

Approved: 3-10-11
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 2:00 pm on February 21, 2011 in Room 144-S of the Capitol.

All members were present except: Kay Wolf

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Secretary Roberts, Kansas Department of Corrections
Justin Stowe, Post Audit
Patti Biggs, Kansas Parole Board

Others attending:

See attached.

ERO 34-Consolidation of parole review functions in the executive branch by abolishing the Parole Board as established by K.S.A. 22-3701 et seq. and establishing the Prisoner Review Board within the Department of Corrections.

Chairperson Colloton called the meeting to order and opened the hearing on **ERO 34**. She introduced Secretary Roberts, Kansas Department of Corrections, to give his testimony as a proponent. Chairperson Colloton asked the Secretary to give a brief presentation regarding what was going to happen with the ERO and also to comment on the possibility of a conflict of interest by having the parole process as a part of the Department of Corrections. Secretary Roberts presented written copy of his testimony. (Attachment 1) He opened by stating the legal counsel for the Kansas Department of Corrections has advised there is no conflict of interest by having the parole process as a part of the Department of Corrections. He stated the plan is to appoint three employees of the Kansas Department of Corrections to a Prison Review Board to serve in the same capacity as the Parole Board. The Department of Corrections would gain help from other staff relying heavily on parole officers. They would also be using video conferencing contacts as much as possible. He assured the Committee that he, as the Secretary of the Department of Corrections, would have very little involvement unless absolutely necessary. The focus is to handle the Prison Review Board as the Parole Board has, understanding all decisions should be made very carefully.

Chairperson Colloton stated she will hold all questions until after all testimony is completed and introduced Justin Stowe, Kansas Legislature Division of Post Audit, to give his testimony as a neutral party. Mr. Stowe presented written copy of the Post Audit Summary (Attachment 2) and stated the report can be found in its entirety in the offices of the Kansas Legislative Division of Post Audit. Mr. Stowe stated merging the 3-member Parole Board, which is primarily responsible for granting and denying parole, into the Department of Corrections would not achieve any additional operating efficiencies because the Board's staff functions already are carried out by the Department of Corrections staff, and Board members already are co-located within the Department. In closing, he stated it could be a conflict of interest creating a Prison Review Board within the Kansas Department of Corrections.

Chairperson Colloton introduced Patti Biggs, Kansas Parole Board, to give her testimony as a neutral party to **ERO 34**. Ms. Biggs presented written copy of her testimony. (Attachment 3) Ms. Biggs stated the counsel for the Kansas Parole Board has concerns that the ERO will be creating a conflict of interest by creating a Prison Review Board within the Kansas Department of Corrections and abolishing the Kansas Parole Board. She stated 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. She cited the Morrissey v. Brewer U.S. Supreme Court decision of 1972. When an offender is sentenced to prison, they are 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. The U.S. Supreme Court, ruling on this Constitutional issue, appears to demand another body be charged with

CONTINUATION SHEET

The minutes of the Corrections and Juvenile Justice Committee at 1:30 p.m. on February 21, 2011, in Room 144-S of the Capitol.

final hearings related to the withdrawal of the right to community-based liberty. In closing, she stated the Parole Board generates savings well in excess of state dollars spend on it; it is a high-yield investment of state dollars. She presented graphs and charts to back up her statements.

With no others to testify or speak to the **ERO 34**, Chairperson Colloton opened the floor for questions. Several of the Committee members had questions and concerns.

Upon the conclusion of the questions and answers, Chairperson Colloton closed the hearing on **ERO 34**.

Next, Chairperson Colloton opened the floor for consideration of the following bills previously heard:

HB 2312-Regulated scrap metal; licensing scrap metal dealers; unlawful acts; criminal penalties

HB 2197-Amending the circumstances under which public defenders may accept new clients.

HB 2188-No fiscal note is required for bills concerning the utilization of correctional resources unless the Kansas sentencing commission is required to provide such information

The first bill up for consideration is **HB 2312**. Chairperson Colloton called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill and the balloon offered on the bill. Mr. Ostrow presented written copy of the balloon. (Attachment 4) He stated there was some technical cleanup in the balloon and also changes in the language that would satisfy Representative Kinzer's concerns.

Representative Pauls made a motion to move the bill out favorably. Representative Kinzer seconded.

A discussion followed.

Representative Pauls made a motion to accept the balloon explained by Mr. Ostrow. Representative Brookens seconded. Motion carried.

Chairperson Colloton moved the attention of the Committee back on the bill.

A discussion followed.

Representative Brookens made a motion for a friendly amendment to redefine the value starting on Page 5 leaving theft alone and on line 13, page 7, from the original bill and line 11 and 12 defining regulated scrap issue. (This amendment would drop down one level where theft is now) Representative Pauls seconded. (Attachment 5) Motion carried.

Representative Brookens made a motion to move HB 2312 out favorably as amended for passage. Representative Pauls seconded. Motion carried.

Chairperson Colloton moved the Committee's attention to **HB 2197** for consideration and called on Sean Ostrow, Office of the Revisor of Statutes, to explain an amendment on the bill. Mr. Ostrow presented written copy of the rules and regs. (Attachment 6) The bill is to limit the case load on public defenders. Changing the word from "may" to "shall"....refuse to take new client which would keep them from not being able to provide adequate representation to existing clients.

Representative McCray-Miller moved to pass HB 2197 out favorably. Representative Goodman seconded.

A discussion followed with some Committee members having concerns.

Representative Brookens made a motion to move an amendment of his which would address the creation of a private right issue. Representative Kinzer seconded.

A discussion followed.

Chairperson Colloton called for a vote on the Brookens amendment to solve the private right to sue

CONTINUATION SHEET

The minutes of the Corrections and Juvenile Justice Committee at 1:30 p.m. on February 21, 2011, in Room 144-S of the Capitol.

for damages or other issues by adding language between section 3 & 4 indicating no private right to sue for relief. Motion carried.

Representative McCray-Miller made a motion to move HB 2197 out favorably as amended for passage. Representative Goodman seconded.

A discussion followed.

Chairperson Colloton called for a vote on the motion on the floor to pass HB 2197 out favorably as amended for passage. Motion carried.

Chairperson Colloton turned the Committee's attention to **HB2188** and called on Representative Pauls to explain the bill and the amendment she is offering.

Representative Pauls made a motion to strike section 1 completely and line 25 (a) should read “fiscal reports done for every legislation including resolutions as well. On line 26 add and resolutions” after all bills. Representative Brookens seconded.

A discussion followed.

Chairperson Colloton called for a vote on the motion on the floor to pass HB 2188 out favorably as amended. Motion carried.

Chairperson Colloton announced to the Committee that some of the bills in Committee could be worked into other bills. She also stated the Speaker of the House has already blessed five bills in our Committee and she was going to ask him to bless **HB 2332-Sexual exploitation of a child: increasing the penalty for certain offenses**, also. The Committee will be working these bills after turnaround.

Chairperson Colloton adjourned the meeting at 3:15 pm. The next scheduled meeting to be on March 2, 2011, at 1:30 p.m. in room 144S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 2-21-11

NAME	REPRESENTING
John Faber	ABATE
PATRICIA SCALIA	BIDS
Brian R. Thompson	ABATE
Dan Holthaus	KCC
Mark Schreiber	Westar
Whitney Janner	City of Tigard
Justin Stone	Post Audit
Sarah Fertig	KSC
Kent Cornish	KS. Assn of Broadcasters
Jennie Marsh	KDOC
JEREMY BARCLAY	KDOC
RAY ROBERTS	KDOC
Dud Burke	JSRW
Ed Kumor	KACP/KSA/KPOA
Patrick Vogelberg	KCDAA
Mark Gleeson	Judicial Branch
Brundan Yorkley	Budget Division
Shannon Beel Little	Little Government Relations



KDOC-Parole Board Consolidation

House Corrections & Juvenile Justice
Committee

Ray Roberts, Secretary of
Corrections

February 21, 2011



ERO Vision Statement

- ERO 34 creates the Prisoner Review Board (PRB)
- To be administered by the Secretary of Corrections
- PRB shall consist of three existing KDOC employees
- Parole Board (KPB) is abolished



Goal and Objective

1-3

- Removes approximately \$500,000 SGF from annual budget beginning with FY 2012 budget
- Completes the consolidation of the KPB into the KDOC, which began with administrative functions
- Maintain a seamless correctional public safety net for all Kansans



Today's Situation

1-4

- KPB has six primary duties
 - Conduct Parole Suitability Hearings
 - Conduct Final Revocation Hearings
 - Impose Special Conditions & Review Proposed Release Plans
 - Review Functionally Incapacitated Applications
 - Review Clemency Applications
 - Review Early Discharge Applications



Parole Suitability

1-5

- Average of 35 hearings per month
- Average of 5 to 7 ½ hours per hearing (prep & hearing)
- Traditionally conceived idea
- Determining release from confinement portion of prison sentence



Revocation

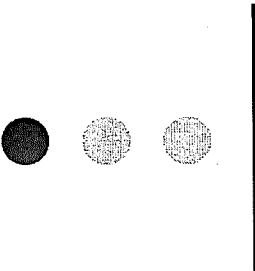
- Average of 50 hearings per month
- Average of 30 to 40 minutes per hearing
- Average of 40 offenders waive hearings per month
- Average of 15 to 20 minutes per review
- Determining that an offender has committed violations of supervision conditions



Special Conditions

1-1

- o 3,405 plans reviewed during FY 10
- o Average of 15 to 20 minutes per review
- o Impose necessary conditions to aid inmate in community reintegration



Functional Incapacitation Release

1-8

- Average of 3 to 5 applications reviewed per year
- Average of 60 minutes per review
- Inmate has a condition that is determined to permanently render the inmate incapacitated so that he or she lacks capacity to cause harm



Clemency

- o Average of 40 to 45 applications reviewed per year
- o Average of 60 minutes per review
- o Develop a recommendation on whether a criminal sentence should be commuted or pardoned by the Governor



Early Discharge

01-10

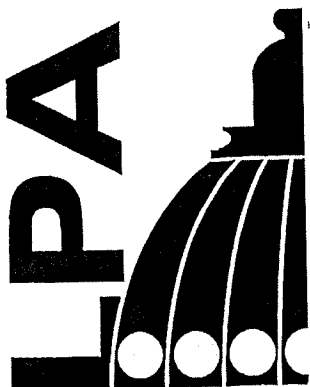
- Average of 75 to 80 applications reviewed per year
- Average of 60 minutes per review
- Societal Suitability; Determine when an inmate on parole has performed their obligation of release and is ready to reenter society



Public Comment Sessions

1-11

- Currently, there is one public comment session monthly in Kansas City, Topeka, & Wichita each
- Involves much staff time to prepare cases for review
- PRB will require three existing staff to turn full attention to sessions



Legislative Post Audit Performance Audit Report Highlights

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-21-11
Attachment # 2-1

Highlights

Adult Correctional Agencies: Determining Whether Functions Could Be Combined To Gain Cost Efficiencies

Report Highlights

October 2009 • 10PA02

Audit Concern

Legislators wanted to know whether significant cost savings could be achieved by merging the functions of the Sentencing Commission and the Parole Board into the Department of Corrections.

Other Relevant Facts

It's uncommon for states to put their parole function within a correctional agency. A 2008 International Parole Association Survey reported that only 6 of 47 responding states had their parole function within their correctional agencies.

It's very common to have correction's staff do prison population projections and legislative impact research. Our interviews with agency staff from all 50 states found that 39 states, or 78%, perform such functions through a correctional agency.

**Estimated Potential
Cost Savings as a
Result of This Audit:**

**Sentencing Commission staff
function merged with the
Department of Corrections:
\$152,000 per year
(\$760,000 over five years)**

AUDIT QUESTION: *Could the Department of Corrections, Sentencing Commission, and Parole Board be operated as a single agency to achieve operating efficiencies and reduce costs?*

AUDIT ANSWER and KEY FINDINGS:

- Merging the 3-member Parole Board—which is primarily responsible for granting and denying parole—into the Department of Corrections would not achieve any additional operating efficiencies because the Board's staff functions already are carried out by Department staff, and Board members already are co-located with the Department.
- Merging the Sentencing Commission's staff functions—prison population projections and legislative impact research—into the Department would allow the State to save about \$152,000 a year by eliminating duplicate administrative functions—including agency management, payroll, IT support, and the like—and the staff positions and other costs associated with them.

Estimated Cost Savings that Could Be Achieved Through Merging Sentencing Commission Staff Functions Into the Department of Corrections

Actions That Could Produce Savings	Total
Eliminate Executive Director position, create a half-time legal position, eliminate a half-time office assistant and a half-time accounting position.	\$117,200
Rent Reduction: move remaining Sentencing Commission staff into the Dept. of Corrections space.	\$23,300
Absorption of IT support, and elimination of unneeded equipment and other costs.	\$11,400
Total Estimated Cost Savings	\$151,900

- ▶ The merger savings we identified represent about 20% of the Commission's fiscal year 2009 operational expenditures.
- ▶ The 17-member Commission could remain an independent advisory body to the Department of Corrections or Legislature.
- ▶ Any potential conflicts of interest that arise from merging Sentencing Commission functions into the Department can be overcome.
- If the agencies remain separate, but the Department takes over administrative staff and functions for the Commission (similar to the way it supports Parole Board members), the State could save about \$48,000 a year.

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2-21-11 Att. 2-1

We Recommended

- The report recommends that the Legislature merge the Sentencing Commission into the Department of Corrections to achieve the efficiencies and cost savings we identified.
- The report also contains recommendations for the Commission and the Department to improve the operational efficiency of those agencies and to reduce operating costs.

Agency Response: *The Parole Board generally concurred with the report's findings, conclusions, and recommendations. In its response, the Department of Corrections disagreed with our recommendation that the Sentencing Commission be merged into the Department, but indicated it was prepared to implement any recommendations the Legislature adopts. In its response, the Sentencing Commission strongly disagreed with the report's recommendation that it be merged into the Department of Corrections.*

DO YOU HAVE AN IDEA FOR IMPROVED GOVERNMENT EFFICIENCY OR COST SAVINGS?

If you have an idea to share with us, send it to ideas@lpa.ks.gov, or write to us at the address shown. We will pass along the best ones to the Legislative Post Audit Committee.

Other Relevant Facts

Kansas is one of only six states that has a Sentencing Commission, and not a correctional agency, perform these functions.

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Barbara J. Hinton,
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For more information about this
audit report, please contact

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

Parole Board

Sam Brownback, Governor

MEMORANDUM

To: Members of House Corrections and Juvenile Justice Committee
Representative Pat Colloton, Chairperson; Representative Lance Kinzer, Vice Chairperson

From: Kansas Parole Board, Patricia Biggs, Member 

Date: February 21, 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.

House Corrections and Juvenile Justice
Committee
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Attachment # 3-1

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.

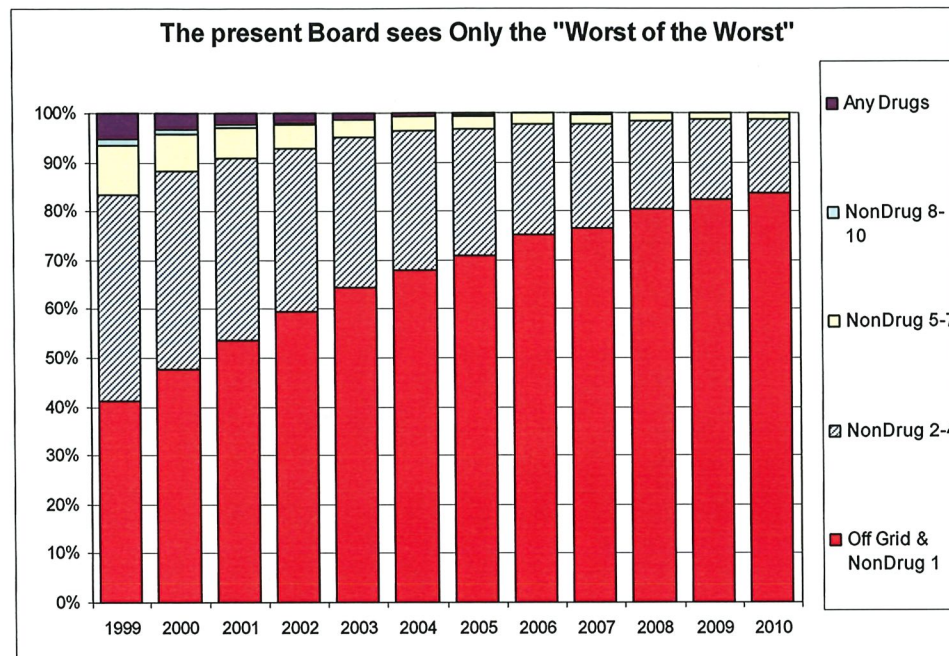
Facts:

- 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 KPB Mission differ in fundamental perspective

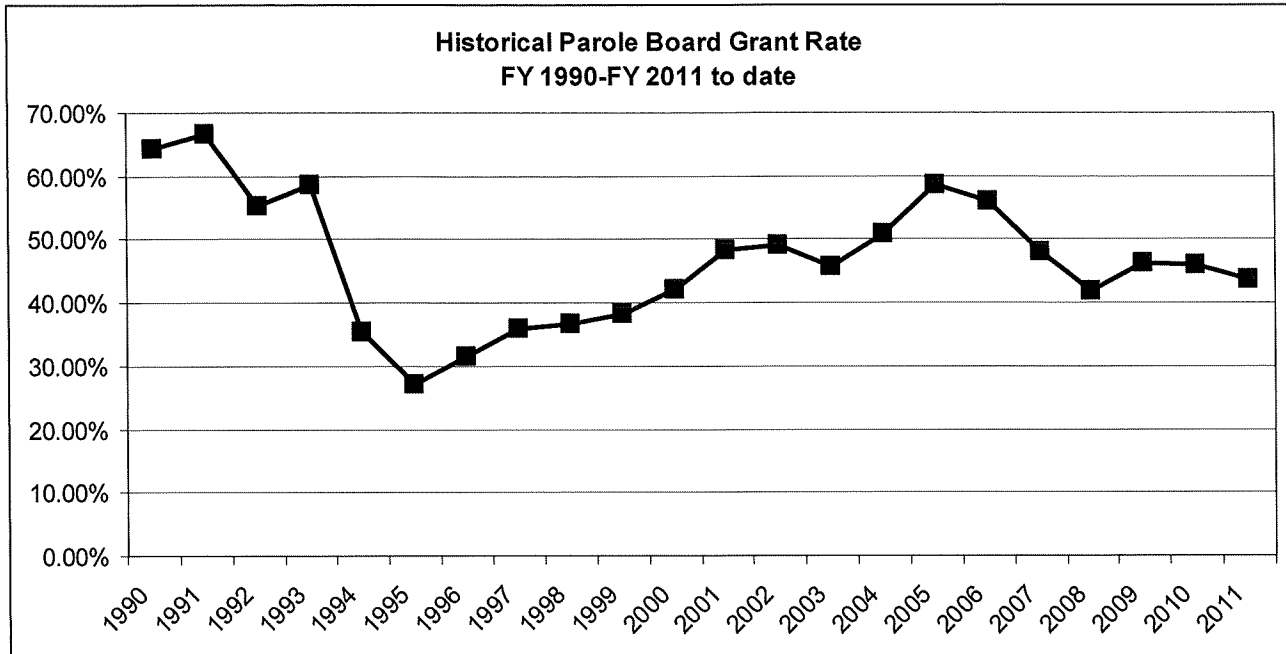
- **KDOC Mission focuses on custody, control and management.**
 The Department of Corrections, as part of the criminal justice system, contributes to the public safety and supports victims of crime by exercising safe and effective containment and supervision of inmates, by managing offenders in the community, and by actively encouraging and assisting offenders to become law-abiding citizens.
- **KPB Mission focuses on accurate assessment of risk.**
 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*).



HOUSE BILL No. 2312

By Committee on Judiciary

2-11

1 AN ACT concerning regulated scrap metal; relating to licensure for scrap
2 metal dealers; unlawful acts; criminal penalties; amending K.S.A.
3 2010 Supp. 50-6,109 and 50-6,111 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) On or after January 1, 2012, no business shall
7 purchase any regulated scrap metal without having first secured a license
8 for each place of business as herein provided. In case such place of
9 business is located within the corporate limits of a city, the application for
10 license shall be made to the governing body of such city. In all other
11 cases, the application for license shall be made to the board of county
12 commissioners in the county in which such place of business is to be
13 located.

14 (b) A board of county commissioners shall not issue or renew a
15 scrap metal dealer license without giving the clerk of the township where
16 the place of business is to be located written notice of the filing of the
17 application for licensure or renewal. The township board may, within 10
18 days, file advisory recommendations as to the granting of such license or
19 renewal and such advisory recommendations shall be considered by the
20 board of county commissioners before such license is issued.

21 (c) The governing body of any city and the board of county
22 commissioners shall not issue or renew a scrap metal dealer license
23 without giving the sheriff, chief of police or director of all law
24 enforcement agencies in the county written notice of the filing of the
25 application for licensure or renewal. Each law enforcement agency may,
26 within 10 days, file advisory recommendations as to the granting or
27 renewal of such license and such advisory recommendations shall be
28 considered by the governing body of the city or board of county
29 commissioners before such license is issued.

30 (d) An application for a scrap metal dealer license shall be verified
31 and upon a form prepared by the attorney general and shall contain:

32 (1) The name and residence of the applicant;

33 (2) the length of time that the applicant has resided within the state
34 of Kansas and a list of all residences outside the state of Kansas during
35 the previous 10 years;

36 (3) the particular place of business for which a license is desired;

(4) the name of the owner of the premises upon which the place of business is located; and

(5) a statement that the applicant has not within 10 years immediately preceding the date of making application been convicted of theft as defined in K.S.A. 21-3701, prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas, theft of property lost, mislaid or delivered by mistake as defined in K.S.A. 21-3703, prior to its repeal, or section 88 of chapter 136 of the 2010 Session Laws of Kansas, theft of services, as defined in K.S.A. 21-3704, prior to its repeal, criminal deprivation of property as defined in K.S.A. 21-3705, prior to its repeal, or section 89 of chapter 136 of the 2010 Session Laws of Kansas, or any other crime involving possession of stolen property.

(e) Each application for a scrap metal dealer license to purchase regulated scrap metal shall be accompanied by a fee of not less than \$100 nor more than \$400, as prescribed by the board of county commissioners or the governing body of the city, as the case may be.

(f) The board of county commissioners or the governing body of a city shall issue a license upon application duly made as otherwise provided for herein, to any scrap metal dealer engaged in business in such county or city and qualified to receive such license, to purchase regulated scrap metals.

(g) If an original license is granted and issued, the governing body of the city or the board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if the license holder is qualified to receive the same and the license has not been revoked as provided by law. The annual license fee for such license, which shall be in addition to the fee provided by subsection (e), shall be not less than \$25 nor more than \$50.

(h) No license issued under this act shall be transferable.

New Sec. 2. (a) After examination of an application for a scrap metal dealer license, the governing body of the city or the board of county commissioners shall, if they approve the same, issue a license to the applicant.

(b) No scrap metal dealer license shall be issued to:

(1) ~~A person who is not a citizen of the United States.~~

(2) A person who is not 18 or more years of age.

(3) ~~A person who is not of good character and reputation in the community in which the person resides.~~

(4) A person who, within 10 years immediately preceding the date of application approval, has ~~plead guilty to~~, been convicted of, released from incarceration for or released from probation or parole for committing, attempting to commit, or conspiring to commit a violation of article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or

(i) Violation of subsection (a) is a Class A nonperson misdemeanor.

pled

4-2

4-2

Sections 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with law enforcement, section 129 of chapter 136 of the 2010 Session Laws of Kansas, interference with judicial process, section 130 of chapter 136 of the 2010 Session Laws of Kansas, or any crime involving moral turpitude.

(5) A person who, within the five years immediately preceding the date of application approval, has ~~plead~~ pled guilty to, been found guilty of, or entered a diversion agreement for violating the provisions of K.S.A. 50-6.109 et seq., and amendments thereto, the laws of another state comparable to such provisions or the laws of any county or city regulating the sale or purchase of regulated scrap metal three or more times.

pled
section 1, and
amendments
thereto.

(6) A person who within the three years immediately preceding the date of application held a scrap metal dealer license which was revoked, or managed a facility for a scrap metal dealer whose license was revoked, or was an employee whose conduct ~~lead~~ led to or contributed to such revocation.

led

(7) A person who makes a false statement on the license application or has made a false statement on a license application within the last three years.

or limited liability
corporation

(8) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.

or limited liability
corporation

(9) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a license hereunder for any reason.

(10) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(11) A person whose spouse would be ineligible to receive a scrap metal dealer license for any reason.

(12) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such crime was committed during the time that the spouse held a license under this act.

(13) Any person who does not own the premises for which a license is sought, unless the applicant has a written lease for at least $\frac{3}{4}$ of the period for which the license is to be issued.

4-4

(14) Any person for a business location not in compliance with the provisions of all zoning requirements, environment codes, or other applicable business requirements.

(d) Scrap metal dealer licenses shall be issued either on an annual basis or for the calendar year as determined by the board of county commissioners or the governing body of the city.

New Sec. 3. (a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, may revoke or suspend the license for any one of the following reasons:

(1) The licensee has violated any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or any ordinance, resolution, or rules or regulations made by the board or the city, as the case may be;

(2) the employment or continuation in employment of a person if the licensee knows such person has violated, within the 18 months prior to the notice of suspension or revocation action, any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or the laws of another state comparable to such provisions, or any city or county ordinance, resolution, or regulation controlling scrap metal sale or purchase in Kansas or any other state; or

(3) there has been a violation of any laws of the state of Kansas, county resolution, or city ordinance regulating scrap metal which occurred on the premises or related to the conduct of the business.

(b) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefore;

(2) the licensee has become ineligible to obtain a license under this act;

(3) the nonpayment of any license fees;

(4) permitting any criminal activity in or upon the licensee's place of business;

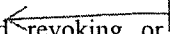
(5) the employment or continuation in employment of a person in connection with the receiving or purchasing of regulated scrap metal if the licensee knows such person has, within the preceding five years, plead guilty to, been convicted of, released from incarceration for or released from probation or parole for committing, attempting to commit, or conspiring to commit a violation of article 37 of chapter 21 of the

Kansas Statutes Annotated, prior to their repeal, or Sections 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section 128 of chapter 136 of the 2010 Session Laws of Kansas,

section 1, and amendments thereto,

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1 compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing
2 legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely
3 reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with
4 law enforcement, section 129 of chapter 136 of the 2010 Session Laws of
5 Kansas, interference with judicial process, section 130 of chapter 136 of
6 the 2010 Session Laws of Kansas, a violation of K.S.A. 2010 Supp. 21-
7 36a03, 21-36a05, and amendments thereto, or any crime involving moral
8 turpitude; or

9 (c) Within 20 days after the order of the board  revoking or
10 suspending any license, the licensee may appeal to the district court and
11 the district court shall proceed to hear such appeal as though such court
12 had original jurisdiction of the matter. ~~Any appeal taken from an order~~
13 ~~revoking or suspending the license shall not suspend the order of~~
14 ~~revocation or suspension during the pendency of any such appeal.~~

denying.

15 Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws is
16 hereby amended to read as follows: Sec. 87. (a) Theft is any of the
17 following acts done with intent to permanently deprive the owner of the
18 possession, use or benefit of the owner's property or services:

19 (1) Obtaining or exerting unauthorized control over property
20 or services;

21 (2) obtaining control over property or services, by deception;

22 (3) obtaining control over property or services, by threat;

23 (4) obtaining control over stolen property or services knowing
24 the property or services to have been stolen by another; or

25 (5) knowingly dispensing motor fuel into a storage container
26 or the fuel tank of a motor vehicle at an establishment in which motor
27 fuel is offered for retail sale and leaving the premises of the establishment
28 without making payment for the motor fuel.

29 (b) *Except as provided in subsection (c),* theft of:

30 (1) Property or services of the value of \$100,000 or more is a
31 severity level 5, nonperson felony;

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(2) property or services of the value of at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(3) property or services of the value of at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony;

(4) property or services of the value of less than \$1,000 is a class A nonperson misdemeanor, except as provided in subsection (b)(5) or (b)(6);

(5) property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony; and

(6) property of the value of less than \$1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.

(c) *Theft of property that is regulated scrap metal of the value of:*

(1) *\$100,000 or more is a severity level 4, nonperson felony;*

(2) *at least \$25,000 but less than \$100,000 is a severity level 6, nonperson felony;*

(3) *at least \$1,000 but less than \$25,000 is a severity level 8, nonperson felony;*

4-7

4-7

1 (4) less than \$1,000 is a class A misdemeanor and the offender
2 shall be fined not less than twice the value of the regulated scrap metal
3 taken, except as provided in subsection (c)(5); and

4 (5) of less than \$1,000 is a severity level 9, nonperson felony if
5 committed by a person who has been convicted of theft two or more
6 times.

7 (d) As used in this section;

8 (1) "Conviction" or "convicted" includes being convicted of a
9 violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal
10 ordinance which prohibits the acts that this section prohibits;

11 (2) "regulated scrap metal" means the same as in K.S.A. 2010
12 Supp. 50-6,109, and amendments thereto; and

13 (3) "value" means the value of the property or the cost to
14 restore the site of the theft of property that is regulated scrap metal to its
15 condition at the time ~~the theft of property that is regulated scrap metal~~ immediately prior to
16 occurred, whichever is greater.

17 Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read
18 as follows: 50-6,109. As used in sections 1 through 3, and amendments
19 thereto, and K.S.A. 20092010 Supp. 50-6,109 through 50-6,112, and
20 amendments thereto:

21 (a) "Scrap metal dealer" means any person that operates a
22 business out of a fixed location, and that is also either:

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1 (1) Engaged in the business of buying and dealing in regulated
2 scrap metal;

3 (2) purchasing, gathering, collecting, soliciting or procuring
4 regulated scrap metal; or

5 (3) operating, carrying on, conducting or maintaining a
6 regulated scrap metal yard or place where regulated scrap metal is
7 gathered together and stored or kept for shipment, sale or transfer.

8 (b) "Regulated scrap metal yard" means any yard, plot, space,
9 enclosure, building or any other place where regulated scrap metal is
10 collected, gathered together and stored or kept for shipment, sale or
11 transfer.

12 (c) "Regulated scrap metal" shall mean wire, cable, bars, ingots,
13 wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle
14 parts, pipes or connectors made from aluminum; catalytic converters
15 containing platinum, palladium or rhodium; and copper, titanium,
16 tungsten, stainless steel and nickel in any form; for which the purchase
17 price described in K.S.A. 2010 Supp. 50-6,110 and 50-6,111, and
18 amendments thereto, was primarily based on the content therein of
19 aluminum, copper, titanium, tungsten, nickel, platinum, palladium,
20 stainless steel or rhodium; any item composed in whole or in part of any
21 nonferrous metal other than an item composed of tin, that is purchased or
22 otherwise acquired for the purpose of recycling or storage for later
23 recycling. Aluminum shall not include food or beverage containers.

24 (d) "Bales of regulated metal" means regulated scrap metal property
25 processed with professional recycling equipment by compression,
26 shearing or shredding, to a form in which it may be sold by a scrap metal
27 dealer consistent with industry standards.

28 (e) "Ferrous metal" means a metal that contains iron or steel.

29 (f) "Junk vehicle" means a vehicle not requiring a title as provided in
30 chapter 8 of the Kansas Statutes Annotated, and amendments thereto,
31 aircraft, boat, farming implement, industrial equipment, trailer or any
32 other conveyance used on the highways and roadways, which has no use
33 or resale value except as scrap.

34 (g) "Nonferrous metal" means a metal that does not contain iron or
35 steel, including but not limited to, copper, brass, aluminum, bronze, lead,
36 zinc, nickel and their alloys.

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1 (h) "Tin" means a metal consisting predominantly of light sheet
2 metal ferrous scrap, including large and small household appliances,
3 construction siding and construction roofing.

4 (i) "Vehicle part" means the front clip consisting of the two front
5 fenders, hood, grill and front bumper of an automobile assembled as one
6 unit; or the rear clip consisting of those body parts behind the rear edge of
7 the back doors, including both rear quarter panels, the rear window, trunk
8 lid, trunk floor panel and rear bumper, assembled as one unit; or any other
9 vehicle part.

10 Sec. 6. K.S.A. 2010 Supp. 50-6,111 is hereby amended to read as
11 follows: 50-6,111. (a) It shall be unlawful for any such scrap metal dealer,
12 or employee or agent of the dealer, to purchase any item or items of
13 regulated scrap metal in a transaction for which K.S.A. 2010 Supp. 50-
14 6,110, and amendments thereto, requires information to be presented by
15 the seller, without demanding and receiving from the seller that
16 information. Every scrap metal dealer shall file and maintain a record of
17 information obtained in compliance with the requirements in K.S.A. 2010
18 Supp. 50-6,110, and amendments thereto. All records kept in accordance
19 with the provisions of this act shall be open at all times to peace or law
20 enforcement officers and shall be kept for two years. If the required
21 information is maintained in electronic format, the scrap metal dealer
22 shall provide a printout of the information to peace or law enforcement
23 officers upon request.

24 (b) It shall be unlawful for any scrap metal dealer, or employee or
25 agent of the dealer, to purchase any item or items of regulated scrap metal
26 in a transaction for which K.S.A. 2010 Supp. 50-6,110, and amendments
27 thereto, requires information to be presented by the seller, without
28 obtaining from the seller a signed statement that: (1) Each item is the
29 seller's own personal property, is free of encumbrances and is not stolen;
30 or (2) that the seller is acting for the owner and has permission to sell
31 each item.

32 (c) It shall be unlawful for any scrap metal dealer, or employee or
33 agent of the dealer, to purchase any junk vehicle in a transaction for
34 which K.S.A. 2010 Supp. 50-6,110, and amendments thereto, requires
35 information to be presented by the seller, without: (1) Inspecting the
36 vehicle offered for sale and recording the vehicle identification number;
37 and (2) obtaining an appropriate vehicle title or bill of sale issued by a
38 governmentally operated vehicle impound facility if the vehicle
39 purchased has been impounded by such facility or agency.

40 (d) It shall be unlawful for any scrap metal dealer, or employee or
41 agent of the dealer, to purchase or receive any regulated scrap metal from
2 a minor.

3 (e) It shall be unlawful for any scrap metal dealer, or employee or

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agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:

- (1) Utility access cover;
- (2) street light poles or fixtures;
- (3) road or bridge guard rails;
- (4) highway or street sign;
- (5) water meter cover;
- (6) traffic directional or traffic control signs;
- (7) traffic light signals;
- (8) any metal marked with any form of the name or initials of a governmental entity;
- (9) property owned and marked by a telephone, cable, electric, water or other utility provider;
- (10) property owned and marked by a railroad;
- (11) funeral markers or vases;
- (12) historical markers;
- (13) bales of regulated metal;
- (14) beer kegs;
- (15) manhole covers;
- (16) fire hydrants or fire hydrant caps;
- (17) junk vehicles with missing or altered vehicle identification numbers;
- (18) real estate signs; and
- (19) bleachers or risers, in whole or in part.

(f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement agency for 30 days, exclusive of weekends and holidays.

(g) ~~It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to pay for the following purchases by any means other than a prenumbered check drawn on a regular bank account in the name of the scrap metal dealer and with such check made payable to the person selling such property:~~

- (1) ~~All purchases of property from any person within a 24-hour period which exceeds \$50; and,~~
- (2) ~~all purchases of copper in any form for any amount, catalytic~~

or any such wire or cable that has had the sheathing removed, making ownership identification impossible

all purchases of property from any person in excess of \$35, copper in any form for any amount, catalytic converters and refrigeration condensing units and related parts,

(1) A

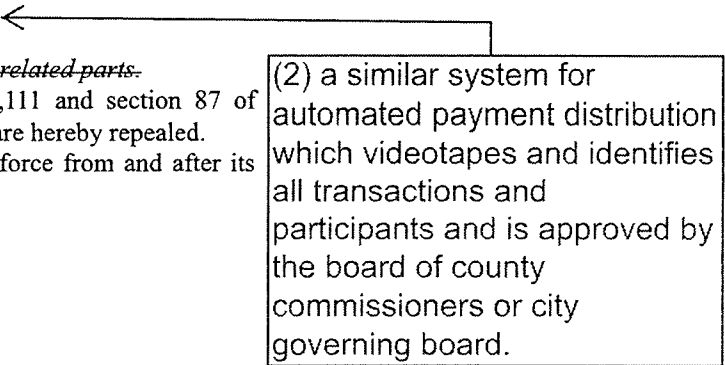
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1 ~~converters, and refrigeration condensing units or related parts.~~

2 Sec. 7. K.S.A. 2010 Supp. 50-6,109, 50-6,111 and section 87 of
3 chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

4 Sec. 8. This act shall take effect and be in force from and after its
5 publication in the statute book.
6



(2) a similar system for
automated payment distribution
which videotapes and identifies
all transactions and
participants and is approved by
the board of county
commissioners or city
governing board.

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HOUSE BILL No. 2312

By Committee on Judiciary

2-11

1 AN ACT concerning regulated scrap metal; relating to licensure for scrap
2 metal dealers; unlawful acts; criminal penalties; amending K.S.A.
3 2010 Supp. 50-6,109 and 50-6,111 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) On or after January 1, 2012, no business shall
7 purchase any regulated scrap metal without having first secured a license
8 for each place of business as herein provided. In case such place of
9 business is located within the corporate limits of a city, the application for
10 license shall be made to the governing body of such city. In all other
11 cases, the application for license shall be made to the board of county
12 commissioners in the county in which such place of business is to be
13 located.

14 (b) A board of county commissioners shall not issue or renew a
15 scrap metal dealer license without giving the clerk of the township where
16 the place of business is to be located written notice of the filing of the
17 application for licensure or renewal. The township board may, within 10
18 days, file advisory recommendations as to the granting of such license or
19 renewal and such advisory recommendations shall be considered by the
20 board of county commissioners before such license is issued.

21 (c) The governing body of any city and the board of county
22 commissioners shall not issue or renew a scrap metal dealer license
23 without giving the sheriff, chief of police or director of all law
24 enforcement agencies in the county written notice of the filing of the
25 application for licensure or renewal. Each law enforcement agency may,
26 within 10 days, file advisory recommendations as to the granting or
27 renewal of such license and such advisory recommendations shall be
28 considered by the governing body of the city or board of county
29 commissioners before such license is issued.

30 (d) An application for a scrap metal dealer license shall be verified
31 and upon a form prepared by the attorney general and shall contain:

- 32 (1) The name and residence of the applicant;
33 (2) the length of time that the applicant has resided within the state
34 of Kansas and a list of all residences outside the state of Kansas during
35 the previous 10 years;
36 (3) the particular place of business for which a license is desired;

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1 compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing
2 legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely
3 reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with
4 law enforcement, section 129 of chapter 136 of the 2010 Session Laws of
5 Kansas, interference with judicial process, section 130 of chapter 136 of
6 the 2010 Session Laws of Kansas, a violation of K.S.A. 2010 Supp. 21-
7 36a03, 21-36a05, and amendments thereto, or any crime involving moral
8 turpitude; or

9 (c) Within 20 days after the order of the board revoking or
10 suspending any license, the licensee may appeal to the district court and
11 the district court shall proceed to hear such appeal as though such court
12 had original jurisdiction of the matter. Any appeal taken from an order
13 revoking or suspending the license shall not suspend the order of
14 revocation or suspension during the pendency of any such appeal.

15 Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws is
16 hereby amended to read as follows: Sec. 87. (a) Theft is any of the
17 following acts done with intent to permanently deprive the owner of the
18 possession, use or benefit of the owner's property or services:

19 (1) Obtaining or exerting unauthorized control over property
20 or services;

21 (2) obtaining control over property or services, by deception;

22 (3) obtaining control over property or services, by threat;

23 (4) obtaining control over stolen property or services knowing
24 the property or services to have been stolen by another; or

25 (5) knowingly dispensing motor fuel into a storage container
26 or the fuel tank of a motor vehicle at an establishment in which motor
27 fuel is offered for retail sale and leaving the premises of the establishment
28 without making payment for the motor fuel.

29 (b) ~~Except as provided in subsection (e),~~ theft of:

30 (1) Property or services of the value of \$100,000 or more is a
31 severity level 5, nonperson felony;

1 (2) property or services of the value of at least \$25,000 but less
2 than \$100,000 is a severity level 7, nonperson felony;

3 (3) property or services of the value of at least \$1,000 but less
4 than \$25,000 is a severity level 9, nonperson felony;

5 (4) property or services of the value of less than \$1,000 is a
6 class A nonperson misdemeanor, except as provided in subsection (b)(5)
7 or (b)(6);

8 (5) property regardless of the value from three separate
9 mercantile establishments within a period of 72 hours as part of the same
10 act or transaction or in two or more acts or transactions connected
11 together or constituting parts of a common scheme or course of conduct
12 is a severity level 9, nonperson felony; and

13 (6) property of the value of less than \$1,000 is a severity level
14 9, nonperson felony if committed by a person who has been convicted of
15 theft two or more times.

16 ~~(c) Theft of property that is regulated scrap metal of the value~~
17 ~~of:~~

18 ~~(1) \$100,000 or more is a severity level 4, nonperson felony;~~

19 ~~(2) at least \$25,000 but less than \$100,000 is a severity level~~
20 ~~6, nonperson felony;~~

~~(3) at least \$1,000 but less than \$25,000 is a severity level 8,~~
~~nonperson felony;~~

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~~(4) —less than \$1,000 is a class A misdemeanor and the offender shall be fined not less than twice the value of the regulated scrap metal taken, except as provided in subsection (c)(5), and~~

~~(5) —of less than \$1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.~~

(d) As used in this section:

(1) "Conviction" or "convicted" includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits;

(2) "regulated scrap metal" means the same as in K.S.A. 2010 Supp. 50-6,109, and amendments thereto; and

(3) "value" means the value of the property or ~~the cost to restore the site of the theft of property that is regulated scrap metal to its condition at the time the theft of property that is regulated scrap metal occurred, whichever is greater.~~

if the property is regulated scrap metal,

such

immediately prior to

such

Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read as follows: 50-6,109. As used in sections 1 through 3, and amendments thereto, and K.S.A. 20092010 Supp. 50-6,109 through 50-6,112, and amendments thereto:

(a) "Scrap metal dealer" means any person that operates a business out of a fixed location, and that is also either:

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thorized by and implementing K.S.A. 22-4501 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

105-21-4. Misdemeanor or juvenile appointments. Any public defender, with the approval of the director, may elect to accept misdemeanor or juvenile appointments not covered by agreement or contract in the district or county of jurisdiction. However, the public defender shall make a record of time expended both in court and in preparation of such a case and shall submit this timesheet with a bill for services rendered to be computed at the rate set out in K.A.R. 105-5-2. The timesheet and bill shall be submitted to the clerk of district court of the county in which the case was heard. A copy of this billing and timesheet shall be sent promptly to the director. The bill shall designate the state board of indigents' defense services as the payee and shall include the title of the case, case number and any other identifying information needed by the clerk for processing, as well as the total amount due according to the timesheet. Expenses incurred by the public defender office may also be included in this billing.

The public defender may, at any time, refuse to accept misdemeanor or juvenile appointments. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

105-21-5. (Authorized by K.S.A. 1982 Supp. 22-4507 and 22-4522; implementing K.S.A. 1982 Supp. 22-4508 and 22-4522; effective May 1, 1984; revoked May 1, 1985.)

105-21-6. Records and reports. Each public defender shall keep accurate records of cases assigned and make reports in the form and with the content prescribed by the director. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

Articles 22 to 30.—RESERVED

Article 31.—CONTRACT COUNSEL GUIDELINES

105-31-1. General provisions. (a) The board may elect to contract with one or more private attorneys for the delivery of indigent defense

services in any county, counties, or district when there is evidence that such contracting may be cost effective or that the assigned counsel panel lacks attorneys of sufficient expertise or number.

(b) The duration of the contract shall be set forth in the contract and shall be subject to availability of funds. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522, 22-4523; effective May 1, 1984.)

105-31-2. Awarding the contract. (a) The board shall not pursue a contract through the competitive bidding process but only through negotiation.

(b) Contracts to individual attorneys or firms shall be awarded on the basis of:

(1) the experience and qualifications of the attorney or firm;

(2) the willingness and ability of the attorney or firm to comply with the performance criteria and statistical reporting provisions of the contract; and

(3) the negotiated rate of compensation. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522, 22-4523; effective May 1, 1984.)

105-31-3. Qualifications. Each attorney qualified to serve on the panel shall be qualified to enter into a contract for the purpose of providing legal representation to indigents. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522, 22-4523; effective May 1, 1984.)

105-31-4. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4505, 22-4522; effective May 1, 1984; revoked Aug. 20, 1999.)

105-31-5. Exceptional cases. Subject to board approval, any contract attorney may be provided compensation in addition to the contract compensation for cases determined to be exceptional in nature as defined by K.A.R. 105-5-8. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

105-31-6. Other provisions. The procedure for withdrawing from cases and procuring investigative, expert or other services shall be set forth in the contract. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4508, 22-4522; effective May 1, 1984.)

to the administrative judge of the judicial district by certified letter, return receipt requested, at least 30 calendar days prior to the time the designation becomes effective. The notice shall include:

- (1) the county for which such office is designated as the conflicts office;
- (2) the effective date of the designation; and
- (3) the name, address and phone number of the designated conflicts office.

(b) If the written notice of designation of a conflicts office is received at a date less than 30 calendar days prior to the effective date of designation contained in the notice, the effective date of designation will be 30 calendar days after the actual receipt of the written notice of the designation.

(c) If the board changes the designated conflicts office for a particular county, the board shall provide written notice to the administrative judge of the judicial district 10 calendar days prior to the effective date of the change, by certified letter, return receipt requested. The notice shall state:

- (1) the effective date of the change;
- (2) the name, address and phone number of the new conflicts office; and
- (3) the manner in which current open cases are to be handled. (Authorized by K.S.A. 22-4501 and 22-4522; implementing K.S.A. 22-4503 and 22-4522; effective March 28, 1994.)

105-10-5. Assigned counsel contracts. A public defender, the state appellate defender, and the designated conflicts office may, upon written authorization by the director, contract for services with qualified attorneys to undertake representation of indigent defendants to which each office has been appointed. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective March 28, 1994; amended Aug. 20, 1999.)

Article 11.—REIMBURSEMENT FROM DEFENDANT

105-11-1. Defendant reimbursement of attorney fees. The document titled "attorney cost reimbursement tables: assigned counsel and public defender," as revised by the state board of indigents' defense services on June 20, 2008, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522 (e); effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5,

2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008.)

Article 12 to 20.—RESERVED

Article 21.—PUBLIC DEFENDER GUIDELINES

105-21-1. Qualifications. Each public defender shall be an attorney licensed to practice law in Kansas and shall be selected on the basis of merit. Primary qualifications shall be: (a) demonstrated commitment to the provision of quality legal representation for eligible persons charged with or convicted of criminal conduct;

(b) demonstrated ability to properly administer a law office of similar size and responsibility to that of the public defender office; and

(c) demonstrated knowledge of criminal law and effective ability to provide actual representation. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

105-21-2. Scope of representation. Except as otherwise provided by law or by ethical considerations, each public defender shall accept and undertake representation of all persons assigned to that office and determined to be eligible for the services of the public defender in accordance with K.S.A. 1982 Supp. 22-4501, *et seq.* (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

105-21-3. Withdrawing from cases. (a) Any public defender may withdraw from any court-appointed case when that defender determines that there exists a possible conflict of interest in further representation of the defendant.

(b) The public defender may refuse to accept court-appointed cases when it is determined jointly by the public defender and the director that the current active caseload would preclude the public defender from providing adequate representation to new clients.

(c) When a decision is made to withdraw from a case or to not accept cases due to current caseloads, the public defender shall communicate this decision to the administrative judge of the district, who shall appoint attorneys, in sequence, from the panel for a period established by the director. (Au-