

## MINUTES

### JOINT COMMITTEE ON PAROLE BOARD OVERSIGHT

November 10, 2009  
Room 446-N—Statehouse

#### Members Present

Representative Pat Colloton, Chairperson  
Senator Thomas C. (Tim) Owens, Vice-chairperson  
Senator David Haley  
Senator John Vratil  
Representative Melody McCray-Miller  
Representative Michael O'Neal

#### Staff Present

Jerry Donaldson, Kansas Legislative Research Department  
Athena Andaya, Kansas Legislative Research Department  
Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Pat Matzek, Committee Assistant

#### Others Attending

Patti Biggs, Kansas Parole Board  
Robert Sanders, Kansas Parole Board  
Tom Sawyer, Kansas Parole Board  
Roger Werholtz, Secretary, Kansas Department of Corrections  
Linden Appel, Chief Counsel, Kansas Department of Corrections  
Liz Rice, Administrator, Kansas Department of Corrections  
Teri Canfield, Attorney General's Office, and Kansas Parole Board  
Tim Carpenter, Topeka Capital Journal  
Eric Aufdengarten, Attorney General's Office, and Kansas Parole Board  
Kim Lynch, Attorney General's Office, and Kansas Parole Board

#### Morning Session

The meeting was called to order by Chairperson Pat Colloton at 10:10 a.m. Chairperson Colloton acknowledged Committee members as being present and a motion would be forthcoming to go into closed executive session.

A memorandum from the Parole Board was distributed identifying the number of illegal aliens in the prison system (Attachment 1). Chairperson Colloton further commented that one of the policy issues raised is whether an illegal alien be deported by Immigrations and Customs Enforcement (ICE), if possible. Senator Vratil stated the memorandum only indicates from which country they claim nationality, so they are not necessarily illegal aliens, because they could be in the United States legitimately. Secretary of Corrections Werholtz advised it is the responsibility of ICE to determine the nationality and status of each individual.

Also distributed was information regarding Kansas Parole Board Case Summaries (Attachment 2) from the Assistant Attorney General's office, outlining a list of all state district court lawsuits in which the Kansas Parole Board or its members have been served and all cases requiring briefing to a state appellate court since that time.

Chairperson Colloton stated what the Committee would be working under is a statute that creates a selection by the Secretary of Corrections of 30 random cases: 15 related to situations in which the person has not been released from prison, and the other 15 related to randomly selected cases in which the person was released from prison but has been sent back to prison from parole.

*Senator Vratil moved that the open meeting of the Joint Committee on Parole Board Oversight be recessed for a closed, executive session pursuant to subsection (b)(5) of KSA 2009 Supp. 75-4319 and KSA 2009 Supp. 46-3801 for the purpose of discussing matters relating to actions adversely or favorably affecting a person as a resident of a public institution, specifically, inmates of a correctional institution, to examine certain confidential records relating to specific inmates and to protect the privacy interest of each inmate who will be discussed. Senator Vratil further moved that the Joint Committee on Parole Board Oversight resume the open meeting in Room 446-N of the Statehouse at 11:55 a.m., and that this motion, if adopted, be recorded in the minutes of the Joint Committee on Parole Board Oversight and be maintained as part of the permanent records of the Joint Committee on Parole Board Oversight. Representative McCray-Miller seconded the motion. The motion carried.*

The meeting was adjourned at 11:55 a.m.

### **Afternoon Session**

*At 1:30 p.m., Senator Vratil moved that the open meeting of the Joint Committee on Parole Board Oversight be recessed for a closed, executive session pursuant to subsection (b)(5) of KSA 2009 Supp. 75-4319 and KSA 2009 Supp. 46-3801 for the purpose of discussing matters relating to actions adversely or favorably affecting a person as a resident of a public institution, specifically, inmates of a correctional institution, to examine certain confidential records relating to specific inmates and to protect the privacy interest of each inmate who will be discussed. Senator Vratil further moved that the Joint Committee on Parole Board Oversight resume the open meeting in Room 446-N of the Statehouse at 2:30 p.m., and that this motion, if adopted, be recorded in the minutes of the Joint Committee on Parole Board Oversight and be maintained as part of the permanent records of the Joint Committee on Parole Board Oversight. Representative O'Neal seconded the motion. The motion carried.*

Representative Owens is on record opposing the closed session and voting "no" on the motion.

The open meeting reconvened at 2:30 p.m.

Patti Biggs, Kansas Parole Board, presented issues and recommendations on Parole Board policies (Attachment 3) for potential future directions of which the Joint Committee on Parole Board Oversight will give a report to the Legislature of their recommendations, and possibly vote on issues to be included in the final report.

Final Violation Hearings:

Offenders' Due Process Rights, Incapability of Self-representation, Availability of Counsel.

*Parole Board Request: Legislative study, funding stream, and requirement.*

- Committee recommendation:

*Senator Vratil made a motion that our report reflect a recommendation from the Committee that the Legislature either increase funding for Board of Indigent Defense (BID) and require BID to provide defense counsel for the parolee in question, or, in the alternative, that the county of origin be required to provide funding for legal counsel for the parole violator. Senator Haley seconded the motion. Senator Owens objected to the wording stating to put something in as an alternative to send it to the counties, given the nature of things sounded like a minority report from the Committee and was not appropriate. The motion was restated. Senator Vratil made a motion the Committee recommends that sufficient funding be provided to BID and that BID be required to provide legal counsel to alleged parole violators who are determined to be in need. A proposal was made to require the county of origin to provide counsel. Senator Haley seconded the motion. The motion carried.*

**Off-Grid Sentences, Pre-sentence Investigation.**

*Parole Board Request: Modification so that an apparent contradiction is eliminated.*

- Committee recommendation:

*Senator Vratil made a motion the Committee recommend that when a pre-sentencing investigation is done for an offender sentenced or about to be sentenced to an off-grid term, the pre-sentencing investigation include a social history. Senator Vratil added the following modification to the motion: And at the time of sentencing of that off-grid offender, the social history information will not be available to the judge. Senator Haley seconded the motion. The motion carried.*

**Offenders with Combined Indeterminate and Determinate Terms.**

*Parole Board Request: Review reconciliation so that parole suitability determination be determined at the conclusion of the combined term of the indeterminate and determinate sentences, rather than the current mid-sentence location.*

- Committee recommendation:

*Senator Owens made a motion that when an indeterminate sentence is in conjunction with a determinate sentence that the determinate sentence be incorporated within the indeterminate sentence for the purpose of parole consideration. Senator Vratil seconded the motion. The motion carried.*

### **Multidisciplinary Team ("MDT") Review for Civil Commitment for Sexually Violent Predators.**

*Parole Board Request: Allow for the MDT review process to occur 180 days prior to a work release placement for offenders under parole suitability determination.*

- Committee recommendation:

*Senator Owens made a motion to recommend a request to allow the MDT review process to occur 180 days prior to a work release placement for offenders under parole suitability determination. Representative McCray-Miller seconded the motion. The motion carried.*

### **Habitual Criminal Act**

*Parole Board Request: Initiate a statutory change regarding offenders sentenced pursuant to the Habitual Criminal Act and subject to release under Parole Board suitability determination. This measure could be by review or modification from the Court.*

- Committee recommendation:

*Chairperson Colloton made a motion for a resolution that would propose legislation that would reduce the ten-year pass to a five-year pass and require review within 24 months of previous cases that are on a ten-year pass subject to rules and regulations governing review of those cases. Senator Owens seconded the motion. The motion carried.*

### **Application of Proportionality - Sentenced to Off-Grid Terms**

*Parole Board Request: Submit language clarifying the statute's application to those sentenced for offenses committed prior to July 1, 1993.*

*Parole Board Request: Include other areas of guidance, i.e., revocation, current guidelines, or any other areas viewed as inconsistent with intent.*

- Committee recommendation:

*Senator Owens made a motion to add a sentence that the guideline to be used is the one most recently adopted for that particular crime and off-grids are part of the guidelines. Representative McCray-Miller seconded the motion. The motion carried.*

### **Early Discharge from Post-Incarceration Supervision**

*Parole Board Request: Submit combining provisions regarding early discharge from post-incarceration supervision be contained in one statutory location.*

*Parole Board Request: Submit for the indeterminate sentences that the "one year from release" be specified or that the provision allow for release, regardless of duration of most recent release, upon review of file.*

- Committee recommendation:

*Senator Vratil made a motion to consider a bill that would combine the statutes and in the provision now under KSA 22-3717 (d)(1) (d)(4) for calculation of the presumptive term of post-release supervision after which time early discharge could be received; available good time credit should be applied to the presumptive term. In the KSA 22-3722 statute that refers to "after one year of release," suggest striking that wording. Representative O'Neal seconded the motion. The motion carried.*

### **Special Conditions of Post-Incarceration Supervision**

*Parole Board Request: Reconsider that the conditions are to be in line with evidence-based principles of offender case management.*

- Committee recommendation:

*Senator Owens made a motion to consider that under certain circumstances, supervision conditions of the Board shall impose a requirement that conditions shall be in line with evidence-based principles of offender case management that the Rules and Regulations Authority determine what can be changed, but non-statutorily. Senator O'Neal seconded the motion. The motion carried.*

### **Annual File Reviews**

*Parole Board Request: Either support increased costs and staffing to enable this task or, alternately, consider the task recognizing the scarcity of labor availability.*

- Committee recommendation:

*Senator Owens made a motion recommending that the Parole Board review whether there are particular statutes like the Habitual Criminal Act that might be considered for earlier review than currently provided for offenders who are sentenced to long sentences under alternative provisions similar to the Habitual Criminal Act, but not limited to those statutes, and a parole hearing eligibility under each, and when the review by the Parole Board would first occur. Representative McCray-Miller seconded the motion. The motion carried.*

Roger Werholtz, Secretary of Corrections, spoke about illegal aliens and furlough issues. Linden Appel, Chief Counsel, and Liz Rice, Administrator, from the Secretary of Corrections' office, were also in attendance.

Secretary Werholtz advised one piece of information not provided at the morning session, regarding illegal aliens, was that when ICE takes someone into custody that does not mean they remain incarcerated; in fact, they could be released to a community in the United States pending deportation and could be free until such time that they are deported. Secretary Werholtz further stated the convictions of murder, rape, manslaughter, among others, make the likelihood of finding a large number of candidates for release very small. Chairperson Colloton stated there would not be a recommendation on this issue.

Chairperson Colloton addressed the question of whether the Secretary has the ability to release inmates from prison, as stated in the furlough statute. Secretary Werholtz advised no inmates have been furloughed because he felt that if one of the inmates did something harmful, it could potentially do damage to other programs such as work release and pre-release.

*Senator Haley made a motion that the Parole Board perform a cost benefit analysis of incarceration of individuals who have no time to be considered for parole, in contrast to the advantages of additional staff or Parole Board membership. Representative McCray-Miller seconded the motion. The motion carried.*

The meeting was adjourned at 4:42 p.m.

Prepared by Pat Matzek  
Edited by Jerry Donaldson

Approved by Committee on:

April 23, 2010

(Date)



**KANSAS**  
PAROLE BOARD

Mark Parkinson, Governor

Robert Sanders, Chairperson  
Patricia Biggs, Member  
M. Tom Sawyer, Member

**MEMORANDUM**

**TO:** JOINT COMMITTEE ON PAROLE BOARD OVERSIGHT, REPRESENTATIVE COLLOTON, CHAIRPERSON  
**FROM:** KANSAS PAROLE BOARD  
**DATE:** NOVEMBER 10, 2009  
**RE:** FOLLOW-UP TO QUESTIONS FROM NOVEMBER 2, 2009 MEETING

**1. Offenders claiming citizenship outside the USA:**

We were able to identify the country of claimed nationality – a self-report item from offenders as they are admitted to the system. Of the offenders incarcerated on November 6, 2009, 293 claimed nationality to 28 other countries. This breakdown is as follows:

Country	#	Country	#
BZ Brazil	1	KE Kenya	1
CC Cuba	7	KR Korea	2
CD Canada	2	LS Laos	16
CN China	2	MM Mexico	200
EL El Salvador	9	NO New Guinea	3
EN England	1	NY Nicaragua	1
GB Gabon	1	PR Puerto Rica	1
GE Germany	1	RU Romania/Rumania	1
GG Ghana	1	SG Senegal	1
GT Guatemala	16	TH Thailand	1
HD Honduras	12	UA United Arab Republic	2
II India	1	VN Viet Nam	6
IQ Iraq	1	YE Yemen	1
JM Jamaica	1		
JO Jordan	1	<b>Total</b>	<b>293</b>

**2. Offenders sentenced pursuant to the Habitual Criminal Act who have not yet seen the Parole Board**

From a manual review of records, it appears that there are 51 offenders sentenced under the Habitual Criminal Act who are subject to release by the parole board but have yet to see the board on their current sentence. A packet is available with these offenders, their sentence, crimes, and other generally public information.

KANSAS PAROLE BOARD  
Marie McNeal, Administrator

*Joint Committee on  
Parole Board Oversight  
November 10, 2009  
Attachment 1*

**3. Offenders released to community supervision due to reaching their Conditional Release ("CR") date:**

Ten years of data was sought to provide a summary of the number of releases at Conditional Release date. FY 2001 could not be located. The number of CR releases is as follows:

FY 2000	141
FY 2001	UNK
FY 2002	73
FY 2003	74
FY 2004	52
FY 2005	30
FY 2006	29
FY 2007	14
FY 2008	18
FY 2009	8

**4. Number of offenders admitted at a young age and what happened to them.**

There were 15 offenders incarcerated on November 6, 2009 who were 16.5 years of age or less when admitted to the Kansas Department of Corrections.

**5. Are there any cases where an indeterminate-sentenced offender has served more time than they would have under the Kansas Sentencing Guidelines Act?**

Yes

**6. How many indeterminate sentenced offenders have no disciplinary convictions in the facilities and have completed at least one program?**

22 (note that at least one in this group is sentenced to an off-grid/guidelines term of H50).



Kansas Parole Board Case Summaries  
Prepared for the Joint Committee on Parole Board Oversight

By: Assistant Attorney General Eric Aufdengarten,  
Litigation Counsel to the Kansas Parole Board

Date: November 10, 2009

In May 2008, Assistant Attorney General Kimberly Grunewald and I began representing the Kansas Parole Board in litigation. I have compiled a list of all state district court lawsuits in which the Kansas Parole Board or its members have been served and all cases requiring briefing to a state appellate court since that time. This list does not include cases filed against the Parole Board in federal district court, which are typically dismissed in screening by the court.

Since May 2008, the Kansas Parole Board or its members have been served in 67 cases.

Cases identified: 67

- Pending in district court: 15
- Pending in appellate courts: 16 (all determined in favor of the Parole Board at the district court level)
- Dismissed by district court: 26
- Dismissed by appellate court: 4 (all determined in favor of the Parole Board at the district court level)
- New hearing granted voluntarily: 5 (1 remanded after reversal on issue of statute of limitations)
- New hearing ordered by the appellate court: 1 (currently on appeal after the new hearing)

The district court of original filing:

- Leavenworth County – 30 cases
- Reno County – 18 cases
- Butler County – 14 cases
- Shawnee County – 4 cases
- Norton County – 1 case

Types of cases:

- Grant or denial of parole: 40 cases
- Revocation of parole: 19 cases
- Petitions for mandamus: 7 cases
- Change in parole date: 1 case

Issues of interest:

- Senate Bill 411 or the consideration of proportionality was an issue in 14 cases.
- The statute of limitations was an issue in 22 cases.

*Joint Committee on  
Parole Board Oversight  
November 10, 2009  
Attachment 2*

Robert Sanders, Chairperson  
Patricia Biggs, Member  
M. Tom Sawyer, Member

**MEMORANDUM**

**TO:** JOINT COMMITTEE ON PAROLE BOARD OVERSIGHT, REPRESENTATIVE COLLOTON, CHAIRPERSON  
**FROM:** KANSAS PAROLE BOARD  
**DATE:** NOVEMBER 10, 2009  
**RE:** POTENTIAL FUTURE DIRECTIONS

1. Final Violation Hearings: Offenders due process rights, incapable of self-representation, availability of counsel.

There are some limited instances where an offender is being brought forth for a final violation hearing before the parole board and s/he is determined to be unable to represent self in this proceeding. Pursuant to *Morrissey v. Brewer*, and consistent with due process in liberty restriction, counsel must be available to these offenders at the final violation hearing. Presently, there exists no mechanism to secure such counsel.

*Request: Legislative study, funding stream, requirement*

2. Off-Grid sentences, Pre-sentence Investigation

Offenders sentenced to off-grid terms under the sentencing guidelines are subject to release by the Parole Board. K.S.A. 22-3717 requires, among other things, that the Board consider social history. However, the presentence investigation under the guidelines has been limited to criminal history with the specific and intentional exclusion of social history.

*Request: Modification such that the apparent contradiction is eliminated.*

3. Offenders with combined Indeterminate and Determinate terms.

K.S.A. 21-4720 specifies that when an offender is sentence to consecutive off-grid an on-grid crimes, the on-grid term of incarceration shall not begin until the offender is determined parole suitable ("paroled from") the off-grid crime. However, K.S.A. 22-3717 couches parole suitability in terms of release to the community.

*Request: Reconciliation; specifically, that parole suitability determination be placed at the conclusion of the combined term of the indeterminate and determinate sentences rather than its current mid-sentence location.*

4. Multidisciplinary Team ("MDT") Review for Civil Commitment for Sexually Violent Predators

For offenders with sex crime convictions, a MDT review is commenced around six months prior to release. For indeterminate sentenced offenders with sex-crime convictions, this is triggered by a positive parole board decision. For increasing numbers of offenders who have served substantial terms of incarceration, transition needs – most often expressed as a work release placement – are critical for successful community reintegration. However, the Department of Corrections custody calculation prohibits Work Release placement when a MDT detainer is in place; the

KANSAS PAROLE BOARD  
Marie McNeal, Administrator

*Joint Committee on Parole Board  
November 10, 2009  
Attachment 3  
Oversight*

offender cannot become fully parole suitable until transition needs are met .... This circularity becomes a barrier to preparing and facilitating the offender's reentry to society.

*Request: Allowance for the MDT review process to occur 180 days prior to a work release placement for offenders under parole suitability determination.*

#### 5. Habitual Criminal Act

While those sentenced pursuant to the Habitual Criminal Act have been identified, no analysis has been completed in this past week. Should such analysis reveal drug and property offenders (i.e., offenders without person-crimes). If such are identified, parole eligibility hearings might be considered at a time which advances initial parole eligibility.

*Request: Statutory change - for offenders sentenced pursuant to the Habitual Criminal Act and subject to release by parole board suitability determination, who have no active person offenses, a mechanism whereby the earliest parole suitability date can be advanced. Could be by review / modification from the Court; could be after serving X% of sentence imposed; could be upon no objection from public officials or victims or other mechanism.*

#### 6. Application of Proportionality – Sentenced to Off-Grid Terms

For offenders sentenced to off-grid terms under the Sentencing Guidelines, K.S.A. 22-3717 (h) requires that the board shall consider, among other things, "the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration."

*Request: Language prefacing this section clarifying its application to those sentenced for offenses committed prior to July 1, 1993.*

*Request: Other areas of guidance – revocation, current guidelines, or any other areas viewed as inconsistent with intent.*

#### 7. Early Discharge from Post-Incarceration Supervision

K.S.A. 22-3717 (d)(1)(D)(iv) provides that the parole board may discharge early, from post-release supervision, offenders for whom the Court departed when sentencing the post-release portion of the sentence. Such early discharge shall not be earlier than the presumptive term of post-release supervision; however, the application of good-time credits toward that presumptive term is left unaddressed.

K.S.A. 22-3722 provides for the potential of early discharge from parole or conditional release with the provision that for a minimum of one year after the date of release.

K.S.A. 22-3717 further specifies that there shall be no discharge from post-incarceration supervision for those sentenced pursuant to K.S.A. 21-4643 with an offense date on/after July 1, 2006.

*Request: Combining provisions regarding early discharge from post-incarceration supervision be contained in one statutory location*

*Request: For the indeterminate sentences:*

*that the "one year from release" be specified – or –*

*that the provision allow for release, regardless of duration on most recent release, upon review of file.*

#### 8. Special Conditions of Post-Incarceration Supervision

K.S.A. 22-3717 (m) contains supervision conditions that the Board shall impose on offenders releasing from correctional facilities to community supervision.

KANSAS PAROLE BOARD

Marie McNeal, Administrator

3-2

*Request: Reconsideration such that the conditions are to be in line with evidence-based principles of offender case management.*

9. Annual File Reviews

Discussion from the November 2<sup>nd</sup> meeting included the potential for conducting annual paper-based file reviews. While not opposed to the concept, present staffing prohibits this activity.

*Request: Either – support for increased costs and staffing to enable this task or alternate consideration of the task recognizing the scarcity of labor availability.*

KANSAS PAROLE BOARD

Marie McNeal, Administrator

3-3