

Approved: March 30, 00
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 6, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Kathe Lloyd - Excused
Representative Tony Powell - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Larry Woodward, Kansas Parole Board
Tim Madden, Chief Legal Counsel, Department of Corrections

Hearing on **SB 347 - Parole board, membership; members pro tem; hearings**, was opened.

Larry Woodward, Kansas Parole Board, appeared in support of the bill. He explained that the bill would reduce the Parole Board to three members. The workload has been diminishing due to sentencing guidelines taking affect. The bill would also require anyone serving on the Parole Board to have a baccalaureate degree. He suggested that the committee delete this provision. ([Attachment 1](#))

Tim Madden, Chief Legal Counsel, Department of Corrections, informed the committee that they support the provision which allows Department of Correction personnel to act as an hearing officer. ([Attachment 2](#))

Hearing on **SB 347** was closed.

Hearing on **SB 472 - Violation of conditions of release**, was opened.

Larry Woodward, Kansas Parole Board, stated that the proposed bill would allow for a more equitable penalty for violations of postrelease supervision. It would give the Parole Board discretion to have offenders who are revoked for a new misdemeanor conviction to serve from six month up to the remaining period of postrelease supervision. ([Attachment 3](#))

Hearing on **SB 472** was closed.

Hearing on **SB 473 - Aggravated escape from custody**, was opened.

Tim Madden, Chief Legal Counsel, Department of Corrections, informed the committee that the bill corrects a typographical error in the definition of the crime of aggravated escape. ([Attachment 4](#))

Hearing on **SB 473** was closed.

Hearing on **SB 471 - Commission of offense while incarcerated as aggravating factor in departure sentencing**, was opened.

Tim Madden, Chief Legal Counsel, Department of Corrections, commented that this would define a new aggravating factor for a crime that was committed by an offender while he was incarcerated. It would allow the judge to impose a longer sentence than called for by the sentencing grid. ([Attachment 5](#))

Hearing on **SB 471** was closed.

Hearing on **SB 470 - Sentences of person who commits crimes while incarcerated or on post-release supervision**, was opened.

Tim Madden, Chief Legal Counsel, Department of Corrections, stated that the bill would provide that inmates

CONTINUATION SHEET

who commit a new felony crime while serving an indeterminate sentence with a maximum term of life are to remain on postrelease supervision for life or until discharged from supervision by the Kansas Parole Board. (Attachment 6)

Hearing on **SB 470** was closed.

SB 347 - Parole board, membership; members pro tem; hearings

Representative Loyd made the motion to strike on page 1, lines 35-37, requiring board members to have a baccalaureate degree. Representative Carmody seconded the motion. The motion carried.

Representative Loyd made the motion to report **SB 347** favorably for passage, as amended. Representative Carmody seconded the motion.

Representative Klein made the substitute motion to have the Parole Board appoint a hearing officer from the General Hearing Office. Representative Pauls seconded the motion. Committee discussion touched on the fact that the reason the Parole Board suggested using Department of Correction Officers as hearing officers was to save money. By using the General Hearing Office it would negate the costs saving. The motion carried.

Representative Loyd made the motion to update statutory references. Representative Carmody seconded the motion. The motion carried.

Representative Loyd made the motion to strike all language in section 3, (b), which allows the Parole Board to appoint a hearing officer. Representative Gregory seconded the motion. The motion carried.

Representative Loyd made the motion to report **SB 347** favorably for passage, as amended. Representative Gregory seconded the motion. The motion carried. Representative Haley requested he be recorded as voting no.

SB 472 - Violation of conditions of release

Representative Carmody made the motion to report **SB 472** favorably for passage. Representative Loyd seconded the motion. The motion carried.

SB 473 - Aggravated escape from custody

Representative Carmody made the motion to report **SB 473** favorably for passage and be placed on the consent calendar. Representative Lightner seconded the motion. The motion carried.

SB 470 - Sentences of person who commits crimes while incarcerated or on post-release supervision

Representative Carmody made the motion to report **SB 470** favorably for passage. Representative Long seconded the motion. The motion carried.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for March 7, 2000.

Marilyn Scafe
Chairperson



Leo "Lee" Taylor
Vice Chairperson

Carl Cushmanberry
Member

Larry D. Woodward
Member

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Brock Johns
Administrator

MEMORANDUM

**TO: Representative Michael O'Neal, Chairperson
House Judiciary Committee**

**FROM: Marilyn Scafe, Chairperson
Kansas Parole Board**

**RE: SB 347
Reorganization of the Kansas Parole Board**

DATE: February 14, 2000

This memorandum is in response to your request for an update of the Parole Board workload in order for the committee to again consider the proposal to reduce the Board to three members. I have enclosed a copy of my written testimony to the House Judiciary Committee for SB347 in the 1999 session regarding the downsizing of the Board. The rationale for the reduction of members remains the same as explained in last year's testimony.

The workload has been tracked from the FY95. Below you will find those numbers compared to FY99.

	FY 1995	FY 1999
Regular Hearings	3601	1959
Violator Hearings	1998	2575
Total Hearings	5599	4175
File Reviews	3469	5223
Old Law Population as of June 1995	4424	Jun-99 3217

The projected old law population as of June 2000 is 2996

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Violation hearings increased in FY99. However, the reduction of regular hearings resulted in a net decrease of 1,424 hearings from the number conducted by five members in FY95. The average monthly hearings per member in FY95 was 93. The average number per member for FY99 was 94. The regular hearings continue to decrease consistently for FY2000, and the waivers for final revocation hearings have eliminated some hearings we would normally have held for violators. The Board's records reflect that in the first seven months of FY2000, one member's average monthly hearing number was 70, which is well below the previous years. That same number of hearings for FY2000 divided by 3 instead of 4 would make the average number of monthly hearings conducted by one member to be 94, which is consistent with previous workloads.

Also affecting the workload of the Board is video conferencing. When the use of this equipment was implemented, the 40 hours per month of drive time per member was reduced to 20. This resulted in better use of the Board time, and it enabled the first reduction of the Board in 1997. We continue to conduct hearings by this means, as well as travel to the institutions for face to face hearings. We anticipate that travel time will remain about the same for three members.

In the proposed bill, there is a provision for hearing officers, which would be personnel from the DOC. It was discussed and verified by the Secretary during the 99 session that the designated personnel would be controlled by the Secretary and used only in emergency situations, such as individuals confined in the medical clinics and not able to physically make it to the video conferencing room. Therefore, this provision should not affect the workload numbers.

An analysis of the actual time spent by the Board on the various functions of the job indicates that 3 members could adequately perform the official duties of the Board. The following is a breakdown of time for one member of a three member board based on average monthly figures for the first seven months of FY2000.

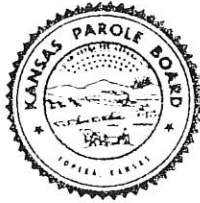
Conduct 2/3 of all monthly hearings	49 hours
Preparation time for 1/3 of all hearings	26 hours
Public Comment Sessions	12 hours
Drive Time	20 hours
Dead time at hearing sessions	10 hours
Release Planning and File Reviews	24 hours
Full Board Meetings on Difficult Cases	18 hours
 Total	 159 hours

Marilyn Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Carl Cushinberry
Member

Larry D. Woodward
Member



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Brock Johns
Administrator

**TO: Representative Michael O' Neal, Chairperson
House Judiciary Committee**

**FROM: Marilyn Scafe, Chairperson,
Kansas Parole Board**

**RE: SB 347
Reorganization of the Kansas Parole Board**

DATE: February 11, 2000

With reference to SB 347, please note the current members of the Kansas Parole Board, and their respective dates of term expiration.

Leo Taylor	January 15, 1999
Marilyn Scafe	January 15, 2002
Carl Cushinberry	January 15, 2003
Larry Woodward	January 15, 2004

Statistical Information

The previously listed items are all duties of the Kansas Parole Board. Below, please find the number of Board actions for Fiscal Years 1996, 1997, 1998 and 1999 as well as the projections for Fiscal Year 2000 for some of the Board's duties:

	FY96 Actual	FY97 Actual	FY98 Actual	FY99 Actual	FY2000 Estimated
Parole Hearings	3,235	2,765	2,259	1,959	1,931
Parole Violator Hearings	1,701	1,884	2,079	2,575	2,760**
Total Hearings	4,936	4,649	4,338	4,534	4,175
Public Comment Sessions	36	36	36	36	36
File Reviews*	2,587	4,676	4,790	5,223	5,129

*File reviews include setting conditions of parole, conditional release and post release supervision as well as decisions regarding clemency recommendations and early discharges.

**Includes offenders who have waived final hearing before the KPb, but for whom the KPb must render decisions.

Inmates Under "Old Law" as of June 30th, 1999 (End of FY 1999)*

6/30/96 (actual)	6/30/97 (actual)	6/30/98 (actual)	6/30/99 (actual)	6/30/2000 (projected)	6/30/2001 (projected)	6/30/2002 (projected)
4,424	3,929	3,486	3,217	2,996	2,962	2,439

*Numbers provided by the Sentencing Commission

Ma. Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Bob J. Mead
Member

Larry D. Woodward
Member



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Teresa L. Saiya
Administrator

MEMORANDUM

**TO: Representative Michael O'Neal, Chairman
House Judiciary Committee**

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

**RE: HB 2149
Reorganization of the Kansas Parole Board**

DATE: February 8, 1999

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. I have attached a report based on the Sentencing Commission numbers and record keeping by our staff which attempts to track the workload of the Board. These numbers were used to determine the FY97 reduction of the Board from five (5) to four (4) members. Increments of twenty percent (20%) decreases in the workload and "old law" inmates were targeted for appropriate timing of the reduction of members. By the end of FY99, projections show approximately thirty-two percent (32%) reduction of inmates. In FY95, 5599 total hearings were held by the five member Board. The hearings have not reduced as quickly, due largely to the number of violation hearings conducted. The use of video conferencing resulted in better use of time by the Board, and therefore, allowed the reduction of the Board by one member in FY97. If SB 131 is passed, the waivers for final revocation hearings should reduce the number of violation hearings significantly. 740 hearings (50% of the FY99 projected "new law" violators) is a conservative estimate of the number of violators who would waive their final revocation hearing before the Board. This would result in a projected thirty-seven percent (37%) reduction in total hearings from FY95. Therefore, HB 2149 is introduced as a plan to reorganize the Board to three (3) full time members.

The Board continues 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 for the Board. We have been involved with the Department of Corrections this year to develop a stronger role for the Board in release planning for the "new law" inmates. The numbers under the heading of "File Review" reflect those responsibilities that remain important duties of the Board.

REORGANIZATION OF THE BOARD:

Number of Positions:

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

Qualifications:

Succeeding appointments would be required to meet the qualifications of a college degree. This is a step toward bringing experience to the position.

Rational for qualifications:

- A parole board member is the only position at this level in the criminal justice system that does not have any requirements.
- Considering the volume of work, the level of decision-making and the limited time available to the three members, the efficiency and quality of the Board will be limited if all members are not at least familiar with information necessary to deal with the mental health and substance abuse issues we must consider, as well as the growing number of sex offenders.
- The Board has communicated expectations and standards for offender behavior. Experience in this area is important in order to hold offenders accountable to realistic expectations.
- The Board must be part of a collaborative effort for assessment and planning of offenders. Therefore, decisions need to be made by integrating information from many agencies and resources on a professional level in the fields of behavioral science and criminal justice.
- Experience and knowledge enable the Board to comprehend and use the available information in the best interests of the inmate and the community.

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. The appointment of a pro tem member would allow the Board to continue to carry out its duties. Pro tem members would meet the same requirements as regular members. The Governor would determine the compensation for such services. This appointment would not be subject to confirmation and would be temporary.

VOTE:

2 out of 3 votes will determine the action of the Board consisting of three members.

HEARING OFFICERS:

Hearing Officers would be qualified employees of the Department of Corrections authorized by the Board to conduct the hearings. This would be subject to the approval of the Secretary of Corrections. Use of hearing officers would be for temporary emergencies or in situations where the use of a DOC employee is a better use of resources than requiring a Board member to travel to a facility for a hearing.

Statistical Information

The previously listed items are all duties of the Kansas Parole Board. Below, please find the number of Board actions for Fiscal Years 1996, 1997 and 1998 as well as the projections for Fiscal Years 1999 and 2000 for some of the Board's duties:

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Parole Hearings	3,235	2,765	2,259	2,033	1,931
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Total Hearings	4,936	4,649	4,338	4,277	4,175
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File Reviews*	2,587	4,676	4,790	4,885	5,129

*File reviews include setting conditions of parole, conditional release and post release supervision as well as decisions regarding clemency recommendations and early discharges.

Inmates Under "Old Law" as of June 30th, 1998 (End of FY 1998)*

6/30/95 (actual)	6/30/96 (actual)	6/30/97 (actual)	6/30/98 (actual)	6/30/99 (projected)	6/30/2000 (projected)	6/30/2001 (projected)
4802	4424	3929	3486	3247	2427	2000

*Numbers provided by the Sentencing Commission



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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 6, 2000

TO: House Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections 

RE: SB 347 As Further Amended by Senate Committee of the Whole

SB 347 is one of the Kansas parole board's legislative initiatives. The parole board has consulted with the department of corrections relative to the impact of SB 347 on the operations of the department. The department supports the provisions of SB 347 that impact the department of corrections .

Section 3 of SB 347 authorizes the parole board to utilize employees of the department of corrections to conduct hearings on behalf of the board. This authority is contingent on the approval of the secretary of corrections. Pursuant to discussions between myself and parole board chairperson, Marilyn Scafe, it is the understanding of both the department and the board that the frequency of hearings conducted by employees of the department on behalf of the board would be limited.

Employees of the department would be requested to conduct hearings on behalf of the board when it would not be a good use of the state's resources for a member of the board to preside at the hearing. An example of such a situation would be when the board is conducting hearings by video conference and one of the inmates for whom the hearings are being conducted is in the infirmary and is physically unable to be present at the location within the correctional facility where the video conference is being transmitted. Use of a department employee to conduct the hearing for that inmate would be a better use of the state's resources than requiring a parole board member to travel to the facility. Both the parole board and the department are cognizant that neither the department's operations nor its budget would permit an extensive use of department personnel as hearing officers for the board.

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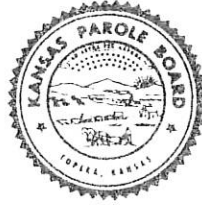
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3-6-2000
Attachment 2

Marilyn Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Carl Cushinberry
Member

Larry D. Woodward
Member



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Brock Johns
Administrator

MEMORANDUM

DATE: March 6, 2000

TO: Judiciary Committee

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

RE: SB 472

This bill amends K.S.A. 1999 Supp. 75-5217 to provide as a penalty for violations of postrelease supervision that result from a misdemeanor conviction, a confinement of not less than six months nor more than the remaining balance of the period of postrelease supervision as determined by the board.

Current law provides that if a revocation of an offender's postrelease supervision results from either a new felony or misdemeanor conviction, the offender will be returned to prison for the remaining period of postrelease supervision which is not subject to good time credits. If the revocation results from a violation of a condition and not a new conviction for either a felony or misdemeanor, the penalty is six months which is subject to good time reduction by not more than three months. This bill proposes that the KPBB be given the discretion to have offenders who are revoked for new misdemeanor convictions serve from six months up to the remaining period of postrelease supervision, not subject to good time credits.

SB 472 would allow for a more equitable penalty for violations of postrelease supervision. Additionally, the flexibility provided by SB 472 would enable the board to address supervision violations by the impositions of a prison sanction without having to impose a lengthy mandatory punishment.

The Sentencing Commission reviewed this issue at its meeting on December 28, 1999, and endorsed the proposal of allowing the KPBB to determine the punishment for a violation of postrelease for a misdemeanor conviction.

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3-6-2000
Attachment 3



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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 6, 2000
To: House Judiciary Committee
FROM: Charles E. Simmons
Secretary of Corrections
RE: SB 473

SB 473 corrects a typographical error in the definition of the crime of aggravated escape. The crime of aggravated escape from custody was amended in L.1999, Ch. 164 §11. However, in defining correctional facilities, an erroneous reference was made to K.S.A. 75-5207. The correct citation should be K.S.A. 75-5202.

SB 473 passed the Senate by a vote of 39 to 0. The department requests favorable consideration of SB 473.

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cc: Legislation file.

House Judiciary
3-6-2000
Attachment 4



DEPARTMENT OF CORRECTIONS
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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 6, 2000
TO: House Judiciary Committee
FROM: Charles E. Simmons
Secretary of Corrections
RE: SB 471 As Further Amended by Senate Committee of the Whole

SB 471 amends K.S.A. 1999 Supp. 21-4716 and K.S.A. 21-4717 to specifically include as an aggravating factor the fact that the crime was committed by an offender while incarcerated. Aggravating factors may be considered by the sentencing court when imposing a sentence that departs from the presumptive sentence provided for by sentencing guidelines.

SB 471 addresses a disparity that exists between the length of time that must be served by an offender who commits an offense while on postrelease supervision and an offender who commits the same offense while incarcerated. Under current law, when an offender commits a new felony while on postrelease supervision, he or she must serve the remaining balance of the postrelease supervision period before the newly imposed sentence begins. Postrelease supervision periods range from 24 months to 60 months. However, sentences imposed for crimes committed while an offender was serving the prison portion of a guidelines sentence commence upon the completion of the prison portion of the original sentence. Thus, offenders who commit a new felony offense while incarcerated do not serve any portion of the original postrelease supervision period. SB 471 addresses this disparity by permitting the sentencing court to impose a departure sentence due to the fact that the crime was committed while the offender was incarcerated. A durational departure may be up to twice the maximum presumptive sentence provided for by the sentencing matrix.

The application of the aggravating factor identified by SB 471 is limited. The fact that the crime was committed while the offender was incarcerated, as with all other aggravating factors, may not be used as a justification for a departure if the aggravating

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factor is a statutory element of the crime or is used to subclassify the crime on the crime severity scale. Therefore, a durational departure for crimes such as battery of a correctional officer, aggravated escape or trafficking in contraband would not be justified by the fact that the offense occurred while the offender was incarcerated.

The Sentencing Commission reviewed this issue at its meeting on December 28, 1999 and endorsed this proposal. SB 471 passed the Senate by a vote of 40 to 0. The Department requests favorable consideration of SB 471.

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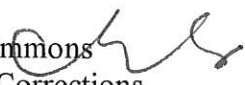


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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 6, 2000
TO: House Judiciary Committee
FROM: Charles E. Simmons 
Secretary of Corrections
RE: SB 470 as amended by Senate Committee

SB 470 amends K.S.A. 21-4608 and K.S.A. 1999 Supp. 22-3717 to provide that inmates who commit new felony crimes while serving an indeterminate sentence with a maximum term of life imprisonment are to remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board. Additionally, SB 470 provides that offenders who commit a new felony while serving a sentence for an off-grid offense, are likewise to remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board irrespective of whether the crime was committed while the offender was on postrelease supervision or incarcerated.

SB 470 prevents offenders incarcerated for an indeterminate sentence of life from having their lifetime release supervision obligation reduced due to the commission of a new crime. Pursuant to current law, if an inmate serving an indeterminate sentence with a maximum term of life commits a new felony while incarcerated, the new felony sentence does not begin until the inmate is paroled from the original indeterminate sentence. However, once the new sentence begins and the prison portion of that sentence is served, the inmate's release supervision obligation is determined by the period of postrelease supervision applicable to the new sentence. Thus, an incarcerated offender serving a life sentence, which would normally require the offender to remain under parole supervision for life once he or she is released from prison, can reduce his or her release supervision obligation to 24, 36, or 60 months by committing a new felony crime.

SB 470 also prevents offenders serving an off-grid sentence of life from having an incentive to commit a new felony while incarcerated or on postrelease supervision. SB 470 negates this incentive by providing that offenders serving a sentence with a maximum term of life shall remain on postrelease supervision for life or until discharged

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from supervision by the Kansas parole board, irrespective of the postrelease supervision period applicable to the new sentence.

In limited situations, current law provides for the continuation of a lifetime release supervision obligation in the event the offender commits a new felony crime. The continuation of the lifetime release supervision obligation under current law is limited to situations where the new offense is committed while the offender is on probation, parole, conditional release, or in a community corrections program for a crime committed prior to July 1, 1993. Current law does not allow for the continuation of a lifetime release supervision obligation if the offender was incarcerated at the time of the commission of the new crime or if the original sentence was for a post July 1, 1993 off-grid offense.

The Sentencing Commission reviewed this issue at its meeting on December 28, 1999 and endorsed this proposal. SB 470 passed the Senate by a vote of 40 to 0. The department requests favorable consideration of SB 470.

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cc: Legislation file