

Approved: Feb 24, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on February 23, 1998 in Room 514-S of the Capitol.

All members were present except: Senator Pugh (excused)
Senator Petty (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Chuck Hensen, Legal Counsel, Kansas Banker's Association
Marilyn Scafe, Chair, Kansas Parole Board
Wendy McFarland, ACLU

Others attending: See attached list

The minutes of the February 19 and February 20 meetings were approved on a motion by Senator Bond and seconded by Senator Oleen with the request by Senator Oleen that the minutes of the February 20 meeting be amended to include "verbal testimony by Conferee Ramirez supported chemical castration of a sex offender prior to his release". Motion carried.

SB 531 - Credit agreements; actions for legal or equitable relief or defenses

Conferee Hensen testified in support of **SB 531**. He presented a history of the statute **SB 531** amends calling it a "statute of frauds". He stated that the purpose of a statute of frauds is reliability and to assure that, the statute requires that an agreement between two parties must be in writing and signed by both parties. He discussed 1989 amendments to the bill which added a "laundry list" excluding certain types of common agreements. He stated that Section 2 of **SB 531** would "clarify what was the original intent of the statute passed 10 years ago, that the requirement a credit agreement be in writing applies both when the alleged credit agreement is the basis for an affirmative action and when it is the basis for an affirmative defense." (attachment 1) Following discussion and clarification regarding the need for this bill, Senator Goodwin moved to pass the bill out favorably, Senator Donovan seconded. Carried.

SB 587 - An act concerning criminal procedure; relating to parole, release procedures and Kansas parole board

Conferee Scafe testified in support of **SB 587**. She discussed the changes that SB 587 affects detailing the following subjects: reorganization of the Parole Board; pro tem members; voting; professional staff; waivers of final revocation hearing; and balloon amendments. (attachment 2) There was discussion regarding the fiscal impact of portions of the bill and Senator Oleen requested the Sentencing Commission respond to this. The Chair requested a formal reply from the Sentencing Commission as soon as possible. There was further discussion among members of the Committee regarding the need to grant more authority to, and provide further management tools for, the Chair of the Parole Board.

Conferee McFarland testified in opposition to **SB 587** stating that the requirement for a unanimous decision on whether or not to grant parole is unfair due to possible "vested interests" on the part of members of the Parole Board who may be influenced in their judgement by personal future goals and ambitions. She stated that she felt the current majority vote is fair. She also expressed concern regarding hearings being conducted by members of the Department of Corrections calling this "ex-post facto violation" unconstitutional and cautioning against conflicts of interest in these cases. She offered a suggestion that independent counselors be chosen by the Parole Board to set hearings. (attachment 3)

The Chair assigned **SB 571** to a subcommittee chaired by Senator Schraad.

SB 577 - Additional district magistrate judge positions of district courts

Following brief discussion regarding **SB 577**, Senator Harrington moved to pass the bill out favorably, Senator Bond seconded. Carried.

The meeting adjourned at 11:10 a.m. The next scheduled meeting is Tuesday February 24.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/23/98

NAME	REPRESENTING
TERESA SAUYA	KDOC
KEVIN GRAHAM	KAN. SENT. COM. M.
Marilyn Scafe	KPB
TELE. M. PARRELL	Judicial Council
Glenn M. Bralitt	KTLA
George Clarke	KCDAA
Heather Randall	Whitney Johnson, P.H.
Kathy Olsen	KBA
Charles Hanson	WBA
Natalie Haag	Governor's office
Ann Dukes	DOB
Vicki Belsel	Budget
Colleen Cain	wichita Eagle
Nancy Lindberg	Atty General
Dan Hokenham	Atty General
Doreen Redje	Federico Consulting
John DiAlain	Sen. Pugh
Kyle Smith	KBI
Matt Goddard	Heartland Community Bankers

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 23, 1998

NAME	REPRESENTING
Kelly Kuetala	City of Overland Park
George W. Henderson	JSA of KS
W. M. Fawcett	KCC
Kathy Porter	OJA

S Jwd
3-98
att 1

S T A T E M E N T

To: The Committee on Judiciary of the Kansas Senate
From: Charles Henson, General Counsel of the Kansas Bankers Association
Date: February 23, 1998
Re: SB 531

Members of the Committee:

The Kansas Bankers Association supports enactment of SB 531, which would amend K.S.A. 16-117 and 118, originally enacted in 1988 and amended in 1989. K.S.A. 16-117 and 118 is a statute of frauds which requires that to be enforceable by the debtor or the creditor, agreements by a financial institution to extend credit must be in writing and signed by the creditor and the debtor, contain a clear and conspicuous notice to the debtor that the writing is the entire agreement between the lender and the borrower, and provide space for any provision of the agreement not in the form to be written in. The statute also requires the debtor and the creditor to sign an affirmation that there are no unwritten oral credit agreements between them.

The 1989 amendments added a "laundry list" excluding certain types of common agreements which, without the exclusion, might be found to be credit agreements and not to satisfy one of the requirements of the statute and therefore be unenforceable. The list is of types of common agreements which, for example, are usually not signed by both parties, or which basically are not agreements for the extension of credit but which might have provisions calling for credit to be advanced in certain situations, etc. To the laundry list, SB 531 would add deposit account agreements and agreements in connection with deposit account agreements for payment of overdrafts, and clarify that both closed-end and open-end promissory notes are excluded from the category of credit agreements.

Section 2 of SB 531 would clarify what was the original intent of the statute passed 10 years ago, that the requirement a credit agreement be in writing applies both when the alleged credit agreement is the basis for an affirmative action and when it is the basis for an affirmative defense. The need for certainty and reliability, which is the need which gives rise to all statutes of frauds, and which a written document supplies, is present when a credit agreement is alleged in order to support, or defend against, an action.

Senate Judiciary
2-23-98
att 1

Subsection (c) of section 2 lists theories which experience shows will be used to attempt an "end run" around the requirement of a written agreement. SB 531 blocks use of these theories to evade the requirement of a written agreement.

The Kansas Bankers Association urges the committee to report SB 531 favorably for passage.

Respectfully submitted,

Charles N. Henson

Marilyn Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson



Bob J. Mead
Member

Larry D. Woodward
Member

KANSAS PAROLE BOARD
LONDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(913) 296-3469

Teresa L. Saiya
Administrator

*STW
-23-87
att 2*

To: **Senator Tim Emert, Chairman**
Committee on Judiciary, Kansas Senate

From: **Marilyn Scafe, Chair**
Kansas Parole Board

Date: **February 23, 1998**

Re: **SB587**
Reorganization of Parole Board and
Waiver of Final Revocation Hearing

In cooperation with the Governor, the Kansas Parole Board is proceeding with the plan to adjust the size of the Board according to the workload and the number of "old law" inmates under our jurisdiction. In FY97, the Board was reduced from five (5) members to four (4) by not filling an expired term. I have attached a report which accounts for the decision based on the official Sentencing Commission numbers and record keeping by our staff. As you can see, tracking started with FY95, which was a response to the 1994 Post Audit Report. Increments of twenty percent (20%) decreases in the workload and inmate numbers were targeted for appropriate timing of the reduction of members. By the end of FY99, projections show approximately thirty-nine percent (39%) reduction of "old law" inmates and twenty-one percent (21%) reduction in hearings. Video conferencing, longer passes, and waivers of final revocation hearings will increase the potential of reducing the hearing numbers even more. Therefore, SB587 is introduced as a plan to reorganize the Board to three full time members effective January 15, 1999.

During the last year, the Board was assisted by the KQM manager of the Department of Corrections in our efforts to define our mission, role, and strategic plan. As a means of assessing the changes in SB587, I refer you to the attachment regarding our role. It is a primary consideration for public safety for the Board to strive for responsible release decisions and quality parole plans. Therefore, it is important to keep in mind that cutting the membership is not the only strategy, and the changes presented in SB587 take into account how the Board will continue to pursue its mission, role, and strategic plan.

*Senate Judiciary
2-23-98
att 2*

22-3707 REORGANIZATION OF THE BOARD:

Number of Positions:

Two of the remaining four positions are due to expire as of January 15, 1999. Only one would be filled.

Qualifications:

Also effective January 15, 1999, the succeeding appointments would be required to meet the qualifications as stated in SB587. A college degree with criminal justice experience would help to ensure that the three members would be fully operational even at a time when new appointments are added. Bringing experience to the position is important when considering the volume of work, the level of decision-making and the limited time available to the three members. The position requiring an advanced degree in behavioral science and experience in delivery of service addresses the numerous mental health and substance abuse issues we must consider, as well as the growing number of inmates who are sex offenders. The Board has begun to communicate expectations and standards for offender behavior. In order to hold offenders accountable to realistic expectations, the Board must be part of a collaborative effort for assessment and planning. Therefore, decisions need to be made by integrating information from many agencies and resources. Experience and knowledge enable the Board to comprehend and use the available information in the best interests of the inmate and the community.

22-3707: PRO TEM MEMBERS

Extended absence due to illness or other leave and conflict of interest issues which would require a member to refrain from voting have been mentioned as concerns for reducing the Board. In the event of one of these occurrences, there would not be sufficient members for a vote. Allowing the Governor to appoint a member pro tem will address this concern. Pro tem members would meet the same requirements as regular members. The Governor would determine the compensation for such services. This appointment is not subject to confirmation and is temporary. With the addition of professional level hearing officers for support to the Board, there would most likely be limited use of the pro tem members.

22-3709: VOTE

The action of the Board will be determined in the following manner:

Parole for C, D, and E felony releases and subsequent A and B releases- 2 of the 3 vote "yes" to parole.

Parole for first time A and B felony releases- All 3 vote "yes" to parole.

Revocation of any type of release- 2 of the 3 vote "yes" to revoke.

The above voting system takes into account that first time released A and B felons continue to be held to a higher standard for release. There would be no change from the current system for the remaining votes. There is no change in the number of votes for parole.

22-3713: PROFESSIONAL STAFF

This change provides for the addition of two professional level positions to the Department of Corrections staff which supports the Board. These hearing officer/parole examiner positions are the final piece of the 1994 Post Audit recommendations. There is an additional benefit of accountability, since these are classified positions and will be supervised and evaluated for effectiveness. Further, these positions are added at no additional cost. These positions would assist the Board in the following manner:

- Research cases and analyze offender files to seek out information which may be missing, inaccurate, incomplete, or outdated.
- Provide more comprehensive information in a consistent format by which all cases will be analyzed.
- Apply a risk/needs instrument if one becomes available.
- Provide more "two person panels" for hearings
- Provide more comprehensive parole planning by improved coordination with the Department of Corrections.
- Implement consistent criteria by which data can be collected and decisions can be evaluated.
- Provide data necessary for Board policy to become more data driven.

75-5217: WAIVER OF FINAL REVOCATION HEARING

Under the current law, all offenders must have a personal interview with a Board member in order to revoke a period of post release, parole, or conditional release supervision. SB587 would allow offenders under the determinate sentences to waive their appearance at the final hearing, thus allowing the Board to make administrative decisions regarding revocation. The Board would continue to have the responsibility to oversee and review all cases to ensure that due process is afforded. If deemed necessary, the Board could set a hearing even if the offender waives. If there are pending charges, the offender will not be eligible to waive the final hearing. The Department of Corrections would be responsible for the timing of the waiver and the full explanation of the rights waived and the consequences thereof.

At this time, offenders serving indeterminate sentences whose releases are governed by the Kansas Parole Board, will not be given the opportunity to waive their final hearings. Wide discretion exists for setting penalties and planning release in those cases. Therefore, it is felt that personal interviews are needed in order to determine the length of pass and recommendations for programs and treatment.

Benefits of the waiver of the final revocation hearing for post release violators are:

- Time (90 or 180 days) would start with the signing of the waiver rather than the appearance before the Board. This is congruent with the legislative intent for violators.
- Per the fiscal note of the Department of Corrections, there will be a positive impact on bed space.
- This is an efficient way of handling post release violators for the Board. If the offender admits to guilt on all violations or has a new conviction, upon revocation, the Board has limited or no discretion for penalties.
- Since it is the offender's decision to waive, there will be fewer appeals to process.
- There should be a reduction in the number of revocation hearings held.

Handwritten mark resembling a stylized 'A' or 'E' with a horizontal line through it.

1 governor, subject to the budget limitations of the Kansas parole board,
2 and shall receive subsistence allowances, mileage and other expenses as
3 provided in K.S.A. 75-3223 and amendments thereto.

4 Sec. 2. K.S.A. 1997 Supp. 22-3709 is hereby amended to read as
5 follows: 22-3709. (a) (1) The chairperson and vice-chairperson of the Kan-
6 sas parole board shall be designated by the governor. The chairperson of
7 the board shall have the authority to organize and administer the activities
8 of the board.

9 (2) Prior to January 15, 1999, the chairperson of the board may des-
10 ignate panels, consisting of three members of the board, which shall have
11 the full authority and power of the board to order the denial, grant or
12 revocation of an inmate's offender's parole or conditional release, or for
13 crimes committed on or after July 1, 1993, grant parole for off-grid crimes
14 or revocation of postrelease supervision or to order the revocation of an
15 inmate's offender's conditional release, upon hearing by one or more
16 members of the panel.

except as provided by (b)(1);. A hearing may be conducted

17 (3) On or after January 15, 1999, the chairperson of the board may
18 designate panels, consisting of two members of the board, which shall
19 have the full authority and power of the board to order the denial, grant
20 or revocation of an inmate's parole or conditional release, or for crimes
21 committed on or after July 1, 1993, grant parole for off-grid crimes or
22 revocation of postrelease supervision or to order the revocation of an
23 inmate's conditional release, upon hearing by one member of the panel.

except as provided by (b)(2);. A hearing may be conducted

24 (b) (1) Prior to January 15, 1999, any decision of the Kansas parole
25 board granting original parole to an inmate offender sentenced for a class
26 A or class B felony or for off-grid crimes committed on or after July 1,
27 1993, shall be by unanimous vote of all members of the three-member
28 panel acting on such parole except that, if two members of such panel
29 vote to parole the inmate offender, the full membership of the board shall
30 review the decision of the panel and may parole such inmate offender
31 upon the vote of three members of the board.

32 (2) On or after January 15, 1999, any decision of the Kansas parole
33 board granting original parole to an offender sentenced for a class A or
34 class B felony or for off-grid crimes committed on or after July 1, 1993,
35 shall be by action of the Kansas parole board upon the unanimous vote
36 of all members of the board acting on such parole.

37 Sec. 3. K.S.A. 1997 Supp. 22-3713 is hereby amended to read as
38 follows: 22-3713. (a) The Kansas parole board may authorize one or
39 more of its members to conduct hearings on behalf of the parole board.

40 (b) (1) For any hearing or hearings which the Kansas parole board
41 is required or authorized to conduct under K.S.A. 22-3717 through 22-
42 3727 and amendments thereto, the parole board may refer such hearing
43 or hearings to an employee of the department of corrections, who shall

2-5

1 ~~be designated by the chairperson of the parole board in accordance with~~
 2 ~~procedures prescribed by rules and regulations adopted by the parole~~
 3 ~~board, to conduct such hearing or hearings without the presence of the~~
 4 parole board or any member thereof. Each such hearing shall be con-
 5 ducted by the hearing officer in accordance with procedures prescribed
 6 by rules and regulations adopted by the parole board. After each such
 7 hearing, the hearing officer shall prepare a written report setting forth
 8 information about the offender who is the subject of the hearing and shall
 9 make a recommendation to the parole board.

with the consent of the secretary of corrections,

10 (2) After each such hearing, a parole board panel established under
 11 K.S.A. 22-3709 and amendments thereto, shall review the information and
 12 recommendation provided by the hearing officer. The panel shall affirm,
 13 modify or reject the recommendation. If the recommendation is affirmed,
 14 then that recommendation shall constitute an order of the parole board
 15 and no further action shall be required by the parole board. If the rec-
 16 ommendation is rejected, then a parole board panel established under
 17 K.S.A. 22-3709 and amendments thereto shall conduct a new hearing. If
 18 the recommendation is modified, then a parole board panel established
 19 under K.S.A. 22-3709 and amendments thereto shall determine whether
 20 the modification is of a substantive nature requiring a new hearing. If it
 21 is determined that the modification of the recommendation is of a sub-
 22 stantive nature requiring a new hearing on the matter, then a parole board
 23 panel established under K.S.A. 22-3709 and amendments thereto shall
 24 conduct the new hearing. If it is determined that the modification of the
 25 recommendation is not of a substantive nature, then that recommendation
 26 shall constitute an order of the parole board and no further action shall
 27 be required by the parole board.

28 (3) As used in this section and in K.S.A. 22-3717 and amendments
 29 thereto, "hearing officer" means any hearing officer of the department of
 30 corrections or any other qualified employee of the department of correc-
 31 tions designated by the Kansas parole board for the purposes acting as a
 32 hearing officer for the Kansas parole board for purposes of conducting
 33 hearings under K.S.A. 22-3717 through 22-3727 and amendments thereto.

34 (c) The secretary of corrections shall provide the Kansas parole board
 35 with necessary personnel and accounting services.

36 Sec. 4. K.S.A. 1997 Supp. 22-3717 is hereby amended to read as
 37 follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A.
 38 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-
 39 4638 and amendments thereto, an inmate offender, including an inmate
 40 offender sentenced pursuant to K.S.A. 21-4618 and amendments thereto,
 41 shall be eligible for parole after serving the entire minimum sentence
 42 imposed by the court, less good time credits.

43 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and

2-6

1 is subsequently arrested in another state pursuant only to the secretary's
 2 warrant, the released inmate's offender's sentence shall not be credited
 3 with the period of time from the date of the issuance of the secretary's
 4 warrant to the date of the released inmate's offender's arrest, regardless
 5 of whether the released inmate's offender's presence in the other state
 6 was authorized or the released inmate offender had absconded from su-
 7 pervision.

8 The secretary may issue a warrant for the arrest of a released inmate
 9 offender for violation of any of the conditions of release and may direct
 10 that all reasonable means to serve the warrant and detain such released
 11 inmate offender be employed including but not limited to notifying the
 12 federal bureau of investigation of such violation and issuance of warrant
 13 and requesting from the federal bureau of investigation any pertinent
 14 information it may possess concerning the whereabouts of the released
 15 inmate offender.

16 (f) Law enforcement officers shall execute warrants issued by the
 17 secretary of corrections pursuant to subsection (a) or (d), and shall deliver
 18 the inmate offender named therein to the jail used by the county where
 19 the inmate offender is arrested unless some other place is designated by
 20 the secretary, in the same manner as for the execution of any arrest war-
 21 rant.

22 Sec. 6. K.S.A. 75-5217 and K.S.A. 1997 Supp. 22-3707, 22-3709, 22-
 23 3713 and 22-3717 are hereby repealed.

24 Sec. 7. This act shall take effect and be in force from and after its
 25 publication in the Kansas register.

statute book.

Attachment 1

Inmates Under Old Law as of June 30th, 1997
(End of FY 1997)*

6/30/95 (actual)	6/30/96 (actual)	6/30/97 (actual)	6/30/98 (projected)	6/30/99 (projected)	6/30/2000 (projected)
4802	4424	3929	3611	2940	2420

*Numbers provided by the Sentencing Commission.

Hearing Numbers

	6/30/95	6/30/96	6/30/97	Projected 98	Projected 99
Parole Eligible	3601	3235	2765	2627	2496
Violation	1998	1701	1884	1931	1931
Total	5599	4936	4649	4558	4427
		12% reduction from FY 95	17% reduction from FY 95*	18% reduction from FY 95	21% reduction from FY 95

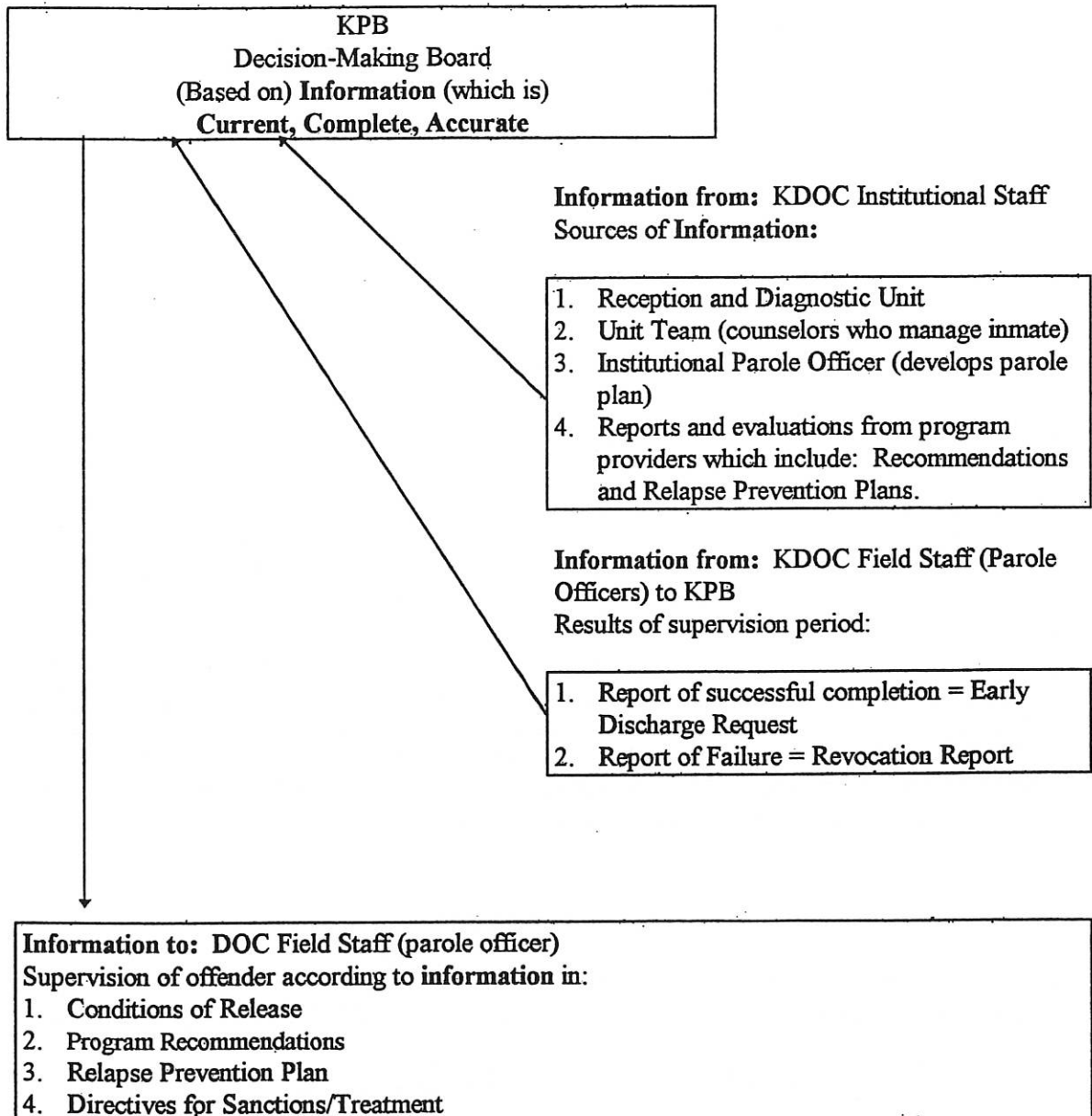
*Amount of reduction did not equal that of the reduction of staff/board members. However, it is felt that video-conferencing will help compensate. The change in statute which allows for the KPB to pass offenders for a longer time should result in a minor reduction in workload.

File Reviews

	FY 1996	FY 1997	Projected 98	Projected 99
File Reviews	2587	4676	4790	4885

ROLE OF THE KANSAS PAROLE BOARD

The *quality* and the *flow* of the *information* is the concern of the Board. As a service to all Kansans, the KPB can function as a public safety check and balance. In the flow of information, shortcomings have been identified and can be corrected. Our strategic plan is designed to address some of these problems. During the decision-making process, the information is examined for quality. Information must be assessed as **Current, Complete, and Accurate** to ensure the best possible decisions and release plans. Anything less than this leaves Kansans vulnerable to assuming that the system has done all it can to provide for its safety



Marilyn Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Bob J. Mead
Member

Larry D. Woodward
Member



KANSAS PAROLE BOARD
LONDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(913) 296-3469

Teresa L. Saiya
Administrator

MEMORANDUM

**From: The Kansas Parole Board
Marilyn Scafe, Chair
Leo Taylor, Vice Chair
Bob Mead, Member
Larry Woodward, Member**

Re: Parole Board Expectations Regarding Treatment Programs

Date: September 1, 1997

After careful consideration, the Kansas Parole Board has agreed to the following expectations relative to decisions for inmates assigned to treatment programs.

Compliance with treatment recommendations will be the expectation. Performance while in attendance of treatment programs will be noted by the Board and considered when making all decisions about an individual inmate. Upon final discharge from the program, all aftercare recommendations in the summary report given to the Board should be followed. An acceptable relapse prevention plan must be presented prior to release, and the inmate must agree to supervision of that plan by the field officer. These requirements are the means by which the degree of accountability and recovery are established.

Relapse Prevention Plan

The written plan or any revision of existing plans should be submitted to the Board at the hearing. All plans should be given to the Unit Team so they can be forwarded to the field upon release. Inmates or releasees with inappropriate plans or no plans may be referred to the treatment provider for further work. Failure to comply will be considered relapse.

2-9

~~2-8~~

Program Recommendations for Aftercare

During incarceration, recommendations for aftercare:

- Will be discussed at hearings for consideration for release.
- Will be considered when making Board recommendations at the time of a pass for future hearing date.
- If not in compliance, the Board will consider the inmate as currently in relapse.
- If a recommended support group such as AA/NA is not available, the inmate should take the initiative to help start one.

While on supervision in the community, compliance with recommendations for aftercare:

- Will be a standard condition of release.
- Will be included in the relapse prevention plans sent to the supervising field officer.
- Will be considered and discussed if returned to the Board as a violator.

The Board will be in support of all program recommendations, especially the substance abuse and sex offender programs. As well as being a statutory requirement, treatment programs are viewed by the Board as necessary for public safety and the successful reintegration of the offender into the community.

Stud 2-23-98
att 3

American Civil Liberties Union of Kansas and Western Missouri

Wendy McFarland/Lobbyist (785) 233-9054

Recommendations on SB 587 Concerning Parole Board
Presented to the Senate Judiciary
February 23, 1998

1) **The ACLU opposes the new requirement for a unanimous vote by the 3 member board to grant paroles after Jan. 15, 1999.** No less than 6 former members of the Kansas Parole Board and two former Secretaries of Corrections feel the addition of this requirement would virtually guarantee no paroles. Historically, members of this board have rarely agreed on any one inmate's parole consequently most paroles were granted by a majority vote if parole was even granted.

EXPLANATION: With the knowledge that 2 recent and very prominent members ran for higher office on the platform of having been the consistent "NO" votes for parole, it is easy to see how one ascribing to higher office could easily vote against any parole realizing the political liability of granting parole to one who might recommit a crime. Do you really want this heretofore independent body of jury to become a prisoner to the vote of only one of its members? To avoid allowing one potentially biased member the ability to cancel out every other members vote, we urge you to leave intact the reasonable requirement of a majority vote from those vested with the trust to arrive at fair decisions.

2) **The ACLU opposes the use of Kansas Dept. of Corrections employees to act alone in the capacity of parole board members.** With the recent reductions of the size of the board taking the state from 5 members to 3 by 1999, the board appears to be requesting the assistance of the Dept. of Corrections in providing them with officers to handle all of the hearings they are authorized to conduct.

EXPLANATION: Admittedly, inmates are not guaranteed the same due process those only charged with crimes are however the US Supreme Court has ruled that partial due process must be availed. The mixing of duties that were intended to be performed by those independent of influence with those who are charged with the duty of incarceration presents an obvious conflict of interest that could easily manifest itself in unfair hearings. The elimination of two \$80,000 per year positions on the board should be used to hire independent attorneys employed by the board to conduct hearings and make recommendations if it is necessary which we think it is not.

Senate Judiciary
2-23-98
att 3

With the virtual elimination of indeterminate sentencing, the parole board should be seeing far fewer inmates than ever before and after inmates sentenced under old law eventually leave the system, there will be little need for parole boards at all. At sentencing, an individual is given a contract he must fulfill to society. Part of this contract included the promise of parole hearings before the parole board. The prevailing sentiment of late among many elected officials is one of total disregard for the treatment of those who would break the law and end up in our penal system.

Retroactive changes though concerning what constitutes a resentencing to most inmates, seems hardly fair for a country that prides itself on honesty and fairness. For those of you who are lawyers, there is a very real possibility that the courts would see this and the unanimous vote requirement as an ex-post facto violation which the US Constitution disallows. An ex-post facto violation means the increase in severity of one's sentence after it has been given and this would constitute then a violation of Constitutional law. The ACLU cannot predict what a court would rule on that argument but we can predict the matter would most assuredly be litigated by someone.

If we are to instill in people a respect for the democratic process which is how the free world attempts to live, then shouldn't we at least set an example for one who is sentenced that those who seek to punish and rehabilitate him can be trusted to keep their word and avail that person an opportunity at some later date to appear before an independent body of jurists who will base decisions on parole, not only on the word of a person employed by the agency who jails him, but on their own review and investigation of this persons record of incarceration.

Giving an inmate the rare opportunity to appear as a human being before human beings that can ask questions and have them answered is just and fair under the laws of our civilized state.