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Testimony on HB 2684
To
The House Corrections and Juvenile Justice Committee

By Johnnie Goddard, Interim Secretary
Kansas Department of Corrections
February 17, 2016

The Department of Corrections opposes HB 2684. HB 2684 combines sentencing features of both indeterminate and determinate sentencing schemes that have purposely been discarded. Furthermore, HB 2684 couples those features with an arbitrary standard of postrelease supervision that is not based upon the risk posed by the releasee.

HB 2684 amends K.S.A. 21-6821 to provide two independent mechanisms for the early release of an inmate. The first mechanism is the provision of an additional 30% good time rate (referred to in the bill as "alternative incarceration credit"). [Subsection (f)]. The second mechanism is a early release by the Prisoner Review Board for an inmate who is determined to be low risk pursuant to a assessment instrument selected by the Kansas Sentencing Commission. [Subsection (g)]. Irrespective of whether the inmate is released by the increase of good time or by the Prisoner Review Board; all releasees regardless of their release plan, behavior or actual threat posed would be required to be electronically monitored. Finally, provisions of HB 2684 would be applied retroactively.

One of the criticisms of indeterminate sentencing was the large disparity between the maximum sentence imposed and when the offender could be released. Pursuant to HB 2684 the combination of good time, program and alternative incarceration credits available would be:

Non-Drug severity level 1-6 would increase to 45%
Non-drug severity level 7-10 would increase to 50%
Drug severity level 1-2 would increase to 45%
Drug severity level 3-5 would increase to 50%

Off Grid sentences would be able to receive "alternative incarceration credit" when they have served 70% of their mandatory prison sentence. A Hard 40 after 28 years, a hard 50 after 35 years.

Additionally, this aspect of HB 2684 would not have the benefit of being a parole eligibility date whereby the Prisoner Review Board could deny release even though the inmate had good time or alternative incarceration credits. HB 2684 subsection (f) would create a mandatory early release. Some very dangerous offenders are able to behave well while incarcerated.

The second mechanism for an early release provided for by HB 2684 is a low risk assessment pursuant to an assessment instrument selected by the Kansas Sentencing Commission and approval by the Prisoner Review Board. At first blush, this proposal appears to revert back to adopting the old indeterminate sentencing scheme. However, HB 2684 in addition to the aspects that caused Kansas to move to a determinate sentencing matrix does not contain any of the notices provided to the public, judges, or prosecutors regarding when parole hearings are going to be held. It also lacks the factors to be considered by the Board other than a low risk score. Finally, the department and the Prisoner Review Board utilize a variety of assessment instruments to evaluate offenders depending on the individual characteristics of the offender. HB 2684 would give authority to the Kansas Sentencing Commission to determine what type of assessment the Kansas Department of Corrections must use to determine when a prisoner should be released early. Various assessment tools are applicable for different purposes and types of offenders. For example, the LSI-R has utility in identifying program needs or to evaluate nonviolent offenders who typically commit offenses subject to probation. At the same time, KDOC has 201 incarcerated first degree murders who have an LSI-R score of 20 or less. Therefore, the department utilizes a number of different assessment instruments.

Finally, the department would like to raise the issue of whether release supervision levels and criteria should be legislated in a one size fits all or based upon the individual characteristics of the releasee. Electronic monitoring is expensive and time consuming for staff. The department has two types of releasees, those who are released or placed in a program at the discretion of the department based on its best judgment and those who are released mandatorily. If the department has a concern that an inmate poses a need to be electronically monitored why should it release that offender early? On the other hand, if the department must release an offender and that offender poses a threat to a specific person or place, continuous electronic monitoring maybe useful. Placement of low risk offenders under continuous electronic monitoring distracts from the monitoring of higher risk offenders.

Former Secretary Ray Roberts, last November presented information to the Interim Joint Committee for Corrections and Juvenile Justice regarding electronic monitoring. A copy of that testimony is attached for the Committee's convenience.

HB 2684 radically changes the sentencing structure for the state and provides no benefit that cannot be achieved pursuant to K.S.A. 21-6609 which already provides for a house arrest program to be managed by the Secretary of Corrections. The provisions of K.S.A. 21-6609 may be employed when the need for minimum custody beds arises and the marginal cost of those beds exceeds the costs of electronic monitoring. That statute, unlike HB 2684, sets out the eligibility; notice to law enforcement officers; the administration of the house arrest program and is limited to minimum custody inmates. That statute leaves the management of the individual inmates sentenced to the custody of the secretary of corrections to the Secretary.

The department opposes HB 2684.

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Ray Roberts, Secretary

Sam Brownback, Governor

Testimony on Electronic Monitoring
to
The Interim Joint Committee for Corrections and Juvenile Justice

By Ray Roberts
Secretary
Kansas Department of Corrections
November 2, 2015

- KDOC Population with Electronic Monitoring.
  - ✓ KDOC uses electronic monitoring for 90 to 100 offenders on postrelease supervision.
    - Some of the postrelease supervision offenders have electronic monitoring for life by statute irrespective of risk level, age, mobility or other medical condition.
    - The other postrelease supervision offenders have electronic monitoring as a supervision condition ordered by the Prisoner Review Board or parole officer based upon risk assessment.
    - KDOC averages 2,016 alerts per month for 89 offenders
    - 25% of the alerts take 30 to 60 minutes to resolve.
    - 75% of the alerts take an average of 5 minutes to resolve .
    - Electronic monitoring costs $1,825 per person/year for equipment and contractor personnel; and $2,500 per person/year for KDOC personnel to monitor and respond.
  - ✓ Offenders placed under house arrest by the department are required to be under electronic monitoring by statute. K.S.A. 21-6609 requires electronic monitoring irrespective of risk level, length of time remaining to be served, age, mobility or other medical condition. Currently, KDOC does not have any inmates on house arrest.

- Targeted Electronic Monitoring Population
  - ✓ Evidence based practices indicate that supervision/control should be based upon the risk posed by the offender. The risk posed by the offender should be correlated with the level of supervision imposed.
    - An appropriate level of supervision is more cost effective and produces better recidivism rates.
    - Allows staff to focus on higher risk offenders.
    - Increased use of electronic monitoring increases the number of false alarms. False alarms for low risk offenders diverts officers and resources from higher risk offenders.
    - Electronic monitoring useful when an elevated risk cannot be addressed through incarceration, ie when the release from prison is mandatory despite an inmate's high risk assessment.

- Conclusions Regarding Use of Electronic Monitoring.
  - ✓ Electronic monitoring useful when the risk posed by the offender cannot be addressed by incarceration due to the expiration of the prison portion of a sentence.
  - ✓ In the case of a discretionary release to house arrest, if there is a question of the risk posed by the inmate, placement can be denied without the costs and staff burden created by the limited utility of electronic monitoring.
  - ✓ Currently, the department does not have a shortage of minimum custody beds which would be the custody level from which the house arrest population would be drawn, therefore house arrest with electronic monitoring will not provide the needed higher custody level beds.