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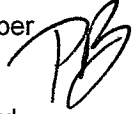
Robert Sanders, Chairperson
Patricia Biggs, Member
Tom Sawyer, Member

Parole Board

Sam Brownback, Governor

*** REVISED ***
MEMORANDUM

To: Members of Senate Judiciary Committee
Senator Tim Owens, Chair; Senator Jeff King, Vice Chair

From: Kansas Parole Board, Patricia Biggs, Member 

Date: February 18, 2011

Re: ERO 34 abolishing the Kansas Parole Board

Definition: Executive Reorganization Order Number 34 abolishes the Kansas Parole Board and moves all Parole Board powers, duties and functions to the prison review board. The prison review board shall consist of three existing employees of the Department of Corrections as appointed by the Secretary of Corrections. This ERO is effective July 1, 2011.

Position: The Parole Board holds a position of neutrality regarding this reorganization recognizing it as a policy issue.

The members of the Parole Board are committed to facilitating any and all action necessary to accomplish the transition of its powers, duties and functions to the prison review board under the ERO in a manner that is as seamless as possible. Discussions with the Secretary have occurred; all job duties and functions are being examined. Assistance will be provided in a manner and fashion directed by the Secretary or his designee.

Primary Information for Consideration: Due Process Constitutional issues in the process of post-incarceration supervision revocation.

Explanation: The U.S. Supreme Court decision of *Morrissey v. Brewer* (1972) guides the processes of revocation of post-incarceration supervision. Held by the Justices in this decision is, in relevant part, the following:

3. At the revocation hearing, which must be conducted reasonably soon after the parolee's arrest, minimum due process requirements are: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); **(e) a "neutral and detached" hearing body** such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. Pp. 408 U. S. 487-490. (*emphasis added*).

When an offender is sentenced to prison, s/he is sentenced to the custody of the Secretary of Corrections for a term of incarceration and a term of post release supervision. Thus, it appears that members of the Department of Corrections cannot be both custodial and neutral and detached.

U.S. Supreme Court, ruling on this Constitutional issue, appears to demand another body be charged with final hearings related to the withdrawal of the right to community-based liberty.

Senate Judiciary
2-18-11
Attachment 1

Secondary Information for Consideration:

The Parole Board generates savings well in excess of state dollars spent on it; it is a high-yield investment for state dollars.

- **Return on Investment:**
 - ❖ Each \$1.00 of State General Fund allocated to the Parole Board returns in excess of \$1.92 in FY 2010
 - ❖ Each \$1.00 of State General Fund allocated to the Parole Board returns in excess of \$2.43 (estimated) in FY 2011.
- **Cost to the State:**
 - ❖ Elimination of the Parole Board will cost \$1 Million to \$1.25 Million annually. The total annual budget for the Parole Board is approximately \$0.5 Million - netting additional costs to the state of \$500,000 to \$750,000 annually.

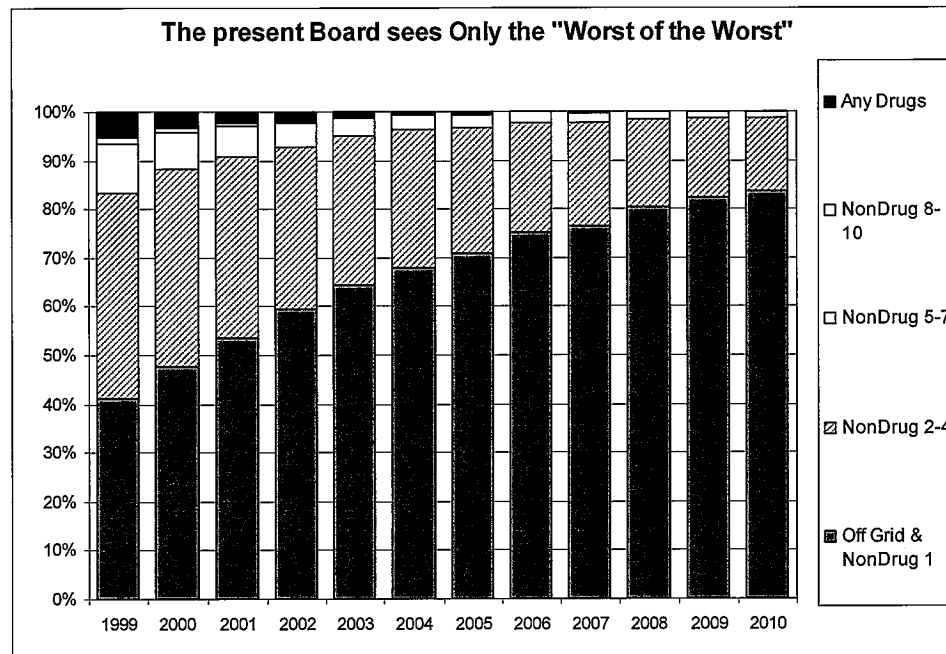
Facts:

- In FY 2010, there were 92 instances where the Parole Board denied revocation as recommended by the KDOC parole officer.
- Costs for incarceration that same year neared \$25,000 (actual \$24,953 source: KDOC Annual Report).
- The actual average length of stay for this group in FY 2010 was 158 days (Kansas Sentencing Commission, FY 2011 Adult Inmate Prison Population Projections p. 7).
 - Elimination of Parole Board will result in revocation to prison for each of these cases - as recommended by KDOC staff - and will generate incarceration costs totaling \$993,745. This is \$497,287 greater than the cost of having a Parole Board.
- Through the first half of Fiscal Year 2011, 58 cases where the KDOC parole officer moved for revocation were sent back to the community by the Board. At this rate, 116 cases are anticipated in FY 2011.
- Cost for incarceration for FY 2011 are \$24,970 (KDOC Annual Report).
- Assuming the same average length of stay from FY 2010 (158 days) per Sentencing Commission reports (Kansas Sentencing Commission, FY 2011 Adult Inmate Prison Population Projections p. 7).
 - Elimination of Parole Board will result in revocation to prison for each of these cases - as recommended by KDOC staff - and will generate incarceration costs totaling \$1,253,836. This is \$758,836 greater than the cost of having a Parole Board.

* A Department of Corrections Prison Review Board can use the release of the most serious and violent person felons as a mechanism to control prison population and budgets. This is inconsistent with the legislature's sentencing policy of reserving incarceration for the most serious and violent offenders - consistent with proportionality.

Parole Board sees only "the worst of the worst"

- 83.6% are Off Grid and Non-Drug Level 1: Murder 1, Rape, Aggravated Kidnapping
- 15.2% Non-Drug Level 2-4 : Murder 2, Voluntary Manslaughter, Kidnapping, Aggravated Robbery, Involuntary Manslaughter, Aggravated Battery of Law Enforcement with Great Bodily Harm.



KDOC Mission and KPBB Mission differ in fundamental perspective

- **KDOC Mission focuses on custody, control and management.**
The Department of Corrections, as part of the criminal justice system, contributes to the public safety and supports victims of crime by exercising safe and effective containment and supervision of inmates, by managing offenders in the community, and by actively encouraging and assisting offenders to become law-abiding citizens.
- **KPBB Mission focuses on accurate assessment of risk.** *to community*
Consistent with the principles of evidence based practices, parole privilege shall be extended to those offenders who demonstrate suitability by having served incarceration time set forth by the courts and who have demonstrated a reduction in risk to re-offend such that re-victimization is minimized and rehabilitation and successful reentry are maximized; similarly, parole privilege shall be rescinded in cases where an offender demonstrates increasing risk to community.

* The KPB is not a "board of 'no' ".

Facts:

Nearly 1 in 2 offenders who come before the Kansas Parole Board are released.

The Board's release rate is about 45% - and is a rate higher than the rate in the seven years from 1994 through 2000. (*rate of release = (parole+cr+max)/total decisions less continued*).

