

Approved: August 25, 2011  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on February 4, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Ray Roberts, Secretary of the Kansas Department of Corrections

Others attending:

See attached list.

### Bill Introductions:

- Senator Vicki Schmidt requested introduction of a bill concerning the Kansas Tort Claims Act
- Senator Pyle requested introduction of a resolution to amend the Constitution relating to the selection of members of the Supreme Court
- Nancy Strouse, Executive Director of the Kansas Judicial Council, requested introduction of bill enacting an Apology Law
- Senator Owens requested introduction of a bill relating to the health care of persons in custody of law enforcement
- Senator King requested introduction of a bill requiring consideration of an accused's immigration status when determining bail
- Senator Lynn requested introduction of a bill relating to district court trustees and Title IV cases
- Senator Haley requested introduction of a bill requiring videotaping of felony interrogations

The Chairman opened the hearings on **ERO 34 - Abolishing Parole Board and Establishing the Prisoner Review Board within the Department of Corrections.**

Jason Thompson, Staff Revisor, gave an overview of **ERO 34.**

Mr. Thompson gave a brief explanation of the action the committee may take on an ERO:

- If the committee would like the policy in the ERO to become effective, the committee takes no action on the ERO.
- If the committee does not want the policy in the ERO to become effective, the committee adopts a resolution of disapproval; a majority of the senate would then be required to adopt the resolution within 60 days of the filing of the resolution.

Ray Roberts testified in support of **ERO 34 (Attachment 1).** He stated that under the ERO:

- The Parole Board would be abolished on July 1, 2011
- The Prisoner Review Board (PRB) would be administered by the Secretary of KDOC
- The PRB will consist of three existing KDOC employees
- State general funding would be reduced, annually, by \$500,000
- A seamless correctional public safety net for all Kansans would be maintained

The following is an exchange of questions by members of the committee and responses to those questions by Secretary Roberts:

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on February 4, 2011, in Room 548-S of the Capitol.

**Senator Umbarger:** Will current KDOC staff have enough time to perform all the new powers and duties described in your testimony?

**Secretary Roberts:** Yes

**Senator Haley:** How will the PRB handle the conflict in its duty as a “jailer” and its duty as the determiner of parole? How will the PRB ensure that the PRB will be autonomous when considering whether to parole an inmate?

**Secretary Roberts:** The PRB will have known the inmates and the inmates’ records. There will be an openness and transparency in the decision-making process.

**Senator Haley:** Will there be an appeal process for an inmate who feels he or she was not treated fairly?

**Secretary Roberts:** There will be a grievance process.

**Senator Bruce:** What is the current parole and revocation of parole processes?

**Secretary Roberts:** For parole: Consideration of parole suitability issues, holding of the parole hearing; and file review by the parole board. For revocation: There is a preliminary hearing in the field and a final hearing by the parole officer. The PRB would use same procedures.

**Senator Bruce:** Would there be a due process issue? The ERO gives the appearance that the inmate is “prosecuted” by a KDOC employee and also is “judged” by a KDOC employee. Does the system proposed under the ERO work in other states?

**Secretary Roberts:** I would need to research the question in order to respond.

**Secretary Roberts** assured the committee that parole decisions would not be based upon the availability of bed space, or the lack thereof.

**Senator Schodorf:** Since the members of the PRB will be KDOC employees, will there safeguards for the PRB members if the secretary disagrees with a decision of the PRB?

**Secretary Roberts:** I do not see myself involved in the process, but safeguards would need to be developed.

**Senator Lynn:** Is there a difference in liability with KDOC employees making these decisions as opposed to the Parole Board?

**Secretary Roberts:** I do not believe there would be any difference in liability.

**Senator Vratil:** Can you commit to not coming back to the legislature for additional employees in order to perform the functions and duties transferred to KDOC under the ERO? You stated that there would be an annual savings of \$500,000 in personnel costs if the ERO becomes effective.

**Secretary Roberts:** Yes.

**Senator Kelly:** How have you disagreed with past decisions of the Parole Board?

**Secretary Roberts:** It has been a long time since I have been in disagreement with the Parole Board, but sometimes I felt the Board was too harsh; other times, I felt the Board was too lenient.

**Senator King:** Is the savings of \$500,000 mainly attributable to the salary of the members of the Parole Board?

**Secretary Roberts:** Yes.

**Senator King:** Who provides administrative services for the current Parole Board? Who will provide it under the ERO?

**Secretary Roberts:** Currently, the members of the Board provide administrative services. Under the ERO, KDOC staff will provide administrative services.

CONTINUATION SHEET

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**Senator King:** How are you prepared to ensure that notice of public comment periods is given in a timely manner and at no additional cost?

**Secretary Roberts:** We will have to take the steps necessary to do so.

**Senator Pilcher-Cook:** Would parole review from an “inside” agency (KDOC) have a better idea of what the offenders behavior more likely will be?

**Secretary Roberts:** Yes. It is a balancing act. We must look at the entire picture, including, the offender’s behavior and background and the impact on victims.

**Senator Kelly:** Will there be a single PRB or a PRB at each facility?

**Secretary Roberts:** There will be a single PRB, but there would be resources at each facility to assist the PRB.

**Senator Owens:** Does the current Parole Board report to the Governor?

**Secretary Roberts:** the Governor appoints Members.

**Senator Owens:** Will the PRB report to a cabinet secretary?

**Secretary Roberts:** Yes.

**Senator Owens:** How will you respond to requests from the governor’s office to release offenders because of a lack of prison bed space?

**Secretary Roberts:** A decision will not be made if it is not in the interest of public safety.

**Senator Owens:** With the reductions in KDOC staff that already have occurred, how can the remaining staff do more work without diminishing the quality of the staff’s work?

**Secretary Roberts:** As Secretary, I am responsible for finding more efficient ways to do the job.

**Senator Owens:** How are you going to change the perception that KDOC is the fox guarding the chicken house?

**Secretary Roberts:** Through strong oversight and constant evaluation and re-evaluation.

The Chairman announced that the hearings on **ERO 34** would be continued until a later date.

Meeting adjourned at 10:30 A.M. The next meeting is scheduled for February 7, 2011.