

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2412**

As Agreed to March 26, 2010

**Brief\***

HB 2412, as amended, would amend the law on functional incapacitation release and would create a new procedure for the release of a terminally ill inmate whose medical condition is likely to cause death within 30 days.

Functional Incapacitation Release

The bill would remove a person sentenced to imprisonment for an off-grid offense from the group of inmates who would be eligible for an early release pursuant to the functional incapacitation release procedure. The bill would add a provision to make it clear that a person sentenced for an off-grid offense would not be eligible for a functional incapacitation release.

Additionally, the bill would provide explicitly that nothing in the functional incapacitation release procedure would apply to the terminally ill release procedure.

Terminally Ill Early Release

The process would be initiated with an application by the Secretary of Corrections to the Kansas Parole Board (KPB) for the release of an inmate deemed by a physician to have a terminal medical condition likely to cause death within 30 days.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Inmates sentenced to imprisonment for an off-grid offense would not be eligible for a terminally ill early release. The Chairperson of the KPB may grant the release after examining the case and finding that the inmate has been deemed by a Kansas medical doctor to have a terminal medical condition likely to cause death within 30 days and the inmate does not represent a future risk to public safety. The decision of the Chairperson of the KPB would be final and not subject to review by any administrative agency or court.

The KPB would be authorized to promulgate rules and regulations governing the procedure for initiating, processing, reviewing, and establishing criteria for review of these applications. Such rules and regulations would be required to include criteria and guidelines for determining whether the terminal medical condition precludes the inmate from posing a threat to the public. In determining whether the inmate meets the criteria in this section, the KPB also would be required to consider the following:

- The person's current condition as confirmed by a physician, including whether the condition is terminal and likely to cause death within 30 days;
- The person's age and personal history;
- The person's criminal history;
- The length of sentence and the time the person has served;
- The nature and circumstances of the current offense;
- The risk or threat to the community if released;
- Whether an appropriate release plan has been established; and
- Any other factors deemed relevant by the KPB.

The KPB would be required to establish conditions of release. The release supervision by the Kansas Department of Corrections (KDOC) and revocation authority by the KPB for the terminally ill released offender is the same as for a functionally incapacitated released offender, except that a terminally ill offender's release could be revoked if the illness or condition significantly improves or the person does not die within 30 days.

Notification of the application for release is not provided to the prosecutor, court, or victim or victim's family. They are notified of the granting of the release of the terminally ill inmate.

### **Conference Committee Action**

The Conference Committee agreed to the Senate amendments with one change. Rather than requiring the Kansas Parole Board to make the determination that a person should be released pursuant to the terminally ill release procedure, the Conference Committee agreed that the approval of the Chairperson of the Parole Board is what would be required with the passage of this bill.

### **Background**

Under current Kansas law, the KPB may grant release to a functionally incapacitated inmate who is determined to not pose a threat to the public pursuant to KSA 22-3728. It prohibits the KPB from granting the release until at least 30 days after notification of the application has been given to the prosecutor, court, and victim or victim's family, and published in the local newspaper.

The proponents of the bill, as introduced, who testified in the House Committee were Representative Bill Feuerborn and Secretary Roger Werholtz, KDOC.

There were no opponents of the bill, as introduced, who testified in the House Committee.

The House Committee amended the bill to clarify the circumstances and criteria that a KPB member must consider in order to grant a release.

The proponents of the bill, as amended by the House Committee, who testified in the Senate Committee were Representative Bill Feuerborn, the Secretary of the Kansas Department of Corrections, and a member of the Kansas Parole Board.

The Senate Committee amended the bill, at the request of the Kansas Parole Board, to clarify that it is not the KPB that determines a person has a terminal illness but a Kansas medical doctor who makes the determination. Additionally, the Senate Committee amended the bill to require the KPB, not just one member of the KPB, to make the determination that a person should be released pursuant to the terminally ill release procedure. Finally, the Senate Committee removed a person sentenced to imprisonment for an off-grid offense from the group of inmates who would be eligible for an early release pursuant to the functional incapacitation release procedure and the terminally ill release procedure.

According to the fiscal note on the bill, as introduced, the KPB stated that any fiscal effect resulting from the passage of HB 2412 could be absorbed within current resources. It also is estimated that the KDOC would be able to handle within existing funds any fiscal effect resulting from the bill's enactment.

Terminally ill early release; functional incapacitation release