

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on February 7, 2011 in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Sarah Fertig, Executive Director, Kansas Sentencing Commission .

Others attending:

See attached.

Chairperson Colloton called the meeting to order and she made a motion to withdraw one of the bill request made to the committee at an earlier date by the KBI. Representative Wolf seconded. Motion carried.

Chairperson Colloton recognized Representative Meier for a bill introduction. She moved a bill request regarding PTS relating to veterans. Representative Smith seconded. A discussion followed. Motion carried.

Chairperson Colloton opened the hearing on **HB 2038-Amending the procedure regarding jury trials for upward departure sentences**, and called on Sarah Fertig, Executive Director, Kansas Sentencing Commission to explain the bill and give her testimony as a proponent of the bill. She presented written copy, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 1)

The only other testimony was the “written only” proponent testimony of Patrick Vogelsberg, representing the Kansas District & County Attorneys' Association, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 2)

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2038**.

Next, Chairperson Colloton called on Sarah Fertig, Executive Director, Kansas Sentencing Commission, to give a review of the Kansas Sentencing Commission along with the present bed space and projected future bed impacts. (Attachment 3)

A question and answer session followed and upon the conclusion, Chairperson Colloton opened the floor for consideration of **HB 2008-Creating a special sentencing rule for identity theft and identity fraud**. **Representative Kinzer moved to pass the bill out favorably. Chairperson Colloton seconded.**

A discussion followed and Representative Brookens moved an amendment with changes on the severity levels. Representative Moxley seconded. A discussion followed. Motion carried with “no” votes being recorded for Representative Kinzer, Representative Smith, and Representative Goodman.

Representative Pauls moved a motion to change back to the original language on Lines 23, and 24; bringing it from a level six to a level five. Representative Kinzer seconded. A discussion followed. Motion carried.

Representative Kinzer moved the bill out favorably as amended. Representative Brookens seconded. Motion carried.

Next, Chairperson Colloton moved the Committee's attention to **HB 2009-Defining the crime of home improvement fraud and providing penalties**, for consideration.

Representative Brookens moved the bill out favorably for passage. Representative McCray-Miller seconded. A discussion followed. Motion carried.

The meeting was adjourned at 3:05 pm next scheduled meeting to be February 8, 2011 at 1:30 pm in room 144-S.

DATE: 2-7-11

DATE: 2-7-11

[illegible]

KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chair
Honorable Richard M. Smith, Vice Chair

SAM BROWNBACK, GOVERNOR

MEMORANDUM

To: Dennis Taylor, Secretary of Administration
Attn: Brendan Yorkey
From: Kunlun Chang, Research Director
Date: January 18, 2011
Re: Prison Bed Impact, HB 2008 Identity Theft

BILL SUMMARY: This bill would amend identity theft from severity level 8, nonperson felony to person felony and from severity level 5, nonperson felony to person felony. This bill would also amend identity fraud from severity level 8, nonperson felony to person felony.

IMPACT OF THIS BILL

- **Impact of Prison Admissions:** This bill would result in no additional prison admissions.
- **Impact of Prison Beds:** This bill would result in 9 additional prison beds needed in FY 2012 and 12 additional prison beds needed in FY 2021.
- **Impact on the workload of the Commission:** The amendment of this bill would not increase the workload of the journal entry of the Commission.

KEY ASSUMPTIONS

- The target population of the bill includes offenders who commit the crime of identity theft under K.S.A. 21-4018(a) and identity fraud under K.S.A. 21-4018(b).
- Change from nonperson to person would elevate criminal history scores and offenders convicted under this statute would have increased penalties in the future.
- The projected prison admission growth rate is assumed to be 2.75% in FY 2012 and 2% annually from 2013 and forward, which is the same percentage used in relation to the baseline prison population forecast produced in August 2010 by the Kansas Sentencing Commission.
- The new policy effective date is assumed to be on July 1, 2011.

FINDINGS

- In 2010, 149 offenders were convicted of identity theft and fraud under 21-4018. Of this number,
 - 129 (86.6%) were sentenced at nondrug severity level 8 and
 - 20 were sentenced at nondrug severity level 10.
- In 2010, 42 offenders were admitted to prison under K.S.A. 21-4018. Of this number,
 - 14(33.3%) were new court commitments;

- 24(57.1%) were probation condition violators and
- 4 (9.5%) were probation violators with new sentence.

IMPACT ASSESSMENT

- **Current Policy:** If current policy remains unchanged,
 - by the year 2012, 30 prison beds will be needed and
 - by the year 2021, 44 prison beds will be needed.
- **Impact:** If the nonperson felony changed to person felony, resulting in criminal history categories change and longer length of sentences,
 - by the year 2012, 39 prison beds will be needed and
 - by the year 2021, 56 prison beds will be needed.

IMPACT OF THE BILL

- **Impact of Prison Admissions:** This bill would result in no additional prison admissions.
- **Impact of Prison Beds:** This bill would result in 9 additional prison beds needed in FY 2012 and 12 additional prison beds needed in FY 2021.
- **Impact on the workload of the Commission:** The amendments of this bill would not increase the workload of the journal entry of the Commission.

Prison Beds and Admissions Impact Assessment

Fiscal Year	Current Policy Unchanged	Nonperson Felony to Person Felony	Additional Prison Beds Needed
2012	30	39	9
2013	34	43	9
2014	35	48	13
2015	34	47	13
2016	33	44	11
2017	40	50	10
2018	39	47	8
2019	42	53	11
2020	45	55	10
2021	44	56	12



Kansas County & District Attorneys Association

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February 1, 2011

**Testimony Regarding HB 2038
Submitted by Patrick Vogelsberg
On Behalf of the Kansas County and District Attorneys Association**

Madam Chair and members of the committee:

This testimony is submitted on behalf of the Kansas County and District Attorney Association (KCDAA) and is in support of HB 2038. It is the KCDAA's position that this is the statutory fix that is necessary due the recent *State v. Horn* holding which stated that unless a defendant has validly waived his or her right to a jury for an upward durational departure sentence proceeding, a court-conducted departure proceeding is unconstitutional.

The bill accomplishes this by striking the unconstitutional language and thus, allows that only after the jury at the upward durational departure sentence proceeding has been waived may the proceeding be conducted by the court.

The KCDAA stands in support of the Sentencing Commission proposal and request that the committee pass HB 2038 favorably.

Respectfully submitted,

Patrick Vogelsberg
Kansas County and District Attorney Association

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-7-11
Attachment # 2

Kansas Sentencing Commission Overview of Population Projections

Presentation before the House
Corrections and Juvenile Justice
Committee
February 1, 2011

Overview

1. Establishment and duties of the Commission
2. Membership of the Commission
3. Commission staff
4. FY 2011 prison population projections

KSC – a very brief history

- Established in 1989 (K.S.A. 74-9101)
- Mission:

"Develop a sentencing guidelines model or grid based on fairness and equity and...provide a mechanism for linking justice and corrections policies. The sentencing guideline model or grid shall establish rational and consistent sentencing standards which reduce sentence disparity, to include, but not be limited to, racial and regional biases which may exist under current sentencing practices." (L. 1989, Ch. 225, Sec. 1)

- 1993 SB 423: Kansas Sentencing Guidelines Act
- 1993 – present: ongoing research, analysis and guidance

*Similar offenders
commit similar
crimes - be sentenced
the same*

Commission Goals

1. To develop and maintain a monitoring system that allows for comprehensive evaluation of the sentencing guidelines.
2. To forecast the state's adult offender populations incarcerated in state institutions, and to determine the impact of proposed legislation on the prison population.
3. To assist in the process of educating and training judges, attorneys, court services officers, state parole officers, correctional officers, law enforcement officials and other criminal justice groups in the understanding and application of sentencing guidelines.
4. To serve as an information resource for the legislature and various state criminal justice agencies.

Services provided by KSC

- Prison bed and fiscal impact assessments for legislation
- Annual prison population and inmate classification projections
- Administration of SB 123 payments to drug abuse treatment providers
- Development of sentencing manuals and related training
- Maintain database of sentencing journal entries, pre-sentence investigations (PSIs) and probation revocations
- Information resource for criminal justice agencies

KSC membership

- 17 members (K.S.A. 74-9102):
 - the chief justice of the supreme court or the chief justice's designee;
 - two district court judges appointed by the chief justice of the supreme court;
 - the attorney general or the attorney general's designee;
 - one public defender appointed by the governor;
 - one private defense counsel appointed by the governor;
 - one county attorney or district attorney appointed by the governor;

by statute

KSC Membership (cont.)

- the secretary of corrections or the secretary's designee;
- the chairperson of the Kansas parole board or such chairperson's designee;
- two members of the general public, at least one of whom shall be a member of a racial minority group, appointed by the governor;
- a director of a community corrections program appointed by the governor; and
- a court services officer appointed by the chief justice of the supreme court.
- four members of the legislature

KSC membership (cont.)

The KSC is designed to be independent and objective:

- By statute, not more than 3 members appointed by the Governor may be of the same political party
- Legislators appointed equally by majority and minority parties
- No single criminal justice agency dominates Commission membership

KSC staff

- Currently 10 staff members
 - Staff report to the Commission
- Major functional areas:
 - Research and data maintenance
 - SB 123 (provider payments, data tracking)
 - Legislative issues (bed impacts, special requests)
 - Legal issues (journal entry revisions, PSI questions, updates to sentencing desk reference manual)

FY 2011 Prison Population Projections

Prison Population Projection Data

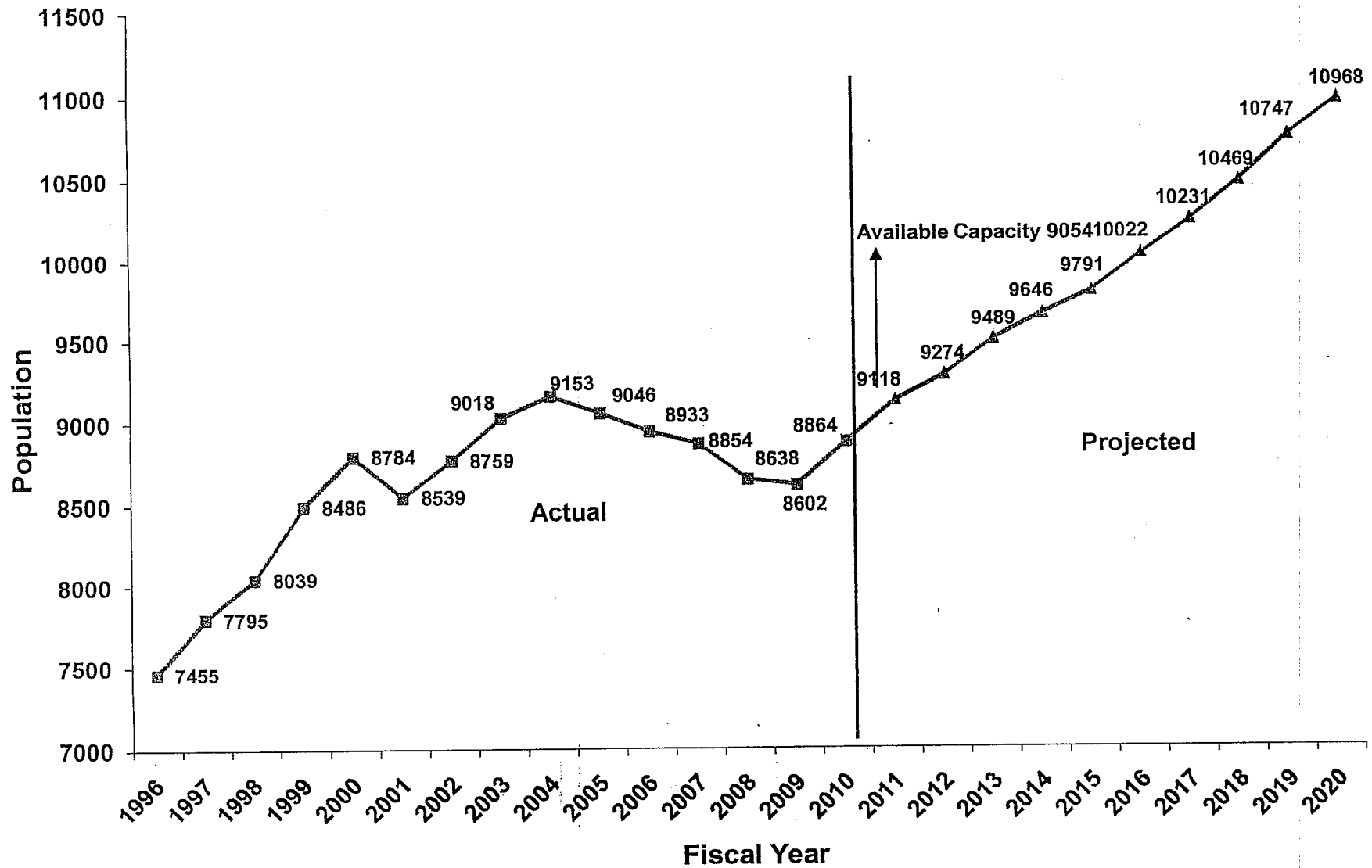
- KDOC data:
 - Prison admissions and releases
 - Prison populations
 - Parole/post-release supervision populations
 - Parole/post release supervision discharges
 - Parole hearing decisions
 - KDOC monthly offender population reports
- Data collected by the KSC:
 - Prison sentences
 - Probation sentences
 - Probation revocations

Prison Population Projection Process

- The Prison Population Projection Consensus Group reviews sentencing trends and policy changes that may impact bed space, and identifies assumptions to be incorporated into the PROPHET forecast model.
- The PROPHET model simulates future inmate movement through the correctional system based upon KDOC/KSC data and assumptions made by the Consensus Group.

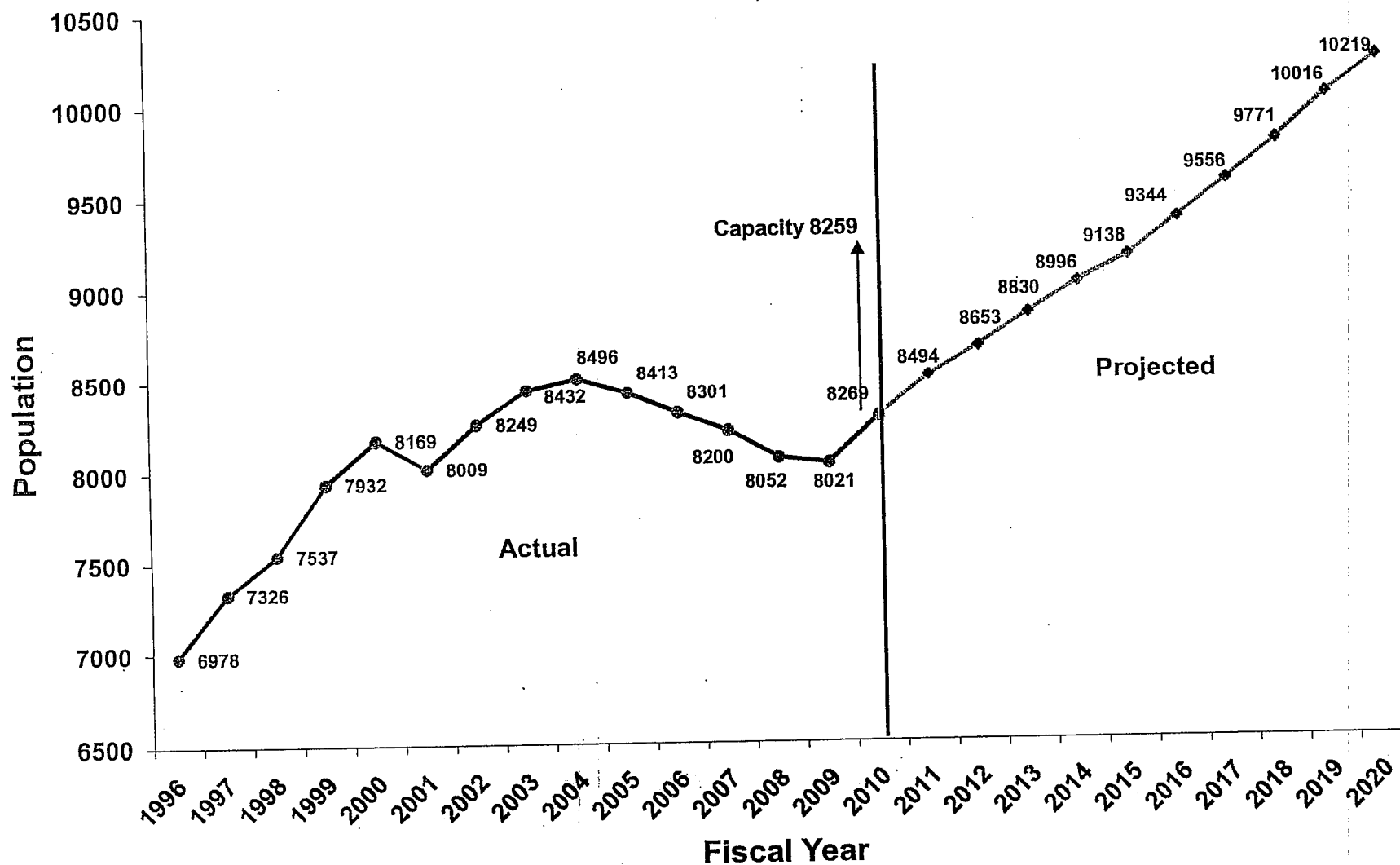
any action that
impacts ability
of bed space

Kansas Prison Population Trend - Actual and Projected



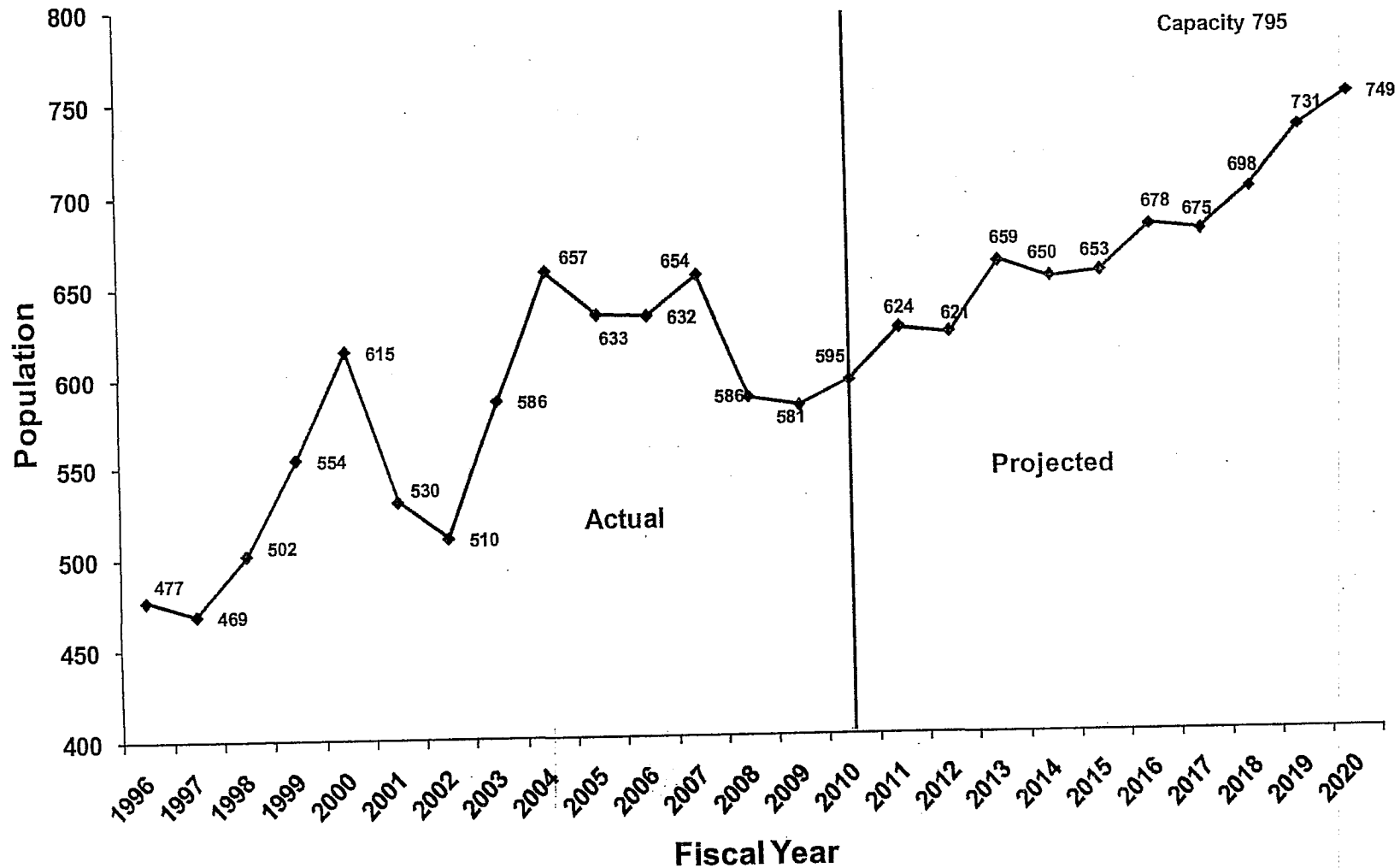
The assumed growth rate of 2.75% during FY 2011 and FY 2012, and a 2% growth rate thereafter, for the remainder of the projection period, are based upon the sudden increase in population trend during the last few months of FY 2010, the slow economy, lack of local funding, lack of funding for mental health, substance abuse, and the elimination of corrections and reentry programs that result in a lack of dispositional options. If increased funding becomes available and the economy improves, these assumptions would no longer be applicable and a lower growth rate would be indicated.

Male Prison Population Trend - Actual and Projected



The assumed growth rate of 2.75% during FY 2011 and FY 2012, and a 2% growth rate thereafter, for the remainder of the projection period, are based upon the sudden increase in population trend during the last few months of FY 2010, the slow economy, lack of local funding, lack of funding for mental health, substance abuse, and the elimination of corrections and reentry programs that result in a lack of dispositional options. If increased funding becomes available and the economy improves, these assumptions would no longer be applicable and a lower growth rate would be indicated.

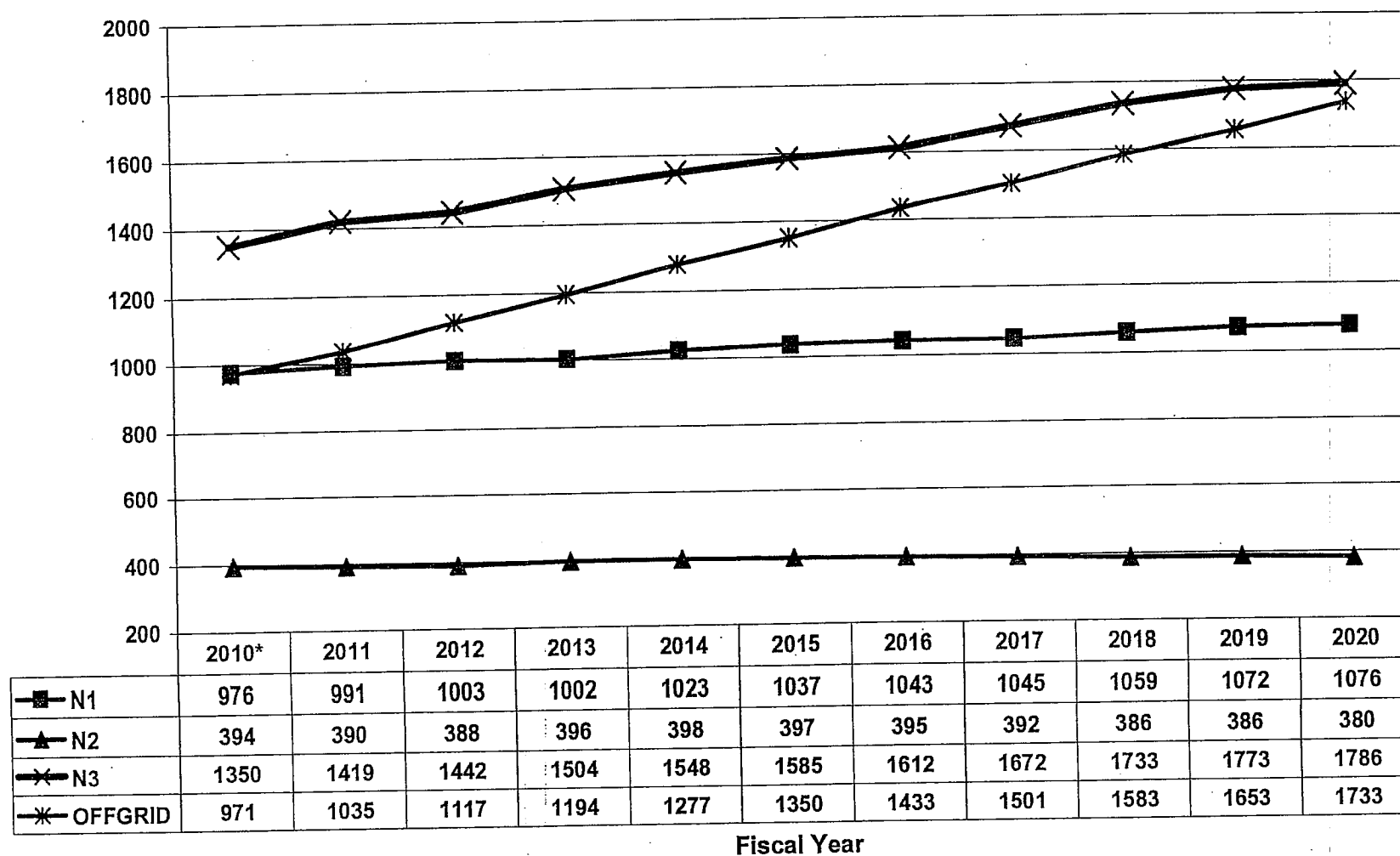
Female Prison Population Trend - Actual and Projected



The assumed growth rate of 2.75% during FY 2011 and FY 2012, and a 2% growth rate thereafter, for the remainder of the projection period, are based upon the sudden increase in population trend during the last few months of FY 2010, the slow economy, lack of local funding, lack of funding for mental health, substance abuse, and the elimination of corrections and reentry programs that result in a lack of dispositional options. If increased funding becomes available and the economy improves, these assumptions would no longer be applicable and a lower growth rate would be indicated.

Notable Trends in the Prison Population

Projected Violent Inmate Prison Population

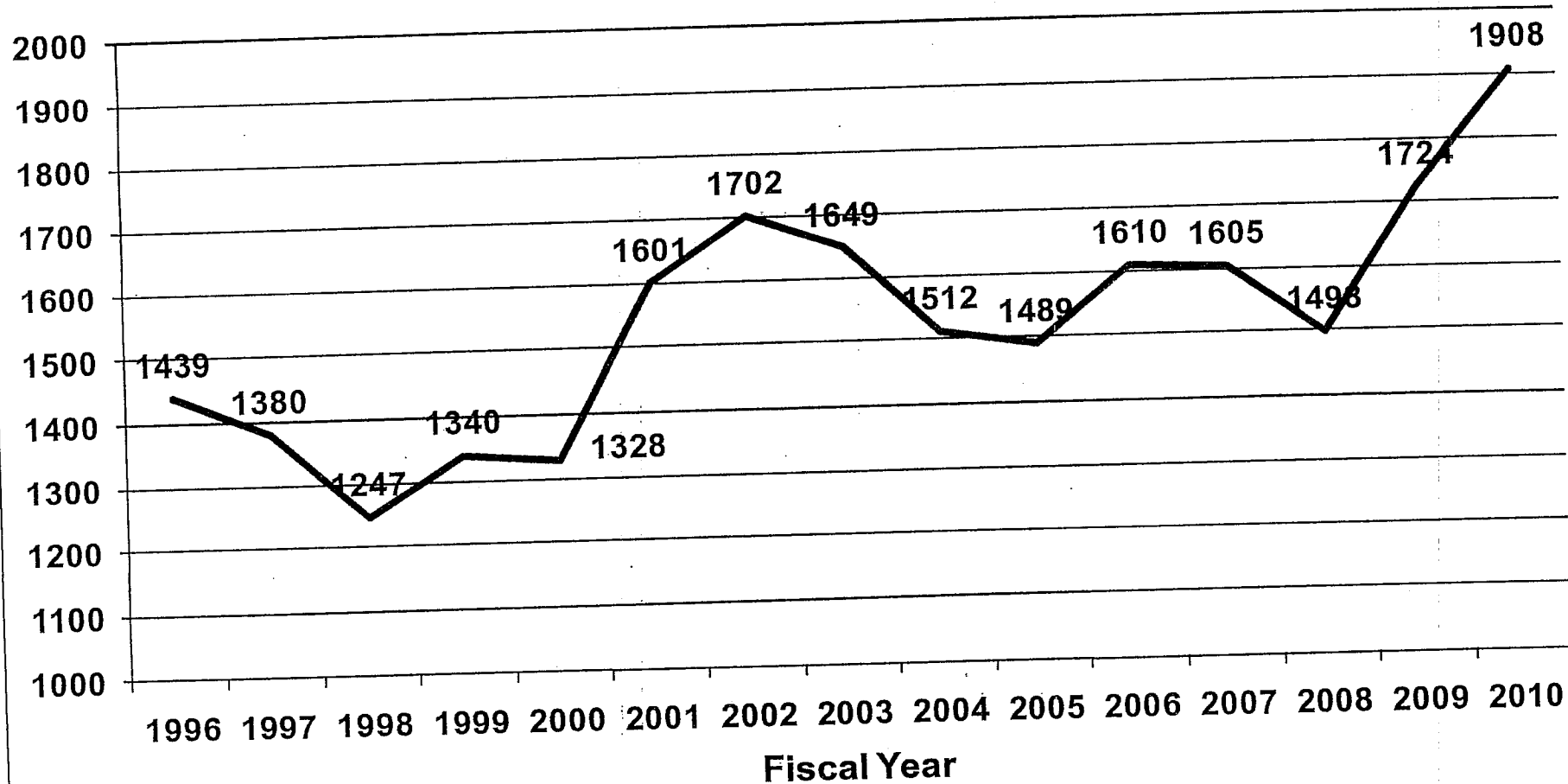


* Actual prison population on June 30, 2010.

This group accounts for 45.4% of the total projected prison population in FY 2020.

KANSAS PRISON ADMISSION TRENDS

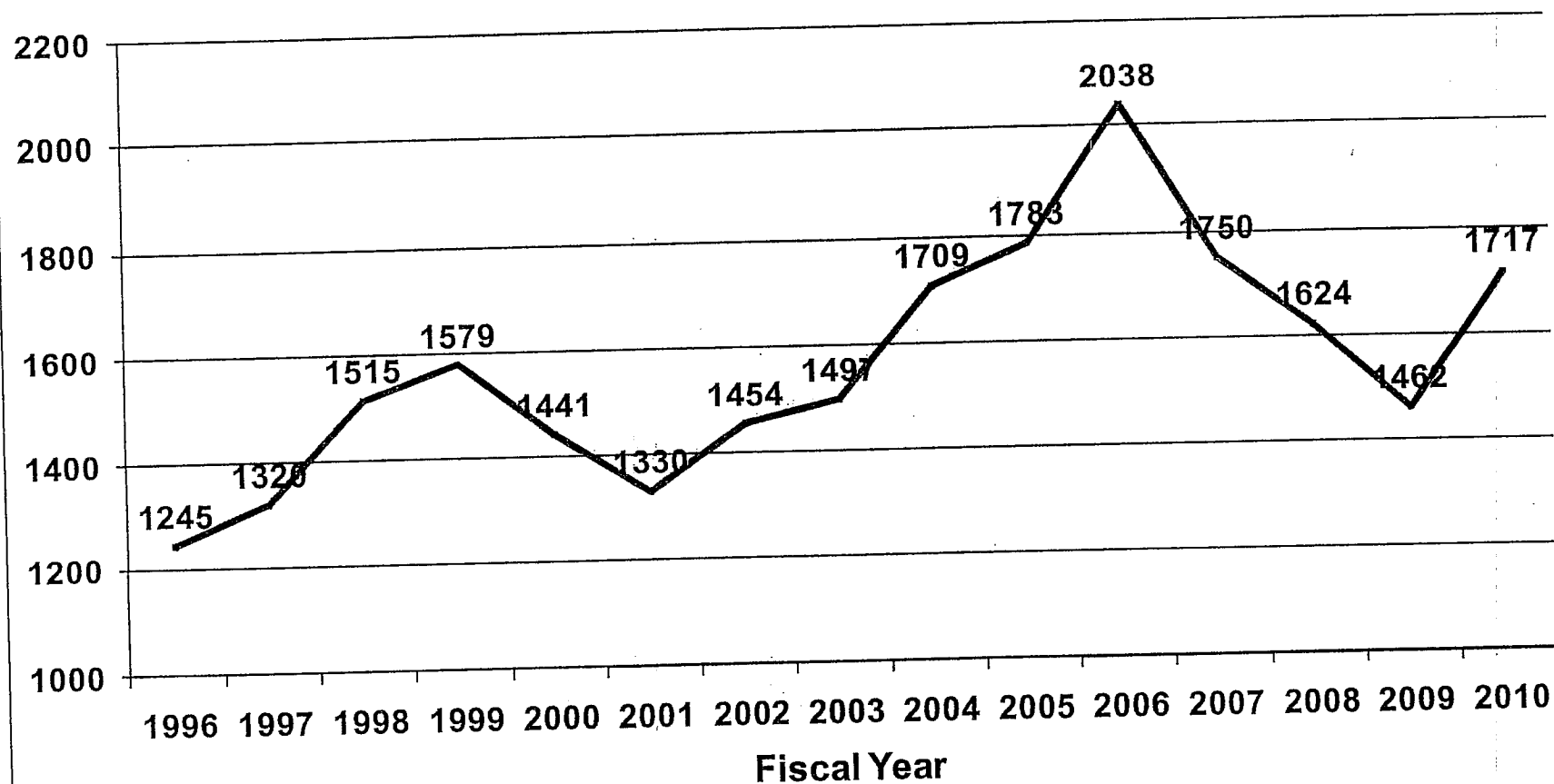
Direct New Court Commitments



Source: KDOC admission files

KANSAS PRISON ADMISSION TRENDS

Probation Condition Violators



Source: KDOC admission files

Ongoing projects

- Proportionality
- Recodification Committee recommendations
- Prison bed reduction options

Resources

<http://www.accesskansas.org/ksc>

- Full FY 2011 Population Projection Report
- SB 123 Information
- Sentencing Guidelines Desk Reference Manual

<http://www.doc.ks.gov/publications>

- Daily inmate population reports
- Information re: prison capacity

Questions?

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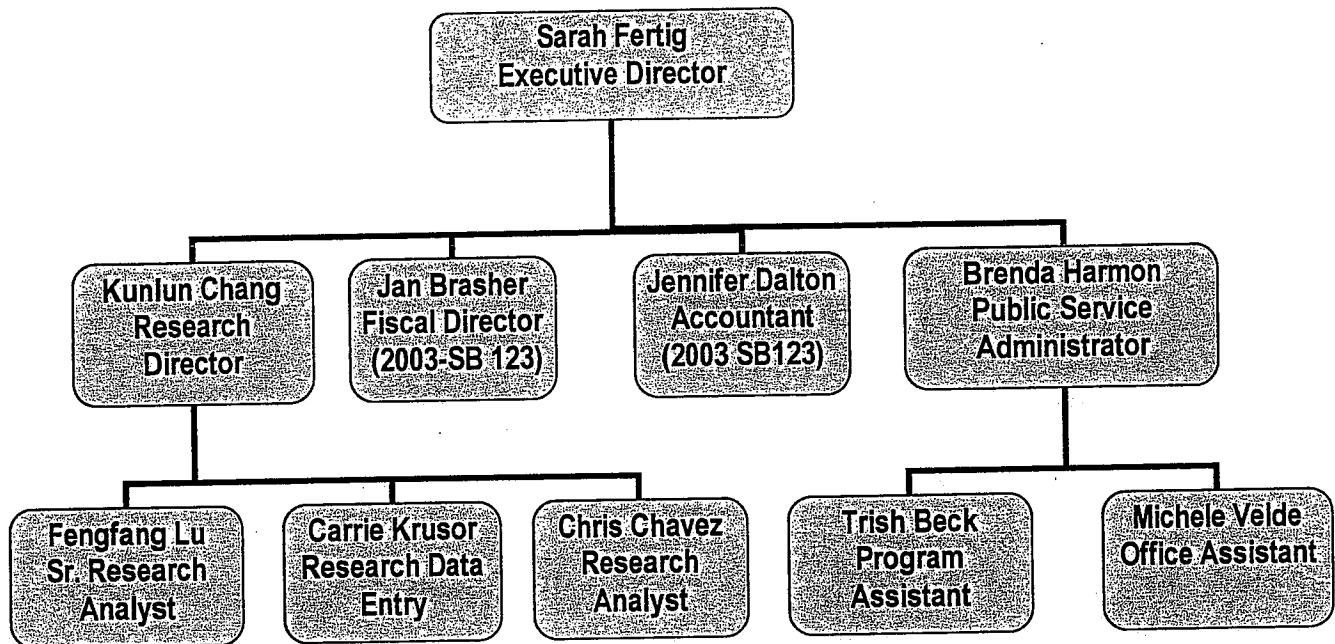
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Kansas Sentencing Commission Organization Chart



3-15

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	88 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	18 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 are:

36 months recommended for felonies classified in Severity Levels 1-2

18 months (up to) for felonies classified in Severity Level 3
and, on and after July 1, 2009, felony cases sentenced pursuant to K.S.A. 2010 Supp. 21-4729 (SB 123)

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 except for some
K.S.A. 2010 Supp 21-36a06 (K.S.A. 65-4160 and 65-4162) offenses on and after 11/01/03.

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-3

12 months for felonies classified in Severity Level 4

3-15

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	287 259 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
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	123 117 109
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 59 55
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	186 180 122	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

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 Supervision Terms are:

18 months for felonies classified in Severity Levels 1-4

12 months for felonies classified in Severity Levels 5-6

12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

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

**HISTORIC GROWTH RATES FOR NEW COMMITMENTS
FY 1989 THROUGH FY 2010**

Fiscal Year (From)	Fiscal Year (To)	*Growth Rate (%)
FY 1989	FY 1990	5.8
FY 1990	FY 1991	-8.9
FY 1991	FY 1992	3.1
FY 1992	FY 1993	-0.2
FY 1993	FY 1994	-11.4
FY 1994	FY 1995	15.1
FY 1995	FY 1996	19.0
FY 1996	FY 1997	-1.0
FY 1997	FY 1998	2.1
FY 1998	FY 1999	6.0
FY 1999	FY 2000	-5.2
FY 2000	FY 2001	5.1
FY 2001	FY 2002	7.8
FY 2002	FY 2003	-0.8
FY 2003	FY 2004	0.5
FY 2004	FY 2005	0.9
FY 2005	FY 2006	11.5
FY 2006	FY 2007	-8.9
FY 2007	FY 2008	-5.1
FY 2008	FY 2009	-0.1
FY 2009	FY 2010	13.3
Guideline Average Growth Rate (Since FY 1993) Change%		2.9
Total Average Growth Rate (Since FY 1989) Change %		2.3

Note: New commitments include new direct court admissions, condition probation violators, and probation violators with new sentences.

* Based on DOC Admission Files.

**COMPARATIVE ANALYSIS ON ADMISSION TYPE
FY 2006 THROUGH FY 2010**

Admission Type	FY2006		FY2007		FY 2008		FY 2009		FY 2010	
	N	%	N	%	N	%	N	%	N	%
New Court Commitment	1610	28.7	1605	32.8	1498	31.7	1724	37.8	1908	38.4
Probation Condition Violator	2038	36.3	1750	35.7	1624	34.4	1462	32.1	1717	34.6
Probation Violator With New Sentence	142	2.5	99	2.0	156	3.3	89	2.0	84	1.7
Inmate Received on Interstate Compact	4	0.1	5	0.1	4	0.1	11	0.2	11	0.2
Parole/Post-release/CR Condition Violator	1641	29.3	1239	25.3	1268	26.9	1154	25.3	1084	21.9
Parole/Post-release/CR Violator With New Sentence	168	3.0	190	3.9	156	3.3	109	2.4	141	2.8
Paroled to Detainer Returned With New Sentence	6	0.1	11	0.2	15	0.3	12	0.2	21	0.4
Total	5609	100.0	4899	100.0	4721	100.0	4561	100.0	4966	100.0

Source: DOC admission file.

Note: Federal female admissions are excluded.

OPTION	PRISON BED REDUCTION OPTIONS THAT DO NOT INCLUDE EARLY RELEASE OF SEX OFFENDERS	ESTIMATED DECREASE OF LENGTH OF STAY BY AVERAGE NO. OF MONTHS		FIRST YEAR BED SAVINGS
		New Admissions No Retroactivity	Stock Population Retroactivity Only	
1	Good time increase to 50% w/o sex offenders with retroactivity (FY 2010)	11.2	28.5	2,194
2	Good time increase to 40% w/o sex offenders with retroactivity (FY 2010)	7.7	20.2	1,227
3	Good time increase to 30% w/o sex offenders with retroactivity (FY 2010)	4.3	12.0	581
4	Good time increase to 40% D4, N7 - N10 with retroactivity (FY 2010)	4.0	6.5	581
5	Good time increase to 20% person, 30% drug, 40% property except off-grid, sex offenses with retroactivity (FY 2010)	2.7	6.0	422
6	Good time increase to 50% w/o sex offenders (FY 2010)	11.2	0.0	330
7	Good time increase to 30% N7 - N10, D4 Criminal history A - E; D4 criminal history F - I do not go to prison; with retroactivity (FY 2010)	N7-N10 2.0 D4A-E 2.9 D4F-I 11.2	N7-N10 3.2 D4A-E 3.8 D4F-I 11.6	463
8	Good time increase to 30% D4, N7 - N10 with retroactivity (FY 2010)	2.0	3.3	254
9	Good time increase to 40% w/o sex offenders (FY 2010)	7.7	0.0	210
10	Good time increase to 40% D4, N7 - N10 (FY 2010)	4.0	0.0	203
11	Good time increase to 20% person, 30% drug, 40% property except off-grid, sex offenses (FY 2010)	2.7	0.0	138
12	Good time increase to 30% w/o sex offenders (FY 2010)	4.3	0.0	93
13	Good time increase to 30% D4, N7 - N10 (FY 2010)	2.0	0.0	88
14	Restrict admission of offenders with 90 days or less left to serve (FY 2010)	0.9	0.0	44
15	Moratorium on N10 admissions (FY 2010)	6.8	0.0	32
16	Amend offender registration elements and penalties (FY 2010)	30.0	0.0	27
17	DUI parole violators to county jail (FY 2010)	3.1	0.0	25
18	Restrict admission of offenders with 60 days or less left to serve (FY 2010)	0.5	0.0	20
19	Restrict admission of offenders with 30 days or less left to serve (FY 2010)	0.2	0.0	6
OPTIONS THAT INCLUDE EARLY RELEASE OF SEX OFFENDERS				
20	Good time increase to 50% including sex offenders with retroactivity (FY 2010)	12.8	35.0	2,594
21	Good time increase to 40% including sex offenders with retroactivity (FY 2010)	8.9	24.9	1,438
22	Good time increase to 30% including sex offenders with retroactivity (FY 2010)	5.0	14.8	678
23	Good time increase to 50% including sex offenders (FY 2010)	12.8	0.0	337
24	Good time increase to 40% including sex offenders (FY 2010)	8.9	0.0	214
25	Good time increase to 30% including sex offenders (FY 2010)	5.0	0.0	94
NOTE: Options are identified by whether sex offenders are included in the early release mechanism, then by the first year bed savings anticipated in each, largest to smallest. These are options, not recommendations. Although options relating to sex offenders are listed, they are not endorsed by the Kansas Sentencing Commission. It should be noted that the Kansas Sentencing Commission does NOT recommend early release of sex offenders.				