

Approved March 1, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~xxx~~/p.m. on February 15, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson, Sebelius and Vancrum, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Elwaine Pomeroy, Chairman, Kansas Parole Board

CONTINUATION OF HEARINGS ON:

H.B. 2198 - Criminal procedure, parole and supervised furlough

H.B. 2199 - Requiring notice to be given to victims of crime of inmate's public hearing and release of inmates; release considerations

H.B. 2200 - Crime victims, reparations & assistance

HCR 5008 - Constitutional amendment, victims rights

Elwaine Pomeroy, Chairman, Kansas Parole Board, testified that victims do have rights and too often the feelings of the victims have been ignored. H.B. 2199 codifies the present practices of the Parole Board. Kansas is a leader in asking for input from the public, officials and victims with regard to the decisions the Parole Board makes. He said if the Parole Board is to consider prison population they should be directed to do so. He also said the Kansas Parole Board would like not to make program recommendations. This should be decided by the inmate and the Department of Corrections. A copy of a letter was attached to the outline of his testimony which explained to an inmate why the inmate was passed three times for parole.

Mr. Pomeroy stated H.B. 2284 by Representative Martha Jenkins deals with program agreements. He suggested if there is need for legislative clarification regarding transitional placement in work release or prerelease, they could be recommended in H.B. 2284.

Mr. Pomeroy said if H.B. 2198 is amended to delete Section I dealing with program agreements, then the bill would be a repealer.

In regard to HCR 5008, Mr. Pomeroy said it is broad and vague. There would be complications if the victims were at the actual parole hearings at the institutions. There would be security and logistical problems. He said victims have a right to be heard, but the right should be exercised at public comment sessions. He also recommended the constitutional amendment could be handled statutorily, see Attachment I.

In response to Committee questions, Mr. Pomeroy suggested the statute could say victims have a right to be heard in certain specified instances, such as at plea bargaining, or the victim notified prior to plea bargaining so their input could be gathered before the prosecutor would agree to the plea bargain. Another time a victim could be heard would be at the time of public comment on parole hearings.

The Chairman announced he would be appointing a subcommittee to study the Victims' Rights bills to make recommendations to the Committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 15, 1989

BILL REQUESTS:

Representative Solbach made a motion to introduce, as a Committee bill legislation amending K.S.A. 75-5296 by adding clarifying language with respect to the relationship between Community Corrections programs and the Secretary of Corrections. Representative Hochhauser seconded the motion. The motion passed.

The Kansas Bar Association requested through the Legislative Coordinating Council to have the Judicial Council look at Chapter 61 of the Code of Civil Procedure. The bill would address jurisdictional amendments.

Representative Jenkins moved to introduce the proposed legislation as a Committee bill. Representative Douville seconded the motion. The motion passed.

Representative Douville moved to approve the minutes of February 6, February 7 and February 8, 1989. Representative Lawrence seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:35 p.m. The next meeting will be Thursday, February 16, 1989 at 3:30 p.m. in room 519-S.

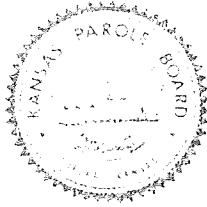
Elwaine F. Pomeroy
Chairman

Frank S. Henderson, Jr.
Vice-Chairman

Joan M. Hamilton
Member

Carla J. Stovall
Member

George Rogers
Member



Micah A. Ross
Director

Sandra K. Smith
Assistant Director

KANSAS PAROLE BOARD
LONDON STATE OFFICE BUILDING
900 JACKSON STREET, 4TH FLOOR
ROOM 452 S
TOPEKA, KANSAS 66612-1220
(913) 296-3469

OUTLINE OF REMARKS

By Elwaine F. Pomeroy

Chairman, Kansas Parole Board

House Judiciary Committee

February 15, 1989

Mixed emotions

No one can question victim's rights

HB 2199 simply recognizes present practice of KPB

Would have small fiscal note for KPB

Some administrative changes

Public comment notices to all county and district attorneys

Not limited on pages 2 and 3 as on page 6

Footnote - prison capacity, page 3

Sentencing commission to consider prison population?

If you want KPB to consider capacity, tell us

If we are not directed to consider capacity, don't expect it

HB 2198 amends same statute as HB 2199

Program agreements are just getting a good start

Would like to get out of program business

Confusion between pass reasons and recommendations

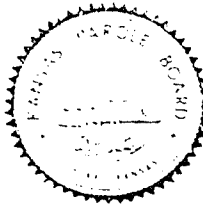
Letter of February 2 to inmate

House Judiciary
2/15/89
Attachment I

Distinction between programs and transitional placements
Could be clarified by an amendment to HB 2284
K.S.A. 22-3726 part of HB 3079 - attached
Does infringe on parole power
DOC is moving cautiously
If DOC carefully screens, KPB would probably agree
Could change wording of 22-3726
Policy matter
Could amend HB 2198 to a repealer only
HD 2198 perhaps is premature
HCR 5008 is broad and vague
Many complications if victims were at actual parole hearings
Scheduling - sometimes 30 or 40 per day
Next week, 198 in five days at Hutchinson
Security considerations
Victims have a right to be heard
That right should be exercised at public comment sessions
As suggested yesterday, statutory approach is better
Footnote - Landmark Hotel situation

*F.J. 2/15/89
Att I*

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February 2, 1989

P.O. Box #2
Lansing, Kansas 66043

Dear Mr. :

We have received your letter of January 5, 1989, and also a letter received in our office on January 18, 1989 from . Both your letter and the letter from state that you have been passed three times since September 1986 for mental health counseling. That is not correct.

On August 27, 1986, you were seen for a parole revocation hearing, at which time your parole was revoked, and you were passed to February 1987. The reason that your parole was revoked and you were passed to February 1987 was that you admitted that on June 9, 1986, you engaged in assaultive activities against a law enforcement officer in Hutchinson. There also was an allegation that you had consumed alcohol to excess on June 9, 1986. Having made the decision that you should serve time until February 1987, we recommended that you participate in substance abuse counseling.

We did not see you in February, 1987, because prior to your hearing, you escaped from the Winfield Pre-Release Center. You and other inmates escaped and stole a truck, and were involved in a highspeed chase. You were convicted of that escape. The board then passed you until May 1988, because you had committed new crimes while incarcerated.

You were next seen on May 23, 1988. You had accumulated six disciplinary reports, including two for hooch, disobeying a direct order, and at least one for disorderly conduct. You said that you didn't use the hooch, you just sold it. The decision was to pass you to January 1989. The reasons for the decision to deny your parole and pass you were your disciplinary infractions and objections that had been received concerning your parole. Having made the decision to pass you to January, 1989, we recommended that you receive mental health counseling, and attend AA and NA.

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You were last seen on December 28, 1988. At that time, you were passed to October, 1989. The reason for your pass was again because of your disciplinary reports. Your disciplinary infractions included serious ones such as threatening, dangerous contraband, disrespect, and disobeying orders. The dangerous contraband was razor blades. The threatening involved your saying "Do you mean I gotta cut his throat before you move me". Having made the decision to pass you to October 1989 because of your disciplinary infractions, we recommended that you participate in mental health counseling and AA/NA.

At no time have you been passed because of a desire for you to obtain mental health counseling. You have been passed because your behavior has been deplorable while incarcerated. You have committed new crimes while incarcerated. You have had serious disciplinary infractions. Kansas law provides that an inmate should be paroled only when the Kansas Parole Board believes that the inmate is able and willing to assume the obligations of a law abiding citizen. Your actions certainly indicate that either you are not able, or are not willing, to be a law abiding citizen. If you are unable to change your behavior without counseling, we hope that you can participate in counseling to assist you in changing your behavior.

Sincerely,

Elwaine F. Pomeroy
Chairman

EFP:ams
cc:

Unit Team

L.J. 2/15/89
Att I

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22-3726. Supervised furlough. The secretary of corrections may place on a six-month supervised furlough any inmate who is classified at a custody level not higher than minimum and who will be eligible for parole under K.S.A. 22-3717 and amendments thereto by the end of the six-month period. If, at the end of the six-month period, the secretary determines that the inmate has successfully completed the furlough, the secretary shall certify that fact to the Kansas parole board, which shall promptly order the inmate's release on parole, without hearing, under the level of supervision specified by the secretary and subject to such conditions as imposed by the board.

History: L. 1988, ch. 115, § 3, May 19.

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