Approved: March 24, 1999
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:10 a.m. on March 16, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Becker, Excused

Committee staff present: Russell Mills, Legislative Research Department
Theresa Kiernan, Revisors of Statutes
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Senator Gooch
Jeremy Anderson, Adm. Dir. Senator Hensley
Joseph Ledbetter
TreMayne L. Akins
Terrella Akins
Secretary Chuck Simmons, Dept. of Corrections

Others attending: See Attached Sheet

Russell Mills reviewed **SB 317 - Paternity, revocation of acknowledgment; time limit** and **SB 322–Special Medical parole** for the committee. Under existing law an action to revoke acknowledgment must be brought while the child is less than 1 year old. **SB 317** would permit the acknowledged father to file an action to revoke the voluntary acknowledgment at any time if genetic testing determines that the man is not the biological father.

SB 322, creates a new law which would allow either the inmate or the secretary of corrections to request a special medical parole if the inmate should be diagnosed with a terminal illness and the inmate would not live to serve the term to which sentenced.

Chairman Oleen opened hearing on **SB 317- Paternity, revocation of acknowledgment; time limit**

Chairman Oleen recognized Senator Gooch, a proponent of **SB 317.** Senator Gooch stated that the courts have ruled that DNA testing may be used to confirm a man is the father but, DNA cannot be used to release him of all legal responsibilities if he has been paying child support for one year or more. (Attachment 1) As the law is now written, the mother can at anytime before the child reaches the age of 18 accuse a man of, or use DNA testing to prove paternity, yet the man has only year after the claim is made against him to prove he is not the father. He stated that most of the time the man isn't made aware of this time limit. The law puts an unfair burden on the man and should be corrected.

Chairman Oleen called on Jeremy Anderson, Administrative Director for Senator Hensley. Mr. Anderson spoke as a proponent for **SB 317.** (Attachment 2). He provided information from an actual case that had been filed where a man had been determined by the court in 1996 as a father of a child born in 1989. In 1998 this man had genetic testing done which shows zero percent probability that he is the actually the father. The court followed the law and showed that because he was not presenting this genetic evidence within one year of the child's birth that the court couldn't take away his paternity status. He was ordered to continue to pay the child support.

Chairman Oleen recognized Joseph Ledbetter, Topeka as a proponent for **SB 317.** Mr. Ledbetter stated that he supports this bill because it creates a fairness issue and due process.(Attachment 3). If DNA can convict then it should also set one free of a charge. Mr. Ledbetter stated that if DNA can set someone free in a criminal matter who has been falsely accused, it should be allowed in the civil courts also.

TreMayne Akins was introduced by Chairman Oleen as a proponent for **SB 317.** Mr. Akins stated that as the law stands now, he is responsible for child support for a child that DNA testing has shown there is a zero percent probability that he is the father.(Attachment 4). He stated that he did not have the DNA test performed before the time limit which is before the child is one year old. Under the current law he is required to pay child support for this child until the child reaches the age of 18.

Chairman Oleen called Terrella Akins, a proponent to **SB 317.** Ms. Akins stated that the present law is unfair when it requires a man to pay child support after DNA testing has proven that there is zero probability of being the father. (Attachment 5).

Several questions were raised by the committee concerning the fact that the bill only addresses a case where acknowledgment of paternity has been made.

The hearing on **SB 317** was closed by Chairman Oleen..

Chairman Oleen opened the hearing on **SB 322-Special medical parole**

Chairman Oleen recognized Senator Gooch, as a proponent. Senator Gooch stated this bill would allow terminally ill inmates who had not committed a crime against persons, who is not serving a mandatory sentence or has any restriction on parole eligibility to be released by the board on a special medical parole. (Attachment 6). Information gathered indicates early release of terminally ill inmates might be cost effective by saving space and reducing the cost of providing additional beds in our overcrowded prisons and jails.

Written testimony supporting **SB 322** from Marilyn Scafe, Chair of the Kansas Parole Board, stating that the Board does not have any objections to making these decisions according to the provisions in the bill.(Attachment 7).

Patricia Jackson, Wichita, Kansas also provided written testimony in favor of **SB 322**.(Attachment 8)

Chairman Oleen recognized Chuck Simmons, Secretary of Kansas Department of Corrections(KDOC). Secretary Simmons stated that he was not opposed to the bill but did want to bring several points to the attention of the committee. (Attachment 9) The process that is described in the bill currently exists in a different form. The Governor is currently allowed to commute the sentence of any person convicted of a crime in any court of the state upon such terms and conditions as prescribed in the order granting the pardon or commutation under KSA 22-3701. That process involves the parole board since the parole board reviews all pardons or commutation of sentencing and makes a recommendation to the Governor under what circumstances or conditions exist. Secretary Simmons noted that KDOC does not anticipate any reduction in expenditures for inmate medical care if the bill passes, since contract payments are not based on straight pass-through costs. It is likely that the costs of caring for terminally ill offenders released under the bill's provisions would shift to other agencies, since these offenders are not likely to be covered by health insurance. Secretary Simmons suggested **SB 322** be amended to ensure conformity to requirements for continued state eligibility under the federal Truth-in-Sentencing grant program, a provision should be added requiring that the Kansas Parole Board (KPB)adopt criteria and guidelines for determining that a prisoner's medical condition is such that he or she no longer poses a threat to the public. He also recommended that the bill be amended to make it clear that all existing public comment and victim notification requirements shall also apply to the KPB's consideration of special medical paroles.

In response to committee questions about medical expenses, Secretary Simmons stated that because the cost of medical treatment is on a contract basis, there would be no reduction of cost to the department, but there would probably be an increase cost to another agency upon release.

Chairman Oleen closed the hearings on **SB 322.**

After discussion regarding Thursday's hearing, the committee agreed to meet for 2 hours from 11:00 a.m. until 1:00 p.m. to allow hearings for **SB 329** and **SB 330.**

The meeting adjourned at 12:05 p.m. The next meeting of the committee will be March 17, 1999, beginning at 11:00 a.m. in Room 313-S.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: MARCH 16, 1999

NAME	REPRESENTING
Terrella M. Akins	
Ruth L Porter	
TreMayne L. Akins	
Greg De Backer	National Congress for Fathers & Children
Joseph Leibetter	Father
Roslyn James-Martin	SRS - Children & Family Services
Charles Simmons	Department of Corrections

STATE OF KANSAS

U. L. "RIP" GOOCH
SENATOR, 29TH DISTRICT
SEDGWICK COUNTY

STATE CAPITOL BUILDING
ROOM 404-N
TOPEKA, KANSAS 66612-1504
(913) 296-7387
12 CRESTVIEW LAKES ESTATE
WICHITA, KANSAS 67220
(316) 684-2824

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: LOCAL GOVERNMENT
MEMBER: COMMERCE
FEDERAL & STATE AFFAIRS
GOVERNMENT ORGANIZATION
JOINT COMMITTEE ON RULES & REGULATIONS
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

To The Chairman, Members of the Federal & State Affairs Committee

Madam Chairman:

Senate Bill 317

I proposed this measure to correct what seems to be an unfair legal judgment. This matter was brought to my attention by a young man who is being forced to pay child support for a child he did not father but was identified as the father and ordered to pay child support on the mother's word only.

The courts have ruled that DNA testing may be used to confirm a man is the father but, cannot be used to release him of all legal responsibilities if he has been paying child support for one year or more.

As the law is now written, the mother can at anytime before the child reaches the age of 18 accuse a man of, or use DNA testing to prove paternity, yet the man has one year after the claim is made against him to prove he is not the father. Most of the time the man isn't made aware of this time limit. But, even if he is aware, doesn't it seem unfair that he has only one year to disprove an accusation and the other party has 18 years to level the accusation. Not to

Sen. Federal & State Affairs Comm
Date: 3-16-99
Attachment: # 1-1

mention the cost involved in having a DNA test.

The young man that brought this to me and asked for my help, borrowed the money to have the testing done. The DNA Parentage Test Report stated the probability of paternity was 0%

Yet, the judge, following the law, could not relieve him of this unfair child support judgment. I say to you that this is wrong, this law needs to be amended.

If genetic testing determines the man named as father, is not the father, an action to revoke the acknowledgment of paternity should not be limited to one year but should be applicable when the `information is obtained.

This bill would allow the man anytime before the child reaches the age of 18 to disprove paternity and allow him to discontinue child support.

The pendulum of justice must swing both ways. This law puts an unfair burden on the man and should be corrected.

TER, HINKEL & AADALEN, LLP
01 S.W. 29th Street
P.O. Box 5514
Topeka, KS 66605
Phone: (785) 266-5121
Facsimile: (785) 266-2116

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION TWO

STATE OF KANSAS, ex rel.
SRS,

Plaintiff,

v.

[redacted]

Defendant.

Case No.: [redacted]

MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER

On November 6, 1998, defendant [redacted] filed a Motion to Set Aside the judgment entered against him on October 10, 1996. The judgment found Mr. [redacted] to be the father of A.D.D., born 2/12/89 and established a duty to support the child. This court in its decision of January 22, 1999, determined that the Motion to Set Aside the Judgment should be denied.

FACTS

The defendant concurs with the facts as set forth in the court's Order of January 22, 1999.

ARGUMENT

I. **Best Interest of the Child**. There have been many cases both before and since In Re Marriage of Ross, 245 Kan. 591,783 P.2d 331 (1989), that have uniformly reiterated the overriding public policy regarding children to determine what is, "in the best interests of the child". Various fact situations have occurred, but they have all concluded that the paramount and controlling interest is what is in the "best interest of the child." See Wilson v. Wilson, 16 Kan. App. 2d 651. Public policy of Kansas has long been that the best interest of the child usurps all other considerations when children are involved, be it custody issues, paternity issues or guardianship issues.

With the above in mind, the court had the opportunity using K.S.A. 60-260(b)(6) to assume its rightful obligation of determining what is in the best interest of A.D.D. Notwithstanding that opportunity, this court chose to disregard that consideration and decide this case merely on the issue of the filing of the Motion "within a reasonable time." The court correctly cited various cases which construe the definition of "reasonable time." However, those cases dictate that the court consider "all" circumstances. See Neehamb v. Young, 205 Kan. 603, Wilson v. Wilson, 16 Kan. App. 2d 651, Jones v. Smith, 5 Kan. App. 2d 352, and In Re Marriage of Larson, 257 Kan. 456.

In the present case, not only did the court not consider all the circumstances; this court did not consider the most important circumstance, i.e. what is in the "best interest of the child." It is patently unfair for the court to terminate these proceedings without making the most important judgement that the law mandates. For example purposes only, what if the facts should reveal that the defendant has only seen the child once or

twice in the last six years? What if the facts should reveal that the child and his mother have lived with a dozen other men, all of whom the child may have been told at one time or another, was his father? What if the facts reveal that this child has never believed that [redacted] was his father? What if the facts should reveal that [redacted] is a child molester, and the child would be relieved to know he was not his father? What if!

The Larson case referred to above, i.e. 257 Kan. 456, said that; "reasonable time is ... a question left to the discretion of the trial court. The determination depends upon the facts of each case, considering the interest in finality, the reasons for the delay, the ability of a litigant to learn earlier of the grounds relied upon, and any prejudice to the parties." The defendant would submit that the most important of the above is "facts of each case." However, once again, in this situation the court never allowed the parties to get to the facts of the case because of the ruling that the Motion should be denied.

What is in the best interest of the child? All other considerations must take a back seat. If this case involved property interests, real estate issues, stocks, bonds, bank accounts, etc., the ruling of the court would be perfectly appropriate. However, when a nine-year old child is involved on an issue so critical as determination of paternity, the court should be very slow to terminate the inquiry and quick to search for what is truly in the "best interest of the child."

II. **Undermining the Integrity of the Judicial System**. The court acknowledged at the previous hearing that it was accepting as only a proffer the representations of defendant that blood tests had proven that he had a zero percent (0%) chance of being the father of A.D.D. Defendant agrees this was a correct ruling. Obviously, the court cannot

accept as fact mere assertions of counsel for defendant. However, the court knows that counsel for defendant would not make such a proffer if he were not convinced that the evidence would prove him correct. Presuming for a moment that if permitted to proceed, the evidence will show that [redacted] is not the father of this child, what does that say to the community about the legal system?

The court knows that [redacted] is not the father. SRS knows that [redacted] is not the father. [redacted] knows he is not the father. [redacted] knows that the defendant is not the father, and most importantly A.D.D. will certainly know that [redacted] is not his father.

The defendant submits that evidence, if allowed to proceed, would show that he has not established a father/son relationship with A.D.D. He has seen the child, according to his Affidavit only two or three times since the early nineties. If the ruling is allowed to stand, [redacted] will be obligated to pay child support until the child reaches age eighteen (18). Child support for a child that everyone in the community knows is not his.

Admittedly, [redacted] has not always acted responsibly in responding to the various legal proceedings that have been filed against him. Admittedly, these issues could have been brought to the court's attention sooner, and admittedly, it would have worked less hardship upon the courts and all involved to have these issues resolved several years ago. Ideally, all of those things would have happened, but they did not. Is that reason enough for the Court and all involved to put their collective heads in the sand and pretend that [redacted] is the father of A.D.D? Our system of justice is given some difficult situations to resolve. Even though [redacted] actions have put the

court in an awkward position, the court is still obligated to hear all the evidence and reach the proper and just solution, whatever it might prove to be.

CONCLUSION

The defendant respectfully requests that the court reconsider its earlier order and find that a Ross hearing should be held to determine what is in the best interest of the minor child. In order to do so, the guardian ad litem should be allowed to complete her work, testimony should be presented to the court, and the decision should be made based upon all of the circumstances. Unless that is done, the system will have short-circuited and failed both the defendant, and more importantly, the minor child.

Respectfully submitted,

Michael Clutter, #7265
CLUTTER, HINKEL & AADALEN, LLP
2201 S.W. 29th Street
P.O. Box 5514
Topeka, KS 66605
Phone: (785) 266-5121
Facsimile: (785) 266-2116

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the pleading was deposited in the United States mail, first class postage, pre-paid, on the 1st day of February, 1999, addressed to the following:

Mr. Mark White
Topeka Area SRS Office
P.O. Box 1424-304-G
Topeka, KS 66601

Ms. Nancy E. Freund
MURPHY & FREUND
1611 S.W. 37th Street
Topeka, KS 66611

Michael Clutter

DNA Parentage Test Report

DNA DIAGNOSTICS CENTER

Report Date 10/13/98

2551 13

Case 30605	MOTHER	CHILD	Alleged FATHER
Name	Not Tested	[redacted]	[redacted]
DoB - Race		2/12/89	8/5/71 Black
Date Collected		9-28-98	9-28-98
Test No.		[redacted]	[redacted]

Results	Allele Sizes	Allele Sizes	Allele Sizes
D2S44 pYNH24 *Hae III* PI **0.00**		1.76	1.92 1.62
D4S163 SLI604 *Hae III* PI **0.00**		4.67 4.05	4.93 4.56
D6S132 SLI1090 *Hae III* PI **3.23**		3.19 1.85	1.85 1.14
D10S28 TBQ7 *Hae III* PI **0.00**		3.31 2.68	8.08 4.83

Interpretation

Combined Paternity Index **0**

Probability of Paternity **0 %**

The alleged father, [redacted], is excluded as the biological father of the child named [redacted]. The alleged father lacks the genetic markers that must be contributed to the child by the biological father. Based on testing results obtained from DNA probes: D2S44, D4S163, and D10S28, the probability of paternity is 0%.

Subscribed and sworn before me on Tuesday, October 13, 1998.

Edward Harris

Edward Harris, Notary Public, State of Ohio
My Commission Expires July 23, 2003.

I, the undersigned, verify that the interpretation of results is correct as reported, and the testing procedure was conducted in accordance with the recommended guidelines for DNA testing set forth by AABB.

Susannie C. Lee

Susannie C. Lee, Ph.D.
Associate Director

225 CORPORATE COURT FAIRFIELD OHIO 45014 PHONE 513.881.7800 FAX 513.881.7803

2-6

REFERENCE SB 317 ; PROPONENT
3-16-99

I am for this bill because it creates fairness ,and due process which is supposed to be the life blood of our so-called Courts of Equity.If DNA can convict then it should can, and should set one free of a charge.

No man or woman is interested in paying child support for life on a child they have been falsely accused of being the parent for the financial gain of the accuser. It is wrong to ignor the scientific evidence and continue to levy court orders based on a falsehood ,in fact it appears fruadulent.

Joseph Ledbetter,father
305 Country Club Drive
Topeka,Kansas 66611
232-6946 ph

CRYU J58 SN. CO. DEPT. OF CORRECTIONS / YOUTH CENTER 02/09/99 11:58:
RBAE RBAU RESIDENT ADMISSION SCREEN FUNCTION:
87 0121 0 003 AKINS, TREMAYNE

PF10 = HELP

ADMISSION DATE: 02/16/88 TIME: 19:33 SPECIALIST: Y009 MARY TELLER

OFFENSE: 65-4127 B PDM

REASON FOR ADMISSION: 02 MISDEMEANOR

ARREST AGENCY: SNSO OFFICER: MECHLER AGENCY CASE#: 88-01278
ARREST AGENCY ORI KS-
ADMISSION AUTH: SNSO SOCIAL WORKER: Y018 SALLY BARTLETT
- -
DETENTION HEARING DATE: 02/17/88 TIME: 13:30
PERSON NOTIFIED: TERRELA AKINS NOTIFY DATE: 02/16/88 TIME: 19:29 HOW: T
ADJUDICATION DATE: 00/00/00 DISPOSITION DATE: 00/00/00
MED.SUM.?: N MED.CARD?: Y MEDICATN.?: N ED.REPT.?: N OTHER?: N
COURT CASE#:
SRS WORKER: SUSAN KELLY SRS COUNTY: 89 SRS CUSTODY DATE: 02/17/88
ATTORNEY: C.S.O.: JOAN WHELAN
FELONY STATUS: NOT APPLICABLE O.T.A. DATE: 00/00/00 TIME: 0:00
NOTICE: CIVIL & CRIMINAL PENALTIES EXIST FOR MISUSE & UNLAWFUL DISSEMINATION
STATUTE CODE NOT FOUND AS ENTERED

CRYU140 J58 SN. CO. DEPT. OF CORRECTIONS / YOUTH CENTER 02/09/99 11:55:46.1
RBAE RBAU DISCHARGE SCREEN FUNCTION:
PF10 = HELP
87 0121 0 003 AKINS, TREMAYNE

RELEASE DATE: 03/04/88 TIME: 8:42 SPECIALIST: Y023 RUTH ANN BLAIR

RELEASE STATUS: 3 REL. PRE-ADJUDICATN AUTHORITY: MITCHELL

RELEASE TO WHOM: SUSAN KELLY TO: 7 OTH.NONSECURE FACIL*

DESTINATION: ADOL CENTER OLATHE

SEND MEDICAL CARD

NOTICE: CIVIL & CRIMINAL PENALTIES EXIST FOR MISUSE & UNLAWFUL DISSEMINATION

Johnson County
ntal Health Center

Adolescent
Center for
Treatment

Intermediate Treatment
301 N. Monroe
Olathe, KS 66061
(913) 782-0283
FAX (913) 782-0609

Outpatient Treatment
1125 W. Spruce St.
Olathe, KS 66061
(913) 782-2100
FAX (913) 782-1186

02/15/99

TreMayne L. Akins
2331 S.E. Adams
Topeka, Ks 66601

Dear Sir:

The Information requested is as follows:

NAME: TreMayne L. Akins SS#515-76-8573
DOB: 08/05/71

Admitted to ACT: 03/04/88

Discharged from ACT: 04/21/88

Group HomePlacement information & date of Return to Topeka will have to be provided by SRS.

Sincerely,

Alice F. Posch

Alice F. Posch

3-3
3-2

CRY) J58 SN. CO. DEPT. OF CORRECTIONS / YOUTH CENTER 02/09/99 12:0 .8
RBA .BAU RESIDENT ADMISSION SCREEN FUNCTION:
87 0121 0 004 AKINS, TREMAYNE

PF10 = HELP

ADMISSION DATE: 06/28/88 TIME: 12:13 SPECIALIST: Y021 ROCHELLE PATTON

OFFENSE: 38-0829 M

REASON FOR ADMISSION: 12 OTH.WARRANT/P.O.

ARREST AGENCY: SSSD OFFICER: W.E. MECLHER AGENCY CASE#: 85JV889
ARREST AGENCY ORI KS-
ADMISSION AUTH: SHERIFF SOCIAL WORKER: Y042 JAMES REDGER
- -
DETENTION HEARING DATE: 06/29/88 TIME: 13:30
PERSON NOTIFIED: TERRELA AKINS NOTIFY DATE: 06/28/88 TIME: 12:07 HOW: T
ADJUDICATION DATE: 00/00/00 DISPOSITION DATE: 00/00/00
MED.SUM.?: N MED.CARD?: Y MEDICATN.?: N ED.REPT.?: N OTHER?: N
COURT CASE#:
SRS WORKER: DONNA DEDONDER SRS COUNTY: 89 SRS CUSTODY DATE: 06/28/88
ATTORNEY: C.S.O.: JOAN WHELAN
FELONY STATUS: NOT APPLICABLE O.T.A. DATE: 00/00/00 TIME: 0:00
NOTICE: CIVIL & CRIMINAL PENALTIES EXIST FOR MISUSE & UNLAWFUL DISSEMINATION
STATUTE CODE NOT FOUND AS ENTERED

CRYU140 J58 SN. CO. DEPT. OF CORRECTIONS / YOUTH CENTER 02/09/99 12:00:36.2
RBAE RBAU DISCHARGE SCREEN FUNCTION:
PF10 = HELP

87 0121 0 004 AKINS, TREMAYNE

RELEASE DATE: 07/18/88 TIME: 9:47 SPECIALIST: Y034 MICHAEL TEEGARDEN

RELEASE STATUS: 3 REL. PRE-ADJUDICATN AUTHORITY: MITCHELL

RELEASE TO WHOM: S.C.S.D. TO: 6 OTH.SECURE FACILITY*

DESTINATION: Y.C.A.T.

SEND MEDICAL CARD

NOTICE: CIVIL & CRIMINAL PENALTIES EXIST FOR MISUSE & UNLAWFUL DISSEMINATION

STATE OF KANSAS

JUVENILE JUSTICE AUTHORITY
ALBERT MURRAY, COMMISSIONER

Topeka Juvenile Correctional Facility

James P. Trast, Superintendent

1440 N.W. 25TH STREET
TOPEKA, KANSAS 66618-1499
TELEPHONE: 785-296-7709 FAX: 785-296-0157

February 11, 1998

Tremayne LeWayne Akins
2331 SE Adams
Topeka, Ks. 66605

Dear Mr. Akins:

The following is the information you requested regarding your incarceration at the Topeka Juvenile Correctional Facility, formerly Youth Center at Topeka. I have listed all movement on and off the facility during you stay.

Admission Date	:	*07-18-88*
Admitting County	:	*Shawnee*
Off Campus Pass	:	*10-07-88*
Return from Pass	:	*10-09-88*
Direct Discharge	:	*11-04-88*

Please let us know if other information is needed.

Sincerely,

Sandra L. Christiansen

Sandra L. Christiansen
Executive Secretary

cc: Master File

3-5
3-4

DNA Parentage Test Report

DNA DIAGNOSTICS CENTER

Report Date 10/13/98

2551 13

Case 30605	MOTHER	CHILD	Alleged FATHER
Name	Not Tested	Anterio D. DeShazer	TreMayne L. Akins
DoB - Race		2/12/89	8/5/71 Black
Date Collected		9-28-98	9-28-98
Test No.		30605-20	30605-30
Results	**Allele Sizes**	**Allele Sizes**	**Allele Sizes**
D2S44 pYNH24 *Hae III* PI **0.00**		1.76	1.92 1.62
D4S163 SLI604 *Hae III* PI **0.00**		4.67 4.05	4.93 4.56
D6S132 SLI1090 *Hae III* PI **3.23**		3.19 1.85	1.85 1.14
D10S28 TBQ7 *Hae III* PI **0.00**		3.31 2.68	8.08 4.83

Interpretation Combined Paternity Index **0** Probability of Paternity **0 %**

The alleged father, TreMayne L. Akins, is excluded as the biological father of the child named Anterio D. DeShazer. The alleged father lacks the genetic markers that must be contributed to the child by the biological father. Based on testing results obtained from DNA probes: D2S44, D4S163, and D10S28, the probability of paternity is 0%.

Subscribed and sworn before me on Tuesday, October 13, 1998.

Edward Harris

Edward Harris, Notary Public, State of Ohio
My Commission Expires July 23, 2003.

I, the undersigned, verify that the interpretation of results is correct as reported, and the testing procedure was conducted in accordance with the recommended guidelines for DNA testing set forth by AABB.

Susannie C. Lee

Susannie C. Lee, Ph.D.
Associate Director

225 CORPORATE COURT FAIRFIELD OHIO 45014 PHONE 513.881.7800 FAX 513.881.7803

3-6

3-5

#4

(1)

3-16-99.

Members of the Federal and State Committee, my name is Ire Mayne L. Akins. I was 16 years old, when I was picked up by a 22 year old women at school. I started skipping school, not going to, not coming home. My mother didn't approve of me seeing this women because I was under age, My mother made several efforts to the authorities, but no one listened to her, so my mother had me locked up so I couldn't see this women. I was in the State of Kansas custody at the time this women (put me down) listed me as the biological father of this child, also a minor.

Sen. Federal & State Affairs Comm.
Date: 3-16-99
Attachment: # 4-1

Dive been frauded, I feel like Im being punished, for something ~~that~~ was already wrong in the first place. Dive had a D.N.A. testing done, the results are negative 0%, but theiy releasing men out of prison because of D.N.A. testing, this is wrong. The state law says, I only have one year to take care of this matter, so that's why I had the blood test done to prove my innocents. Just like my mother, I also made attempts and told SRS this wasn't my child, but they didn't listen once again.

I'm still responsible for taking care of this child, but what about this childs real father does she get ~~away~~ to walk away from taking care of child and I'm still responsible for paying child support til he's 18 years old and if he decided to go to college I'm responsible for that to. I can't see myself paying for another mans child. My family is suffering everyday. This is very emotional, frustating and stressful, but I'm not going to give up. This law is wrong, I would like it to see it changed for me, and anyone else in the same situation I'm in. This is wrong please ~~find~~ it put yourself in my shoes, what would you do. Thank you Mr Mayor Akins

#5

254 East 11:00

TO: Members Of The Federal + State Committee

I believe its unfair how my son's been treated and other men. Being made to pay child support when a DNA testing has been proven your are not the Father of this child. The State should make it mandatory for DNA testing after the birth of a baby. These women will say there pregnant by Bill, Sam, Jay. The woman signs ~~these~~ the man's name on the birth certificate and SRS runs away with that type of situation. That is so unfair.

Sen. Federal & State Affairs Comm.
Date: 3-16-99
Attachment: # 5-1

STATE OF KANSAS

U. L. "RIP" GOOCH
SENATOR, 29TH DISTRICT
SEDGWICK COUNTY
STATE CAPITOL BUILDING
ROOM 404-N
TOPEKA, KANSAS 66612-1504
(913) 296-7387
12 CRESTVIEW LAKES ESTATE
WICHITA, KANSAS 67220
(316) 684-2824

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: LOCAL GOVERNMENT
MEMBER: COMMERCE
FEDERAL & STATE AFFAIRS
GOVERNMENT ORGANIZATION
JOINT COMMITTEE ON RULES & REGULATIONS
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

To The Chairman, Members of the Federal & State Affairs Committee

Madam Chairman

Senate bill 322

This bill would allow terminally ill inmates who, had not committed a crime against persons, who is not serving a mandatory sentence or has any restriction on parole eligibility to be released by the board on a special medical parole. Several other states have this law in effect.

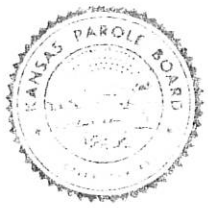
There is growing concern that the prison boom has taken on a life of it's own, with built in dynamics that will keep the inmate population growing for years even if crime continues to fall. This condition will force cities and states to divert scarce resources to building even more jails and prisons.

Sen. Federal & State Affairs Comm
Date: 3-16-99
Attachment: # 6-1

The new Justice Department report found that there were 1,277,866 inmates in state and federal prisons last year, an increase of 4.8% from a year earlier, and 592,462 people in local city and county jails a rise of 4.5%

Because of tougher attitudes toward criminals, tougher sentencing laws, longer sentences, reluctance of parole boards to grant early release and the increased likelihood of re-arrest for parole violations, like failing a urine test for drugs, the inmate population has increased by 4.4%.

Information gathered indicates early release of terminally ill inmates would be cost effective by saving the necessary medical care cost and by saving space and reducing the cost of providing additional beds in our overcrowded prisons and jails.



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

MEMORANDUM

TO: Senator Lana Oleen, Chair
Senate Federal and State Affairs Committee

FROM: Marilyn Scafe, Chair
Kansas Parole Board MS

RE: SB 322

DATE: March 16, 1999

The Kansas Parole Board currently considers paroles in situations that are similar to the conditions set by the bill, and there have been situations where the Board has been favorable to parole based on the inmate's health status. Parole decisions are based on the inmate's suitability for parole. The requirements for consideration are defined in the statutes. Each case is decided on its own merit.

This bill provides for the Kansas Parole Board to additionally review inmates who have mandatory sentences off grid and all others who are serving determinate sentences under the Sentencing Guidelines Act who fit the criteria of the bill. The only option available in these cases under current law is through an executive clemency process. In such cases, the Board reviews the clemency application and makes recommendations to the Governor. The final decision in clemency actions are made by the Governor. In rare cases, and with careful consideration, the Board has made positive recommendations in past applications.

The Board does not have any objections to making these decisions according to the provisions in the bill. However, it is recommended that each case be reviewed and considered within the same requirements currently defined by the statutes. This would ensure that any release would be to an appropriate parole plan which would address the medical needs and meet public safety standards for supervision. Victim needs must also be carefully considered in the final decision.

March 15, 1999

Committee on Federal & State Affairs
State Capitol Building
Topeka, KS 66612-1504

My name is Patricia Jackson, and I am the mother of a terminally ill HIV/AIDS inmate incarcerated at the Topeka Correctional Facility. I am writing in support of SENATE BILL NO. 322, which is the Compassionate Release Medical Program that is being brought before your committee on March 16, 1999.

This bill is supported by the American Bar Association, and has been adopted by several states.

Terminally ill patients are currently not receiving the medical attention they need. I personally know of several inmates who have died because of lack of proper medical care. I feel that this is inhumane, and this issue needs to be addressed nationwide.

Our present prison system is understaffed and they do not have qualified doctors available that specialize in the medical problems of the terminally ill. I furthermore believe that releasing terminally ill/non-violent offenders can reduce the cost of medical treatment in the prison system, thus reducing the cost to taxpayers. It has been estimated that caring for persons with HIV/AIDS costs approximately $40,000 to $50,000 a year.

My family and I are in the process of collecting signatures from persons who are in support of this bill. We will continue to do so until this bill is taken into consideration.

I would welcome the opportunity to speak with your committee in person, however, due to job restrictions, I will need at least two weeks prior notification.

I am enclosing a copy of the American Bar Association recommendation, a newsletter from the AIDS In Prisons Project, a copy of a letter from my daughter, a letter from the Missionary Society of my church, and the signatures that have been collected to date.

Your feedback would be appreciated, and I pledge my full cooperation in doing whatever else is needed in this endeavor. I also thank you for your consideration and prompt response.

Sincerely,
Patricia Jackson

Patricia Jackson
3144 E. 24TH Street
Wichita, KS 67219
(316) 682-9496 - Home
(316) 383-7899- Work

Sen. Federal & State Affairs Comm
Date: 3-16-99
Attachment: # 8-1

To Whom It May Concern:

I am an advocate for HIV/AIDS in prison for women here at the Topeka Correctional Facility. I am imploring your help to enact laws for a compassionate release or medical parole for terminally inmates for non-violent inmates. I have been praying that god would send people to help implement a program that would help terminally ill inmates to be released to get their medical needs met under supervision of the parole office. For other's to be able to go home to die with dignity and the comfort of their love ones. Medical parole and Compassionate Release programs vary from state to state. Most jurisdictions require that an applicant is "terminally ill."

Some laws require that the person have "six months or less to live, some require "there is no recovery and death is imminent," or "permanently incapacitated." Some states such as Delaware and Missouri require that an individual may either suffer from a terminal illness or "require treatment that cannot reasonably be provided by the Department of Corrections. Which is the case for me and the length of my sentence for a small amount of crack cocaine could exceed my life expectantancy? Texas has a "special needs parole " extends beyond the terminally ill to the elderly, physically handicapped, mentally ill, or mentally retarded." Minnesota and New Jersey, also permit release for serious medical conditions that are not terminal. In addition to the requirement of physical incapacity, most jurisdictions require some affirmation or certification that an individual who is granted medical parole is highly unlikely to commit another felony. The individual's criminal case will be reviewed by the local court system or the state parole board to decide the appropriateness of a request release based on the individual's medical condition.

This is just an outline of what Compassionate Release/Medical Parole program is and how it would benefit society. Two established ways of rationally relieving the pressure on prison systems are compassionate release from prison and alternatives to incarceration for non-violent, terminally ill defendants. Presently, due to the existence of plea bargaining restrictions and mandatory minimum sentencing guidelines in many jurisdictions, prosecutors are unable to offer, and judges unable to order, alternatives to prison for non-violent, terminally ill defendant's. Therefore, even when "the judge and prosecutor consider the sentence to be inappropriate," especially for non-violent and terminally ill individuals, they still have no choice but to incarcerate them. It is the American Bar Association's recommendation that all states and the federal government adopt language similar to the model language set forth in the attached resolution, which would allow all parties concerned to take into account a terminally ill Defendant's medical condition.

Moreover, Kansas does not have any form of early release. except clemency, unfortunately our Governor Bill Graves has not granted anyone clemency since having been in office.

The adoption of uniform legislation in the areas of compassionate release and alternative sentencing should go a long way toward addressing both the humanitarian concerns associated with the terminally ill and dying inmates And the concerns of prison officials dealing with the over-crowding and health care problems plaguing the prison system.

Respectfully submitted,

Carol Jackson

AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

RESOLVED, that the American Bar Association supports compassionate release of terminally ill prisoners and endorses adoption of administrative and judicial procedures for compassionate release consistent with the "Administrative Model for Compassionate Release Legislation" and the "Judicial Model for Compassionate Release Legislation," each dated April 1996; and

FURTHER RESOLVED, that the American Bar Association supports alternatives to sentencing for non-violent terminally ill offenders in which the court, upon the consent of the defense and prosecuting attorneys, and upon a finding that the defendant is suffering from a terminal condition, disease, or syndrome and is so debilitated or incapacitated as to create a reasonable probability that he or she is physically incapable of presenting any danger to society, and upon a finding that the furtherance of justice so requires, may accept a plea of guilty to any lesser included offense of any count of the accusatory instrument, to satisfy the entire accusatory instrument and to permit the court to sentence the defendant to a non-incarceratory alternative. In making such a determination, the court must consider factors governing dismissals in the interest of justice.

RECOMMENDATION/APPENDIX

JUDICIAL MODEL FOR COMPASSIONATE RELEASE LEGISLATION
(April 1996)

(a) Authorization: At any time after the defendant is sentenced, the court, on motion of the defendant or the Department of Corrections or on its own motion, and after notice to the prosecutor, may reduce a sentence of imprisonment to time served, or substitute for the unserved balance of a sentence of imprisonment a sentence of home confinement, probation, or supervised release, upon proof that the defendant has a medical condition that is critical. The court may reduce any sentence, whether or not the defendant has served any imposed minimum sentence, [except in the following cases...].

(b) Standard: If the court finds from the evidence that the defendant is likely to die within one year, the court shall reduce the prison sentence to time served, or substitute home confinement, probation, or supervised release, for the unserved balance of the prison sentence, unless it finds by a preponderance of the evidence that the defendant poses a danger of committing additional crimes, that the defendant will not receive adequate care upon his or her release, or that release would denigrate the seriousness of the offense.

(c) Motion: In the case of a motion filed by the defendant, the motion shall be accompanied by an affidavit of the medical officer attesting to the nature of the defendant's illness, the treatment he or she is receiving, the prognosis, and the extent of the defendant's incapacitation from the illness. A copy of each such application shall be served on the prosecutor.

(d) Summary disposition of unmeritorious motions: Within five days, the court shall determine whether a hearing on the motion is necessary. If the court determines that the motion clearly fails to establish grounds for relief, it may deny the motion without further proceedings and issue a written decision explaining the reasons therefore.

(e) Procedure for hearing:

(1) If the court determines that the defendant may be entitled to relief, the court shall set the motion for hearing in the next 10 calendar days, unless the defendant requests additional time.

(2) Notice of the hearing shall be sent to the prosecutor and the victim(s), if any, of the offense(s) for which the prisoner is incarcerated, and the victim(s) shall have the right to be heard at the hearing or in writing or both.

(3) Evidence may be taken in the form of affidavit.

(f) Decision: Within [10] days of the hearing, the court shall issue a written decision granting or denying the motion, setting forth its factual findings and explaining the reasons for its

decision. If the court determines that relief is warranted, the court shall determine whether to reduce the prison sentence to time served, or instead to substitute a period of home confinement, probation, or supervised release. If the court chooses to substitute a period of probation or supervised release, the court shall impose as conditions of probation or release at least the following:

(1) that the defendant not commit another crime;

(2) that the defendant maintain his or her residence;

(3) that the defendant maintain established reporting requirements with his or her probation officer;

and such other conditions as the court concludes are necessary or appropriate in the particular case.

(g) Review: If the court denies the motion, the defendant shall have the right to appeal, limited solely to the question whether the trial court, in denying the motion, abused its discretion.

(h) Revocation of release:

(1) Violation of conditions of release: If the defendant violates any condition of release, his or her release may be revoked in the same manner as for other violations of probation or supervised release, and the defendant returned to prison to serve his or her sentence. Credit for time spent on release shall not be counted toward service of the sentence.

(2) Defendant no longer late-stage terminal: If after release the defendant is determined not to be likely to die within one year, his or her release shall be revoked, and the defendant shall be returned to prison to serve his or her sentence. Credit for time spent on release shall be counted toward service of the sentence.

(i) New motion based on changed circumstances: Denial of relief under this section shall not preclude the defendant from filing a subsequent motion for relief if there is a change in his physical condition or other pertinent circumstances.

(j) Reporting requirements: The Department of Corrections shall maintain statistics regarding the number of requests made for conditional release, the number of such requests that were granted, the number of such requests that were denied, and the date the defendant died, if applicable. Within three months of the end of the [fiscal] [calendar] year, the Department of Corrections shall compile them in an annual report that shall be made available to the public. In order to facilitate the collection of relevant data, the court shall send to the Department of Corrections a copy of every motion for conditional release and of the decision on each such motion.

AIDS In Prison Project Newsletter

Volume 1/Number 1/May 1993

LETTER FROM THE DIRECTOR

As an AIDS/HIV prison advocate, I will never get used to the dying, and hope never to take for granted all of the courageous and determined living. Each year, the number of people behind bars in this country with AIDS/HIV increases as the number of people incarcerated escalates and as HIV reaches farther into the poor, inner-city communities of color from which most prisoners come. In the New York State prison system alone, which represents approximately 63,000 or 4.2% of the national prison population of 1.5 million people, correctional officials conservatively estimate that over 8,000 women and men are living with HIV and close to 1,500 have CDC-defined AIDS. At the AIDS in Prison Project, we estimate that upwards of 50,000 people are living with AIDS/HIV behind bars in the United States. Sadly, correctional health care in this country is so far below community standards that some forty states are currently the subject of litigation for inadequate correctional health care and other substandard prison conditions.

Significantly, the vast majority of people living with AIDS/HIV "on the inside" will survive their prison terms and return to their families and communities. During visits to AIDS/HIV support groups in New York State prisons, I often speak to women and men who must manage their HIV-related illness while simultaneously they grieve the deaths of parents, siblings or lovers, and seek a way to tell their children about their own HIV infection. Inevitably, AIDS/HIV is a family disease. Nationwide most prisoners living with AIDS/HIV return home with almost no information about their illness except a test result and, if they are lucky, a few minutes of a counsellor's time. These prisoners also hit the streets with little or no linkage to medical care and other necessary services in the community. Victor, a former prisoner living with AIDS/HIV, recently described how he felt after his release: "When I went home, I was totally lost."

CONTINUED ON PAGE 2 ▶

See article on the AIDS in Prison Project Clearinghouse and Hotline on page 4 inside.

Compassionate Release and Correctional Reality

The vast majority of HIV+ people in prisons and jails will outlive their sentences. Much of advocates' energies thus appropriately focus beyond their clients' time in prison and onto their futures in their home communities. However, a significant number of prisoners do die behind bars of AIDS-related illness. For them, even a short sentence can be a death sentence. Since 1981, more than 2,000 people have died of AIDS-related illness in New York prisons and jails alone. In New York and other states, advocates of prisoners living with AIDS/HIV are recognizing that a portion of their work must focus on the needs of terminally ill prisoners whose last wish is to die in freedom, not shackled to a bed, and often to die at home in the loving presence of their families—families who may be constrained by distance and limited resources from otherwise being at their loved ones' side.

Historically, terminally ill people have been eligible in numerous states for Executive Clemency, through which a state's governor may commute an individual's sentence in light of the individual's physical health or other extenuating circumstances. Similarly, the sentencing laws of most jurisdictions allow the sentencing judge to take the defendant's health into consideration in determining or reconsidering a sentence. Yet with escalating numbers of terminally ill people behind bars, many states have recently implemented medical parole policies or laws (sometimes referred to as "compassionate release") which apparently are intended to provide a formal or legislated mechanism of relief for a large number of prisoners. Advocates in states that have enacted such policies, however, are finding that the reality of compassionate release may be far from its promise, and that their struggle to provide dignity and comfort to clients in the end stages of AIDS is just beginning.

This article provides a brief overview of the medical parole statutes or policies of six states: Connecticut, Michigan, Montana, New York, Texas and Wyoming. (Some states provide similar relief through furlough programs which do not fall within the scope of this article.) We have also included Florida's "conditional medical release" program; although this policy offers a form of supervised release distinguished from parole, its structure and function are strikingly similar to medical parole laws. While all of these policies have been instituted within the last three years, even at this early juncture it is clear that full implementation has been thwarted by conflicting pressures on correctional officials to reduce medical budgets but also to remain tough on crime. Moreover, even if fully implemented, medical parole is only one of many measures which must be taken to address serious inadequacies in correctional health care.

The Letter of the Law

Physical incapacity is not surprisingly the primary criterion of medical parole laws and policies in every jurisdiction. All states but Wyoming and Michigan require a medical examination of the applicant, usually by a doctor employed or authorized by the correctional system. Criteria for medical eligibility differ across the jurisdictions; most states require a finding that an applicant is "terminally ill." Connecticut defines the term as "six months or less" to live, while New York does not spell out the meaning of the term. The Florida statute indicates a prisoner may either be terminally ill—in which case "there can be no recovery and death is imminent"—or "permanently incapacitated." Michigan and Montana require only a finding that the applicant is "incapacitated" or suffers an "incapacitating" illness, respectively, while under Wyoming's policy, a qualifying individual may either suffer from a terminal illness or "require treatment that cannot reasonably be provided... by the Department of Corrections." Texas' "special needs parole" extends beyond the terminally ill to the "elderly, physically handicapped, mentally ill, ... or mentally retarded."

In addition to the requirement of physical incapacity, most jurisdictions require some affirmation or certification that an individual who is granted medical parole is highly unlikely

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Compassionate Release

to commit any further crimes. Five of the seven policies examined (all except Wyoming and Michigan) require a finding—generally made by the examining doctor as part of his/her medical diagnosis—that an applicant for medical parole is "physically incapable of presenting a danger to society," as Connecticut's statute reads (Montana's and New York's are virtually identical), or "to a reasonable degree of certainty ... [is] physically incapacitated to the extent that he does not constitute a danger to himself or others" (Florida), or "no longer constitute[s] a threat to public safety and no longer constitute[s] a threat to commit further offenses" (Texas). In New York's law, the relevant phrase is repeated five times.

Although this criteria would seem to guard against the danger of releasing a violent individual into the community, most jurisdictions also deny eligibility for medical parole to individuals who have been convicted of certain serious crimes. For instance, Connecticut denies eligibility to a prisoner convicted of a "capitol felony," and New York similarly eliminates prisoners convicted of murder in the first or second degree, manslaughter in the first degree, a sexual offense or an attempt at any of these crimes. Florida and Montana only deny eligibility to individuals serving death sentences. In contrast to most jurisdictions, Wyoming's policy makes no crime-based restrictions. The medical parole policy of Louisiana, which was not included in this article, contains a medical exclusion, barring any prisoner "who has a contagious disease." According to a Louisiana Department of Corrections official, prisoners with AIDS are considered ineligible for medical parole, apparently because Louisiana defines all AIDS-related illnesses as a contagious disease.

Most of these statutes allow for the return of a paroled individual to prison should his or her condition improve to the extent that the "incapable of presenting a danger" criterion can no longer be met. The statutes' language often leaves room for discretion: the parole board "may require ... periodic diagnoses" (Connecticut), the Board "may revoke the parole" (Montana). New York is the most exacting on this score. In New York, initially parole is granted for four months only; before this period expires, the parole board must re-evaluate the individual's health and decide whether to renew the grant of medical parole.

Finally, statutes in five of the seven states require that the applicant satisfy the parole board that appropriate arrangements have been made for the individual's housing, medical care and general welfare upon release. Montana's language is typical: "The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department..., including but not limited to a hospital, nursing home, or family home." Other statutes call for the submission of a "parole plan" (Texas) or "discharge plan" (New York) which the parole board may reject or amend.

While in most jurisdictions a prisoner's application to the parole board for medical parole sets a formal process of review in motion, in Michigan and Wyoming a prisoner's access to the process is more limited. In these states, a prisoner appealing to the parole board for medical parole is directed back to his or her facility. The prisoner must then persuade local prison officials to conduct a medical review and apply for medical parole on his or her behalf. In Michigan, the process is even more complicated. The Michigan parole board c grant medical parole until it wins ju tion from the original sentencing jud release a prisoner before the complet his or her minimum term.

The Numbers

Available data indicate that state cor tional officials are not fully implemen the letter and promise of medical par policies or laws. In Michigan, which c rently incarcerates 115 people with fi blown AIDS, an official of the parole l reported that in 1992 a single prisone who was suffering advanced Alzheim disease, was released. Only a tiny por of the prison population in both Mont and Wyoming is affected by AIDS/HI Not a single prisoner has been releas medical parole in either state. In Tex which currently incarcerates 60 indiv als with AIDS, 252 prisoners have ap for "special needs parole" since its inc tion, and 31 prisoners have been rele among whom 8 had AIDS-related illn Sixty-seven prisoners died of AIDS in Florida prisons in 1992; Florida has released four prisoners under its polic New York State prisons incarcerate a estimated 8,000 HIV-positive people 1,487 people living with CDC-defined AIDS. Since the passage of New York medical parole law in March 1992, ov 200 people have applied for medical p and only 9 applications have been gra In that same span of time, over 150 pr ers have died of AIDS-related illnesse New York State prisons. Lastly, the C necticut Department of Corrections w not make its data available.

Toward a Fuller Implementati

While all of these statutes or policies h been enacted only in the last few year several consistent weaknesses in the l and implementation of the laws have thwarted prisoners from fully benefiti from the policies. The most salient of issues include: overly exacting standa physical incapacity; misallocation of a ditional parole board function to the t ing physician; lack of education and o reach to prisoners and their families a the process, and the need for extensiv charge planning.

The widely-used language requiring t doctor certify an applicant incapable c presenting a danger to society is not o excessive but inappropriate. First, par larly with AIDS-related illness, medic an art and not a science, and it is high impracticable to require a doctor to ce how a person's health will be for the remainder of his life, or, for that matte how long the person will live. Second, t standard requires a medical doctor to r

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Compassionate Release

a decision about recidivism, traditionally a function of the parole board. States enacting new medical parole statutes or amending their existing laws should take care to allocate tasks between doctors and the parole board in a manner that is more in keeping with their respective training and expertise.

To assure prisoners full access to medical parole, correctional officials must also conduct education and outreach efforts aimed at prisoners, their families, health providers and advocates; provide prisoners and families ready access to information on the status of a pending application; publish internal procedures, evaluative criteria, records and timetables, and allocate or seek adequate staff to administer the policy.

A further impediment to a prisoner's access to medical parole is lack of adequate staffing within a correctional or parole department to perform adequate discharge planning, including locating the housing, medical care, financial resources and support that discharge plans require. Advocates must work alongside correctional officials to create linkages to existing services in the community and to create new services where they are needed. There are some good models for how bridges will be built. In Connecticut, Dr. Frederick Altice, Medical Director of the HIV in Prison Program at Yale University, has worked to develop relationships with the Uncus-on-the-Thames Hospice and the Connecticut Hospice to receive prisoners released through medical parole. In addition, Dr. Altice is working to place paroled prisoners in the Connecticut AIDS Residency Program, which offers the possibility of independent living in a group home. In Illinois—a state which does not currently have a compassionate release policy—the John Howard Association has proposed that a hospice be established exclusively for the use of people released from prisons and jails. While the creation of prisoner-specific resources in the community is a worthy goal, advocates will have to be wary that the housing, medical services or other resources provided for former prisoners are held to community standards.

Clearly, advocates for prisoners in the end stages of AIDS cannot relax their vigilance once medical parole laws or other means of compassionate release have been established. Whether advocates are working to institute such policies or to fully implement these laws, the persuasive ments they will bring to bear up tors or corrections officials will be the same. As a fiscal matter, compassionate release saves money. It has been estima that caring for a person with AIDS/HIV costs $40,000 per year. By releasing suc inmates early the state shifts much of t expense onto the federal government, which picks up the tab through medica and other entitlements. In addition, the creation of each new bed to accommodat an exploding prison population costs between $30,000 and $35,000. Theoretic ly, to release terminally ill prisoners ear will save states some of that expense.

But to focus primarily on money diminis es an issue that should appeal to humar decency instead. For a prisoner in the fi stages of AIDS, the absence of a viable compassionate release option can mean death in isolation, under restraint, and bereft of the solace and hope loved ones and family members can provide. Unde these circumstances, the person's family and community also suffer a loss—the opportunity to care for the living and to fully grieve the dead.

AIDS In Prison Project
The Correctional Association of New York
135 East 15th Street
New York, New York 10003

AIDS In Prison Project Newsletter

March 15, 1999

To The Committee on Federal & State Affairs

To Whom It May Concern:

I am writing this letter on behalf of the Missionaries of St. Matthew Christian Methodist Episcopal Church, 841 N. Cleveland Wichita, KS 67214, regarding the "Compassionate Release of Terminal and Medically ill Inmates", in the state of Kansas. We are in support of a proposal submitted to Senator Rip Gooch, by Inmate Carol Jackson, of the Topeka Correctional Center in Topeka, Kansas. Documentation states that the American Bar Association and some states throughout the United States has accepted and supported such a bill to release terminally and medically ill inmates, incarcerated for non violent crimes. However, Kansas is one of the states that does not currently support such a bill. We are currently preparing petitions with signatures supporting this bill.

Thank you,

Liz Bishop

Liz Bishop
President of The General Missionary Society

Rev. Dr. Lynn Hargrow Sr., Pastor

1-29-99

1	Verlarina R Laudermilk	1107 Indiana	(Work) 262-7515
2.	Jerrie Thompson		
3.	Michael Thompson		
4.	Larry Carmody	3238 All Hallows	HOME 9455541
5.	Gregory D Brown		
6.	James a. Winston Bey		
7.	Debra Burnett		
8.	Sherman Hawkins	2043 Random Rd.	267-8550
9.	Theresa Carter	1823 N. Grove	262-3578
10.	Mary Hooks	206 N Piatt	265-1920
11.	Johnny Franklin El	840 W wabash	2674908
12.	[illegible]	840 N WABASH	267-4908
13	Ronnie Gene Whitehead	1027 N. New York	969-2211
14.	Hoyte Cartwell	2433 N. Chautauqua	682-9232
15.	Cheryl Jones	37313 Ross PKWY	651-5841
16	Darla Greene	4515 Elmhurst	524-9809
17.	Willie Pete	1139 CHRistine	—
18.	Granell E Brook	1571 N Gentry	6821809
19.	LaJoy Adams.	10114 E Boston #1	689-8291
20.	Eugene Hardyway	1752 S. Sedgwick	
21	Bertha Cole		
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23	Keith Woods	" " "	—
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25	Julia A. Wiley	2305 S. Osage	316-269-2477
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30. James Crowder 1457 N. Chautauqua
31. Patricia Jackson 3144 E 24th 682-9496
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STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
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(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: Senate Federal and State Affairs Committee

From: Charles E. Simmons, Secretary

Subject: SB 322

Date: March 16, 1999

SB 322 authorizes the Kansas Parole Board to grant special medical parole to any inmate who has been diagnosed with a terminal illness if the board determines that: (1) the inmate will not live to serve the term to which sentenced; (2) the inmate will live and remain at liberty without violating any laws or conditions imposed by the board; (3) the inmate will not pose a threat of harm to the public if released on parole; and (4) release of the inmate on parole would not diminish the seriousness of the crime.

The board's discretionary authority to grant a special medical parole would apply to any inmate who meets the conditions set by the bill, regardless of whether the board otherwise has parole jurisdiction over the inmate. Under the bill's provisions, the request for consideration of a special medical parole could be initiated either by the inmate or the Secretary of Corrections.

Statutory authority for "early release" of inmates with a terminal illness already exists under KSA 22-3701, which authorizes the Governor to "...pardon or commute the sentence of any person convicted of a crime in any court of this state upon such terms and conditions as prescribed in the order granting the pardon or commutation...." The statute also establishes procedures for consideration of pardons and commutations. These procedures require that notice to be given to the victim(s), the prosecutor, the sentencing judge and the public generally, that such a petition has been filed. Current law also requires that the Parole Board review each application and submit a report to the Governor for consideration in making a decision on the application. The pardon and commutation authority of the Governor is not exercised frequently, but it has been used in the past for the purpose envisioned in SB 322.

Extending the Parole Board's authority to grant early release of terminally ill inmates serving determinate sentences appears to be inconsistent with the underlying rationale of the Sentencing Guidelines Act. Sentencing guidelines establish presumptive sentences based on the severity of the crime and the criminal history of the offender—not the individual circumstances of the offender.

There are also practical concerns raised by the bill. We do not anticipate any reduction in expenditures for inmate medical care if the bill passes, since contract payments are not based on straight pass-through of costs. The contractor is required to provide comprehensive medical services to all inmates for the contracted amount, with adjustments being made only on the basis of the number of inmates served. However, it is likely that the costs of caring for terminally ill offenders released under the bill's provisions would shift to other agencies, whether state or local, public or private, since these offenders are not likely to be covered by health insurance.

If the Legislature decides to pursue SB 322, we suggest that the bill be amended. To ensure that SB 322 conforms to requirements for continued state eligibility under the federal Truth-in-Sentencing grant program (which requires that certain offenders must serve at least 85% of their sentence), a provision should be adding requiring that the KPB adopt criteria and guidelines for determining that a prisoner's medical condition is such that he or she no longer poses a threat to the public. We also recommend that the bill be amended to make it clear that all existing public comment and victim notification requirements shall also apply to the KPB's consideration of special medical paroles.