	707	734	763	795	825	854	885	916	945	289	44.1%
<b>Non-Drug</b>													
Level 1	656	692	741	793	837	876	910	951	983	1019	1056	400	61.0%
Level 2	509	511	520	532	548	562	576	596	594	608	612	103	20.2%
Level 3	1246	1323	1380	1431	1487	1514	1529	1592	1638	1651	1689	443	35.6%
Level 4	276	278	295	305	323	319	339	331	345	356	358	82	29.7%
Level 5	921	946	907	900	896	912	925	937	982	994	998	77	8.4%
Level 6	160	165	170	177	183	182	189	171	189	186	198	38	23.8%
Level 7	758	758	778	808	829	835	841	828	843	864	852	94	12.4%
Level 8	212	213	207	205	195	190	193	210	222	214	211	-1	-0.5%
Level 9	274	274	303	290	302	288	320	317	328	328	331	57	20.8%
Level 10	51	65	70	52	56	44	65	57	56	59	54	3	5.9%
<b>Drug</b>													
Level D1	371	423	515	582	635	712	751	760	792	820	830	459	123.7%
Level D2	340	337	345	367	374	405	442	445	460	439	435	95	27.9%
Level D3	427	433	445	450	464	475	485	458	481	478	488	61	14.3%
Level D4	480	549	543	539	591	618	589	600	611	622	637	157	32.7%
<b>Parole CVs</b>	1422	1401	1077	947	900	828	826	820	876	857	878	-544	-38.3%
<b>Total</b>	<b>8,759</b>	<b>9,044</b>	<b>9,003</b>	<b>9,112</b>	<b>9,383</b>	<b>9,555</b>	<b>9,805</b>	<b>9,927</b>	<b>10,285</b>	<b>10,411</b>	<b>10,572</b>	<b>1,813</b>	<b>20.7%</b>

As illustrated in the graph below, the FY 2003 population projections prepared by the Kansas Sentencing Commission represent a significant increase from the FY 2002 projections. Annual variance between the two projection series ranges from 473 for the June 30, 2003 population to 852 for the June 30, 2010 population.



**Adjusted Baseline Capacity Compared to Projected Population:  
Male Inmates, by Custody**

	<b>Max</b>	<b>Med</b>	<b>Min</b>	<b>Total</b>
Current Capacity	2,255	3,701	2,526	8,482
Utilization Adjustments	(129)	(73)	112	(90)
<b>Adjusted Baseline Capacity</b>	<b>2,126</b>	<b>3,628</b>	<b>2,638</b>	<b>8,392</b>
<b>Projected Male Population</b>				
June 30, 2003	2,088	3,778	2,648	8,514
June 30, 2004	2,049	3,758	2,667	8,474
June 30, 2005	2,133	3,777	2,667	8,577
June 30, 2006	2,197	3,884	2,751	8,832
June 30, 2007	2,179	3,989	2,823	8,991
June 30, 2008	2,179	4,123	2,921	9,223
June 30, 2009	2,197	4,203	2,939	9,339
June 30, 2010	2,250	4,327	3,097	9,674
June 30, 2011	2,327	4,376	3,093	9,796
June 30, 2012	2,350	4,502	3,099	9,951

**Population projections**

The population numbers are based on the Kansas Sentencing Commission's FY 2003 projections. In addition to its basic projections by inmate ID group, the commission also prepared a separate breakdown by custody and a separate breakdown by gender. The numbers above correspond with the commission's total projections for male inmates; the custody distribution by gender was calculated by first estimating the custody breakdown for women, and then subtracting those from the totals to derive an estimate for males.

**Adjusted Baseline Capacity**

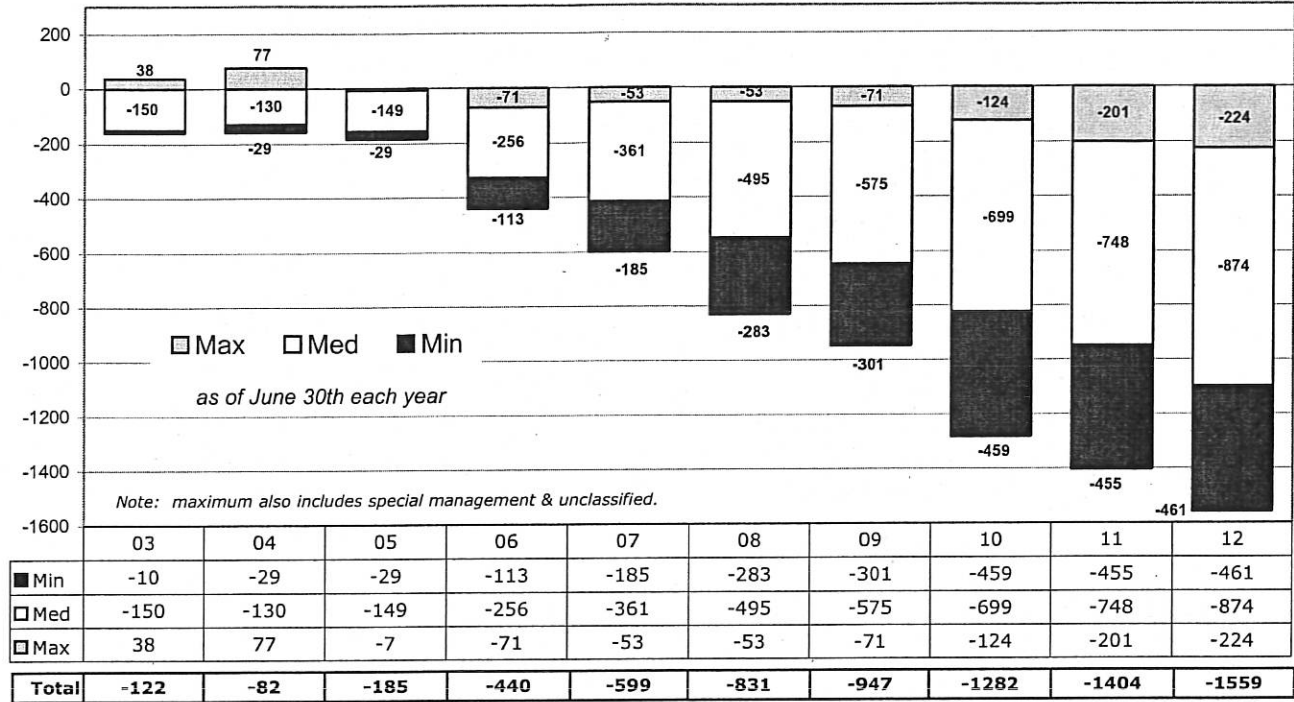
The capacity numbers are based on the department's existing capacity for male inmates of 8,482 beds. The raw capacity numbers have been adjusted, however, to reflect certain utilization and operational factors to provide a more accurate estimate of bed availability at each custody level. These *utilization adjustments* reflect the following:

- (1) non-KDOC beds counted in the systemwide capacity are special purpose beds (such as those at Larned State Hospital) and their utilization depends on the number of inmates suitable for placement; and,
- (2) on any given day, some lower custody inmates occupy higher custody beds. Examples of situations where the latter occurs include: inmates who have received their initial custody classification but who are still undergoing evaluation as part of the intake process; inmates who have just received a lower custody classification and are waiting transfer to a lower custody bed; and, inmates whose medical condition requires close proximity to a level of medical care that is only available within a higher security unit.

The net effect of the utilization adjustments is as follows:

- -90 total beds.
- -129 maximum custody beds.
- -73 medium custody beds.
- +112 minimum custody beds.

**Difference Between Adjusted Baseline Capacity and Projected Male Inmate Population, by Custody Level**



This chart summarizes the difference between available capacity for male inmates and the projected male inmate population, by custody, for the end of each fiscal year through FY 2012.

With the exception of maximum custody beds in FY 03 and FY 04, capacity deficits are projected at all custody levels during all fiscal years of the projection period. The total deficit ranges from a low of -82 in FY 04 to a high of -1559 at the end of FY 12.



**Capacity Compared to Projected Population:  
Female Inmates, by Custody**

	Max	Med	Min	Total
<b>Current Capacity</b>	67	548	17	632
<b>Projected Female Population</b>				
June 30, 2003	69	143	318	530
June 30, 2004	69	152	308	529
June 30, 2005	70	155	310	535
June 30, 2006	71	160	320	551
June 30, 2007	73	164	327	564
June 30, 2008	81	175	326	582
June 30, 2009	83	177	328	588
June 30, 2010	86	183	342	611
June 30, 2011	87	184	344	615
June 30, 2012	88	185	348	621

*Note:*

88 beds at Topeka Correctional Facility's J Cellhouse are available but have not yet been added to capacity. This living unit was renovated following the transfer of the male Reception and Diagnostic Unit to El Dorado Correctional Facility, and was partially occupied following the termination of KDOC's operations at the TCF-West Unit, located on the grounds of the former Topeka State Hospital. The additional beds in J Cellhouse will become operational as warranted by population levels and when funding is approved for the additional positions needed to staff the remainder of the living unit.

The security designation of capacity for females is heavily weighted towards medium custody because medium and minimum custody inmates are housed together at Topeka Correctional Facility's Central Unit. All of the beds in these living units are classified as medium. (The I Cellhouse compound, which houses maximum custody females, is also part of TCF-Central, but it has its own perimeter and is physically separated from the rest of the facility.) Once the renovated J Cellhouse is fully operational with 176 medium beds, the department may review the classification of bedspace at the existing TCF-Central living units.

Although slow growth is projected for the female inmate population, an overall bed surplus is expected throughout the projection period. Because of the existing bed surplus for females, the department has entered into a contract with the federal Bureau of Prisons whereby state capacity will be used for placement of up to 25 female inmates from the federal system. The agreement became effective January 1, 2002. Under the terms of the agreement, the state is reimbursed \$87.02 per day for each inmate.

## Capacity & Population Issues in 2003 Session

### FY 2003 Supplemental Appropriation

- Two allotment reductions were made to the KDOC FY 2003 budget, including a \$4.3 million reduction in August 2002 and a \$8.3 million reduction in November 2002. To fully meet the reductions in the second allotment, the department determined that several KDOC and local facilities would need to be closed, including: minimum security KDOC units at Stockton, Toronto, Osawatomie, and El Dorado; community corrections residential centers in Sedgwick and Johnson counties; and, the two conservation camps in Oswego. To avoid these closures, Governor Sebelius has recommended a supplemental appropriation of \$3.3 million for the department. (The total supplemental recommended is \$4.0 million, which also includes funds for food service and medical contract costs because of an increase in the inmate population.)

If the supplemental is not approved—

- Unit closures would result in the loss or unavailability of 708 correctional beds throughout the state, including 364 KDOC beds, 223 conservation camp beds, and 121 community corrections residential center beds. Such a capacity reduction would be very problematic, given the current status of the correctional system and the most recent inmate population projections made by the Kansas Sentencing Commission.
- Minimum custody inmates affected by the KDOC closures would be transferred to other KDOC facilities, where the inmate count would then exceed established operating capacity. Those facilities would be impacted with increased supervision requirements and more inmate idleness.
- Loss of beds in the conservation camps and residential centers would result in either a lesser degree of community supervision for the affected offenders or, in some cases, they would likely be admitted to KDOC.
- There would be an economic impact in the affected communities because of the loss of jobs and the loss of community service work performed by KDOC inmates.
- Additional cuts would need to be made in the department's budget because there are fewer months remaining in the fiscal year to achieve the targeted savings.

### Capacity Expansion vs. Sentencing Policy Change

The Sentencing Commission's FY 2003 projections indicate that a decision needs to be made this session as to how the state will respond to the projected growth in the male inmate population. The basic options are to expand capacity or revise the state's sentencing laws to reduce the number of offenders in the KDOC system.

The department has not made a recommendation regarding this policy choice or a specific expansion project for consideration. However, we have estimated the construction and annual operating costs involved in expansion at El Dorado Correctional Facility, as described on the next page. Regarding sentencing alternatives that would reduce the inmate population, the Kansas Sentencing Commission will present a proposal to the Legislature that would significantly revise sentencing policy for offenders convicted of drug possession.

Expansion at El Dorado would involve construction of one or more 128-cell living units. The living unit design would be suitable for housing 128 maximum custody inmates or 256 medium custody inmates. (Departmental practice is to single-cell maximum custody inmates and doublecell medium custody inmates.)

**Capital Improvement Project Costs.** Total project cost of constructing one new cellhouse at El Dorado is estimated at \$7.1 million. The cost of constructing two new cellhouses is estimated at \$14.4 million, which also includes costs for installation of an additional boiler and emergency generator, as well as construction of additional warehouse storage space for inmate property. The estimated cost per bed is approximately \$28,000 if doublecelled and used for medium custody inmates. If used for maximum custody inmates, the cost per bed is approximately \$56,000.

**Staffing**

FTE	One Cellhouse		Two Cellhouses	
	128 cell/ 128 inmates	128 cell/ 256 inmates	256 cell/ 256 inmates	256 cell/ 512 inmates
Uniformed	53.6	55.3	75.7	80.3
Unit team	3.0	4.0	6.0	8.0
Support	7.0	9.0	10.0	11.0
<b>Total</b>	<b>63.6</b>	<b>68.3</b>	<b>91.7</b>	<b>99.3</b>

**Annual Operating Costs (excluding one-time start-up costs)**

	One Cellhouse		Two Cellhouses	
	128 cell/ 128 inmates	128 cell/ 256 inmates	256 cell/ 256 inmates	256 cell/ 512 inmates
Salaries & Wages	\$2,257,000	\$2,405,000	\$3,258,000	\$3,509,000
Other Operating	286,000	525,000	705,000	1,024,000
Programs	143,000	286,000	286,000	573,000
Health Care	317,000	549,000	549,000	1,355,000
Food Service	191,000	382,000	382,000	764,000
<b>Total</b>	<b>\$3,194,000</b>	<b>\$4,147,000</b>	<b>\$5,180,000</b>	<b>\$7,225,000</b>
<i>Avg\$/Inmate</i>	<i>\$25,000</i>	<i>\$16,200</i>	<i>\$20,200</i>	<i>\$14,100</i>

Contract for Placement of KDOC Male Inmates- Status

The 2002 Legislature approved \$2.28 million in federal and state funds for the department to contract, if necessary, for lease of beds to house medium custody inmates in a private facility during FY 2003. *(The provision relating to use of beds in a private facility is based on federal requirements for expenditure of grant funds under the Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Grant Program. There is a general prohibition against the use of these funds for operating expenditures unless a privatized facility is involved.)* The authorization given by the 2002 Legislature—which is based on a funding split of 90% federal funds and 10% state funds—provided funding for the entire fiscal year in FY 2003. However, in identifying its first round of allotment reductions, the department reduced the SGF funding for this purpose by 50%, effectively limiting the contract option to six months in FY 2003.

In late fall of 2002, the department issued a Request for Proposals for contract placement of up to 125 male offenders. Five proposals were received and are currently under review.

**CURRENT KDOC ISSUES—Offender Program Resources**

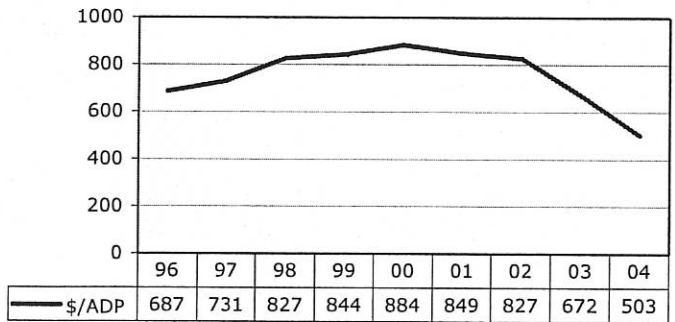
One of the challenges facing the department relates to the significant decline over the past few years in resources available for effective offender intervention programs such as substance abuse treatment, academic and vocational education and sex offender treatment. Funding for offender programs peaked in FY 2000, both in terms of total resources available and funding per ADP (average daily population of offenders in prison and offenders under KDOC supervision in the community).

In FY 2003, the department has made the following adjustments in offender program interventions:

- Terminated community-based residential substance abuse treatment capacity (loss of 48 slots);
- Reduced community-based outpatient treatment from 21,500 hours to 2,710 hours;
- Terminated contract for visitor centers;
- Terminated contract for minimum custody therapeutic community at Winfield Correctional Facility (loss of 64 facility slots and 10 community transition slots);
- Reduced the community residential transition (CRB) capacity by 23 slots;
- Negotiated deferred funding schedule for the values-based pre-release program at Ellsworth Correctional Facility;
- Reduced funding for the academic, vocational, and special education contracts by \$600,000.

The FY 2004 budget will require further adjustments in offender program interventions. Discussions are currently underway with various contract providers to determine the most effective ways to meet the reductions envisioned for FY 2004. While no final determinations have been made, the department projects significant further reductions in the community residential transition service capacity and in the facility-based vocational education capacity, as well as some adjustments in the sex offender treatment program.

- The FY 2004 budget of \$6.6 million for offender programs is approximately 47% less than the \$12.4 million expended for this purpose in FY 2000.
- When measured on the basis of funding per ADP, there has been a 43% decline between FY 2000 and FY 2004, as shown in the graph below.

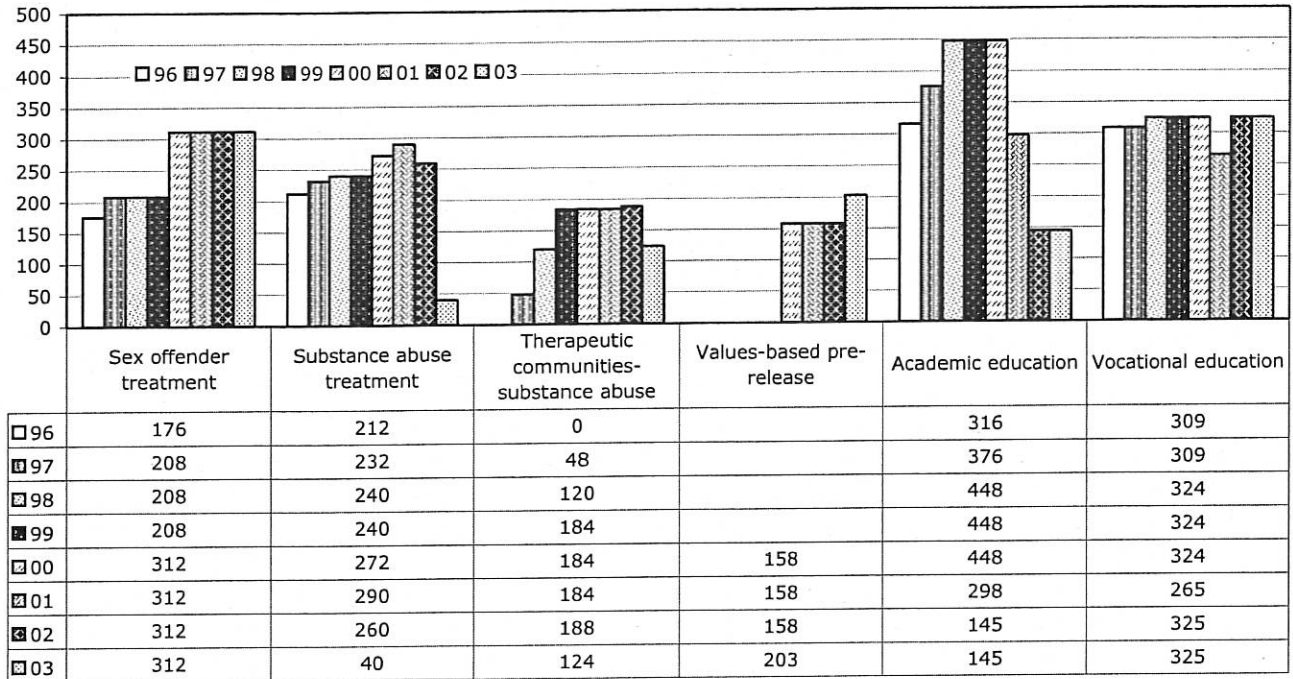


- When compared to FY 2000, the FY 2004 budget represents a projected reduction of over 800 treatment and education program assignments systemwide.
- Program reductions have an impact not only on offenders and their ability to effectively prepare for successful reentry into the community, they also impact prison operations by contributing to inmate idleness, thus creating attendant management, security, and staff safety issues.

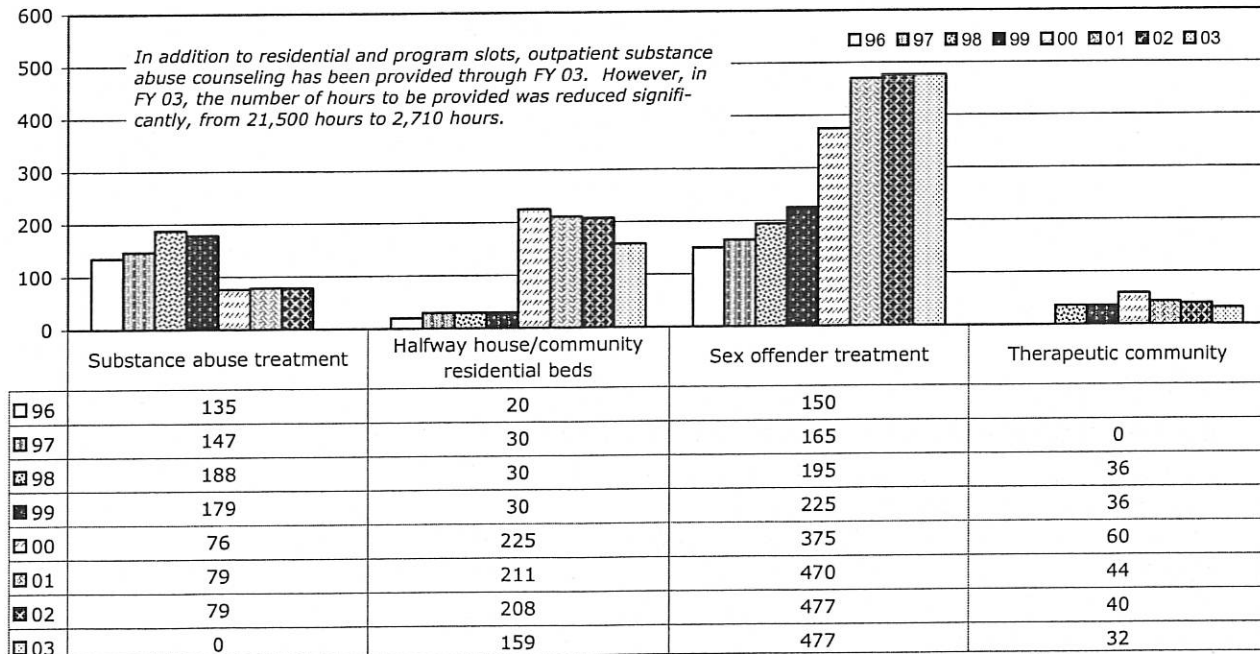
We recognize that the state’s fiscal situation requires reduction in service levels and we are not requesting restoration of funding for offender programs. This has been an area of significant impact for the department, however, and resource availability for offender programs is an issue we plan to raise once the state’s fiscal situation improves.

**Offender Program Capacity: FY 1996—FY 2003**  
 (reflects mid-year adjustments in FY 03)

**FACILITY-BASED PROGRAM SLOTS**



**COMMUNITY-BASED PROGRAM SLOTS**



**CURRENT KDOC ISSUES: STAFFING**

90% of the total authorized positions for the Department of Corrections are in correctional facilities.

Nearly two-thirds of the total system-wide FTE are uniformed security staff.

The department's FTE count does not include unclassified temporary positions or employees of contract providers who deliver services such as medical and mental health care, offender programs, and food service.

**KDOC Authorized Staffing FY 2003**

Location	Total FTE	Uniformed	Non-Uniformed
<b>Facilities</b>			
El Dorado	466.5	353.0	113.5
Ellsworth	223.0	147.0	76.0
Hutchinson	513.0	354.0	159.0
Lansing	710.0	537.0	173.0
Larned	186.0	132.0	54.0
Norton	266.0	190.0	76.0
Topeka	248.0	158.0	90.0
Winfield	201.0	130.0	71.0
Subtotal-Facilities	<b>2813.5</b>	2001.0	812.5
<b>Parole Services</b>	<b>151.5</b>		151.5
<b>Correctional Industries</b>	<b>76.0</b>		76.0
<b>Central Office</b>	<b>91.5</b>		91.5
<b>Total</b>	<b>3132.5</b>	<b>2001.0</b>	<b>1131.5</b>
<i>% of Total</i>		63.9%	36.1%

In late January 2003—

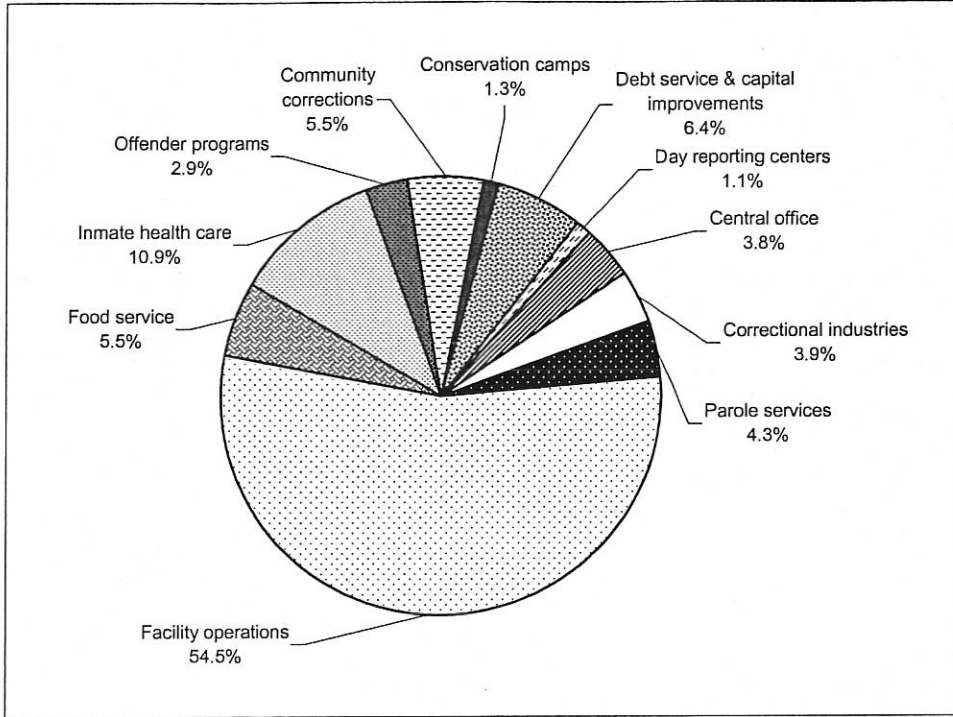
- There were 191 vacancies in KDOC positions, representing 6% of all authorized FTE. The vacancies reflect the fact that many positions have been held open for budgetary reasons, and also reflect the ongoing challenge faced by the department in recruitment and retention of staff, particularly in uniformed positions at certain facilities.
- There were 52 employees on extended sick leave and 23 on military leave. When these are combined with the vacancies, the total number of positions not available for support of departmental operations represented 8.5% of authorized FTE.

As the number of vacancies and unavailable staff increases, it becomes more difficult control and manage overtime expenditures for uniformed staff.

- Through the first six months of FY 2003, KDOC facilities expended \$953,228 for overtime worked by uniformed staff. Annualizing the FY 2003 expenditures to date represents a 16% increase from the amount expended for this purpose in FY 2002.
- At Lansing Correctional Facility—the largest KDOC facility, and one that typically faces a difficult competitive environment for recruitment and retention of staff—expenditures of \$384,674 for uniformed staff overtime during the first half of FY 2003 were only \$55,600 less than the entire year in FY 2002.

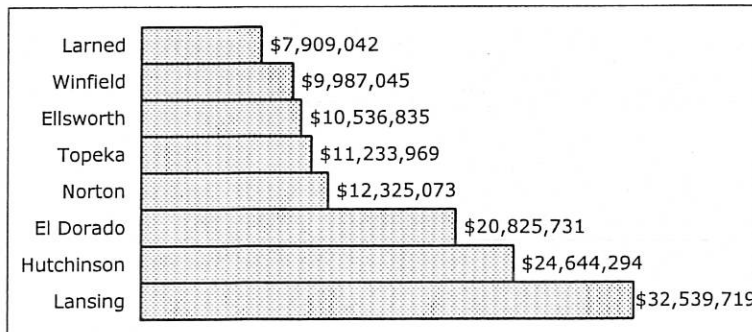
**KDOC BUDGET**

**GOVERNOR'S BUDGET RECOMMENDATIONS FY 2004 - ALL FUNDS**



The Governor's budget recommendations for FY 2004 include \$238.7 million for the Department of Corrections from all funding sources. Individual facility operating budgets represent 54.5% of the total KDOC budget for FY 2004 as recommended by the Governor. However, significant expenditures are also made by KDOC on a systemwide basis in support of facility operations and infrastructure. These categories of expenditure include: inmate health care; food service; debt service and capital improvements; correctional industries; and a portion of offender programs.

**Facility Operating Budgets—FY 2004**



Of the total \$130 million recommended by the Governor for appropriation to individual correctional facilities, \$78 million or 60% is the combined recommendation for the three largest facilities.

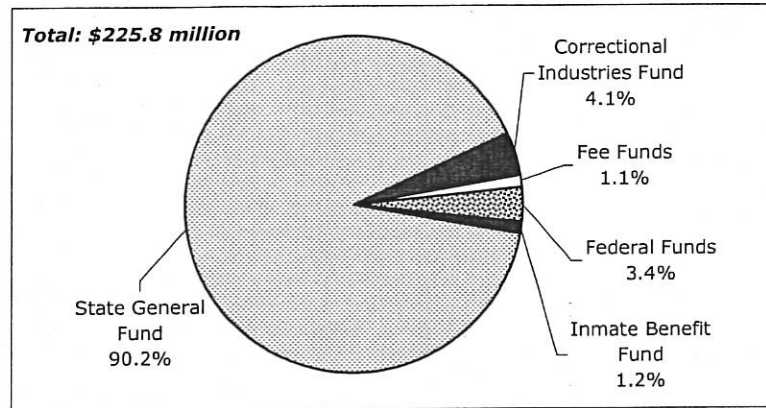


**Systemwide Expenditure Summary: All Funds**

Program/Facility	Actual FY 2002	Estimated FY 2003	Requested FY 2004	Governor's Rec FY 2004
<b><u>OPERATING EXPENDITURES</u></b>				
Department of Corrections				
Central Administration	5,065,170	5,217,587	6,549,860	6,269,067
Information Systems	1,520,409	1,594,729	1,607,935	1,582,935
Parole and Postrelease Supervision	9,914,178	9,577,533	10,471,737	10,227,565
Day Reporting Centers	650,746	1,894,000	2,544,000	2,544,000
Community Corrections	15,287,672	13,416,690	13,559,220	13,099,572
Correctional Conservation Camps	2,822,392	3,064,719	3,089,772	3,089,772
Offender Programs	10,656,079	9,716,252	9,778,938	7,035,531
Inmate Medical and Mental Health Care	24,184,109	25,167,955	26,022,337	26,022,337
Systemwide Projects	13,060,094	13,864,632	18,255,772	14,237,811
Kansas Correctional Industries	10,444,442	9,736,084	9,344,816	9,344,816
Debt Service	3,001,020	2,848,530	2,373,000	2,373,000
<b><i>Subtotal - Department of Corrections</i></b>	<b>96,606,311</b>	<b>96,098,711</b>	<b>103,597,387</b>	<b>95,826,406</b>
Ellsworth Correctional Facility	9,208,011	10,291,357	10,658,452	10,536,835
El Dorado Correctional Facility	20,434,623	20,392,090	21,159,443	20,825,731
Hutchinson Correctional Facility	24,196,521	24,026,046	25,000,596	24,644,294
Lansing Correctional Facility	32,345,890	32,074,915	33,162,872	32,539,719
Larned Correctional Mental Health Facility	7,645,914	7,718,130	8,028,599	7,909,042
Norton Correctional Facility	12,026,390	12,105,323	12,509,493	12,325,073
Topeka Correctional Facility	10,680,919	11,118,332	11,382,845	11,233,969
Winfield Correctional Facility	9,889,219	9,767,172	10,114,792	9,987,045
<b><i>Subtotal - Facilities</i></b>	<b>126,427,487</b>	<b>127,493,365</b>	<b>132,017,092</b>	<b>130,001,708</b>
<b><i>Subtotal - Operating Expenditures</i></b>	<b>223,033,798</b>	<b>223,592,076</b>	<b>235,614,479</b>	<b>225,828,114</b>
<b>% Change</b>	-	0.3%	5.4%	1.0%
<b><u>CAPITAL IMPROVEMENTS</u></b>				
Department of Corrections	9,760,030	14,949,879	12,910,303	12,910,303
Ellsworth Correctional Facility	770,089	153,000	0	0
El Dorado Correctional Facility	66,993	15,157	0	0
Hutchinson Correctional Facility	883,729	1,090,861	0	0
Lansing Correctional Facility	780,830	741,869	0	0
Larned Correctional Mental Health Facility	56,731	42,532	0	0
Norton Correctional Facility	207,626	65,078	1,445,544	0
Topeka Correctional Facility	1,461,582	154,401	0	0
Winfield Correctional Facility	142,210	156,952	0	0
<b><i>Subtotal - Capital Improvements</i></b>	<b>14,129,820</b>	<b>17,369,729</b>	<b>14,355,847</b>	<b>12,910,303</b>
<b><i>Total Budgeted Expenditures</i></b>	<b>\$ 237,163,618</b>	<b>\$ 240,961,805</b>	<b>\$ 249,970,326</b>	<b>\$ 238,738,417</b>
<b><i>Total - Positions</i></b>	<b>3,132.5</b>	<b>3,132.5</b>	<b>3,132.5</b>	<b>3,132.5</b>

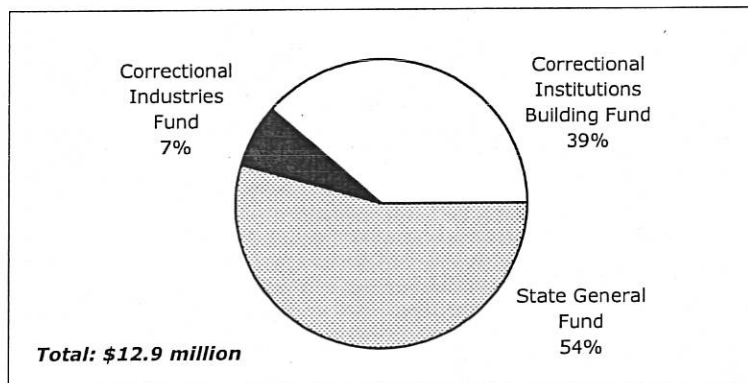
## KDOC Budget, by Funding Source

### THE OPERATING BUDGET—FY 2004



**The principal funding source for the department's operating budget is, by far, the State General Fund, representing 90% of all operating expenditures.**

### CAPITAL IMPROVEMENTS—FY 2004



**Major sources of funding for FY 2004 capital improvements expenditures include the Correctional Institutions Building Fund (financed with transfers from the Gaming Revenues Fund) and the State General Fund. Together, these two funding sources account for 93% of the budgeted capital improvements.**

**All of the State General Fund amount of \$7.0 million, \$1.7 million of the \$5.0 million CIBF amount, and \$523,000 from the correctional industries fund will be expended for the principal portion of debt service payments which, for budgeting purposes, are considered to be capital improvements expenditures. The chart does not include \$2.4 million in debt service payments for interest, which are budgeted as operating expenditures.**

### FY 2003 KDOC Allotment Reductions

August Allotment Reduction Items	Amount
▪ Reduce state match for day reporting centers	132,600
▪ Reduce state grant to Labette Correctional Conservation Camp	44,950
▪ Use community corrections unexpended funds to offset FY 03 appropriations	600,000
▪ Lapse 50% of match for leased beds	114,000
▪ Use special revenue funds to offset SGF expenditures	
Supervision Fees Fund (for parole services operations)	200,000
Correctional Industries Fund (for offender programs)	200,000
Inmate Benefit Funds (for offender programs)	400,000
Alcohol and Drug Abuse Treatment Fund (for substance abuse treatment)	510,000
Correctional Institutions Building Fund (for debt service)	147,225
▪ Lapse unobligated balance for offender programs	858,225
▪ Reduce central administration expenditures by 3%	172,794
▪ Reduce facility operating budgets by 0.5%	646,000
▪ Staffing/salaries & wages adjustments at Lansing Correctional Facility	297,840
<b>Total</b>	<b><u>4,323,634</u></b>

November Allotment Reduction Items	Amount
▪ Terminate formal accreditation process	31,000
▪ Reduce remaining payment for community corrections basic grants by 2%	117,000
▪ Reduce central administration expenditures by 2%	124,000
▪ Further reduce or eliminate contractual programs and services	622,000
▪ Eliminate match for new document imaging grant	58,500
▪ Shift supervision fees from capital outlay; reduce SGF	35,000
▪ Transfer banked IBF funds for canteen reimbursement to TCF; reduce SGF	131,000
▪ Reduce drug testing; shift supervision fees to offset SGF	50,000
▪ Additional KCI transfer for debt service	498,547
▪ Reduce facility operating budgets by 2%	2,564,000
▪ Delay in opening of Wichita day reporting center to December 2, 2002	14,000
▪ Reduce SGF at TCF due to increased receipts from Bureau of Prisons contract	95,000
▪ Reduce SGF for debt service due to increased receipts in principal & interest accounts	184,000
▪ Utilize General Fees Fund balance at EDCF to reduce SGF	92,000
▪ Defer repair and rehabilitation projects; shift CIBF to debt service	300,000
▪ Terminate therapeutic community program at WCF	33,631
▪ Reduce SGF support of InnerChange program	83,333
▪ Reduce funding for health care and food service*	3,263,161
<b>Total</b>	<b><u>8,296,172</u></b>

*\*The allotment reductions affecting health care and food service were made only to "park" these cuts in lieu of closing minimum security and community facilities, pending action by the 2003 Legislature. The Governor's budget includes a recommendation for a supplemental appropriation to restore these funds to the department's budget.*

## OTHER

The Department of Corrections contracts with a private vendor for provision of telephone service to the inmate population. The contract was re-bid in 2002 and a new contractor, T-NETIX, was selected through a competitive, negotiated procurement process conducted through the Division of Purchases. The new contract provides, in several of the major service categories, for lower rates for inmate family members than did the previous contract.

The new contract became effective December 16, 2002, and some issues have arisen in the transition between contractors, primarily in two areas:

- Delay in implementing the change in rates for some categories of service; and,
- Delay in implementing the new option provided in the contract for prepaid telephone service (previous contracts provided that all inmate calls had to be collect calls.)

We have been meeting with the contractor to fully understand the reasons for the delays and to resolve the issues as quickly as possible. In part, the delays in implementing rate changes appear to relate to completing installation of new lines and to finalizing agreements with the prior contractor for use of existing lines. Our discussions have also included how best to address to issue of overcharges since the effective date of the contract.