

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:35 a.m. on March 10, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Roger Werholtz, Secretary, Kansas Department of Corrections
Patricia Biggs, Member, Kansas Parole Board
Ed Klumpp, Kansas Association of Chiefs of Police & Kansas Peace Officers Assn.
Helen Pedigo, Executive Director, Kansas Sentencing Commission

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2412 - Functional incapacitation release; procedures; notice; conditions; supervision upon release.** Doug Taylor, staff revisor, reviewed the bill.

Roger Werholtz appeared in support, stating that if it is the intent of the Legislature to adopt this policy, **HB 2412** is the language preferred by the DOC. The bill provides a procedure for the release of a terminally ill inmate unlikely to survive the current 30 day waiting period. (Attachment 1)

Patricia Biggs spoke in support but voiced concern regarding New Section 2 stating members of the Parole Board are not qualified to make the determination that a terminal illness or condition is likely to cause death within thirty days. Ms. Biggs requested a technical amendment clarifying the Board would rely upon a doctor's finding or statement of such. (Attachment 2)

Written testimony in support of **HB 2412** was submitted by:

Representative Bill Feuerborn (Attachment 3)

There being no further conferees, the hearing on HB 2412 was closed.

The Chairman opened the hearing on **HB 2432 - Criminal law; justified threat or use of force.** Doug Taylor, staff revisor, reviewed the bill.

Ed Klumpp appeared in support, providing the Committee a comparison chart between **HB 2432** and **SB 381**. Mr. Klumpp indicated both propose different methods to effectively amend the statutes relating to the *State v. Hendrix* decision. Mr. Klumpp addressed past attempts to changing K.S.A. 21-3217 and K.S.A. 213219 in regards to use of force against law enforcement officers. These changes have been rejected by both Houses to Klumpp encouraged the Committee not to include such provisions regardless of which provision or combination is ultimately decided upon. (Attachment 4)

There being no further conferees, the hearing on **HB 2432** was closed.

The hearing on **HB 2469 - Use of prior convictions in determining criminal history** was opened. Jason Thompson, staff revisor, reviewed the bill.

Helen Pedigo testified in support, stating currently a penalty enhancement as a added component to the sentence prescribed at severity level 8 for a third or subsequent conviction of K.S.A. 21-3710 excludes prior forgeries from being used as criminal history that would increase the underlying prison sentence. This bill would allow criminal history to be considered and not create an exception for the crime of forgery, or any

CONTINUATION SHEET

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other crime that is assigned a severity level, as well as a specific mandatory penalty provision, for later offenses. **HB 2469** would serve justice by providing a more accurate criminal history of the offender for presentence investigations and sentencing. (Attachment 5)

There being no further conferees, the hearing on **HB 2469** was closed.

The hearing on **HB 2503 - Authorizing and requiring the secretary of corrections to supervise parole offices and other release mechanisms and entities** was opened. Jason Thompson, staff revisor, reviewed the bill. Secretary Werholtz, Kansas Department of Corrections, answered Committee questions regarding the bill.

Written testimony in support of **HB 2503** was submitted by:

Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 6)

There being no other conferees, the hearing on **HB 2503** was closed.

The hearing on **HB 2506 - Requiring the parole board to weigh the proportionality of a crime committed prior to July 1, 1993, to the sentence for the same crime under the new guidelines** was opened. Jason Thompson, staff revisor, reviewed the bill.

Patricia Biggs appeared in support, stating the bill is in response to the Parole Board Oversight Committee work during the past interim. The bill provides clarity and specificity in its direction to the Parole Board with regard to the provisions of 2008 SB 411. Proposed changes specifies the current sentencing guidelines as the basis for the computation of guideline terms and that the element of proportionality is applicable only to those crimes committed prior to July 1, 1993. It does not apply to off-grid offenses. The bill will ensure that there is congruence in understanding of this statutory factor between all stakeholders. (Attachment 7)

There being no other conferees, the hearing on **HB 2506** was closed.

The Chairman opened the hearing on **HB2508 - Shortening the length of deferral time for certain inmates' parole hearings to five years and requiring review of inmates on a 10 year deferral.** Jason Thompson, staff revisor, reviewed the bill.

Patricia Biggs appeared in support, stating the bill is in response to the Parole Board Oversight Committee work during the past interim. Provisions of the bill require a review by the Parole Board of those offenders who are presently serving a deferral of five or more years. Such reviews shall occur within the coming two year cycle beginning with those with the oldest deferral date. (Attachment 8)

There being no other conferees, the hearing on **HB 2508** was closed.

The Chairman opened the hearing on **Sub HB 2509 - Providing the procedure by which the secretary of corrections refers a potential sexually violent predator to the multidisciplinary team for analysis and a determination of placement.**

Patricia Biggs appeared in support, stating the bill is in response to the Parole Board Oversight Committee work during the past interim to remove barriers the Parole Board occasionally faces regarding successful transition through a stepped-down process of the reintegration release of long-term incarcerated sex offenders. This bill provides for an assessment conducted by the Multidisciplinary Team regarding suitability of a proposed placement of a sex offender into a work release program. (Attachment 9)

Written testimony in support of **HB 2509** was submitted by:

Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 10)

The next meeting is scheduled for March 11, 2010.

The meeting was adjourned at 10:31 a.m.

Testimony on HB 2412
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 10, 2010

HB 2412 was passed by the Senate by a vote of 74-44. House Bill 2412 provides a procedure for the release of an inmate in the custody of the Department of Corrections who has a prognosis of dying within thirty days and who is determined to not pose a threat to the public. Currently, the Kansas Parole Board may grant release to a functionally incapacitated inmate who is determined to not pose a threat to the public pursuant to K.S.A. 22-3728. Under current law, the Parole Board may not grant the release until at least 30 days after notification of the application has been given to the prosecutor, court, victim or victim's family and publication in the local newspaper.

HB 2412 provides a procedure for the release of a terminally ill inmate who is not likely to survive the 30 day waiting period required by K.S.A. 22-3728. Both current law and HB 2412 require a finding that the release of the person does not represent a future risk to public safety. In order to implement the release of an inmate likely to die within 30 days in a timely manner, new section 2 of HB 2412 differs from current law:

- A single member of the Board may grant the release.
- Notification of the application is not provided but notification of the granting of the release is to be provided to the prosecutor, court, and victim or victim's family.
- Requiring the prognosis of imminent death by a Kansas doctor licensed to practice medicine and surgery as opposed to the functional incapacitation diagnosis by a medical or mental health practitioner.

The application for the release of a terminally ill inmate must be made by the Secretary of Corrections. Likewise, the release supervision by the Department of Corrections and revocation authority of the Parole Board for the terminally ill released offender is the same as for the functionally incapacitated released offender except that the release of the "terminally ill" offender may be revoked if the illness or condition significantly improves or the person does not die within 30 days.

DEPARTMENT OF CORRECTIONS

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

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE
SENATOR OWENS, CHAIRPERSON; SENATOR SCHMIDT, VICE CHAIRPERSON
FROM: KANSAS PAROLE BOARD, PATRICIA BIGGS, MEMBER *PB*
DATE: MARCH 10, 2010
RE: 2010 HB 2412 – SPECIAL FUNCTIONALLY INCAPACITATED RELEASE – 30 DAYS OF LIFE EXPECTANCY

- The concept of 2010 HB 2412 is to allow for a speedy special release for an inmate deemed to have 30 or fewer days of life expectancy.
- The provisions of New Section 2 would allow such release by authorization of one member of the parole board.
 - This differs from 'regular' functionally incapacitated release which requires a majority vote of the Board.
- The Board requests technical revision to New Section 2 (a) (3).
 - The bill states that "An application for release shall not be approved unless the board member determines that the person has a terminal illness or condition likely to cause death with in 30 days..." (lines 15-18). Parole Board members do not have the expertise to make such a determination and would, instead, rely upon a doctor's finding or statement of such.
 - Of note, this section also provides that the board member may request additional information from a doctor but provides no payment mechanism. Should such be needed when processing one of these applications, it is the intent of the Board to request that information from the Department of Corrections' contracted medical doctor.

BILL FEUERBORN
 REPRESENTATIVE 5TH DISTRICT
 ANDERSON, FRANKLIN, MIAMI COUNTIES



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 RANKING DEMOCRAT APPROPRIATIONS
 MEMBER EDUCATION BUDGET
 JOINT COMMITTEE ON STATE
 BUILDING CONSTRUCTION
 CAPITOL RESTORATION
 CLAIMS AGAINST THE STATE

March 10, 2010

Chairman Owens and Committee Members:

Thank you for allowing me to testify on HB 2412.

I was contacted by a gentleman last year about a problem he was having trying to get his daughter out of jail. She was terminally ill and had been in the hospital for about four (4) weeks. She was unable to walk or stand. A guard was stationed outside of her hospital room.

Mr. Droddy said, "Bill, all we want is for her to be able to die at home with her four children." Mr. Droddy told me that he and his wife had not had a relationship with their daughter for several years because of the bad decisions she had made. He said "we still love her - she is our daughter". I contacted Secretary Werholtz and he told me what he could and could not do. Sec. Werholtz was very helpful but our current laws were, I believe, made to take time for the process to work.

I believe it is time to have a process that is responsible but one that can be sped up if the illness dictates. I believe this bill would have all of the safe guards in it but would allow for a quicker process.

Mr. & Mrs. Droddy have left to spend a couple of months in Texas for the winter. They regret very much not being here today. They know this bill will not help their family but they hope no other family will have to go through what they did. They were able to bring their daughter home from the hospital via ambulance. She died the next day.

Rep. Bill Feuerborn



Kansas Association of Chiefs of Police

PO Box 780603, Wichita, KS 67278 (316)733-7301

Kansas Peace Officers Association

PO Box 2592, Wichita, KS 67201 (316)722-8433



Testimony to the Senate Judiciary Committee In Support of HB2432

March 10, 2010

Chairman Owens and committee members,

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association supports legislation to remedy the a gap left in the use of force statutes after the Kansas Supreme Court ruling in State vs. Hendrix, decided in October 2009.

As you know, this committee and the Senate passed an amended bill also proposing a fix to the Hendrix case, SB381. Either bill accomplishes the needed fix for the statute. They each take a similar but slightly different approach to the Hendrix issue. They are further apart on some of the other amendments made to the statutes that have nothing to do with the Hendrix case. The Senate version creates a rebuttable presumption use of force is justified in certain cases. The House solved those proposals with a different approach by clarifying what is justifiable in various circumstances but does not create a rebuttable presumption. Again, not a big issue either way for us, but an important policy issue the two chambers will have to resolve. We are less concerned with which approach is used than we are that the legislative intent is clear. Our greatest concern is that legislation with the Hendrix fixes are ultimately passed by the legislature.

There are several different ways to effectively amend these statutes to cure the problems with the Hendrix decision. Both SB381 and HB2432 propose different methods of reaching that end. Perhaps ultimately a combination of the two will be the best answer.

We are aware of the past attempts by some to encourage changes to KSA 21-3217 and parts of KSA 21-3219 in regards to a person using force against law enforcement officers. Those proposals were rejected by both chambers in the bills they each passed. We encourage you to continue to not include such provisions.

Time is of the essence since the misguided case law will not be fixed until a bill actually becomes law. This is a matter the House recognized by amending their bill to be effective upon publication in the register. Regardless of which approach you choose in amending this bill, we urge you to ultimately recommend this bill favorably for passage with provisions to fix the Hendrix case issues.

A handwritten signature in black ink, appearing to read "Ed Klumpp".

Ed Klumpp
Legislative Committee Chair
eklumpp@cox.net
Phone: (785) 235-5619
Cell: (785) 640-1102

Senate Judiciary

3-10-09

Attachment 4



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chair
Honorable Richard M. Smith, Vice Chair
Helen Pedigo, Executive Director

MARK PARKINSON, GOVERNOR

SENATE JUDICIARY COMMITTEE
Senator Tim Owens, Chair

TESTIMONY IN SUPPORT OF HOUSE BILL 2469

Criminal History
Helen Pedigo, Executive Director
March 10, 2010

Chairman Owens and committee members, thank you for the opportunity to testify before you today in support of House Bill 2469. I'm here on behalf of the Kansas Sentencing Commission, a group of 17 criminal justice professionals, including local and state partners, members of all three branches of government, and the public.

This bill addresses an issue in *State v. Luttig*, 40 Kan. App. 2d 1095 (2009) and more recently, in *State v. Gilley*, No 99,156, (Jan. 22, 2010). The bill would amend current law to include convictions, for which the sentence includes a penalty enhancement, in criminal history. Presently, a penalty enhancement, in this case a mandatory sentence of 45 days in jail as an added component to the sentence prescribed at severity level 8 for a third or subsequent conviction of K. S. A. 21-3710 Forgery, excludes prior forgeries from being used as criminal history that would increase the underlying prison sentence.

The bill would allow criminal history to be considered and would not create an exception for the crime of forgery, or any other crime that is assigned a severity level, as well as a specific mandatory penalty provision, for later offenses. This bill would serve justice by providing a more accurate criminal history of the offender for presentence investigations and sentencing.

The House made no amendments. The bill started out on the consent calendar, was taken off the consent calendar, and passed out of the chamber with a vote of 120 to 0.

Thank you for your time, and I'd be happy to answer questions.

Testimony on HB 2503
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 10, 2010

The Department of Corrections urges favorable consideration of HB 2503. HB 2503 was passed by the House by a vote of 121-0. HB 2503 amends K.S.A. 75-5251 which currently provides the secretary with the authority to examine the operations of correctional facilities and conduct administrative inquiries regarding those facilities. HB 2503 provides that same authority to the secretary regarding the department's parole offices and release supervision services.

The Department of Corrections exercises its jurisdiction and management over offenders who are either incarcerated or under the release supervision of the department. The secretary's administrative authority and responsibility to examine the business, government, discipline and management of correctional facilities is clearly set out in K.S.A. 75-5251, however, the secretary's administrative responsibility and authority regarding the management of parole offices is not explicitly set out and particularly does not provide for the issuance of administrative subpoenas and the administration of oaths to witnesses regarding the operations of the department's parole services. HB 2503 would provide the secretary with the explicit management responsibility and authority regarding parole services operations as is currently provided regarding correctional facilities.

The Department urges favorable consideration of HB 2503.

DEPARTMENT OF CORRECTIONS

Robert Sanders, Chairperson

Patricia Biggs, Member

Tom Sawyer, Member

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE
SENATOR OWENS, CHAIRPERSON; SENATOR SCHMIDT, VICE CHAIRPERSON
FROM: KANSAS PAROLE BOARD, PATRICIA BIGGS, MEMBER 
DATE: MARCH 10, 2010
RE: 2010 HB 2506 PAROLE SUITABILITY FACTORS – PROPORTIONALITY

- The concept of 2010 HB 2506 generated from the Parole Board Oversight Committee work of this past interim session.
- This bill provides additional statutory clarity and specificity in its direction to the Parole Board with regard to the provisions of 2008 SB 411.
- Under current law, the Parole Board shall consider, along with other factors, the "...proportionality of 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"
- The changes provided for under this bill are:
 - it specifies the current sentencing guidelines as the basis for the computation of guideline terms
 - it specifies that the element of proportionality, as it relates to parole suitability deliberations, is applicable only to those *crimes committed prior to July 1, 1993* – that is, it does not apply to off-grid guidelines offenses.
- This bill's specifications will ensure that there is congruence in understanding of this statutory factor between all stakeholders (for example, the parole board, the offender, the victim/victim family, the offender family, public officials, etc.)

The Parole Board supports the provisions of HB 2506.

KANSAS PAROLE BOARD

Marie McNeal, Administrator

Senate Judiciary

3-10-10

Attachment 7

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

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE
SENATOR OWENS, CHAIRPERSON; SENATOR SCHMIDT, VICE CHAIRPERSON
FROM: KANSAS PAROLE BOARD, PATRICIA BIGGS, MEMBER *PB*
DATE: MARCH 10, 2010
RE: 2010 HB 2508 – REVIEW OF LONG PASSES

- The concept of 2010 HB 2508 generated from the Parole Board Oversight Committee work of this past interim session and was amended in House Committee.
- The provisions of this bill require a review by the Parole Board of those offenders who are presently serving a deferral ('pass') of five or more years. Such review shall occur within the coming two year cycle beginning with those with the oldest deferral date.

Current Provisions:

A, B or Off-Grid Felonies : The Board is required by statute to hold another hearing regarding parole suitability within three (3) years unless compelling reasons exist that would make parole suitability unlikely within this time period at which point an extended pass may be issued for up to ten (10) years if reasons for the extended pass are provided in the decision. (K.S.A. 22-3717 (j)).

Considerations:

1. Extremely Serious and Violent: The cases to be reviewed pursuant to these provisions represent the most serious and violent.
2. Infrequently Employed: Deferrals of more than 5 years are not frequently used by the Board. Deferrals of 10 years are considered very seriously before those decisions are rendered and are used even more rarely. This pool of offenders is very small when considering the prison population. This pool of offenders is consistent with the concept of reserving incarceration for the most serious and violent offenders and in providing for public safety.
3. Scope
 - Of the 8602 total inmate population on June 30, 2009, 1637 (19%) require a suitability determination by the parole board for community release.
 - Of the 1637 who must achieve a suitability determination,
 - 639 have at least one offense of an off-grid severity.
 - 227 have an old-law offense equal to a present guidelines severity level 1 or 2.
 - These 866 (639+227) constitute the A, B, and Off-Grid felonies who, with extended reason, the parole board could pass for up to ten years.

KANSAS PAROLE BOARD
Marie McNeal, Administrator

- These 866 represent 10% (866/8602) of the total prison population.

Source: KSC prison pop projections

- 74 incarcerated offenders have a current deferral term of five years or more.
 - This represents 4.3% (37/866) of the pool who are eligible, with special findings, for a pass duration greater than three years.
- 37 offenders have a ten year current deferral.
 - This represents 4.3% (37/866) of the pool who are eligible, with special findings, for a pass duration greater than three years.

4. Usage Rates:

1. Annually, the number of deferrals greater than 5 years is very small; note that these will, "stack" within the prison population.
2. Extended deferrals greater than five years and equaling ten years by the Number of Decisions Rendered by the KPB by year:

	Decisions Total Pass Rendered Decisions	Deferrals >5 years	Deferral of 10 years
2006	860 286	4	1
2007	760 297	19	10
2008	662 289	25	10
2009	642 230	10	4

5. Violence Description:

The crimes of conviction for these 37 offenders with a deferral of ten years includes:

- 47 homicides
- 17 sex crimes (inclusive of those against adults or children)
- 34 other serious person crimes (aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated assault, aggravated battery)

NOTE: These numbers represent *only* present, active, Kansas convictions; not counted here are criminal history offenses which reveal an even greater number of homicides, sex crimes, and violent person crimes (as well as property and drug convictions).

- Victim Impact: Consideration must be given to the victims of the crimes who make personal investment – emotional and financial burdens – to attend public comment sessions in opposition to offender release.
- Comments received constitute one of the statutory factors the board must consider.

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

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE
SENATOR OWENS, CHAIRPERSON; SENATOR SCHMIDT, VICE CHAIRPERSON
FROM: KANSAS PAROLE BOARD, PATRICIA BIGGS, MEMBER *PB*
DATE: MARCH 10, 2010
RE: 2010 SUB. HB 2509 WORK RELEASE PLACEMENT & MULTIDISCIPLINARY TEAM
REVIEW OF SEX OFFENDERS

- The concept of 2010 HB 2509 generated from the Parole Board Oversight Committee work of this past interim session.
 - Specifically, the concept hoped to remove barriers that the Parole Board sometimes faces with regard to facilitating successful transition through a stepped-down process of reintegration release of long-term incarcerated sex offenders.
- The Department of Corrections, SRS, and the Parole Board reviewed the current bill draft for operational challenges.
- The Board acknowledges that the Secretary of Corrections retains the final decision on offender placement and recognizes that barrier issues faced presently in successful transition of long-term offenders is not resolved by the provisions of this bill.
- The policy concept of MDT (Multi Disciplinary Team) review prior to placement in work release is supported by the Board from the perspective of community risk management.

Testimony on HB 2509
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 10, 2010

The House passed Substitute for HB 2509 by a vote of 122-0. The Department of Corrections supports Substitute for HB 2509. Substitute for HB 2509 provides for an assessment conducted by the Multidisciplinary Team (MDT) regarding the suitability of a proposed placement of a sex offender into a work release program. Currently, the MDT established by K.S.A. 59-29a03 evaluates offenders for possible civil commitment as Sexually Violent Predators.

It is important to the Department that the committee understand that, because of funding reductions that impact our medical/mental health care contract, it is highly likely that the forensic psychological evaluations conducted on behalf of the MDT process will be discontinued. This will not stop either the MDT process as it currently exists, nor would it stop the review process as proposed in *HB 2509*. It would, however, eliminate one very useful piece of information used by MDT members in reaching their decisions.

Substitute for HB 2509 reflects the recommendation of the Department to establish the policy of having the Multidisciplinary Team evaluate potential work release placement of sex offenders through amendment of the work release statute, K.S.A. 75-5267 rather than through amendment of the Civil Commitment of Sexually Violent Predator Act, K.S.A. 59-29a01 et seq. This recommendation was made due to a belief that it was more logical to codify procedures and prerequisites pertaining to work release placements in the existing work release statute rather than in the Act for the Civil Commitment of Sexually Violent Predators and to avoid the possible premature initiation of civil commitment procedures when the offender still has a sentence of incarceration remaining to be served.

The Department currently evaluates the placement suitability of sex offenders into a work release program. The Department would continue to conduct those evaluations irrespective of whether HB 2509 is enacted. The policy of having the MDT also make work release placement assessments provides another level of review and for a consistent application of criteria for both a work release placement and potential civil commitment at the expiration of the criminal sentence.

The Department urges favorable consideration of Substitute for HB 2509.

DEPARTMENT OF CORRECTIONS