

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 a.m. on January 29, 2004 in Room 514-S of the Capitol.

All members were present except:

Representative Dean Newton- excused

Committee staff present:

J. G. Scott, Legislative Research
Amy VanHouse, Legislative Research
Michele Alishahi, Legislative Research
Becky Krahl, Legislative Research
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Administrative Analyst
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

Patricia Scalia, Executive Director, Board of Indigents Defense Services (BIDS)
Roger Werholtz, Secretary, Department of Corrections (DOC)

Others attending:

See Attached List.

- Attachment 1 Overview of Board of Indigent's Defense Services (BIDS)
- Attachment 2 Overview of the Department of Corrections (DOC)
- Attachment 3 Risk Management, Department of Corrections (DOC)

The Chair recognized Patricia Scalia, Executive Director of the Board of Indigents Defense Services (BIDS), who presented an overview of the FY 2004 and FY 2005 budget needs of the Board (Attachment 1). Ms. Scalia addressed the issue of establishing a public defender's office in Independence because of the difficulty in staffing the public defender's office in Chanute requiring extra funding for assigned counsel for FY 2004. Requests for FY 2005 include an increase in the hourly rate paid to assigned counsel, funds to set up a death penalty conflicts office and an increase in public defender pay.

Because of the lack of attorneys in Independence, the Committee proposed that it might be feasible to combine the Independence and Chanute offices. Ms. Scalia indicated that there are attorneys who would close a private practice to work for the State; however, are not interested in doing assigned counsel work because of the pay rate. In response to a question from the Committee, Ms. Scalia stated that the cost of the Chanute office is approximately \$300,000. Ms. Scalia indicated that the State uses the federal poverty guidelines in determining eligibility for the services of an attorney; however, in some cases felt this is not being consistently practiced across the State. The Committee felt this might be an area that needs to be reviewed. The Committee noted that there were other questions to be answered, noting also that one reason the State might be having trouble obtaining the services of attorneys, could be professional liability and recommended this be an area to be addressed..

Chairman Neufeld thanked Ms. Scalia for her presentation.

Representative Feuerborn moved to introduce legislation as requested by the Department of Administration's Accounts and Reports Division. The motion was seconded by Representative Shultz. Motion carried.

Chairman Neufeld recognized Roger Werholtz, Secretary of the Department of Corrections, who presented an overview of the Department of Corrections and information on how the state of Kansas compared nationally in the context in which they are operating (Attachment 2). Secretary Werholtz stated that the National Crime Victimization Survey reveals that according to research, during the last thirty years, crime is declining. The study also shows that reported crime is increasing indicating that the public is now reporting

CONTINUATION SHEET

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE at 9:00 a.m. on January 29, 2004 in Room 514-S of the Capitol.

crime more than in the past. In response to a question from the Committee, Secretary Werholtz stated that the funding for the lease of out-of-state prison space is from federal government Violent Offender Incarceration/Truth in Sentencing (VOI/TIS) grant funds. This money was appropriated to the State for the federal years of 1996 thru 2001 in the amount of \$27 million. These funds can only be used for leasing private prison space, not prison space from another government entity. Secretary Werholtz stated that VOI/TIS funds will expire in FY 2005 and in all probability will be expended by the end of 2005. Responding to a question from the Committee, the Secretary indicated that he did not favor in-state private prisons.

Responding to questions from the Committee, Secretary Werholtz indicated that the type of offenders being contracted for in out-of-state prison space are primarily medium-security offenders. Because of the type of screening performed by these out-of-state prisons before acceptance of the offenders, the Secretary stated that DOC is planning to review Kansas' classification system. This review has not been done since 1986 and will take approximately nine months to complete. It is felt that the review of the classification system should be done before any building projects are proposed.

With regard to program reductions, the Secretary noted that, between FY 2000 and FY 2005, there has been a 51 percent reduction in funding for facility-based and community-based academic education and vocational programs. The Secretary noted that the Department is working with the education contractor to restructure how this service is delivered. Secretary Werholtz stated that the new medical contract will probably have a significant cost increase. The Department will also be challenged to replace the federal funds from the VOI/TIS and RSAT programs.

Secretary Werholtz also presented a report on Risk Management showing a comparison between risk containment and risk reduction (Attachment 3). It is felt that risk containment limits the environment in which negative offender behavior can occur as compared to risk reduction which reduces the likelihood of negative offender behavior regardless of the environment. The Department of Corrections is implementing the risk management program with the belief that the number of offenders returning to Kansas prisons will decrease as they are better prepared prior to release to return to society.

The Chair thanked Secretary Werholtz for his presentation.

Representative Pottorff introduced her intern, Brett Skaugstad, a student from the University of Kansas.

The meeting was adjourned at 10:55 a.m. The next meeting will be held on February 3, 2004, with a tour of the Juvenile Justice Authority facilities in Topeka.



Melvin Neufeld, Chairman

HOUSE APPROPRIATIONS COMMITTEE

January 29, 2004

9:00 A.M.

NAME	REPRESENTING
Liz Alaria	BIDS
Lidi-Lynn Helsel	Budget
Denise Apte	GRW.
Mark Masterson	SS Co
BERRY BILLINGS	SN/2 nd Dist Comm Corr
Rick Fischli	KS. DEPT. OF CORRECTION.
David Croy	HOMELESS COME HOME
Roger Verholtz	KDOC
JEREMY S BARCLAY	KDOC
DENNES WILLIAMS	KDOC

APPROPRIATIONS COMMITTEE
BUDGET OVERVIEW
January 29, 2004

Thank you for the opportunity to appear before you and present an overview of the budget needs of the SBIDS.

Current Budget Year-FY04

Public Defender Office-Independence - \$300,000

For FY04, SBIDS requests funds to establish a public defender office in Independence. The Honorable Rawley Judd Dent, Chief Judge of the Fourteenth Judicial District expressed the need for this office and appeared before the Legislative Budget Committee last November. The situation is worse now due to the resignation of one of our Chanute attorneys. We have great difficulty staffing the Chanute office and cannot cover the caseload nor lend in-house attorney assistance to Independence.

In FY03, there were 450 felony cases with indigent persons accused in the 14th judicial district but there are only two private attorneys willing to accept those appointments. The "Standards for Criminal Justice" published by the American Bar Association state that only 150 felony cases should be handled by a defense attorney (doing no other work) each year. Higher numbers pose a risk of providing ineffective assistance of counsel.

Private attorneys from Wichita have been hired to handle the numerous homicides at substantial cost to the state. Additionally, the caseload and numbers of homicides continues to increase.

Judge Dent has offered office space in the courthouse for a savings of \$20,000 in rent. Other start up costs and operation of a public defender office for Independence staffed by three attorneys total \$300,000

Assigned Counsel Funding - \$300,000 LSP

The Division of the Budget worked with us to develop a system of "case based" funding. The purpose was to prevent our running out of funds to pay assigned counsel as has happened when assigned counsel was under funded. However, it did not address the caseload that will fall to us from the budget cuts to Legal Services for Prisoners.

Budget Year-FY05

For budget year FY05, the SBIDS made three requests and one and one half have been recommended for funding. The requests are for an increase in the hourly rate paid to assigned counsel, for funds to set up a death penalty conflicts office, (two attorney positions were granted toward this request), and for an increase in public defender pay-which was our most important priority and which was granted.

HOUSE APPROPRIATIONS

DATE 1-29-2004
ATTACHMENT 1

Increase in Assigned Counsel Hourly Rate-\$4M

The request is for a tremendous amount of money, however, this enhancement is vital to the agency mission of providing criminal defense counsel in a cost effective manner.

Public defender offices are established in those regions that can more cost effectively be served by public defenders. Assigned Counsel are appointed in those areas where a public defender office would not be cost effective. There are exceptions due to necessity. The Chanute office is one exception. It was established to serve an area where there was an insufficient number of private attorneys willing to accept felony defense appointed cases for the increasing felony caseload. Additionally, the proposed Independence office would be opened due to necessity. Again, there are few private attorneys willing to accept felony defense appointed cases for the increasing felony caseload.

Without the cooperation of private attorneys willing to work as assigned counsel, our system will collapse. In FY2003, we ran out of money to pay assigned counsel and advised them of that fact by letter. In response thereto, the entire attorney panel for Dodge City resigned. Public Defenders were pulled from other offices to handle cases in Dodge City. The private attorneys returned to assigned counsel service based on our advice of our efforts at funding. Had they refused, we would have been forced to open a public defender office in Dodge City. We have a similar situation right now in Garden City. Only two assigned counsel remain on the panel and we are unable to staff the Garden City Public Defender Office. Our Public Defenders already handle 190 cases per year which far exceeds the American Bar Association Standards of 150 cases. If all of our assigned counsel were to resign, we would be forced to open public defender offices in Kansas City, Leavenworth, Westmoreland, Ottawa, Pittsburg, Emporia, Independence, El-Dorado, McPherson, Concordia, Smith Center, Norton, Colby, Hays and Larned in addition to Dodge City. A low estimate of the cost would be \$6,500,000. Conflict public defender offices would have to be opened for offices already existing at a cost of approximately \$3,000,000 in additional funds. It is vital that we maintain a panel of assigned counsel.

Assigned Counsel have been paid \$50.00 per hour since 1987. The hourly rate was raised to \$50 per hour from the previous \$35 per hour as a result of the "Stephans" case. In its decision on that case, the Kansas Supreme Court suggests that the Board of Indigents' Defense consider the overhead cost of attorneys to determine a payment rate that would not be confiscatory. We have followed the Supreme Court suggestion by conducting a survey of our assigned counsel asking the following questions: How many attorneys in your office accept assigned counsel appointments, what is your overhead? We divided that out and found the median overhead for assigned counsel is \$40 per hour. Therefore, the current hourly payment of \$50 per hour allows them only \$10 per hour compensation for a professional service. This is not a fair rate of compensation and is arguably confiscatory.

To avoid the wholesale resignation of our assigned counsel throughout the state and to avoid a lawsuit for fair compensation, we request an increase in the hourly rate to \$80 per hour. This hourly rate would allow \$40 per hour compensation after overhead. This reflects a yearly increase over the past 16 years of 3.88%. The rate paid to assigned counsel in federal court is \$90 per hour.

The cost of this enhancement is substantial-\$4,000,000. Compared to the cost of the alternative, however, this is cost effective.

Death Penalty Trial and Conflicts Office-\$535,000

In FY2003, \$695,630 was spent for private attorneys fees on death penalty cases where the in-house Death Penalty Defense Unit had a conflict. The establishment of a conflict office would allow for conflict cases to be handled in-house which is much more cost effective. Additionally, we expect to see a high number of cases proceeding to trial this year because the next three cases after Kleypas will be returned for retrial of the penalty phase on the same grounds as Kleypas. So we will have to retry three cases already tried in addition to all new cases that are filed. This office would be established in Wichita where most cases that have the potential of carrying the death penalty proceed to trial. Two attorney positions have been recommended by the Governor and those would be placed in the new death penalty conflict office.

Public Defender Pay Parity with Classified-\$400,000

The current public defender pay matrix does not keep pace with the pay scale for classified attorneys. Specifically, there is no pay step advancement to off-set the cost of the KPERS contribution at the successful completion of the first year of work. Nor is there any step advancement for successful completion of a probationary period. Most significantly, the current pay matrix does not enable the in-house promotion of attorneys. Public defenders go to work for other state agencies to achieve the pay advancement that cannot be achieved in the current pay matrix.

Our own regulations require that attorneys achieve a certain level of experience before they can defend high level felony cases. To qualify for the defense of a severity level 1 or 2, an attorney must have tried to verdict, five or more jury trials. If we cannot keep our public defenders, we must hire private attorneys to handle high level cases.

It was precisely the granting of pay parity in FY1998 that enabled us to shift the caseload from predominately assigned counsel to predominately public defenders and to reduce the cost per case from \$498 for public defenders and \$513 for assigned counsel to \$435 for public defenders and \$483 for assigned counsel in FY1999. Now, six years later, our costs are still lower than they were in FY1998 with Public Defenders at \$449 and assigned counsel at \$461. We handle over 12,000 cases per year on each side. We cannot maintain that efficiency without matching public defender pay to the classified system.

As compared to our neighboring states a Kansas public defender with 5 years of experience earns \$44,096 while the average of neighboring states is \$57,405.



Defending Liberty
Pursuing Justice

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STATEMENT OF THE AMERICAN BAR ASSOCIATION
DEATH PENALTY REPRESENTATION PROJECT
TO THE LEGISLATIVE BUDGET COMMITTEE
OF THE KANSAS STATE LEGISLATURE

NOVEMBER 17, 2003

Robin M. Maher, Esq.
Director

I am very pleased to submit this statement to the Legislative Budget Committee. Thank you for the opportunity to provide you with our comments on the pending budget request. I also would like to congratulate the Committee on its willingness to address the jurisdiction's critical responsibility to ensure adequate legal representation for all indigent defendants.

The ABA Death Penalty Representation Project is concerned with the quality and availability of legal representation for poor defendants charged with or sentenced to death. The ABA does not take a position on the death penalty itself, but the ABA has long advocated for the principle that all criminal defendants are entitled to effective and competent legal representation. This principle is never more important than when the death penalty is a possible sanction.

In February 2003, the ABA House of Delegates overwhelmingly approved the revised *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. These Guidelines embody the current national consensus regarding the minimum defense effort that must be expended in all death penalty cases.

Statement of the American Bar Association Death Penalty Representation Project
November 17, 2003
Page 2

Guideline 9.1, attached hereto, addresses Funding and Compensation. ABA policy states that each death penalty jurisdiction must ensure "funding for the full cost of high quality legal representation," to include full compensation for attorneys, mitigation specialists, investigators, and necessary experts. As the Commentary to Guideline 9.1 explains:

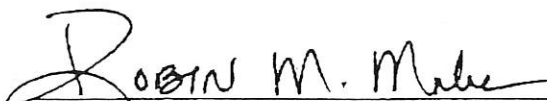
[A]ny compensation system that fails to reflect the extraordinary responsibilities and commitment required of counsel in death penalty cases, that does not provide for extra payments to counsel when unusually burdensome representation is provided, or that does not provide for the periodic payment of fees, will not succeed in obtaining the high quality legal representation required by these Guidelines. For better or for worse, a system for the provision of defense services in capital cases will get what it pays for (citation omitted). *Commentary to Guideline 9.1, ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L.Rev. 913, 988 (2003).

I understand that the Board of Indigent Defense Services has made a request for supplemental funding so that it may continue to deliver high quality legal representation to poor defendants, including those facing a death sentence. It is consistent with ABA policy and appropriate that the Board receive the funding it requires. Doing so will permit the Board to deliver the kind of competent, effective legal representation that all citizens of Kansas are constitutionally entitled to receive and should rightfully expect.

Effective legal representation at trial also reduces the number and significance of errors that cause many cases to be reversed on appeal and remanded for new proceedings. In this way, it is a far more effective use of limited judicial resources to "get it right the first time" rather than to pay for unnecessary appeals and proceedings because of the incompetence of or lack of resources available to trial counsel.

For all these reasons, the ABA Death Penalty Representation Project once again commends this body for its hard work and attention to this important matter. We respectfully urge approval of the supplemental funding request to the Board of Indigent Defense Services.

Thank you again for this opportunity.



Robin M. Maher, Esq.
Director

GUIDELINE 9.1—FUNDING AND COMPENSATION

- A. The Legal Representation Plan must ensure funding for the full cost of high quality legal representation, as defined by these Guidelines, by the defense team and outside experts selected by counsel.
- B. Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.
1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.
 2. Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.
 3. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.
- C. Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.
1. Investigators employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.
 2. Mitigation specialists and experts employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale for comparable expert services in the private sector.
 3. Members of the defense team assisting private counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with prevailing rates paid by retained counsel in the jurisdiction for similar services, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.
- D. Additional compensation should be provided in unusually protracted or extraordinary cases.
- E. Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

History of Guideline

This Guideline was Guideline 10.1 in the original edition. The express disapproval of flat or fixed fee compensation provisions and statutory fee maximums is new to this edition. The provision is in keeping with Guideline 10.1(A) of the original edition, which mandates that counsel be fully compensated at a reasonable hourly rate of compensation, and follows the commentary to Standard 5-2.4 of the ABA Standards for Criminal Justice: Providing Defense Services, which observes that "[t]he possible effect of such rates is to discourage lawyers from doing more than what is minimally necessary to qualify for the flat payment." Subsection B(2) is new to the Guideline and has been added to provide for compensation of attorneys employed by defender organizations. Subsection B(3) is based on the original edition of the Guideline, but a provision has been added indicating that there should be no distinction between the hourly rates of compensation for services performed in or out of court. Subsection C is new to this edition and provides for compensation of the other members of the defense team. Subsection D is new to this edition. Subsection E is based on the original edition.

Related Standards

ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-2.4 (3d ed. 1992) ("Compensation and Expenses").

ABA STANDARDS FOR CRIMINAL JUSTICE: CRIMINAL APPEALS Standard 21-2.4 (2d ed. 1980) ("Procedural Devices Intended to Eliminate Frivolous Appeals Before Determination of Their Merits").

ABA STANDARDS FOR CRIMINAL JUSTICE: POSTCONVICTION REMEDIES STANDARD 22-4.3 (2d ed. 1980) ("Appointment of Counsel").

NAT'L LEGAL AID & DEFENDER ASS'N, STANDARDS FOR THE ADMINISTRATION OF ASSIGNED COUNSEL SYSTEMS Standard 4.7.1 ("Assigned Counsel Fees").

NAT'L LEGAL AID & DEFENDER ASS'N, STANDARDS FOR THE ADMINISTRATION OF ASSIGNED COUNSEL SYSTEMS Standard 4.7.2 ("Method of Compensation").

NAT'L LEGAL AID & DEFENDER ASS'N, STANDARDS FOR THE ADMINISTRATION OF ASSIGNED COUNSEL SYSTEMS Standard 4.7.3 ("Payment of Expenses").

NAT'L LEGAL AID & DEFENDER ASS'N, STANDARDS FOR THE ADMINISTRATION OF ASSIGNED COUNSEL SYSTEMS Standard 4.7.4 ("Only Authorized Compensation") (1989).

NAT'L LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, Guideline 3.1 (1976) ("Assigned Counsel Fees and Supporting Services").

NAT'L LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, Guideline 3.2 (1976) ("Defender System Salaries").

NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS, Model Public Defender Act, Section 11 (1970) ("Local Offices").

NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS & GOALS, REPORT OF THE TASK FORCE ON THE COURTS Standard 13.7 (1973) ("Defender to Be Full-time and Adequately Compensated").

NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS & GOALS, REPORT OF THE TASK FORCE ON THE COURTS Standard 13.11 (1973) ("Salaries for Defender Attorneys").

NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS, Model Public Defender Act, Section 13 (1970) ("Court Assigned Attorneys").

NAT'L LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES, Guideline III-10 (1984) ("Compensation").

NAT'L LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES, Guideline III-11 (1984) ("Special Case Compensation").

Commentary

In order to fulfill its constitutional obligation to provide effective legal representation for poor people charged with crimes,¹ "[g]overnment has the responsibility to fund the full cost of quality legal representation."² This means that it must "firmly and unhesitatingly resolve any conflicts between the treasury and the fundamental constitutional rights in favor of the latter."³

As Subsection A of this Guideline emphasizes, each jurisdiction is responsible for paying not just the direct compensation of members of the defense team, but also the costs involved in meeting the requirements of these Guidelines for high quality legal representation (e.g., Guideline 4.1, Guideline 8.1).

As a rough benchmark, jurisdictions should provide funding for defender services that maintains parity between the defense and the prosecution with respect to workload, salaries, and resources necessary to provide quality legal representation (including benefits, technology, facilities, legal research, support staff, paralegals, investigators, mitigation specialists, and access to forensic services and experts). In doing so, jurisdictions must be mindful that the prosecution has access at no cost to many services for which the defense must pay. A prosecution office will not only benefit from the formal resources of its jurisdiction (e.g., a state crime laboratory) and cooperating jurisdictions (e.g., the FBI), but from many informal resources as well. For example, a prosecutor seeking to locate a witness in a distant city can frequently enlist the assistance of a local police department; defense counsel will have to pay to send out an investigator. Yet funding for defense services usually lags far behind prosecution funding.⁴

1. See generally *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Powell v. Alabama*, 287 U.S. 45 (1932).

2. ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-1.6 (3d ed. 1992).

3. *Pruett v. State*, 574 So. 2d 1342, 1354 n.17 (Miss. 1990) (quoting *Makemson v. Martin County*, 491 So. 2d 1109, 1113 (Fla. 1986)).

4. Studies indicate that funding for prosecution is, on the average, three times greater than funding that is provided for defense services at both the state and federal levels. See ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-1.6 cmt. (3d ed. 1992) (footnote omitted). The ABA has recently reaffirmed its commitment to the principle of equal funding, calling for a public defense system in which:

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

ABA, THE TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYS., Principle 8 (2002) (footnotes omitted), available at <http://www.abanet.org/legalservices/downloads/sclaid/resolution107.pdf>.

In particular, compensation of attorneys for death penalty representation remains notoriously inadequate.⁵ As Justice Blackmun observed in 1994:

[C]ompensation for attorneys representing indigent capital defendants often is perversely low. Although a properly conducted capital trial can involve hundreds of hours of investigation, preparation, and lengthy trial proceedings, many States severely limit the compensation paid for capital defense. . . .

As a result, attorneys appointed to represent capital defendants at the trial level frequently are unable to recoup even their overhead costs and out-of-pocket expenses, and effectively may be required to work at minimum wage or below while funding from their own pockets their client's defense.⁶

Low fees make it economically unattractive for competent attorneys to seek assignments and to expend the time and effort a case may require. A 1993 study of capital representation in Texas, for example, showed that "more and more experienced private criminal attorneys are refusing to accept court appointments in capital cases because of the time involved, the substantial infringement on their private practices, the lack of compensation for counsel fees and experts/expenses and the enormous pressure that they feel in handling these cases."⁷ Similarly, a survey of Mississippi attorneys appointed to represent indigent defendants in capital cases found that eighty-two percent would either refuse or be very reluctant to accept another appointment because of financial considerations.⁸ A 1998 study of federal death penalty cases reported that "[a]lthough the hourly rates of compensation in federal capital cases are higher than those paid in non-capital federal criminal cases, they are quite low in comparison to hourly rates for lawyers generally, and to the imputed hourly cost of office overhead."⁹

While compensation is generally inadequate for representation at trial, it is even worse—and indeed, in a number of jurisdictions, nonexistent—for representation in state collateral proceedings.¹⁰ Thousands of attorney hours are required to represent a death-sentenced prisoner effectively in such cases.¹¹ Not surprisingly, few attorneys are willing to take on this responsibility for negligible compensation. As a result, a substantial and growing number of condemned inmates who have completed direct review are without legal representation.¹²

It is such inmates—and the justice system—rather than lawyers (who can always move to more lucrative fields) that are victimized when jurisdictions fail to fulfill their financial responsibilities. What is "most important [is that] the quality of the representation often suffers when adequate compensation for counsel is not available."¹³ This is not a merely theoretical concern. It is demonstrably the case that, by discouraging more experienced criminal defense lawyers from accepting appointments in capital cases, inadequate compensation has often left capital defense representation to inexperienced or outright incompetent counsel. A series of studies in several death penalty states have found that appointed counsel in death penalty cases have been subject to professional disciplinary action at significantly higher rates than other lawyers.¹⁴

These realities underlie the mandate of this guideline that members of the death penalty defense team be fully

5. See generally Ruth E. Friedman & Bryan A. Stevenson, *Solving Alabama's Capital Defense Problems: It's a Dollars and Sense Thing*, 44 ALA. L. REV. 1 (1992); Anthony Paduano & Clive A. Stafford Smith, *The Unconscionability of Sub-Minimum Wages Paid Appointed Counsel in Capital Cases*, 43 RUTGERS L. REV. 281 (1991); Vick, *supra* note 4; Albert L. Vreeland, II, Note, *The Breath of the Unfee'd Lawyer: Statutory Fee Limitations and Ineffective Assistance of Counsel in Capital Litigation*, 90 MICH. L. REV. 626 (1991).

6. *McFarland v. Scott*, 512 U.S. 1256, 1257-58 (1994) (Blackmun, J., dissenting from denial of certiorari).

7. THE SPANGENBERG GROUP, A STUDY OF REPRESENTATION IN CAPITAL CASES IN TEXAS 152 (1993).

8. See Friedman & Stevenson, *supra* note 136, at 31 n.148.

9. *Federal Death Penalty Cases*, *supra* note 91, at 28 (footnotes omitted).

10. For a survey of state practices regarding appointment and compensation of post-conviction counsel, see generally Hammel, *supra* note 47, and THE SPANGENBERG GROUP, ABA POSTCONVICTION DEATH PENALTY REPRESENTATION PROJECT, AN UPDATED ANALYSIS OF THE RIGHT TO COUNSEL AND THE RIGHT TO COMPENSATION AND EXPENSES IN STATE POSTCONVICTION DEATH PENALTY CASES (1996).

11. As discussed *supra* in the text accompanying note 119, a 1998 study of time and expenses required in Florida capital post-conviction cases concluded that on average, over 3,300 lawyer hours are required to represent a death-sentenced prisoner in Florida's post-conviction proceedings. THE SPANGENBERG GROUP, *supra* note 119, at 16.

12. See Celestine Richards McConville, *The Right to Effective Assistance of Capital Postconviction Counsel: Constitutional Implications of Statutory Grants of Capital Counsel*, 2003 Wisc. L. Rev. 31, 35 n.22; Smith & Starns, *supra* note 47, at 106-19 (discussing state provisions for appointment of counsel and states that fail to appoint or compensate counsel); *infra* note 334.

13. ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-2.4 cmt. (3d ed. 1992).

14. See Vick, *supra* note 4, at 398 (summarizing studies); see also Kirchmeier, *supra* note 29, at 455-60 (listing cases of appointed capital defense counsel who were intoxicated, abusing drugs, or mentally ill).

compensated at a rate commensurate with the provision of high quality legal representation. The Guideline's strong disapproval of flat fees, statutory caps, and other arbitrary limitations on attorney compensation is based upon the adverse effect such schemes have upon effective representation.¹⁵ Rather, compensation should be based on the number of hours expended plus the effort, efficiency, and skill of counsel.¹⁶ When assigned counsel is paid a predetermined fee for the case regardless of the number of hours of work actually demanded by the representation, there is an unacceptable risk that counsel will limit the amount of time invested in the representation in order to maximize the return on the fixed fee.¹⁷

Moreover, any compensation system that fails to reflect the extraordinary responsibilities and commitment required of all members of the defense team in death penalty cases,¹⁸ that does not provide for extra payments when unusually burdensome representation is provided, or that does not provide for the periodic payment of fees to all members of the defense team will not succeed in obtaining the high quality legal representation required by these Guidelines.

For better or worse, a system for the provision of defense services in capital cases will get what it pays for.¹⁹

15. See Vick, *supra* note 4, at 399-400.

16. See ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-2.4 cmt. (3d ed. 1992).

17. See, e.g., Bailey v. State, 424 S.E.2d 503, 506 (S.C. 1992). The court stated:

[I]t would be foolish to ignore the very real possibility that a lawyer may not be capable of properly balancing the obligation to expend the proper amount of time in an appointed criminal matter where the fees involved are nominal, with his personal concerns to earn a decent living by devoting his time to matters wherein he will be reasonably compensated. The indigent client, of course, will be the one to suffer the consequences if the balancing job is not tilted in his favor.

Id. (quoting Okeechobee County v. Jennings, 473 So. 2d 1314, 1318 (Fla. Dist. Ct. App. 1985), *quashed sub nom.* Dennis v. Okeechobee County, 491 So. 2d 1115 (Fla. 1986)) (emphasis omitted).

18. See *supra* text accompanying notes 1-8.

19. Cf. Martinez-Macias v. Collins, 979 F.2d 1067, 1067 (5th Cir. 1992) (granting habeas corpus relief because "Macias was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question. The state paid defense counsel \$11.84 per hour. Unfortunately, the justice system got only what it paid for").

LEGAL SERVICES FOR PRISONERS, INC.

3400 SW Van Buren, *Lower Level*

TOPEKA, KANSAS 66611

785-267-1690

DIRECTOR

STEPHEN W. KESSLER

STAFF ATTORNEYS

CHERYL I. ALLEN - HCF

SAM S. KEPFIELD - HCF

CHARLES J. CAVENEY - LCF

GARY L. FULLER - LCF

BRUCE C. HEDRICK - LCF

STEPHEN C. SHERWOOD - EDCF

UNSTAFFED - NCF

November 7, 2003

Pat Scalia, Director
Board of Indigent's Defense Services
714 SW Jackson – Suite 200
Topeka, KS 66603-3714

Dear Pat:

As you are aware, reductions in the appropriation for Legal Services for Prisoners, Inc., required this agency to reduce its staff. One full time attorney at the Hutchinson Correctional Facility and two half time attorneys at the Lansing Correctional Facility were terminated effective June 9, 2003.

Because of this reduction in staffing Legal Services for Prisoners can no longer accept appointments for new felony cases arising in the Lansing or Hutchinson Correctional Facilities. We have continued to accept court appointments on filings pursuant to K.S.A. 60-1501 and K.S.A. 60-1507 when resources and staffing permit but have had to decline representation in a number of these cases already.

The primary duty of Legal Services for Prisoners is to assure that Kansas inmates are provided the constitutionally required access to courts and can file appropriate pleadings attacking the validity of their conviction or sentence and the conditions of their confinement as required by the U.S. Supreme Courts interpretation of the Sixth Amendment to the United States Constitution. The program is an alternative to providing law libraries and assistance in using them.

Secondary to providing the constitutionally required access to courts, LSP has frequently been appointed by courts on criminal cases arising from the correctional institutions and on motions to vacate sentence and petitions for habeas corpus relief. This was due in fact in part to the fact that LSP attorneys have ready access to the inmates, personnel and records involved and knowledge of the issues presented.

While prisoners that file petitions claiming the right to be released from custody or attacking the conditions of their confinement are, if the petition presents a substantial claim, entitled to have counsel appointed to represent them (K.S.A. 22-4506) and if the petition is denied, entitled to an appeal there from (K.S.A. 60-1505) the primary mission

of this agency and the limits placed on staffing do not allow us to provide counsel in most such cases currently.

For the last three (3) years LSP has averaged 156 court appointments per year. In May, 2003, I was forced to inform several judges that we could no longer accept such appointments on a routine basis.

Reduced staffing also means that we can review fewer requests for assistance in a manner that will allow us to advise inmates on the legal merit of their claims and, if appropriate, discourage them from filing such claims.

I estimate that BIDS will pick up approximately 150 additional appointments next fiscal year because of the change in our staffing.

The attorneys whose positions were eliminated as a result of budget cuts this year and last were experienced counsel who had been with Legal Services for a long time and were able to efficiently handle such appointments. To replace them would require funding in addition to the restoration of funds that were cut from last year's budget.

Legal Services budget has been reduced for the last two years and we have not had funding to provide salary or cost of living increases. Because we have not been able to keep salaries at a level comparable to those paid by other agencies, we have had an extremely difficult time filling any vacancies we have had in the last few years. The last time we had an opening for an attorney, we had one applicant. As you are aware, we previously maintained an office in Norton but were forced to close that office when the attorney resigned to take other employment and we could not find other counsel to replace him. At that time we contracted with The Paul E. Wilson Defender Project at the University of Kansas School of Law to help in providing assistance to inmates at Norton, Stockton and Ellsworth but because of budget cuts have now been forced to terminate that contract.

The only benefit we provide to our employees is health insurance and the rates for that increased by over 25% this year and the coverage was at a reduced level. Other costs have also increased. Simply restoring LSP's appropriation to \$497,000 which it was in FY 2002 would not allow us to return to providing the same level of assistance that we did in that year.

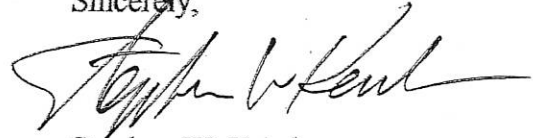
I estimate that an additional \$200,000 would be necessary to allow us to employ attorneys and support staff to fill the positions that were eliminated last year and to return to providing the same level of services that has been provided in previous years.

As you are aware, our budget has always exceeded our appropriation. Since the appropriation is received in a lump sum it is invested and interest earned is included in the budget. Obviously, that amount has been reduced in recent years and it is my belief that we would need an appropriation of \$550,000 to return to the prior level of the service.

Because of previously scheduled court hearings, I may not be able to attend the Legislative Committee Hearing scheduled for November 17, 2003, but would appreciate it if you would make this information known to the committee.

Thank you very much for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen W. Kessler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen W. Kessler
Director

SWK:sc

Briefing on Kansas Department of Corrections

to

The House Appropriations Committee

by Roger Werholtz
Secretary

Kansas Department of Corrections

January 29, 2004

HOUSE APPROPRIATIONS

DATE 1-29-2004

ATTACHMENT 2

The National Crime Victimization Survey reveals long-term declines in victimization to the lowest per capita rates in nearly 30 years

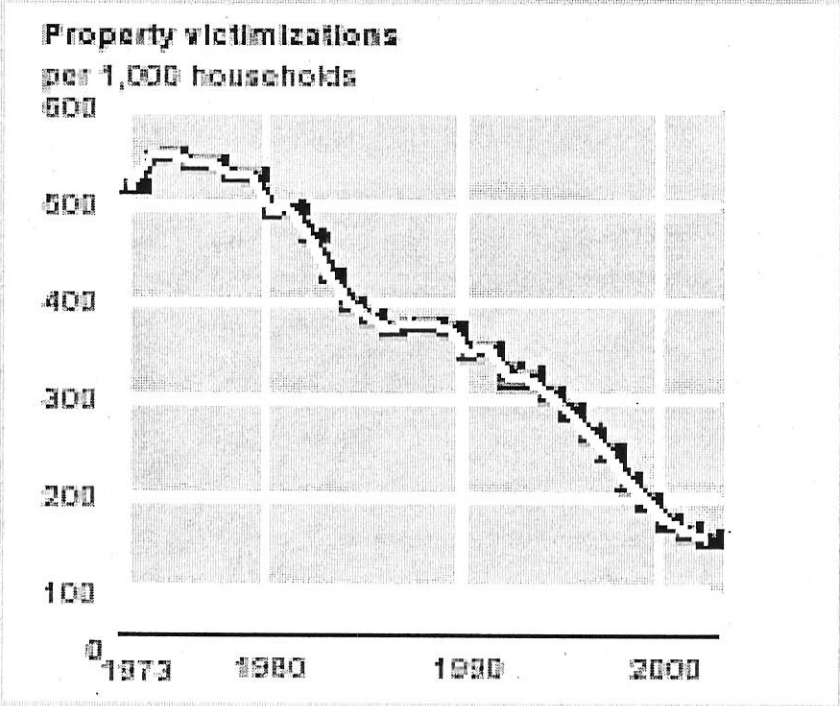


The best estimate and range of estimates

Each vertical bar shows the range within which the true victimization rate was likely to fall. For discussion of displaying estimates, see <<http://www.ojp.usdoj.gov/bjs/pub/pdf/dvctue.pdf>>.

Source: "Criminal Victimization, 2002," Bureau of Justice Statistics National Crime Victimization Survey; August 2003, NCJ 199994

The National Crime Victimization Survey reveals long-term declines in victimization to the lowest per capita rates in nearly 30 years



The best estimate and range of estimates

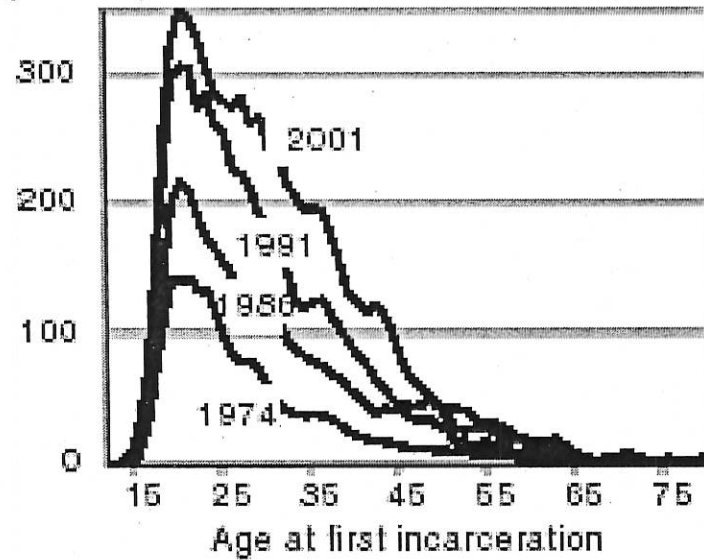
Each vertical bar shows the range within which the true victimization rate was likely to fall. For discussion of displaying estimates, see <<http://www.ojp.usdoj.gov/bjs/pub/pdf/dvctue.pdf>>.

Source: "Criminal Victimization, 2002," Bureau of Justice Statistics National Crime Victimization Survey; August 2003, NCJ 199994

2-4
3

First incarceration rates rose sharply among persons under age 45

Number first incarcerated per 100,000 U.S. residents*



*The number first incarcerated at each age divided by the number at risk to first incarceration, times 100,000.

Source: "Prevalence of Imprisonment in the U.S. Population, 1974-2001," Bureau of Justice Statistics Special Report; August 2003, NCJ 197976

Comparative Data Kansas Corrections

2-5
A

- Kansas ranks 33rd in corrections spending as a percentage of personal income[1]
- Kansas ranks 34th in per capita spending for corrections[2]
- Kansas ranks 15th in state spending on corrections as compared to spending by local units of government[3]
- Kansas ranks 34th in sentenced prisoners under the jurisdiction of state correctional authorities[4]
- Kansas is tied for 35th in the number of women under the jurisdiction of state correctional authorities[5]
- Kansas ranks 45th in terms of the number of persons per 100,000 on probation[6]
- Kansas reported 15,217 adults on probation on Dec. 31, 2002[7]
- Kansas ranks 21st in terms of the number of persons per 100,000 on parole[8]
- Kansas ranks 14th in terms of the percentage of the correctional population (probation, community corrections, prison, parole) that is incarcerated [9]

[1] Source: U.S. Bureau of Justice Statistics as quoted in Governing Magazine 2003 Source Book.

[2] Ibid.

[3] Ibid.

[4] Bureau of Justice Statistics Bulletin, Prisoners in 2002; July 2003.

[5] Ibid.

[6] Bureau of Justice Statistics Bulletin, Probation and Parole in the United States, 2002; Aug. 2003.

[7] Ibid.

[8] Ibid.

Comparative Data Kansas Corrections

2-6 5

- The Kansas prison population has grown from 4,538 on June 30, 1985 to 9,185 on Jan. 15, 2004.[10]
- The Kansas in-state parole caseload increased from 2,762 (6/30/87) to 6,525 (2/21/94) and then declined 3,727 (12/21/01). It has now increased to 4,233 on Jan. 9, 2004. Numbers of parolees supervised out of state through the interstate compact have followed a similar pattern.[11]
- The Kansas Community Corrections Act programs' average daily population increased from 1,672 in 1989 to 5,155 in 1999 and then declined to 4,133 in 2002. It increased to 4,365 in 2003.[12]

[9] Ibid.

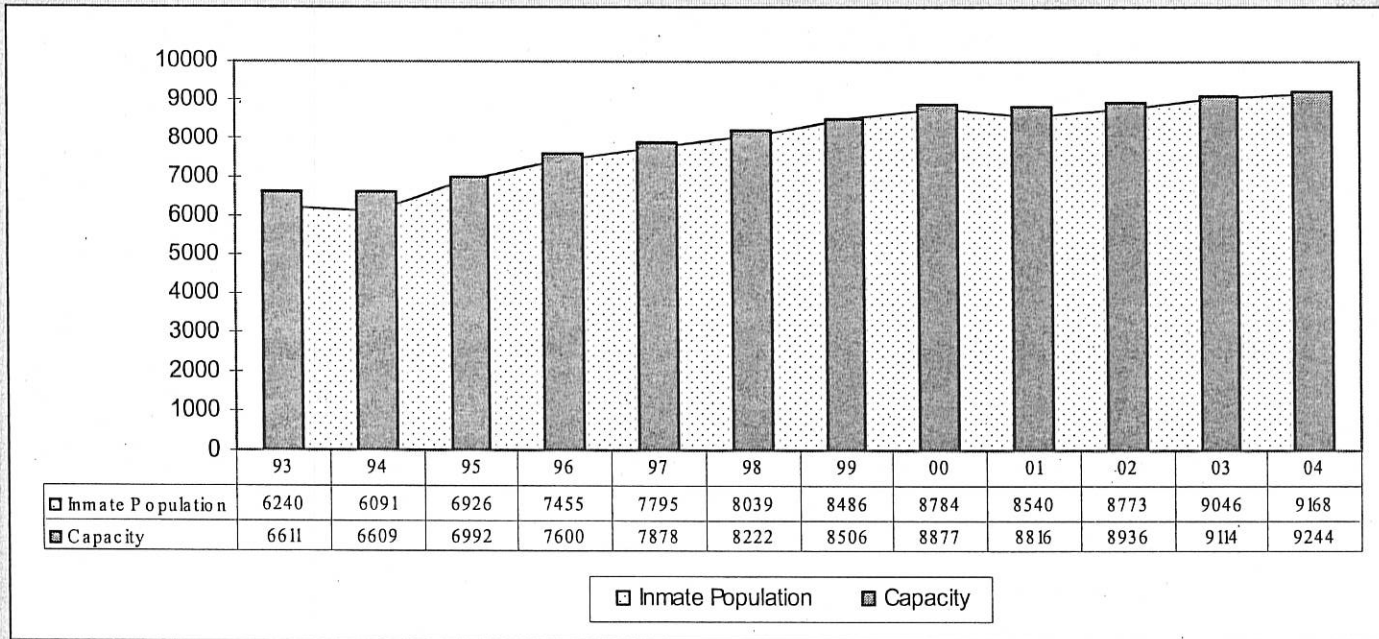
[10] KDOC 2003 Corrections Briefing Report and PGM-POPREP1CBL,

[11] KDOC PGM-PARPOP1CBL,

[12] KDOC Community Corrections\history\ADP History.xls DATA

2-8
7

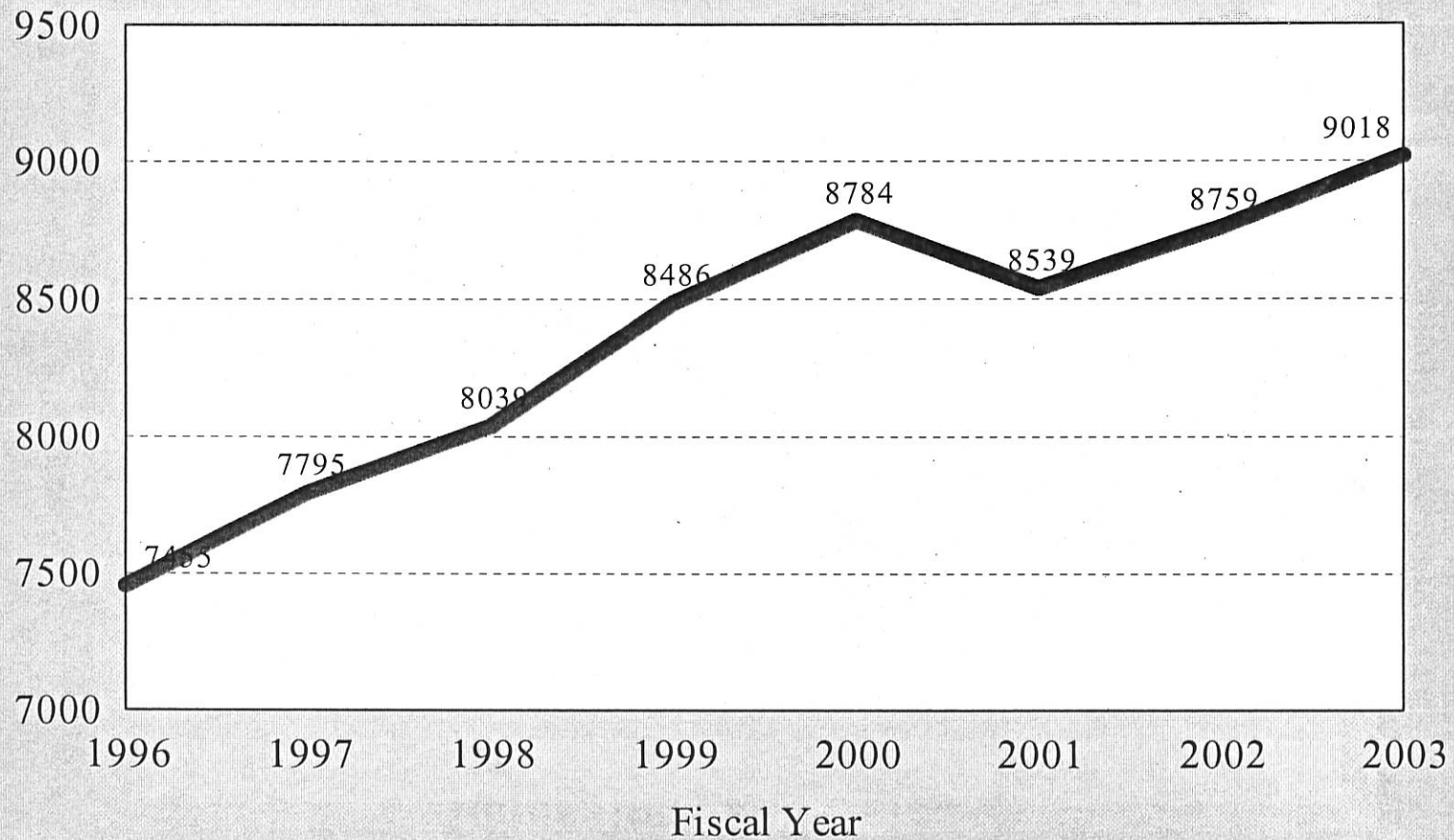
Capacity vs. Inmate Population FY 1993—FY 2004 (through December 31, 2003)



2-9

KANSAS PRISON POPULATION TRENDS

Total Prison Population

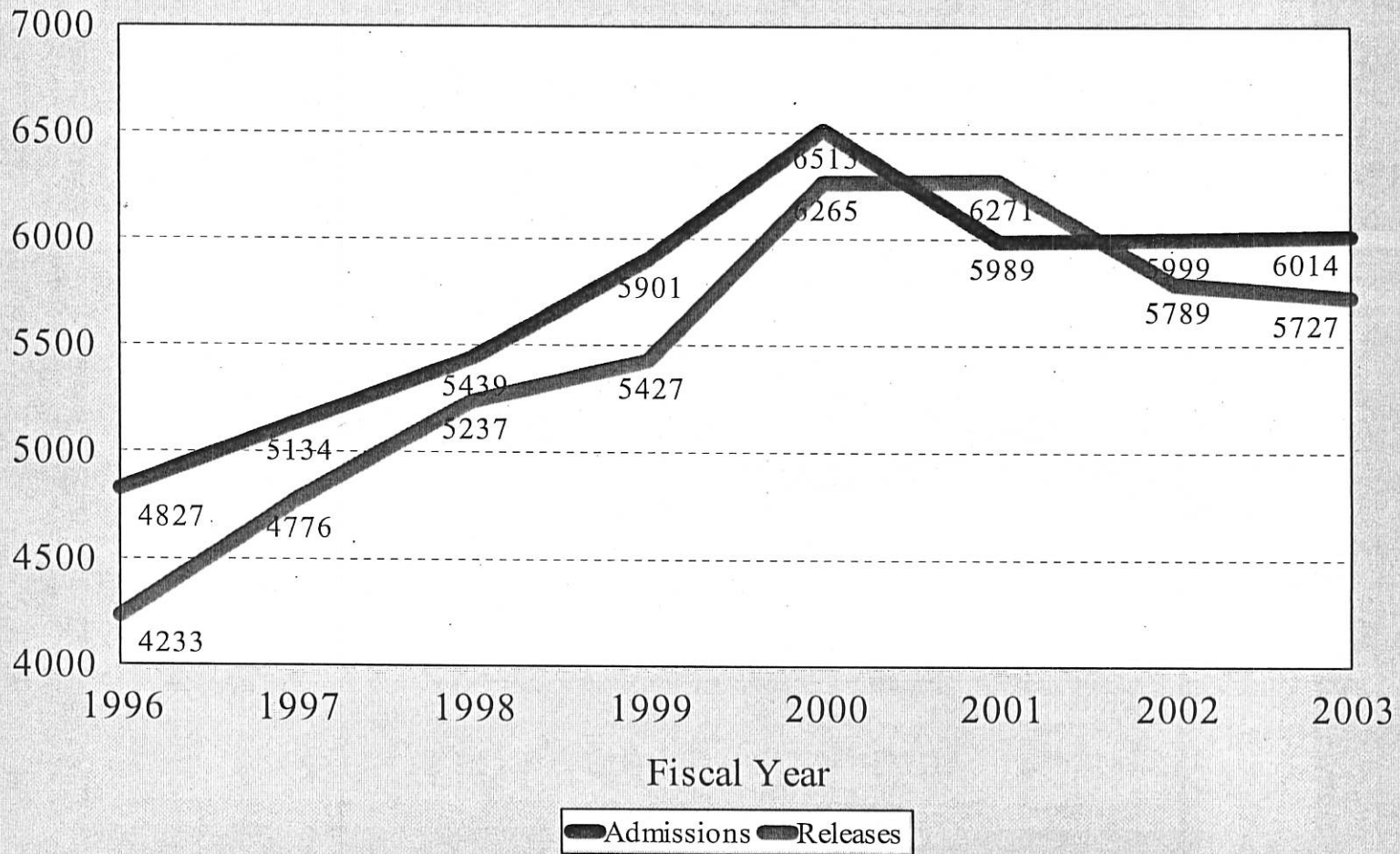


Source: DOC prison population files

2-10

KANSAS PRISON POPULATION TRENDS

Admissions and Releases

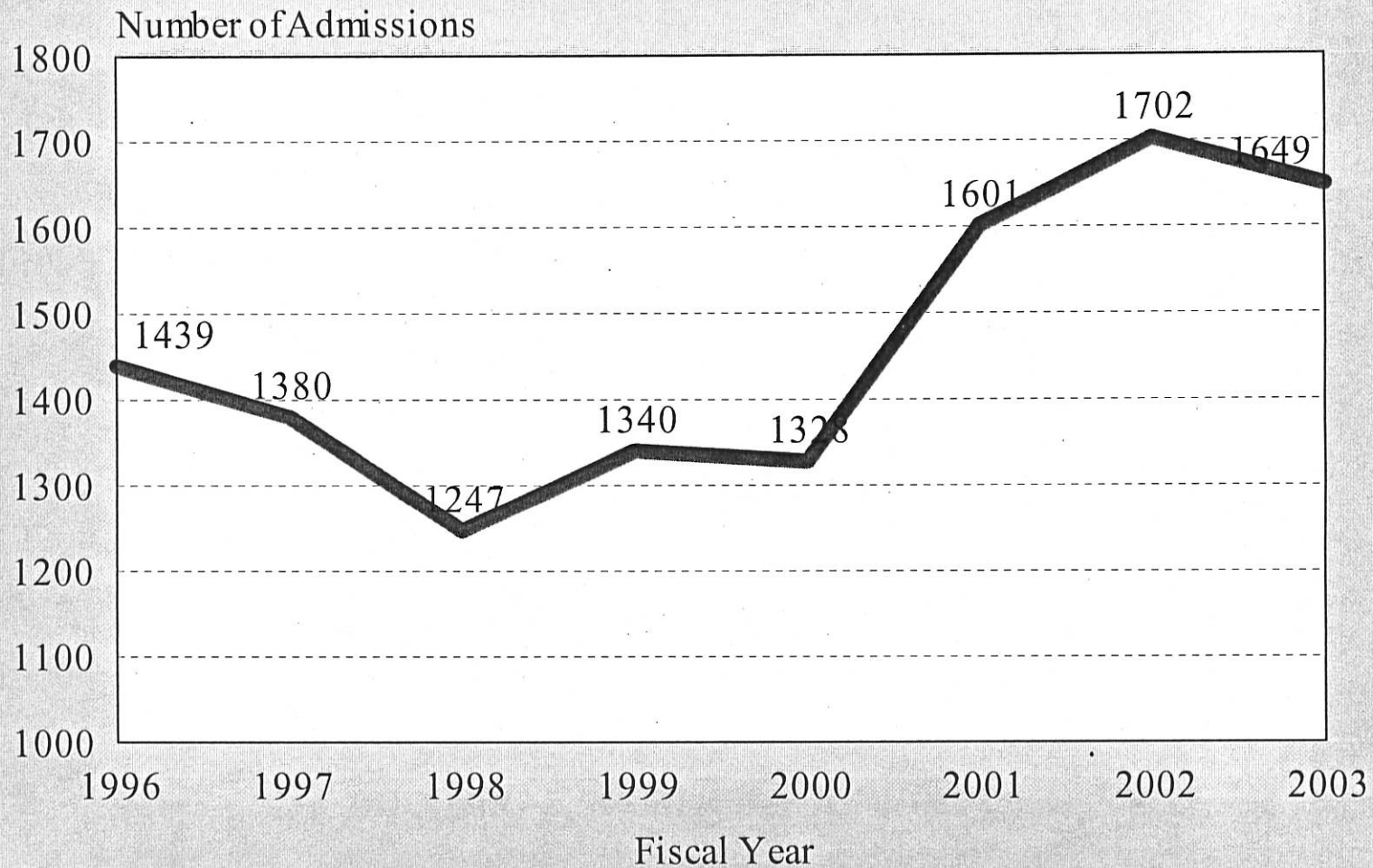


Source: DOC admission and release files

72
2-11

KANSAS PRISON ADMISSION TRENDS

New Court Commitments

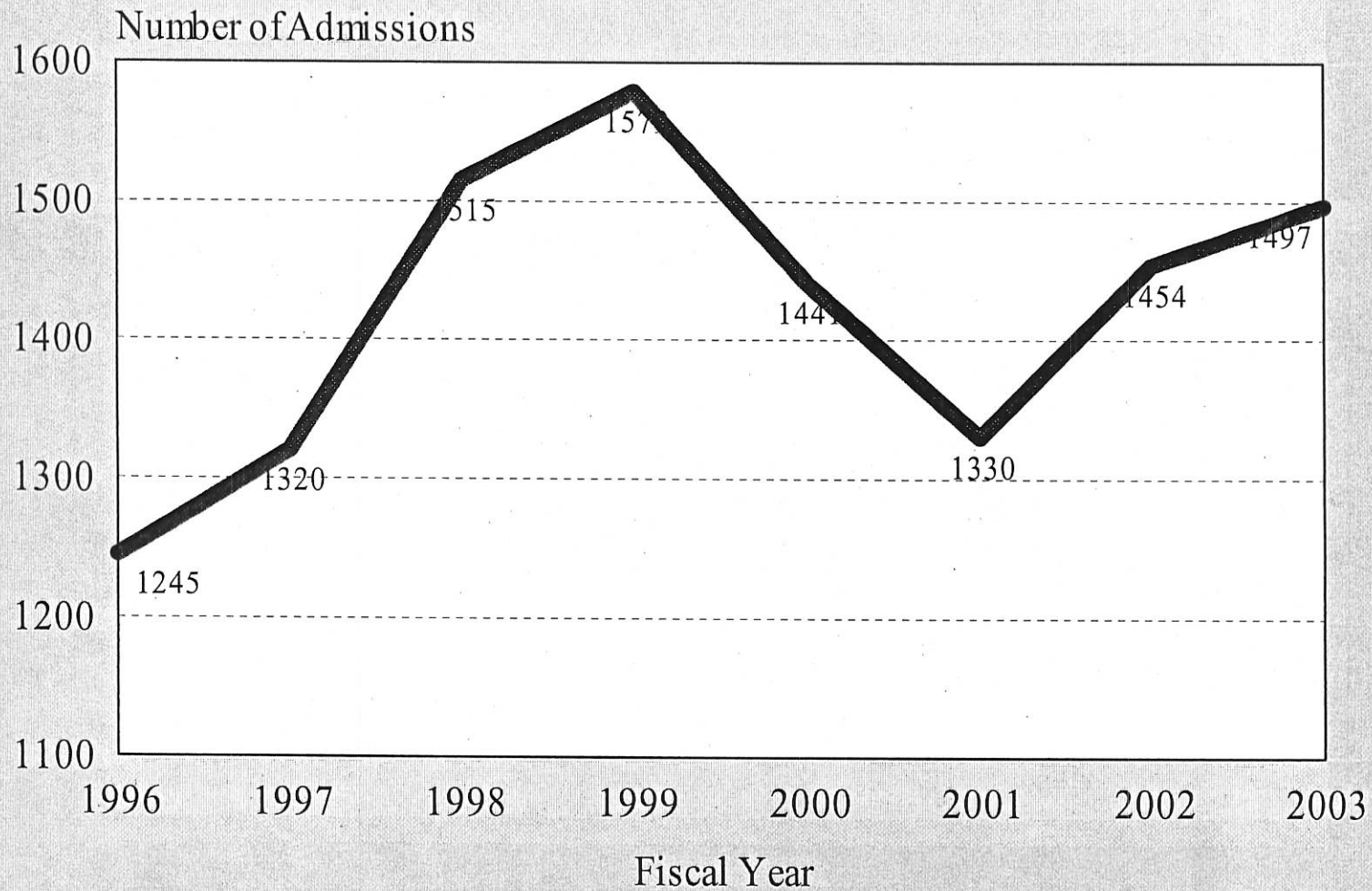


Source: DOC admission files

2-12
JK

KANSAS PRISON ADMISSION TRENDS

Condition Probation Violators

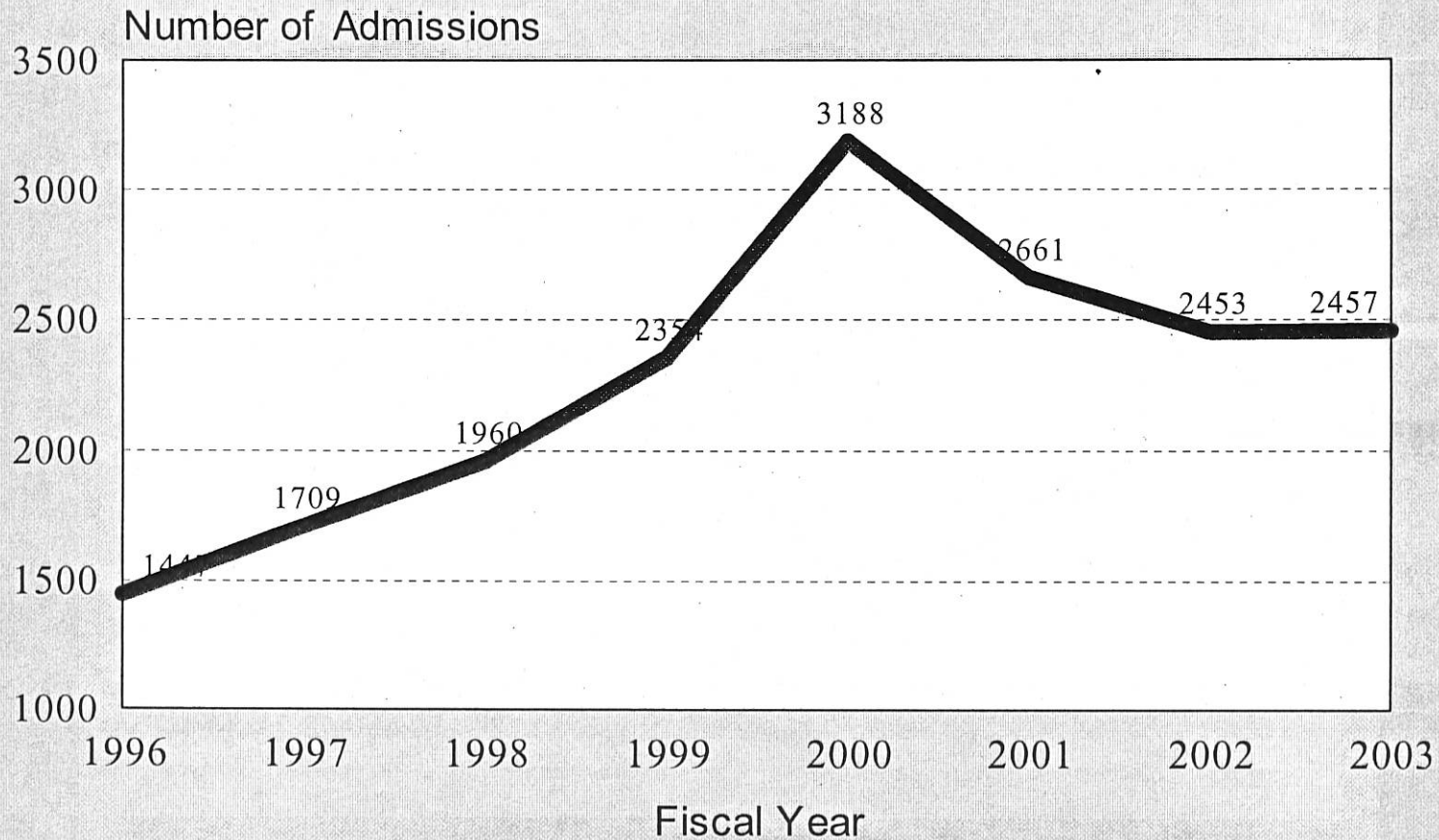


Source: DOC admission files

2-13

KANSAS PRISON ADMISSION TRENDS

Parole/Postrelease Condition Violators



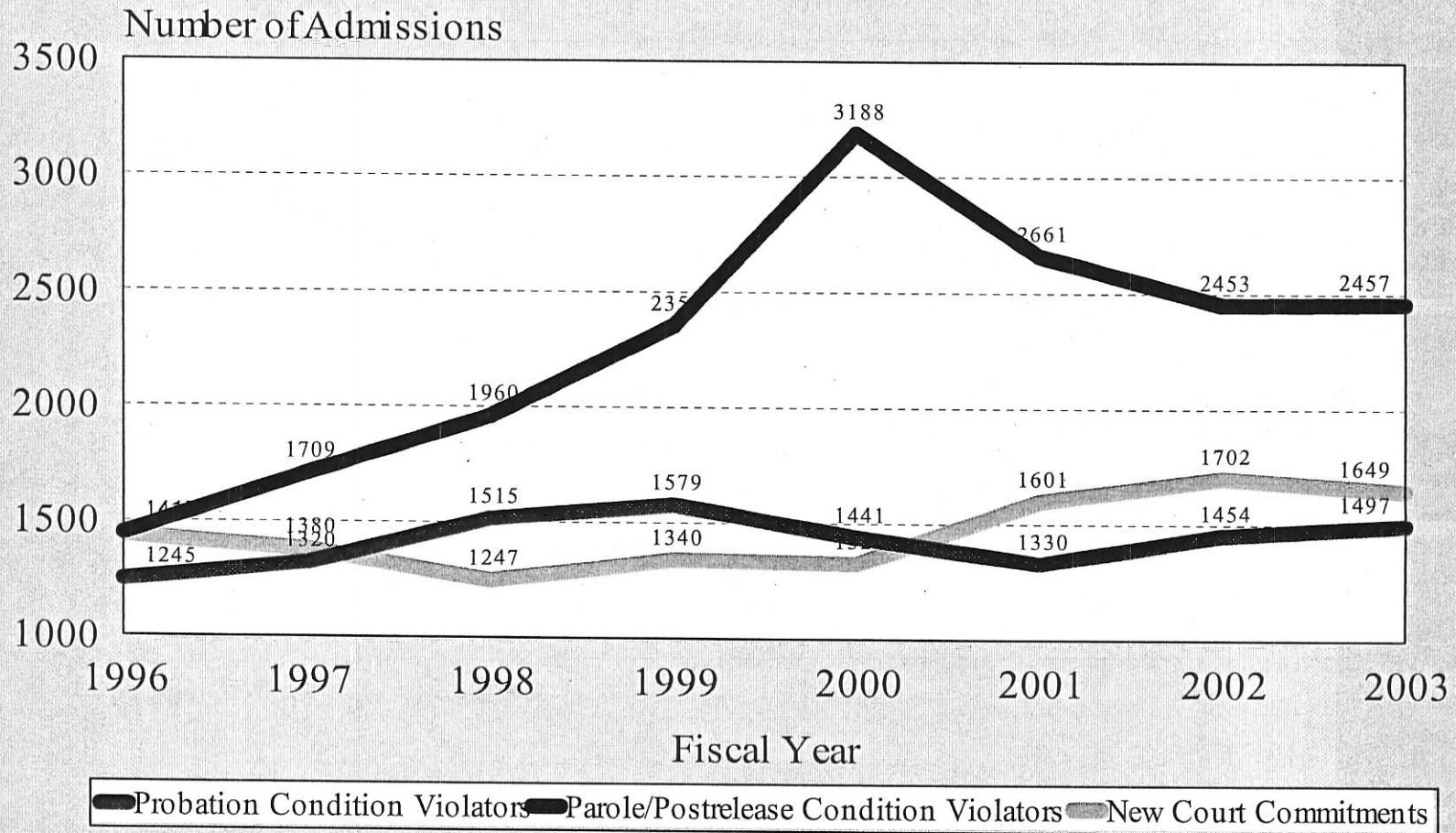
Source: DOC admission file

Note: Including condition conditional-release violators

2-14
B

KANSAS PRISON ADMISSION TRENDS

Admissions by Type

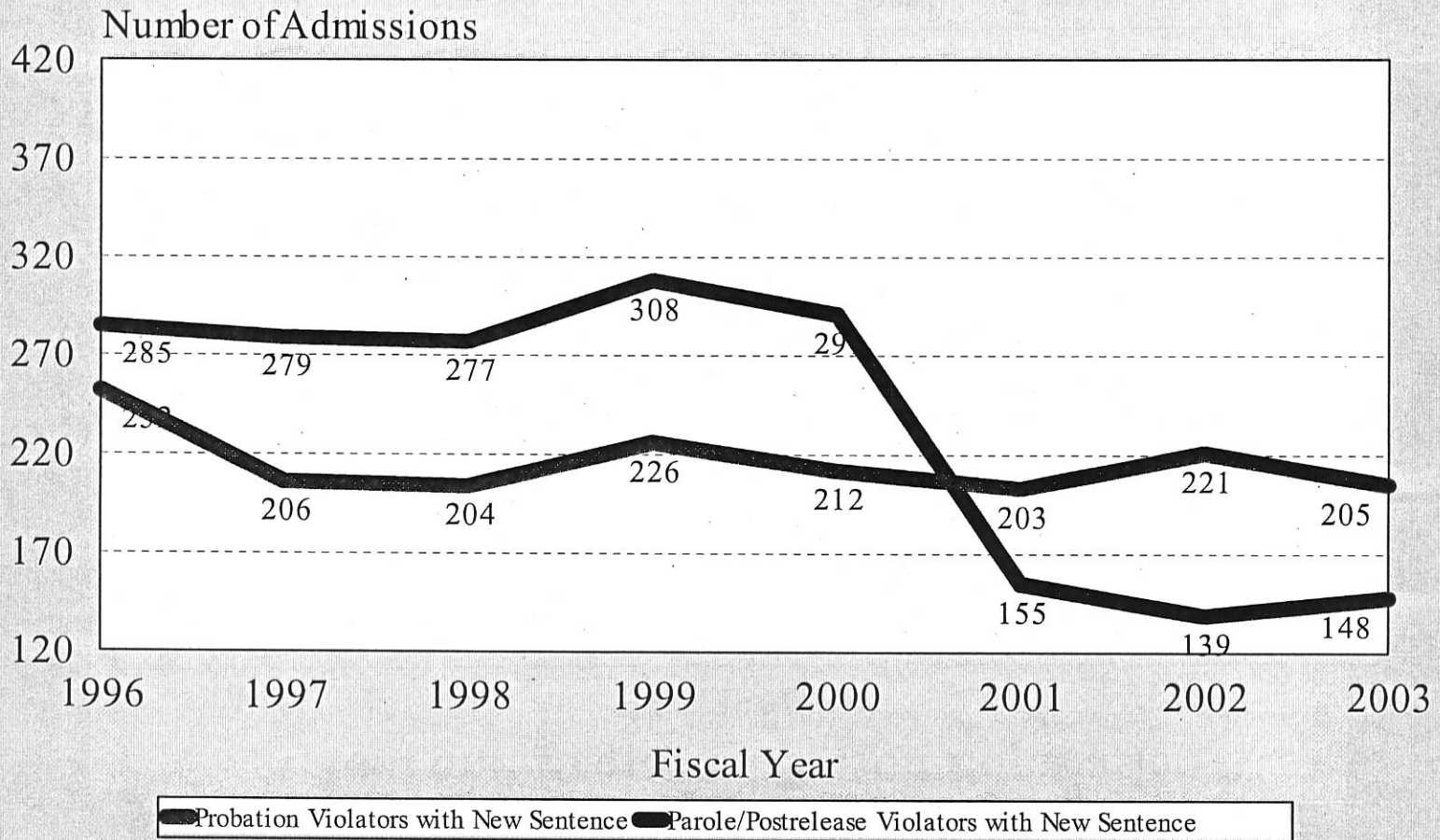


Source: DOC admission files

2-15-14

KANSAS PRISON ADMISSION TRENDS

Comparison between Probation and Parole/Postrelease Violators with New Sentence

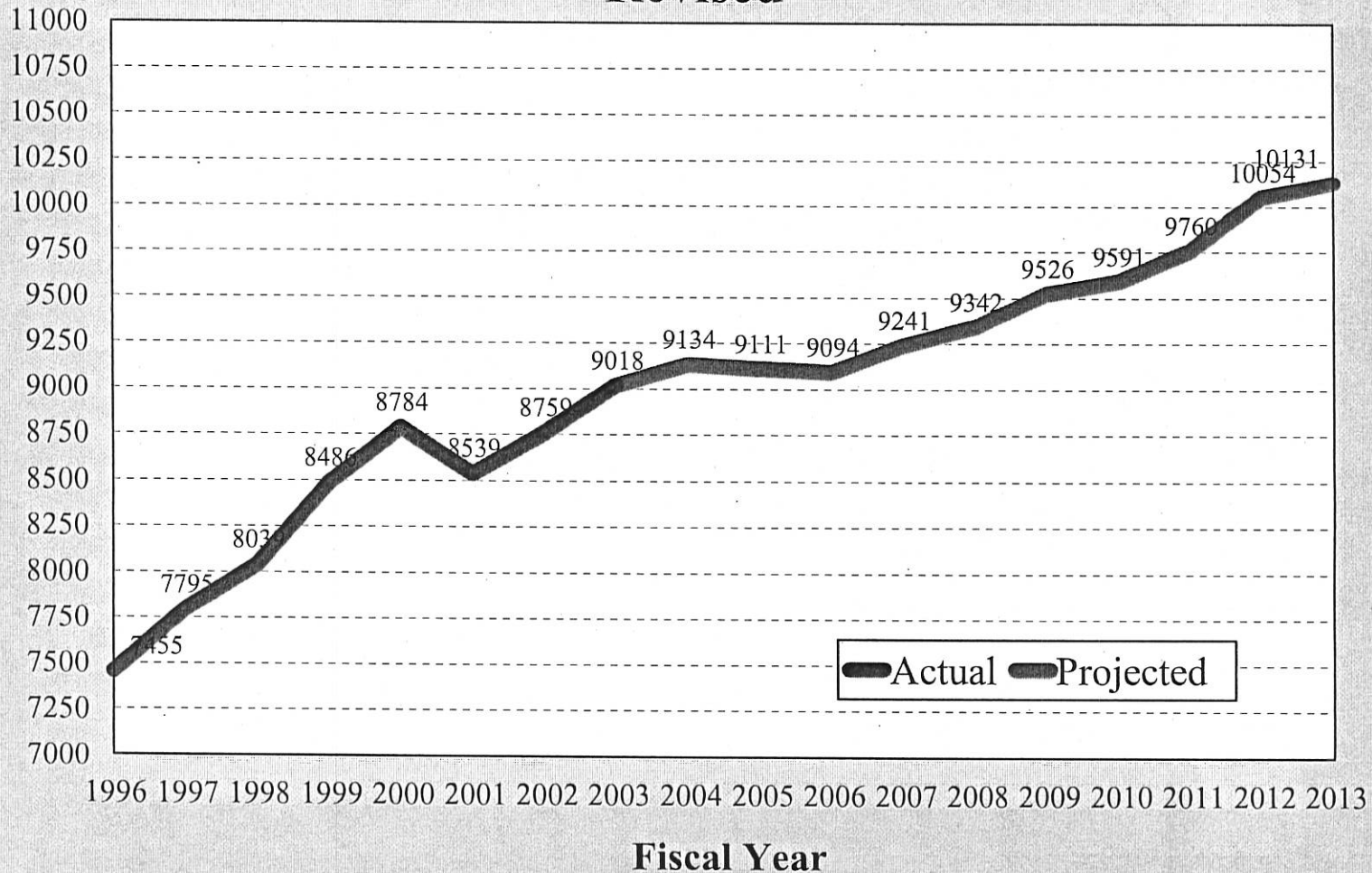


Source: DOC admission files

2-16
15

KANSAS PRISON POPULATION TRENDS

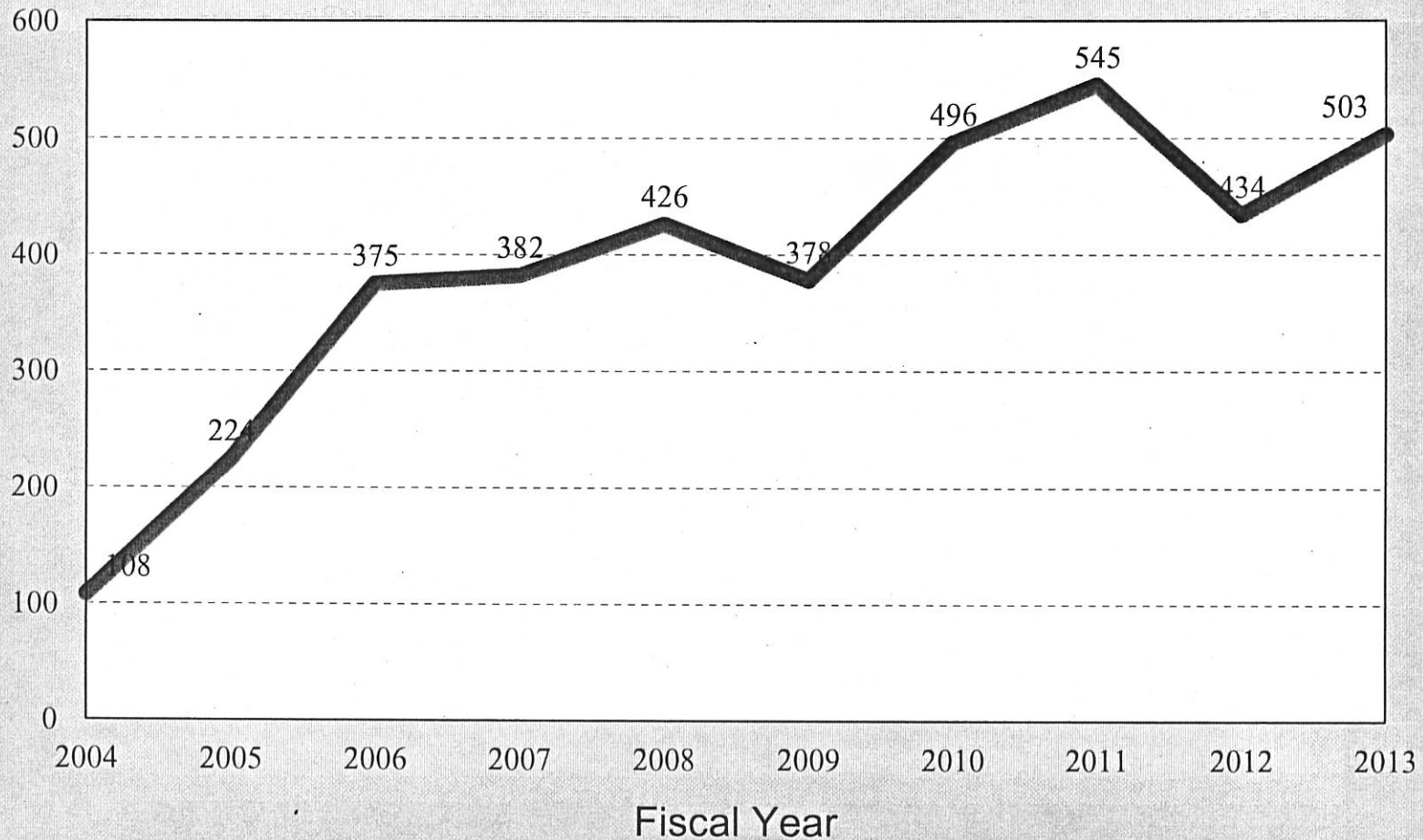
Actual and Projected Prison Population Revised



Note: Revised means offense date on or July 1, 2003 and sentence date on or after November 1, 2003

KANSAS PRISON POPULATION TRENDS

Estimated Beds Saving With SB 123 Revised



Note: Revised means offense date on or July 1, 2003 and sentence date on or after November 1, 2003

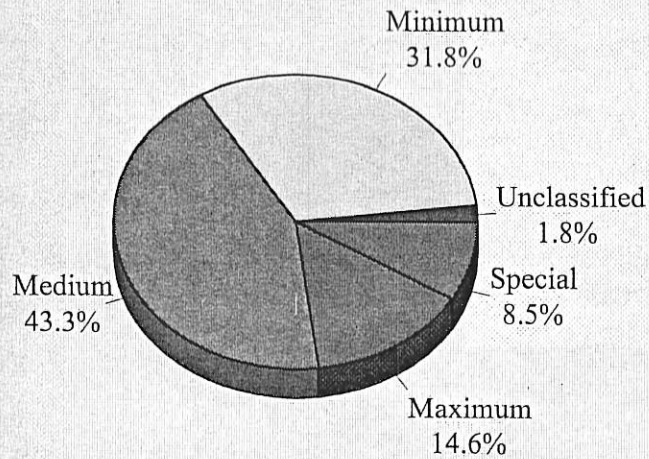
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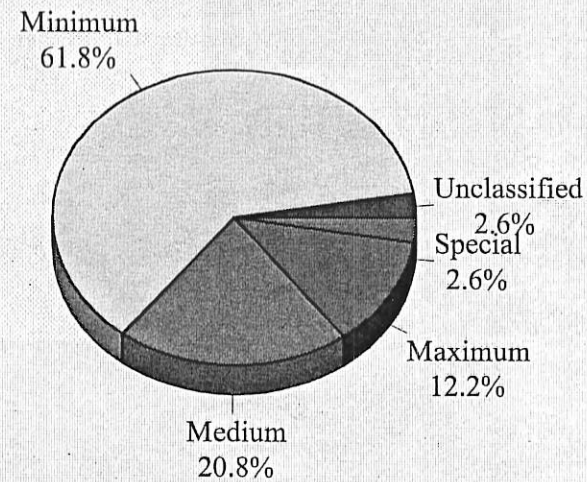
Kansas Sentencing Commission

Projected Percentage Distribution of Custody Classifications Revised

Male



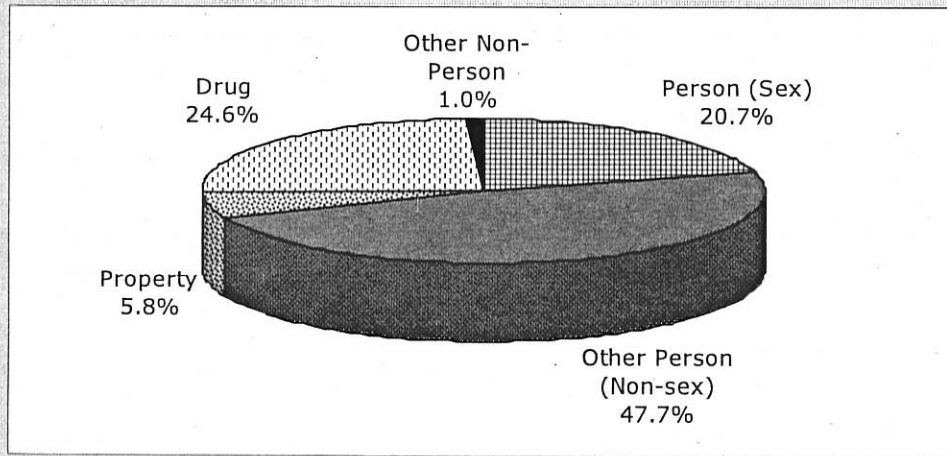
Female



Based on the projected prison population on June 30, 2004 (male = 8,513 and female = 621).

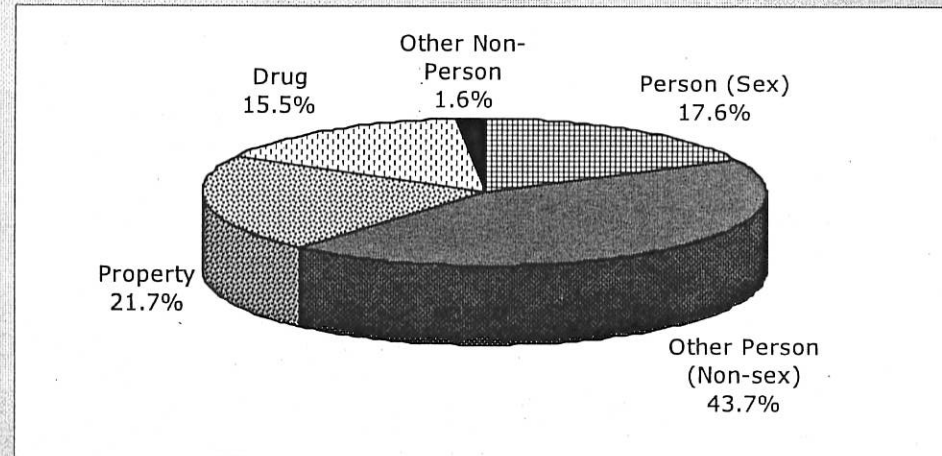
Total Inmate Population by Type of Crime (Most Serious Offense) 12-31-2003 Compared to 6-30-1993*

18
2-19



December 31, 2003

June 30, 1993

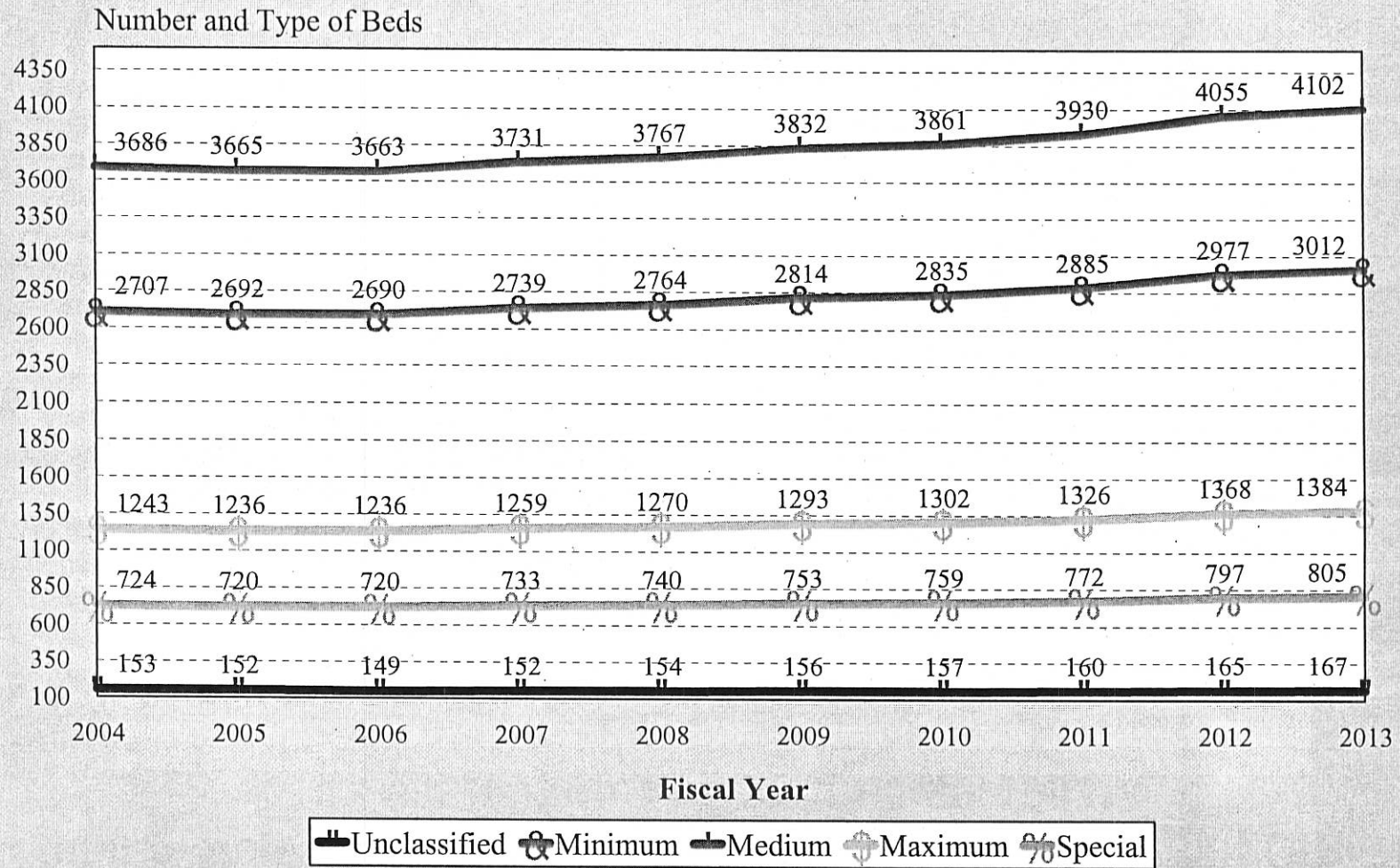


Note: Information pertains to the overall most serious active offense for each offender and includes attempts, conspiracies, and solicitations. Information was unavailable for 92 offenders in 1993 and 33 offenders in 2003.

19
2-20

Kansas Sentencing Commission

Male Inmate Ten Year Custody Classification Projections FY 2004 Through FY 2013 - Revised



2-21

FACILITY CAPACITIES

Capacity by facility, Security Designation of Bedspace and Gender*
September 12, 2003

Location of Beds	Security Designation by Gender							
	Maximum		Medium		Minimum		All Levels	
	Male	Female	Male	Female	Male	Female	Male	Female
<u>KDOC Facilities</u>								
Lansing Corr. Facility	838		943		708		2489	
Hutchinson Corr. Facility	548		932		288		1768	
El Dorado Corr. Facility	691		487		172		1350	
Norton Corr. Facility			539		296		835	
Ellsworth Corr. Facility			794		38		832	
Topeka Corr. Facility		62		636				698
Winfield Corr. Facility					556		556	
Wichita Work Release Facility					250		250	
Larned Corr. Mental Health Facility	150				218		368	
Subtotal: KDOC Facilities/Placements	2227	62	3695	636	2526	0	8448	698
<u>Non-KDOC Facilities/Placements</u>								
Larned State Security Hospital	20	5					20	5
Labette Correctional Conservation Camp					50	17	50	17
Contract Jail Placements			6				6	
Subtotal: Non-KDOC Facilities Placements	20	5	6		50	17	76	52
Totals: All Facilities/Placements	2247	67	3701	636	2576	17	8524	720
Adjusted Capacity vs. Population	2082		3619		2753			

* Includes all beds counted in the capacity as of the specified date. Does not include the system-wide total of 250 "special use beds," which are primarily infirmary and certain types of segregation.

2-22
21

Male Custody Classification Projections FY 2004 through FY 2013

June 30, Each Year	Unclassified	Minimum	Medium	Capacity vs. population		Total
				Maximum	Special	
2004	149	2682	3653	1232	718	8434
2005	148	2674	3642	1229	715	8408
2006	149	2690	3663	1236	720	8458
2007	152	2739	3731	1259	733	8614
2008	154	2764	3767	1270	740	8695
2009	156	2814	3832	1293	753	8848
2010	157	2835	3861	1302	759	8914
2011	160	2885	3930	1326	772	9073
2012	165	2977	4055	1368	797	9362
2013	167	3012	4102	1384	805	3470
Capacity		2576	3701	2247		
Adj. Capacity		2753	3619	2082		

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2-23

**Female Custody Classification Projections
FY 2004 through FY 2013**

June 30, Each Year	Unclassified	Minimum	Medium	Capacity vs. population		
				Maximum	Special	Total
2004	16	379	127	75	15	612
2005	17	397	133	79	15	641
2006	17	394	132	78	15	636
2007	16	389	130	77	15	627
2008	17	399	135	80	16	647
2009	18	420	141	83	16	678
2010	18	419	141	83	16	677
2011	18	425	143	85	16	687
2012	18	428	144	85	17	692
2013	17	410	137	81	16	661

CAPACITY OPTIONS

Do nothing and allow the prison population to exceed capacity.

Implement an early release mechanism.

Lease out-of-state private prison beds

Lease jail beds from Kansas counties

Private Construction and Operation of a Prison in Kansas

Private Construction and Public (KDOC) Operation of a Prison in Kansas

State Constructed and Operated Facility

24
2-25

Estimated VOI/TIS Grant Status

Total Amount Awarded (FFY 96-01)	\$27,245,469
Project	VOI/TIS Amount
Completed Projects	
NCF housing unit - 200 medium security beds	\$ 4,190,379
Labette expansion - 100 conservation camp beds	718,889
LCF-East expansion - 100 minimum security beds	179,159
Programming for drug testing	133,747
Hair specimen testing	32,680
Lease of male beds - 100 medium security	695,300
ECF housing unit - 200 medium security beds	5,478,971
<i>Funds expended on completed projects</i>	\$ 11,429,125
Ongoing Projects and/or Projects Committed But Not Yet Complete	
Maximum security juvenile facility - 150 juvenile offender beds	\$ 5,500,000
Female conservation camp - 17 private facility beds (through FY 2003)	730,745
Day reporting centers (through FY 2003)	2,219,331
<i>Funds expended and/or committed</i>	\$ 8,450,076
Total Expended or Committed to Date	\$ 19,879,201
Planned Expenditures - FY 2004	
Day reporting centers	\$ 2,289,600
Lease of male beds	634,500
Female conservation camp	424,322
Amounts included in FY 04 budget	\$ 3,348,422
Planned Expenditures - FY 2005	
Day reporting centers	\$ 2,336,400
Lease of male beds	1,244,279
Female conservation camp	437,167
Amounts included in FY 05 budget	\$ 4,017,846
Total Expended, Committed & Planned	\$ 27,245,469

2-26
25

VOI/TIS FINANCED PROGRAMS – KDOC BUDGET

<u>Program</u>	<u>FY 2005</u>
Day Reporting Centers	\$2,336,400
Female Conservation Camp	437,167
Bed Space Contract	<u>1,244,279</u>
Total	<u>\$4,017,846</u>

Notes:

If expenditures are made as planned, VOI/TIS funds will not be available after FY 2005.

Female conservation camp is also financed with a State General Fund appropriation of \$477,171.

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2-27



Proposed Medium Security Offender Housing for the Kansas Department of Corrections

RFP #04839

Submitted by CiviGenics, Inc.

December 16, 2002

COST PROPOSAL
RFP #04839

# of Offenders	FY '03	FY '04	FY '05	FY '06	FY '07
125	\$38.50	\$38.50	\$39.27	\$40.00	\$40.80
150	\$38.50	\$38.50	\$39.27	\$40.00	\$40.80
175	\$38.00	\$38.00	\$38.76	\$39.54	\$40.33
200	\$38.00	\$38.00	\$38.76	\$39.54	\$40.33
225	\$38.00	\$38.00	\$38.76	\$39.54	\$40.33
250	\$37.50	\$37.50	\$38.25	\$39.00	\$39.78

* The amount to be filled in is the price per inmate bed per day.

Testing costs shall be included in per diem cost.

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2-28

KANSAS JAIL CAPACITY SURVEY

August 2003

	Female Beds	Male Beds	Level	Anticipated Cost Per Day
Total	44-52	216-250	Medium	\$30 - \$60 (\$43.79 average)
	23	70	Maximum	

28
2-29

Capacity Expansion Options

<u>El Dorado Correctional Facility</u>		
2 cellhouses – 128 cells each		
Potential Capacity:	256 – maximum security	
	512 – medium security (doublecelled)	
Estimated construction cost:	\$15,111,984	
Estimated operating cost:	\$5,180,000	(maximum security)
	\$7,225,000	(medium security)

These estimates are the most recent ones available and will have to be adjusted upward to reflect costs applicable at the time the housing units would be occupied, I.e. base salary amounts, fringe benefits, health care and food service contracts, etc. These estimates exclude one-time start-up.

<u>Hutchinson Correctional Facility</u>		
1 cell house (special needs unit)		
Potential Capacity:	258 medium security	
Estimated construction cost:	\$6,528,657	
Estimated operating cost:	\$3,012,000	
One-time Start up cost:	\$165,000	

These estimates are in current dollars and will have to be adjusted upward to reflect costs applicable at the time the housing unit would be occupied, I.e. base salary amounts, fringe benefits, health care and food service contracts, etc.

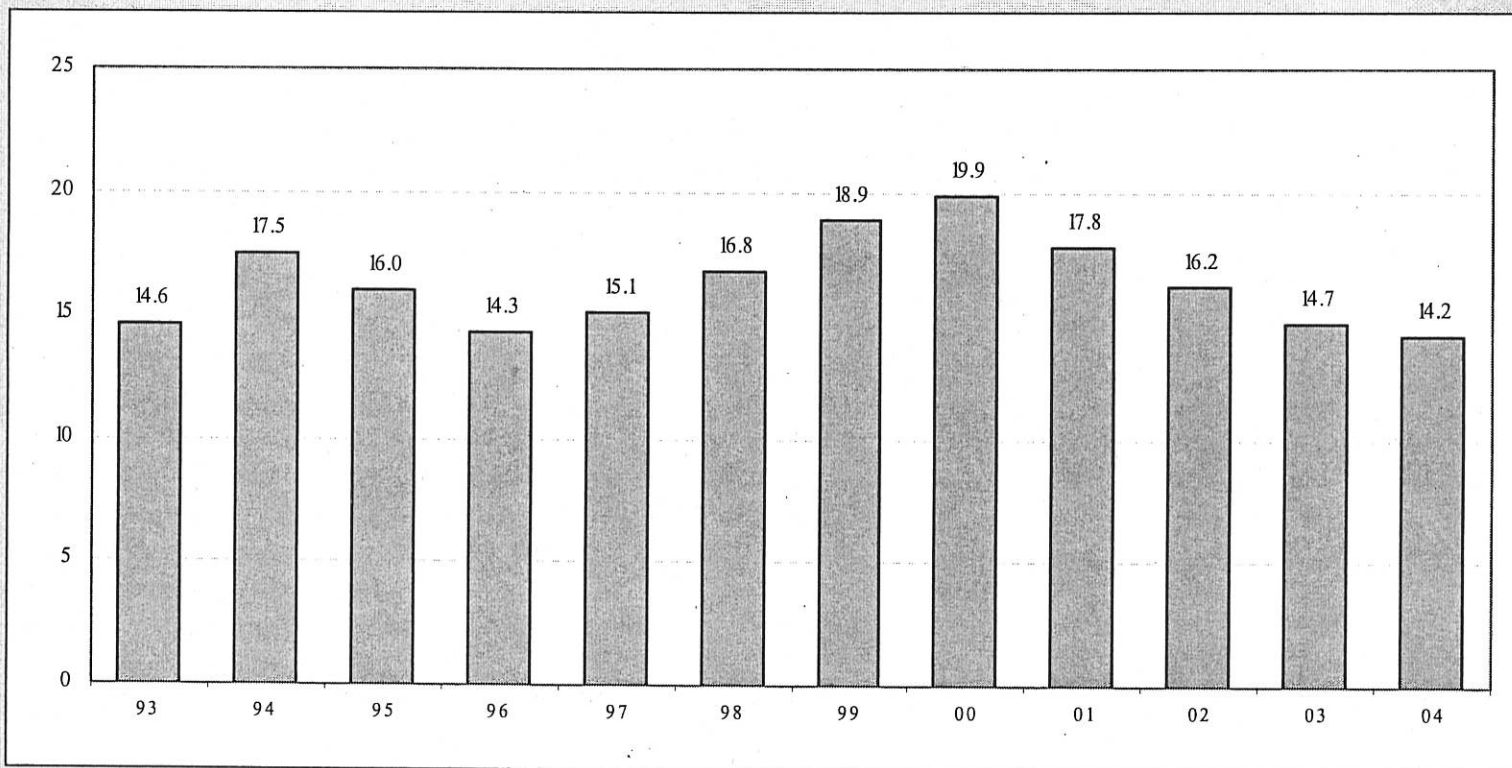
2-30 / 29

Inmate Classification System

- The underlying intent of the classification system is to maintain the individual at the least restrictive level of supervision possible, given the level of risk to the system.
- The point-base classification criteria include:
 - Length of minimum sentence
 - Length of time remaining to serve
 - Criminal behavior involved in the current offense
 - Past criminal behavior
 - Escape history
 - Escape characteristics
 - Special skills and associates
 - Institutional adjustment
 - Behavioral characteristics (suicidal, predatory, etc.)
 - Special needs (protective custody, segregation, etc.)
 - Detainers
- There is one non-point based item. This item addresses such issues as inmate performance in sex offender's treatment, detainers, absconding supervised release, pending disciplinary issues and civil commitment issues. Like the point-based classification criteria, the application of the non point-based item, may or may not impact the inmate's classification level.

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2-31

Proportion of Total Inmate Population Whose Latest Admission Was as a Post-incarceration Supervision Condition Violator: Selected Dates



2-32

FEDERAL FUNDS – KDOC BUDGET

<u>KDOC Program</u>	<u>FY 2005</u>
Therapeutic Community Substance Abuse Treatment – Lansing Correctional Facility (RSAT Grant)	\$375,000
Special Education (ESEA Title I Grant)	55,000
Vocational Education (Carl Perkins Grant)	55,000
Job Readiness Training and Community Transition (DOE Grant)	150,000
Day Reporting Centers (VOI/TIS Grant)	2,336,400
Female Conservation Camp (VOI/TIS Grant)	437,167
Bed Space Contract (VOI/TIS Grant)	1,244,279
Crime Victims Assistance and Information Technology Initiatives (Byrne Grants)	552,480
Crime Victims Assistance (VOCA Grant)	36,262
Therapeutic Community Substance Abuse Treatment – Hutchinson Correctional Facility (Byrne Grant)	210,000
Offender Reentry (OJP Grant)	372,654
Sex Offender Management (OJP Grant)	136,377
Health Care Contract (SCAAP Grant – reimbursement for housing illegal aliens)	600,000
Topeka Correctional Facility Operating Expenditures (BOP Grant - reimbursement for housing federal prisoners)	1,139,628
Affordable Housing Program – TCF (Community Development Block Grant)	86,935
Total	<u>\$7,787,182</u>

Programs Reductions FY 2000 – FY 2005

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2-33

Using FY 2000 as the base year:

- Inmate ADP has increased from 8513 to an estimated 9025 for FY 2005, a 6% increase.
 - Funding for facility-based programs has decreased from \$8,913,797 to \$5,295,760, a 41% reduction.
 - Intervention program capacity has decreased from nearly 1700 program slots to just over 950, a loss of 744 slots representing nearly a 45% reduction.
 - Most significant losses were in short-term substance abuse treatment which has been virtually eliminated in the facilities; academic education which may be eliminated with the FY 05 funding; and vocational education which has been reduced by over a third of its capacity and may be reduced further in FY 05.
- Parole ADP has increased from 3999 to an estimated 4517, an increase of 13%.
 - Funding for community-based intervention programs has decreased from \$3,502,672 to \$736,150, a nearly 80% reduction.
 - Capacity for community-based program interventions has been reduced from a high of 804 slots (FY 01) to 525 in FY 05, a loss of 279 slots, a 35% reduction.
 - Most significant reductions in community-based programs have been in substance abuse treatment, again virtually eliminating community-based treatment; transitional housing (CRB) over a 90% reduction representing a loss of 205 slots; and a reduction in transitional therapeutic community slots.

Overall, the funding for facility-based and community-based programs has decreased by 51 percent.

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2-34

Facility-Based Program Capacity

Fiscal Year	Sex Offender Treatment	Substance Abuse Treatment	Therapeutic Communities	Academic Education	Vocational Education	IFI	Total
2000	312	272	184	448	324	158	1698
2001	312	290	184	298	265	158	1507
2002	312	260	188	145	325	158	1388
2003	312	40	188	145	325	203	1213
2004	312	40	184	145	215	203	1099
2005	312	40	184	0	215	203	954

Facility-Based Program Funding

2000	\$8,913,797.00
2001	\$7,524,951.00
2002	\$6,958,469.00
2003	\$5,812,936.00
2004	\$5,268,065.00
2005	\$5,295,760.00

Figures exclude visitors centers, grantwriter, and risk-needs project.

2-35
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Community-Based Program Capacity

Fiscal Year	Sex Offender Treatment	Substance Abuse Treatment	Therapeutic Communities	Academic Education	Vocational Education	Total
2000	375	76	60	225		736
2001	470	79	44	211		804
2002	477	79	40	208		804
2003	477	48	40	188		753
2004	477	0	28	86		591
2005	477	0	28	20		525

Community-Based Program Funding

2000	\$3,502,672.00
2001	\$3,037,570.00
2002	\$3,269,496.00
2003	\$2,805,299.00
2004	\$1,848,635.00
2005	\$736,150.00

Figures exclude visitors centers, grantwriter, and risk-needs project.

Challenges

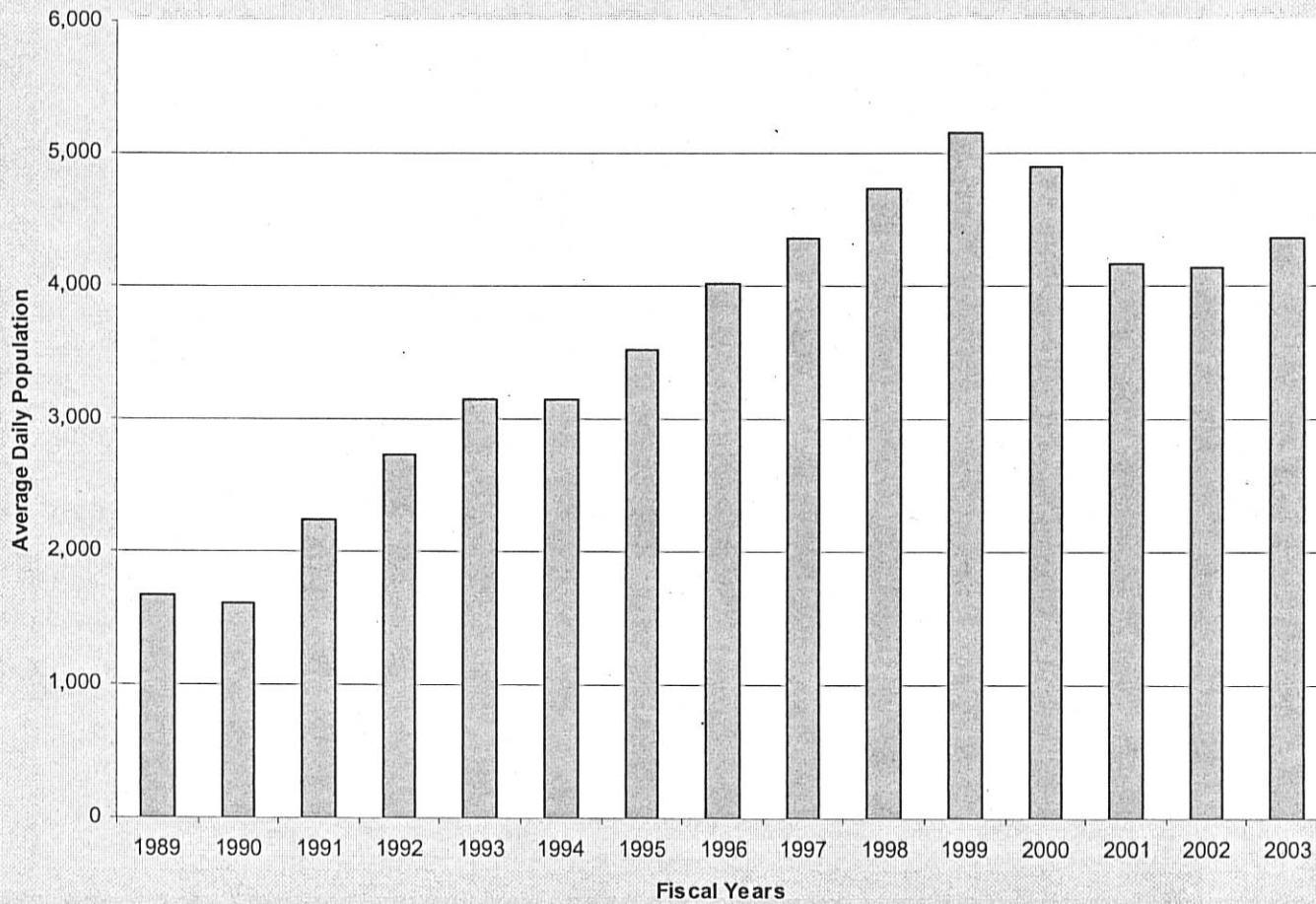
New Medical Contract – significant cost increases likely, contract will probably look quite different in FY 2006

VOI/TIS and RSAT money will likely be gone

2-36

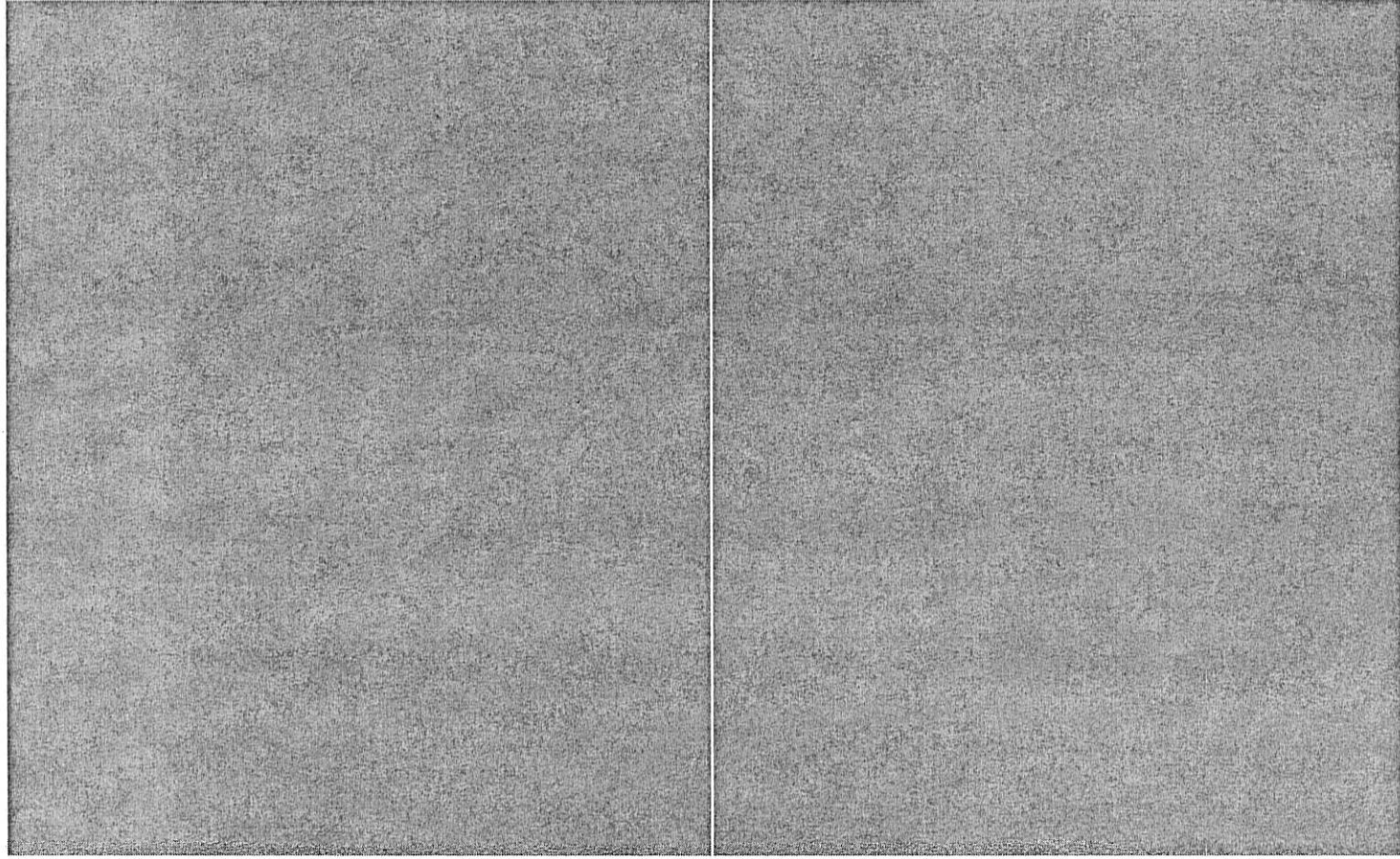
2-37
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Community Corrections ADP History





Risk Management



HOUSE APPROPRIATIONS

DATE 1-29-2004

ATTACHMENT 3



Risk Management

Risk Containment

Limits the environment in which negative offender behavior can occur.

Risk Reduction

Reduces the likelihood of negative offender behavior regardless of the environment.

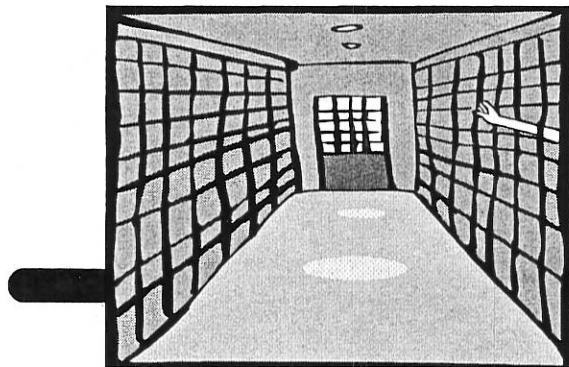
Risk Management

Risk Containment

- Walls and wire
- Surveillance Equipment – Cameras, telephone monitors, heartbeat monitors, etc.
- Lethal and less-lethal weapons
- Restraints
- SORT teams
- Uniformed personnel
- Offender classification

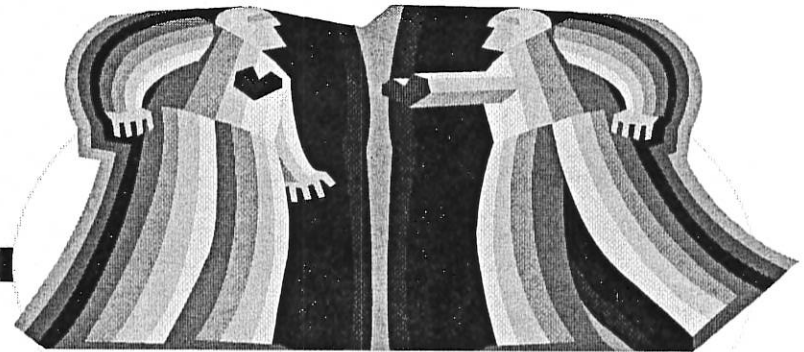
Risk Reduction

- Treatment and education programs
- Privileges and Incentives
- Self help, volunteer and faith based programs
- Release planning, cognitive interventions, relapse prevention, LSI-R
- Non-uniformed personnel
- Other agency and community partners
- Families and advocacy groups



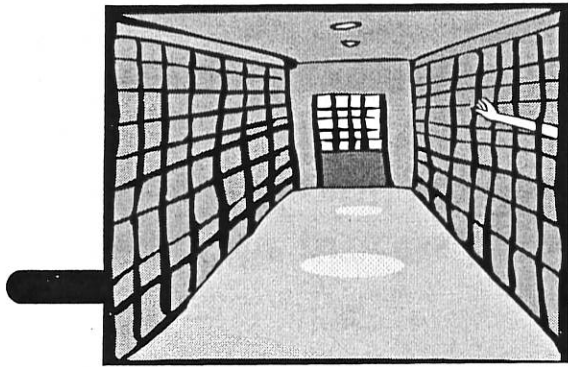
Containment

- Highly effective as an immediate strategy
- Not future oriented
- Expensive - \$19,615 to house one person for one year (FY 2004)
- 15 escapes in FY 2003, 1 escape from max. or med. Custody (99.84% probability of no escape. 99.98% from higher custody)



Risk Reduction

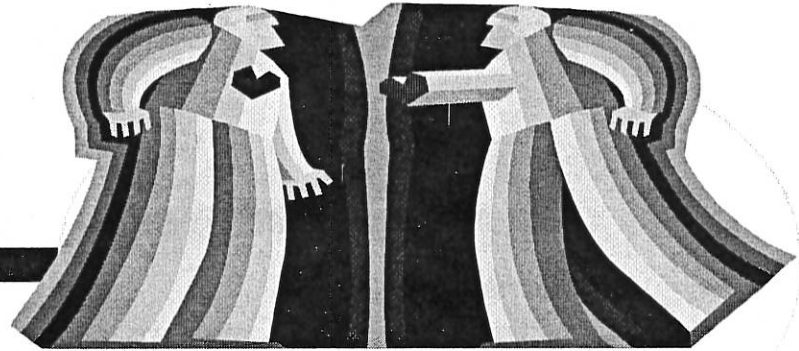
- More effective long term strategy – 95 – 98% will be released.
- What we really want offenders to do when they are released is to **stop victimizing the rest of us!**
- The five year return rate for offenders convicted of a new crime was about 14 – 16%.
- The five year return rate for offenders who violated a condition of release was about 41 – 47%.



Containment

We do this so well that there is a tendency to want to do everything in the same way.

That is a trap and is the wrong approach.



Risk Reduction

We cannot do this like containment and be successful. We need to do it as well, but not using the same strategies, tactics and methods.

We Cannot Do It Alone!

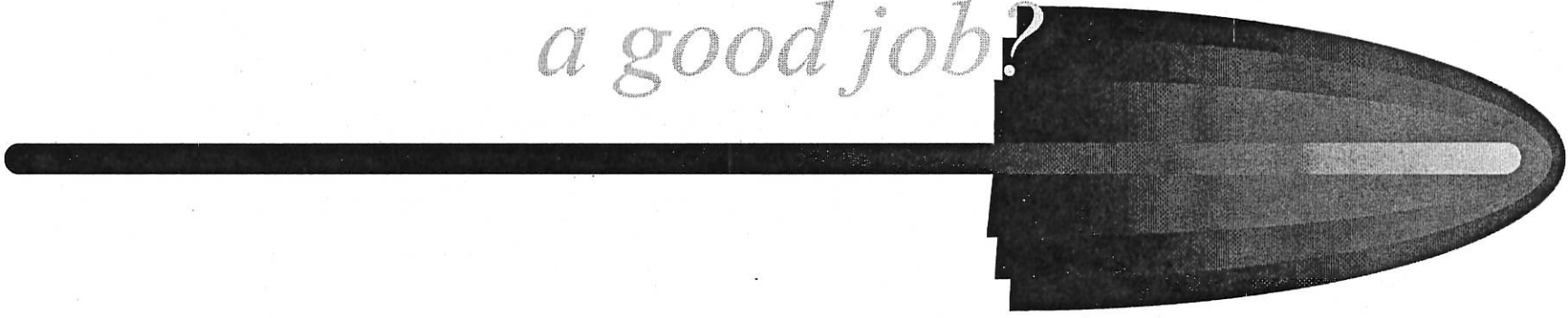
How Can We Make Kansas Safer?

Risk Reduction

- **Restoration of lost program resources – treatment, housing, etc.**
- **Implement latest research based innovations – LSI-R, cognitive interventions, release planning.**
- **Partner with community groups, other social service agencies, faith based organizations, families/advocates to create “wrap-around” structures and support systems to improve community performance.**
- **Start the process in the facilities – establish links to parole while the offender is still in prison.**
- **Recognize that no one but the offender can “control” the offender in the community.**

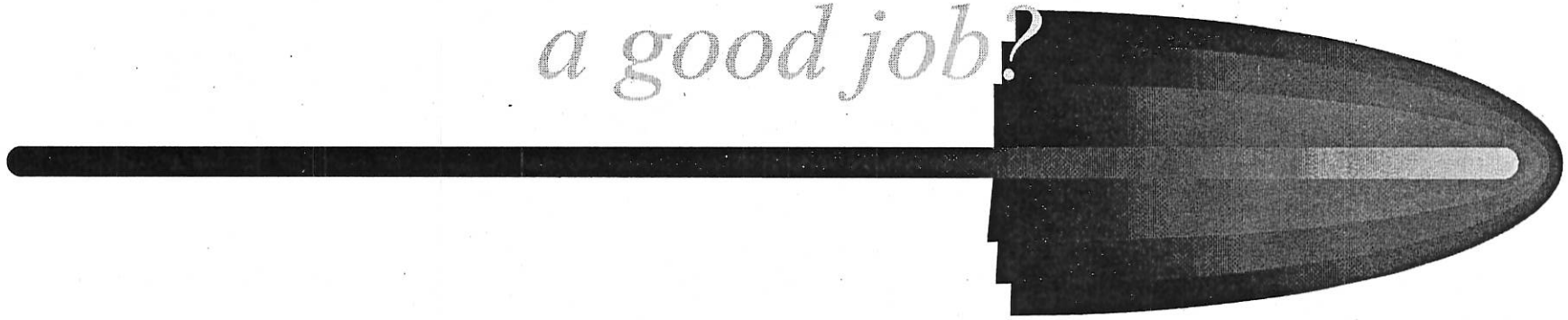
*How will we know we are doing
a good job?*

3-7

- 
- The percentage of offenders returning to Kansas prisons will decrease because they were better prepared prior to release; entered the community with a real job, safe housing, effective relapse prevention plans; and they received active parole supervision targeted at their specific risks and needs.
 - Jail days expressed as a ratio to the parole population will decline because they will not be required.
 - The number of offenders convicted of new crimes will decline.

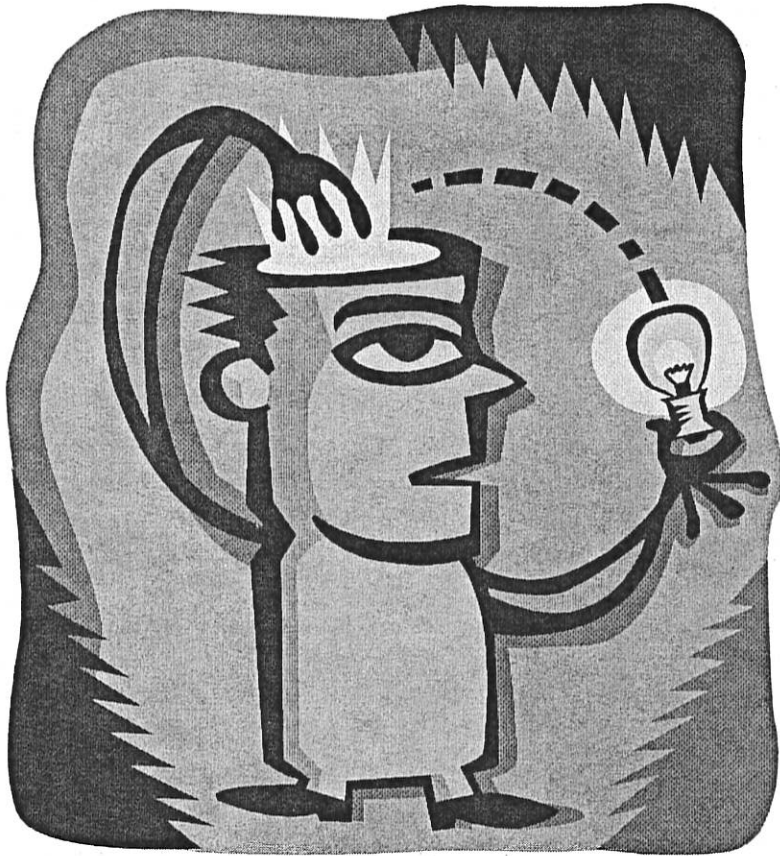
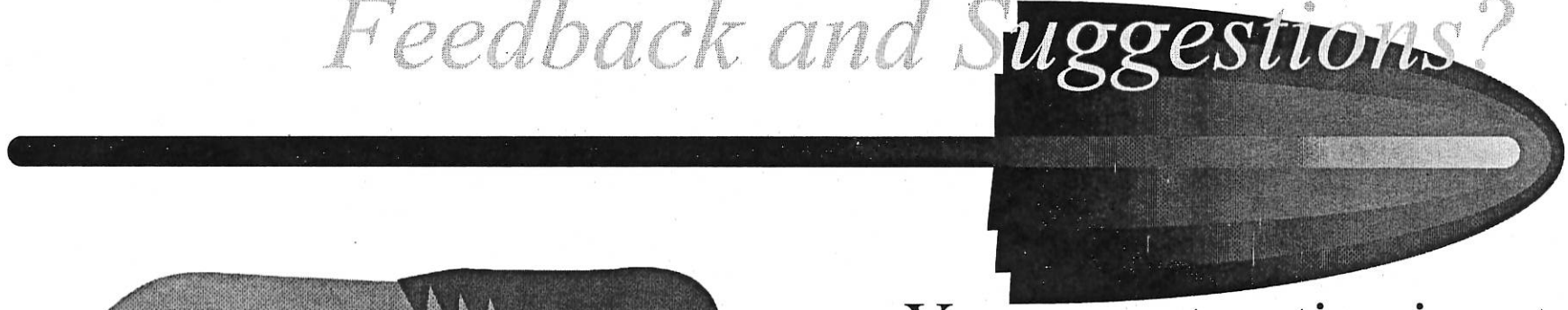
*How will we know we are doing
a good job?*

3-8



- It is a statistical certainty that some offenders supervised in the community will commit new crimes, and some of those crimes will be very serious. Our effectiveness should be evaluated on the changes in the trends listed previously, rather than on specific events.
- There will be more interaction and meaningful partnerships between KDOC and communities, other state agencies, local agencies, victims groups, advocacy groups and families.

Feedback and Suggestions?



- Your constructive input is needed and welcome.
- This is a long, tough road ahead. How do we get there?
- How can we maintain optimism and focus on the goal?