

STATE BOARD OF PARDONS AND PAROLES



Milton E. "Buddy" Nix, Jr.
Chairman

2 Martin Luther King, Jr., Drive, S.E.
Balcony Level, East Tower
Atlanta, Georgia 30334-4909
(404) 656-5651
www.pap.state.ga.us

Garland R. Hunt, Esq.
Vice-Chairman
Garfield Hammonds, Jr.
Member
Dr. Eugene P. Walker
Member
L. Gale Buckner
Member

October 21, 2005

PUBLIC NOTICE OPEN MEETING State Board of Pardons and Paroles

PURSUANT TO THE TERMS OF O.C.G.A. § 50-14-1 NOTICE IS HEREBY GIVEN TO THE PUBLIC THAT THE REGULARLY SCHEDULED OPEN MEETING OF THE STATE BOARD OF PARDONS AND PAROLES SCHEDULED FOR TUESDAY, NOVEMBER 1, 2005 HAS BEEN RESCHEDULED TO BEGIN AT 2:00 P.M. ON FRIDAY, NOVEMBER 18, 2005. THE MEETING WILL BE HELD IN THE PAROLE BOARD HEARING ROOM, EAST TOWER, 5TH FLOOR, 2 MARTIN LUTHER KING JR. DRIVE, ATLANTA, GEORGIA 30334.

A handwritten signature in blue ink that reads "Tracy D. Masters".

Tracy D. Masters
Secretary to the Board



STATE BOARD OF PARDONS AND PAROLES

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Dr. Eugene P. Walker
Member
L. Gale Buckner
Member

NOVEMBER 10, 2005

**PUBLIC NOTICE
OPEN MEETING
STATE BOARD OF PARDONS AND PAROLES**

PURSUANT TO THE TERMS OF O.C.G.A. §50-14-1 NOTICE IS HEREBY GIVEN TO THE PUBLIC THAT THE LOCATION OF THE OPEN MEETING OF THE STATE BOARD OF PARDONS AND PAROLES, SCHEDULED FOR 2:00 P.M. ON NOVEMBER 18, 2005, HAS BEEN CHANGED TO THE 20TH FLOOR, WEST TOWER, FLOYD VETERANS MEMORIAL BUILDING, 2 MLK JR. DRIVE, ATLANTA, GEORGIA.


Tracy D. Masters
Secretary to the Board



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Milton E. "Buddy" Nix, Jr.
Chairman

November 14, 2005

ADDRESS CORRECTION TO NOTICE OF NOVEMBER 10 AND OCTOBER 4, 2005

PUBLIC NOTICE

OPEN MEETING STATE BOARD OF PARDONS AND PAROLES

PURSUANT TO THE TERMS OF O.C.G.A. 50-14-1, NOTICE IS HEREBY GIVEN TO THE PUBLIC THAT THE LOCATION OF THE OPEN MEETING OF THE STATE BOARD OF PARDONS AND PAROLES SCHEDULED FOR 2:00 P. M. ON NOVEMBER 18, 2005, HAS BEEN CHANGED TO THE 20TH FLOOR OF THE WEST TOWER OF THE FLOYD VETERANS MEMORIAL BUILDING, 200 PIEDMONT AVENUE, ATLANTA, GEORGIA. FOR FURTHER INFORMATION REGARDING THE MEETING PLEASE CALL 404.651.6671.


Tracy D. Masters
Secretary to the Board



STATE BOARD OF PARDONS AND PAROLES

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Jr.
Chairman

BOARD MEETING AGENDA FOR NOVEMBER 18, 2005

LOCATION: THE EMPIRE ROOM TIME: 2:00 PM
Floyd Veterans Memorial Building
200 Piedmont Avenue
20th Floor, West Tower
Atlanta, GA 30334

- I. CALL TO ORDER
- II. WELCOME - Chairman Nix
- III. APPROVAL OF AGENDA
- IV. ADOPTION OF MINUTES FROM OCTOBER 4, 2005
- V. OLD BUSINESS
- VI. NEW BUSINESS
- VII. DIRECTOR'S REPORT
 - A. PUBLIC COMMENT TO PROPOSED AMENDMENT TO BOARD RULE 475-3-.05: - Tracy Masters
- VIII. BOARD VOTE ON PROPOSED AMENDMENT TO BOARD RULE 475-3-.05
- IX. ADJOURNMENT



STATE BOARD OF PARDONS AND PAROLES

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L. Gale Buckner
Member

MEMORANDUM

Date: November 10, 2005

To: Board Members

From: La'Quandra Smith 

Re: Potential Opposition to Proposed Board Rule

Please be advised that it has recently come to our attention that a group called the "Fairness for Prisoners' Families, A Program of Southern Center for Human Rights," has attempted a mass solicitation of inmate family members to meet with them on November 14, 2005, to discuss the Board's policies and plan for the Board meeting on November 18. Notice cards (a copy of which is attached) were being distributed on the Balcony Level this week on Visitor's Day, and a large number of them were inadvertently mailed to the Parole Board. Please note that the group has encouraged those who cannot attend their meeting to attend the Board's meeting in an effort to "fill the room to let the Parole Board know that we are paying attention to policies they pass."

cc: Director of Parole
Director of Legal Services
Director of Clemency
Director of Legislative Services
Director of Public Information
Director of Internal Affairs



FAIRNESS FOR PRISONERS' FAMILIES

Atlanta Chapter Meetings

- Topic: We will be discussing policies of the GA Board of Pardons and Paroles and plan for the November 18th Hearing at the Parole Board where they will vote on the new proposed rule to replace the 90% policy.

When: November 14, 2006 @ 6:30pm-8:30 pm

Where: Auburn Avenue Research Library

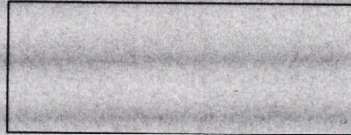
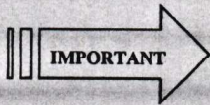
101 Auburn Avenue

Atlanta, GA 30303 (404) 730-4001

IMPORTANT: *If you can not make the meeting, please join us for the hearing at the Parole Board. We are trying to fill the room to let the Parole Board know that we are paying attention to policies they pass. Please see reverse side for location & time details. For more information contact Fairness for Prisoners' Families at 404-681-5576*

Fairness for Prisoners' Families
A Program of Southern Center
for Human Rights
c/o 63 Poplar Street
Atlanta, GA 30303

PLEASE
PLACE
STAMP
HERE



Parole Board Hearing
Friday, November 18, 2005 @ 2:00pm
Parole Board Hearing Room, 5th Floor
2 Martin Luther King, Jr. Drive
Atlanta, GA 30334



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Chairman

BOARD MEETING SUMMARY

November 18, 2005

Members Present: Milton E. Nix, Jr.; Garland R. Hunt, Esq.; Dr. Eugene P. Walker, Garfield Hammonds, Jr. and L. Gale Buckner.

Motions and Other Business:

1. Mr. Hunt made a motion to adopt the agenda as written. Ms. Buckner seconded the motion and the motion carried unanimously.
2. Dr. Walker made a motion to adopt the minutes of the Board meeting of October 4, 2005. Ms. Buckner seconded the motion and the motion carried unanimously.
3. Tracy Masters, Director of Legal Services, reviewed the following proposed amendment to the Board's administrative rules, which the Board tentatively passed at its last meeting on October 4, 2005.

PAROLE BOARD RULE 475-3-.05 Parole Consideration. Amended.

(7)(a) Offenders considered for parole using the Parole Decision Guidelines System who have been convicted of the following crimes shall be assigned a Crime Severity Level of VIII: voluntary manslaughter, statutory rape, homicide by vehicle while under the influence of alcohol/drugs or as a habitual traffic violator, aggravated battery on a police officer, aggravated assault on a police officer, attempted rape, involuntary manslaughter, hijacking a motor vehicle, criminal attempt to murder, aggravated assault (with injury or weapon), enticing a child for an indecent purpose, cruelty to children, child molestation, feticide by vehicle, incest, bus hijacking, robbery, aggravated stalking, aggravated battery, burglary of an occupied residence, VGCSA - Cocaine or Methamphetamine – 400 or more grams, VGCSA - Marijuana -10,000 or more pounds, or VGCSA - Opiates – 28 or more grams.

(b) Crime Severity Level VIII offenders with a Parole Success Score of 0 to 8 shall receive a Parole Guidelines recommendation of 90% of the prison sentence.

(c) Crime Severity Level VIII offenders with a Parole Success Score of 9 to 13 shall receive a Parole Guidelines recommendation of 75% of the prison sentence.

(d) Crime Severity Level VIII offenders with a Parole Success Score of 14 to 20 shall receive a Parole Guidelines recommendation of 65% of the prison sentence.

4. Mr. Hunt made a motion to adopt the proposed amendment to Board Rule 475-3-.05. Mr. Nix seconded the motion and the motion carried unanimously.
5. Mr. Nix made a motion to make January 1, 2006, the effective date of the amendment to Board Rule 475-3-.05.
6. Mr. Hunt seconded the motion and the motion carried unanimously.
7. With no further business, Ms. Buckner made a motion for the meeting to adjourn. Dr. Walker seconded the motion and the motion carried unanimously.

Tracy D. Masters
Secretary to the Board

STATE BOARD OF PARDONS AND PAROLES



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Member
Dr. Eugene P. Walker
Member
L. Gale Buckner
Member

OFFICIAL MINUTES

Open Meeting of November 18, 2005

1. Chairman Nix called the meeting to order at 2:00 p.m. The meeting was held in the Empire Room of the Floyd Building, 200 Piedmont Avenue, 20th Floor, West Tower, Atlanta, Georgia. Chairman Nix, Vice-Chairman Hunt, Mr. Hammonds, Dr. Walker and Ms. Buckner were present.

2. Chairman Nix welcomed everyone.

3. Mr. Hunt made a motion to adopt the agenda as written. Ms. Buckner seconded the motion and the motion carried unanimously.

4. Dr. Walker made a motion to adopt the minutes of the Board meeting of October 4, 2005. Ms. Buckner seconded the motion and the motion carried unanimously.

5. OLD BUSINESS

None.

6. NEW BUSINESS

Tracy Masters, Director of Legal Services, reviewed the following proposed amendment to the Board's administrative rules, which the Board tentatively passed at its last meeting on October 4, 2005.

PAROLE BOARD RULE 475-3-.05 Parole Consideration. Amended.

(7)(a) Offenders considered for parole using the Parole Decision Guidelines System who have been convicted of the following crimes shall be assigned a Crime Severity Level of VIII: voluntary manslaughter, statutory rape, homicide by vehicle while under the influence of alcohol/drugs or as a habitual traffic violator, aggravated battery on a police officer, aggravated assault on a police officer, attempted rape, involuntary manslaughter, hijacking a motor vehicle, criminal attempt to murder, aggravated assault (with injury or weapon), enticing a child for an indecent purpose, cruelty to children, child molestation, feticide by vehicle, incest, bus hijacking, robbery, aggravated stalking, aggravated battery, burglary of an occupied residence, VGCSA - Cocaine or Methamphetamine – 400 or more grams, VGCSA - Marijuana -10,000 or more pounds, or VGCSA - Opiates – 28 or more grams.

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Mr. Masters advised the Board Members that a copy of all written comments received regarding the proposed amendment to the administrative rules was included in the folders provided to them.

The Parole Board then received oral public comment on the proposed amendment to its administrative rules from the following individuals:

- 1) McNeil Stokes - Attorney
- 2) Quincey Feldon - Fairness for Prisoners' Families
- 3) Sara Geraghty - Southern Center for Human Rights
- 4) Bonnie Reynolds - Mothers Against Drunk Driving
- 5) Robyn Baldwin - Fairness for Prisoners' Families

The Board members and Mr. Masters addressed certain concerns expressed about the proposed amendment to the Board's administrative rules.

Mr. Masters then advised the Board that the proposed amendment to its administrative rules had been forwarded to the appropriated Legislative leaders via the Legislative Counsel and that no comment had been received from members of the Legislature. Mr. Masters further advised the Board that at this time the Board could vote to: adopt the proposed rule amendment, to defeat the proposed rule amendment or to table the proposed rule amendment until the next open meeting of the Board.

7. Mr. Nix asked for a motion to adopt the proposed amendment to Board Rule 475-3-.05.

8. Mr. Hunt made a motion to adopt the proposed amendment to Board Rule 475-3-.05. Mr. Nix seconded the motion and the motion carried unanimously.

9. Mr. Masters announced that Rule 475-3-.05 has been adopted. He then requested that the Board vote an effective date of the amendment to Board Rule 475-3-.05 of January 1, 2006.

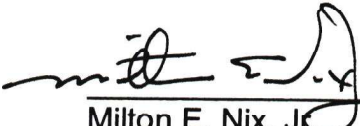
10. Mr. Nix made a motion to make January 1, 2006, the effective date of the amendment to Board Rule 475-3-.05.

11. Mr. Hunt seconded the motion and the motion carried unanimously.

12. Dr. Walker spoke about the Parole Board's commitment and support of educational programs for offenders.

13. With no further business, Ms. Buckner made a motion for the meeting to adjourn. Dr. Walker seconded the motion and the motion carried unanimously.

Approved by the Board on the fifth day of December 2005.


Milton E. Nix, Jr.
Chairman

STATE BOARD OF PARDONS AND PAROLES



NOTICE OF INTENT TO CONSIDER AMENDING AN AGENCY RULE

Synopsis

The Board finds that its 90% policy for certain high level offenses is subject to legal challenge that requires the Board to cease using it. However, the Board believes that offenders convicted of the offenses formerly governed by the 90% policy should serve long prison terms. The Board also believes that the most serious drug offenders should receive similar treatment. Therefore, in accordance with the Board's grant of authority pursuant to O.C.G.A. § 42-9-45 and 42-9-40, notice is hereby given to the public of the Board's intent to amend its rules pertaining to parole consideration as it relates to the Parole Decision Guidelines.

Proposal

Note: Underlined text is proposed to be added.

Pursuant to the provision of the Administrative Procedures Act, notice is hereby given to all interested persons that the State Board of Pardons and Paroles proposes to amend its Agency Rule 475-3-.05, relating to Parole Consideration, by inserting a new paragraph seven at the end of said rule to read as follows:

PAROLE BOARD RULE 475-3-.05 Parole Consideration. Amended.

(7)(a) Offenders considered for parole using the Parole Decision Guidelines System who have been convicted of the following crimes shall be assigned a Crime Severity Level of VIII: voluntary manslaughter, statutory rape, homicide by vehicle while under the influence of alcohol/drugs or as a habitual traffic violator, aggravated battery on a police officer, aggravated assault on a police officer, attempted rape, involuntary manslaughter, hijacking a motor vehicle, criminal attempt to murder, aggravated assault (with injury or weapon), enticing a child for an indecent purpose, cruelty to children, child molestation, feticide by vehicle, incest, bus hijacking, robbery, aggravated stalking, aggravated battery, burglary of an occupied residence, VGCSA - Cocaine or Methamphetamine – 400 or more grams, VGCSA - Marijuana -10,000 or more pounds, or VGCSA - Opiates – 28 or more grams.

(b) Crime Severity Level VIII offenders with a Parole Success Score of 0 to 8 shall receive a Parole Guidelines recommendation of 90% of the prison sentence.

(c) Crime Severity Level VIII offenders with a Parole Success Score of 9 to 13 shall receive a Parole Guidelines recommendation of 75% of the prison sentence.

(d) Crime Severity Level VIII offenders with a Parole Success Score of 14 to 20 shall receive a Parole Guidelines recommendation of 65% of the prison sentence.

The State Board of Pardons and Paroles will receive views presented by interested parties and otherwise consider this amendment of its Agency Rules at its next monthly open meeting scheduled for 2:00 p.m. on Friday, November 18, 2005, in the Board's Hearing Room, 5th floor, 2 Martin Luther King, Jr., Dr., Atlanta, Georgia. Written comments regarding this matter should be forwarded to the Board's Legal Office at 2 M.L.K. Jr. Dr., Atlanta, Georgia 30334. If you have any questions, you should call the Board's Legal Office at 404.651.6671.

Citation of Applicable Authority: Ga. Const. 1983 Art. 4, § 2, ¶ 2; O.C.G.A. § 42-9-20; O.C.G.A. § 42-9-40; O.C.G.A. § 42-9-42; and O.C.G.A. § 42-9-45.

This 4th day of October 2005.

Tracy D. Masters
Tracy D. Masters
Secretary to the Board

O.C.G.A.42-9-40. Parole guidelines system.

- (a) The board shall adopt, implement, and maintain a parole guidelines system for determining parole action. The guidelines system shall be used in determining parole actions on all inmates, except those serving life sentences, who will become statutorily eligible for parole consideration. The system shall be consistent with the board's primary goal of protecting society and shall take into consideration the severity of the current offense, the inmate's prior criminal history, the inmate's conduct, and the social factors which the board has found to have value in predicting the probability of further criminal behavior and successful adjustment under parole supervision.
- (b) The guidelines system required by subsection (a) of this Code section shall be adopted by rules or regulations of the board. The rules or regulations shall be adopted in conformity with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

**WRITTEN
COMMENT ON
PROPOSED
AMENDMENT
TO BOARD
RULE 475-3-05**

Re: [illegible]
NOV 17 2 5
Legal Services

November 9, 2005

State Board of Pardon and Parole
Board Legal Office
2 Martin Luther King Drive
Atlanta, Georgia 30334

RE: Proposal Amendment of Rule

In the last ten years we have let our prison system get way out of hand. The State or the Public cannot afford to maintain its growth rate. I believe it is time the Board comes up with a fair and just way to release **some** prison inmates back into society especially for first offenders.

At time we all make mistakes and bad choices in life. I believe if a person shows responsibility after serving at least a third of their sentence should be given a chance to return to society and their family and prove himself.

Believe me, I am not soft on crime, however if the person repeats his or her crime and goes back to prison there should be no leniency and should fulfill the sentence given for the crime.

I commend the Parole Board for putting a plan together that would lighten the load for taxpayers while giving offenders a chance to return to society as a productive citizen.

Thank You,


Teresa G. Trusty

Received

NOV 18 2005

SOUTHERN CENTER for HUMAN RIGHTS Legal Services

83 Poplar Street, N.W., Atlanta, Georgia 30303-2122

(404) 688-1202 Fax (404) 688-9440

E-mail: rights@schr.org Web site: <http://www.schr.org>

Stephen B. Bright
Director

Charles J. Ogletree
Chair, Board of Trustees
Harvard Law School

November 18, 2005

VIA FACSIMILE AND U.S. MAIL

Tracy D. Masters
Director of Legal Services
Georgia Board of Pardons and Paroles
2 Martin Luther King, Jr. Drive, S.E.
Atlanta, GA 30334
Fax: (404) 651-6670

Re: Proposed Rule 475-3-.05

Dear Mr. Masters:

We write regarding the Board's proposed Rule 475-3-.05, a rule that, if adopted, would substantially revise the parole decision-making process in this state. We believe that adoption of the proposed rule is premature for the following reasons. First, the rule, as written, does not address the "retroactivity" problem that caused a federal court to declare the Board's former "90% rule" unconstitutional. Second, there has not yet been a thorough analysis of the fiscal impact of the rule. Third, we believe that the Board should refrain from making major changes in policy until steps have been taken to ensure that the Board's decision-making process is appropriately transparent to members of the public. At present, it is simply impossible to ensure that parole decisions are made in a just, appropriate, and timely fashion because parole files are considered "state secrets" – inaccessible to inmates, families, attorneys, advocates, legislators, and the press. The "state secret" status of parole files must be removed if the Board is to be truly accountable to the citizens of Georgia. Accordingly, we request that the Board not adopt this policy change until concerns regarding retroactive application have been addressed, the fiscal impact of the rule change is appropriately calculated, and parole files are no longer classified as state secrets.

Retroactive Application

The proposed rule does not state whether it will be applied retroactively. We believe that the rule will violate the constitutional ban on *ex post facto* legislation if it is applied mechanically to persons who were convicted and sentenced before the rule is

adopted, resulting in a longer prison term than they would have served under prior rules. See *Jackson v. State Board of Pardons and Paroles*, 2002 WL 1609804 (N.D. Ga. May 30, 2002) (finding that the 90% rule violated the Ex Post Facto Clause because the Board applied the policy to persons convicted before the rule's adoption, the rule undeniably increased the length of time plaintiff would spend in prison, and the Board exercised "unwavering adherence" to that rule).

We respectfully urge the Board to amend the rule so that it will not be applied retroactively in a fashion that will violate the Ex Post Facto Clause of the United States and Georgia Constitutions.

Fiscal Impact

The rule, if adopted, will cause a rise in prison population within a few years of its adoption and must be considered in light of the limited number of beds in Georgia's Department of Corrections. For the past decade, the prison population has risen every year without fail, from 27,184 people in 1994, to the current population of 48,619. (Source: *Georgia Department of Corrections Annual Report 2004*). The proposed rule change will directly contradict efforts by state officials who are looking for ways to reduce the overall population.

We believe that the Board's proposed rule will result in lengthier sentences in our already overcrowded system. As the effect of this policy begins to filter in over the next few years and the prison population rises, the State of Georgia will be required to fund an expansion in correctional facilities. Current research confirms that increasing the number of people in prison has no effect on reducing crime. Quite the contrary: money that could be used to fund crime prevention programs and victim services are soaked up instead by a growing prison bureaucracy.

Additionally, longer prison sentences result in keeping people in prison into old age. As a prisoner gets older, his health care needs – and the cost of providing health care – rise exponentially. An audit performed by the state in 2004 found that inmates over age 50 comprised 9.7% of the inmate population delivered health care, but accounted for 28.6% of all claims submitted. The number of aged inmates is already expected to rise by 39% between 2004 and 2009. The new rule will likely increase this number. It will burden the correctional system and further drain taxpayer dollars.

Regarding Georgia's packed prisons, Board member Mr. Garland Hunt expressed concerns during the Board's retreat in August 2004, stating that "[b]lanket policies or laws that don't allow discretion are not necessarily the right thing." (*Atlanta Journal Constitution*, September 13, 2004). At the October 4, 2005 Board meeting, Board member Mr. Garfield Hammond asked whether the fiscal impact of the proposed policy had been calculated. There were no figures offered.

In 2002, the Georgia Department of Corrections estimated that the Board's 90% rule would result in an average increase of 2.3 years for those sentenced under the rule. The Board has made no such calculation with respect to the new proposed rule – or, if it has, it has not made that calculation public. Particularly during this time of fiscal crisis, taxpayers are entitled to know the fiscal impact of the Board's proposed rule change. We

ask the Board to delay adoption of this rule until it has assessed the fiscal implications of the rule and its corresponding benefit to public safety.

Transparency and Accountability

The Parole Board assures people in prison, their families, and the general public that its decisions are fair. The Board's website states that the Board can be "entrusted to make an objective decision rising above political and personal considerations." The Parole Board also claims that it uses its Guidelines to help it make "more consistent and soundly based decisions which are understandable for the inmate and accountable to the public." There is, however, absolutely no transparency or accountability in the parole decision-making process, due to both the state secret status of parole files and the lack of a meaningful appeals procedure.

The decision to grant or deny parole is deeply important to the prisoner, his family, and to society at large. Yet, too often, this important decision is made mechanically, hastily, and/or on the basis of information that is not accurate or complete. Unlike in other states, in Georgia, there is no face-to-face meeting between the prisoner and Board staff. There is no "hearing" at all. No one except Board staff may see the file on which the parole decision is based. There is no opportunity to correct mistakes in the parole file. The work of the Board is done in secret.

Moreover, the appeals process is frequently nothing more than a rubber stamp. First, there is often no notification given to the inmate that he may appeal his parole decision. Second, Board staff gives so little attention to the appeal process that it is exceedingly difficult for an inmate to correct even an obvious mistake in parole calculation. At the Southern Center for Human Rights, we are aware of several instances in which the Board ignored an inmate's meritorious requests for parole reconsideration, only correcting the miscalculations when a *pro bono* attorney happened to notice them and brought them to the Board's attention.

The Board has a long way to go to regain the public trust. In January 2004, a member of the Board was convicted of using his position to influence the passage of legislation in exchange for money. In May 2004, the *Atlanta Journal-Constitution* reported another failure of the Board's public trust: fifty-nine parole files were essentially lost in the system. Inmates who should have been released instead languished in prison, costing the taxpayers as much as \$526,000. One sat in prison for five years past his tentative parole month ("T. M.") without parole consideration. This is the sort of mishap that occurs when a governmental entity conducts its work in secrecy.

There is, of course, a legitimate concern for the safety of victims of crime, and we support the preservation of state secret status for portions of the parole file that contain victims' information, including personal information, statements regarding the crime, and correspondence with the Board regarding parole. Deeming the entire file a "state secret," however, is unjustifiable.

The Fairness for Prisoners' Families program has launched *Operation Open Book*, a campaign calling for the removal of state secret status of parole files by the Georgia State Legislature. We believe that *Operation Open Book* is the first step towards ensuring accountability, transparency and fairness in the parole system. To that end, we encourage the Board to endorse Fairness's *Operation Open Book* campaign.

Conclusion

The Southern Center for Human Rights requests that the Board delay voting or adopting this policy until all of the above concerns are fully addressed. The rule should be revised so that it is not applied retroactively in violation of law. There must be accountability and transparency in the parole process. Until the blanket state secret status of parole files is removed, the Board's claim that all its decisions are fair cannot be tested or measured. A process that allows individuals to see and challenge mistakes and erroneous information would build public trust in the Board's mission. Additionally, we cannot lose sight of the impact of this rule change on taxpayers' pockets during tight budget times. The people of Georgia are entitled to a reasonable estimate of the rule's future costs to decide whether it is, in fact, in the best interest of fiscal responsibility and public safety.

We thank the Board for its important work and for the opportunity to present our concerns about its proposed rule.

Sincerely,



Sara Totonchi
Public Policy Director



Sarah Geraghty
Staff Attorney

**STATEMENT OF MCNEILL STOKES
TO
STATE BOARD OF PARDONS AND PAROLES
ON
PROPOSED RULEMAKING**

NOVEMBER 18, 2005

**McNeill Stokes
Attorney at Law
1040 Peachtree Battle Ave.
Atlanta, Georgia 30327
Telephone: 404-352-2144
Facsimile: 404-367-0353**

**STATEMENT OF MCNEILL STOKES
TO
STATE BOARD OF PARDONS AND PAROLES
ON
PROPOSED RULE MAKING**

NOVEMBER 18, 2005

Mr. Chairman and Members of the Board:

I am McNeill Stokes, an attorney who has been involved in the aftermath of the ninety percent to serve policy in various cases brought against the Members of the Board contesting the validity of the actions of the Board's adopting and continuing the de facto application of the substantially extended sentences to serve policy. This substantially extended sentences to serve policy was adopted without legal authority or rulemaking contrary to the enacted statutory parole laws and the Parole Decision Guidelines to require that inmates in twenty offense categories serve at least ninety percent of their judicial sentences before being practically eligible for release on parole.

I commend the Board for abandoning the ninety percent to serve policy following Judge T. Jackson Bedford's Order in *Griffin, et al. v. Nix, et al.*, Superior Court of Fulton County, Civil Action No. 2004-CV-92152 (March 3, 2005) as announced in your news release on March 10, 2005. This should have unblocked inmates who have previously been foreclosed from

consideration for release on parole because of the ninety percent extended sentences to serve policy, but as telegraphed in your news release of announced reconsiderations the Members of this Board are still continuing a de facto substantially extended sentences to serve policy and are not following the enacted parole laws entitling inmates to consideration for release on parole after serving the greater of one-third of their judicial sentences or the months to serve calculated in accordance with the Parole Decision Guidelines.

The announcement in the news release that "the vast majority of these inmates can expect to serve most of their sentence in prison" forewarned the ominous projected implication that the Members of this Board would continue and have in fact continued an extended sentences to serve policy and will still not follow the statutory parole laws and the statutorily mandated Parole Decision Guidelines in the reconsiderations of the inmates whose parole has been previously foreclosed by the now declared illegal actions of this Board.

Now the Board is proposing to codify in changes to the Parole Decision Guidelines to perpetuate the previous de facto extended sentences to serve policy in its proposed Rule 475-3-.05 noticed for final consideration today. At least the previously unpublished substantially extended sentences

to serve policy has been forced out in the open. The proposed Rule providing for release on parole for inmates in the covered offender categories after serving 65% to 90% of judicial sentences will continue to have the effect of wholesale foreclosing release for all covered inmates that is inconsistent with the enacted parole laws.

I oppose the adoption of the proposed amendment to Rule 47-3-.05 and I am determined to cabin the Members of this Board back to following the enacted parole laws. It is that straight forward. The proposed Rule codifying the substantially extended sentences to serve policy cannot be retroactively applied to substantially extend the sentences to serve of inmates whose offenses were committed prior to its effect date which would have the certain effect of increasing their punishment after they have committed their offenses in violation of Ex Post Facto prohibitions of the United States Constitution. The parole laws in effect at the time of commission of offenses attach to determine offenders likely sentences to serve and any parole action which increase their sentences to serve beyond their likely sentences to serve under the parole laws and the Parole Decision Guidelines in effect at the time of commission of their offenses violates Ex Post Facto. An unspoken issue is will the Members of this Board continued to de facto retroactive substantially increasing of inmates sentences to serve

who offenses were committed prior to the effective date of this proposed codification of the previously de facto enforced substantially extended sentences to serve policy?

The proposed codification of the substantially extended sentences to serve policy is just fundamentally flawed. It is inconsistent with the legislatively enacted parole laws which as you well know provide in O.C.G.A. § 42-9-45 (b) that inmates serving fixed term judicial sentences shall be eligible for release on parole after serving one-third of their judicial sentences or a maximum of seven years. The proposed Rule totally ignores the legislatively enacted parole laws and would wholesale foreclose inmates from consideration for parole after serving one-third of their sentences. O.C.G.A. § 42-9-45 limits rulemaking authority to rules and regulations "not inconsistent with this Chapter."

The legally controlling parole laws contained in O.C.G.A. §§ 42-9-45 and 42-9-40 are the existing laws dictating when inmates are to be eligible for release on parole. The statutorily parole laws provide for denial of release only by an objective determination on an individual basis that an inmate's release on parole would not be compatible with the inmate's own welfare or the welfare of society pursuant to O.G.C.A. § 42-9-42 (c).