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Draft Jan 27d

Testimony on SB 159
to
The House Corrections and Juvenile Justice Committee

By Ray Roberts
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January 30, 2012

The Department of Corrections supports codification of the authority of law enforcement officers including parole, court services and community corrections officers relative to the search of offenders on parole, postrelease or probation. The contours of the 4th amendment of the United States Constitution, as applied to the search of persons under supervision by criminal justice agencies is, as pointed out by the United States Court of Appeals for the Tenth Circuit, defined by the privacy expectations created by state law. See U.S. v. Freeman, 479 F.3d 743 (10th Cir. 2007). Therefore, a statutory provision setting out the search authority of law enforcement officers and the corresponding expectation of privacy held by the releasee should be enacted.

The department, however, has a concern with SB 159 that was also raised by the department last session in regard to HB 2062. That concern involves the complete absence of any limitation on the search of parolees and postreleasees coupled with the expansion of who can conduct a search beyond the administrative authority of parole officers to include all law enforcement officers. (For simplicity, parole and postrelease will be referred to as "parole"). SB 159 would provide for unbridled searches by any law enforcement officer. The department submits that addressing the issue of the search of parolees should involve an analysis of two components of a search. First, the requisite justification to conduct a search and secondly, who may conduct the search.

The department believes that a meaningful and practical law which provides the greatest authorization for searches of parolees while at the same time preventing a detrimental and presumably unconstitutional search solely for harassment purposes can be achieved by choosing the appropriate relationship between when a search may be conducted and who is authorized to conduct the search. The department believes that the permissible justification for searches of parolees should not be restricted. Home visits irrespective of how extensive the search, drug testing, and the use of global satellite tracking conducted to achieve the dual goals of the parole system of reintegration and prevention of further crime victimization should not be limited and should be utilized routinely and without cause. Further, in order to minimize detrimental harassment that unbridled authority could cause, the unlimited authority to conduct suspicionless searches should be limited to parole officers. Other law enforcement entities would still retain all of the search authority vested in them relative to the public and also have

the ability to demonstrate to the parole officer that a non harassment reason exits to conduct a search of the parolee.

Arbitrary, capricious, or harassing searches are not constitutionally permitted. See Samson v. California, 547 U.S. 843, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006) referring to the significance of state law prohibiting those motivations in conducting parolee searches and the concern that arbitrary, capricious, or harassing searches inflict dignitary harms that arouse strong resentment in parolees and undermine their ability to reintegrate into society. The harm to society by a government that has unbridled authority to enter a private home to conduct an unreasonable search is beyond debate and is the foundation of the 4th Amendment. While, parolees, due to their status, are not entitled to the full measure of protection provided by the 4th Amendment, it is also clear that searches of a parolee's home with family members present conducted night after night is not conducive to the reintegration of a parolee into society.

In regard to the first component, the requisite justification to conduct a search, the department supports allowing searches of parolees without a reasonable suspicion. The department conducts home visits, drug testing and electronic monitoring routinely. These activities fall within the scope of conducting a search. Searches are an integral part of the administrative supervision of released offenders and should not require the need for any justification due to their being part of a supervision regiment. Therefore the department supports the provisions of SB 159 which allow for a search at any time and with or without a search warrant and with or without cause. A suspicionless search of a parolee is constitutionally due to the state's dual interest in integrating probationers back into the community and combating recidivism.

In regard to the second component, who may conduct the search, the department believes that limiting the authority to conduct suspicionless searches is justified by the administrative nature of parole supervision and therefore should be limited to parole officers administering that supervision. This limitation is directly related to the state's interest in administering a parole system that seeks the goals of both rehabilitation and prevention of new criminal victims. Arbitrary, capricious, or harassing searches are minimized and subject to review by the department through its grievance procedures. Other law enforcement entities retain all of the authority vested in them to conduct stop and frisks, searches incident to arrest, and searches based upon probable cause without a warrant, or obtain a judicially issued warrant applicable to their interaction with the public. Other law enforcement entities would still be able to provide parole officers with their rationale for a search and establish the absence of an arbitrary, capricious, or harassing motive for the search so that a warrantless search could be conducted by parole officers or by police officers in conjunction with a parole officer or as the parole officer's agent.

The department urges favorable consideration to a balloon amendment to pages 9 and 10 of the bill. A copy of the proposed amendment is attached.

date and progress to the most recent. Such review shall be done utilizing existing resources unless the parole board determines that such resources are insufficient. If the parole board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections. *Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer, ~~special enforcement officer or other law enforcement officer~~ at any time of the day or night, with or without a search warrant and with or without cause.*

department of corrections

or enforcement, apprehension, and investigation officer,

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances

which would render payment unworkable; ~~and~~

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services; *; and*

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer, ~~special enforcement officer or other law enforcement officer~~ at any time of the day or night, with or without a search warrant and with or without cause.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within ~~10~~ *14* days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing

department of corrections

or enforcement, apprehension, and investigation officer