PAROLE RULE 475-3-.05 (continued)

(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.

Parole Success Scores (PSS) of Inmates Considered Under Guidelines

FY 2000 to FY 2004

Fiscal Year # and % with each Parole Success Score

	Poor		Average		Excellent	
2000	4,008	36%	4,318	39%	2,833	25%
2001	3,813	35%	4,355	40%	2,656	25%
2002	3,787	34%	4,458	39%	3,043	27%
2003	3,656	35%	4,198	40%	2,666	25%
2004	3,931	38%	4,090	39%	2,371	23%
Total	**19,195**	**35%**	**21,419**	**40%**	**13,569**	**25%**

PSS: 0-8 = Poor 9-13=Average 14-20=Excellent

Tracy Masters

404.651.6671

Tracy_Masters@pap.state.ga.us

Fairness for Prisoners' Families presents...

A Press Conference

in Response to the Parole Board Hearing on the Proposed Policy to replace the 90% rule

Please join us!

Friday, November 18, 2005

1:00 p.m. (Parole Board hearing at 2:00pm)

In front of the "Sloppy Floyd" Building,
home of the Georgia Board of Pardons and Paroles

2 Martin Luther King, Jr., Dr.
Atlanta, Georgia 30334

For more information contact Fairness for Prisoners' Families:
404/688-1202 fax 404/688-9440 or email stotonchi@schr.org

Fairness for Prisoners' Families

a program of

The Southern Center for Human Rights

c/o 83 Poplar Street, NW • Atlanta, GA., 30303

voice 404/688-1202 • *fax* 404/688-9440

email fairness@gejustice.org

~Please take a moment to sign this petition~
~We appreciate you posting and forwarding it widely~

Endorse Operation Open Book:

Fairness for Prisoners' Families Parole Reform Campaign
http://www.petitiononline.com/openbook/petition.html

Operation Open Book

A campaign calling for the removal of state secret status of parole files and to insure accountability, transparency and fairness in the parole system.

The Parole Consideration Process pulls together and illustrates everything that is wrong with Georgia's criminal justice system. Georgia incarcerates almost 50,000 people in its prison and over 30,000 people in its jails, and has one of the highest incarceration rates in the nation of one in 15 adults. A major reason for this crisis is that there is a major lack of accountability and absolutely no transparency in the process through which those in prison are paroled.

Decisions by the Georgia Board of Pardons and Paroles are not based on whether an individual has exhibited good behavior while in prison or been rehabilitated. There is no hearing in front of the Parole Board, and no chance for the members of the Board to meet the people whose lives they hold in their hands.

Instead, decisions are made entirely based on what has been put into an individual's parole file. A five-member Parole Board spends approximately *five minutes* reviewing paperwork from an individual's file.

In addition, parole files are classified by Georgia law as "state secret." (Official Code of Georgia 42 9 53). The parole file is kept so secret that even when the Parole Board is deciding whether to let someone live or to send him or her to be killed in Georgia's death chamber, the person's lawyer isn't allowed to check the parole file, to be sure the Board isn't basing its decision on errors in the file.

An individual's attorney, a prosecuting attorney, *even the governor* cannot view parole files. Family after family has called the Georgia Parole Board, desperate for any information at all on the status of their loved ones' parole status, only to be told that "It's being processed," or "It's under investigation," or given other assurances that everything is under control. Yet recently, the Atlanta Journal Constitution exposed a terrible instance of the Parole Board's failure of the public trust-**fifty-nine parole files were discovered sitting on a desk** in the Clemency Division Director's office (Atlanta Journal-Constitution, 5/1/04, "Paroles Stalled As Official Ignored Files.")

The story detailed how **fifty-nine** Georgia prisoners sat in prison waiting for parole while the files that could have helped grant their freedom gathered dust in director of clemency Michael Sullivan's office --- with one prisoner's file "gather[ing] dust . . . for **more than five years**."

Inaction on the files may have cost Georgia taxpayers as much as **$526,000** to keep the inmates in prison, not to mention the costs on the lives of the prisoners and their loved ones awaiting news about their parole. Shortly after the files were discovered in February, the cases were expedited and 18 of the prisoners were paroled. Another seven prisoners served their entire sentence while waiting to hear whether they would be released early.

Fairness and Accountability

The Parole Board assures people in prison, their families, and the general public that all its decisions are fair. The State Board of Pardons and Paroles website says that the Parole Board can be "entrusted to make an objective decision rising above political and personal consideration." The website also says that the Parole Board has Guidelines to help it make "more consistent and soundly based decisions which are understandable for the inmate and accountable to the public."

Yet, how can the public hold the Parole Board accountable for the decisions it makes when all of its decisions are considered "state secrets"? When public meetings are not announced or regularly scheduled? When minutes from meetings are less than a page long, and do not detail what has happened at the meetings?

The time has come for all of this to change. **Click on the link below** to learn more about *Operation Open Book* and how people across Georgia are coming together to demand transparency, accountability, and fairness from the Parole Board!

Endorse Operation Open Book:

Fairness for Prisoners' Families Parole Reform Campaign
http://www.petitiononline.com/openbook/petition.html

Will YOU help collect signatures for this campaign?
Contact us at 404/651-5576 or fairness@gejustice.org
to have an organizing packet for petitions sent to you.

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STATEMENT OF MCNEILL STOKES

TO

STATE BOARD OF PARDONS AND PAROLES

ON

PROPOSED RULEMAKING

NOVEMBER 18, 2005

McNeill Stokes
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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).

This de facto extended sentences to serve policy was formalized in the unpublished ninety percent to serve policy that has now been held to have been in violation of the Georgia Administrative Procedure Act. The Members of this Board are expected to follow the enacted parole laws and the Parole Decision Guidelines in reconsidering inmates previously blocked from release on parole. Not following the parole laws and guidelines would be tantamount to lawlessness by the Members of this Board. The Members of this Board have not only a sworn duty to follow the laws of our state, but not following the enacted parole laws and guidelines makes a mockery of the enacted parole laws by the very Members of the Board who should be setting a legal example for the inmates to whom you are charged to administer the parole laws and guidelines according to the law.

This unpublished policy had an unpublished "effective date" of January 1, 1998, but the Board slavishly applied the ninety percent to serve policy retroactively to inmates whose offenses were prior to January 1, 1998 as well as prospectively to inmates whose offenses after that date to foreclose any parole until the inmates in the listed categories had served ninety percent of their sentences. Judge William C. O'Kelley in *Coleman Jackson v. State Board of Pardons and Paroles*, United States District Court for the Northern District of Georgia, Civil No. 2:01-CV-068-WCO (May 29,

2002), held unconstitutional in violation of Ex Post Facto prohibitions the retroactive application of the unpublished policy of the Board which substantially extended inmates' sentences to serve to at least ninety percent of their judicial sentences. Following the holding that the retroactive application of the ninety percent to serve rule was unconstitutional, the Members of the Board on the advice of the office of the Attorney General adopted a Resolution Amendment, September 9, 2002, resolving that, "Those offenders previously considered for parole under the ninety percent policy who committed their offenses before January 1, 1998, shall be reconsidered for parole under the parole decision guidelines that do not include the ninety percent policy."

However, the Members of this Board did not and have not reconsidered any of the previously covered inmates under the Parole Decision Guidelines. In spite of committing to reconsider inmates under the Parole Decision Guidelines, they did not follow the Parole Decision Guidelines in a single inmate's case. The Board only gave lip service that they would reconsider the previously blocked inmates for parole under the Parole Decision Guidelines and in no case did the Board follow the Parole Decision Guidelines. The Board in reconsidering these inmates' sentences to serve in bad faith only made token adjustments in the sentences to serve

varying only a few months in order to avoid the mathematical ninety percent figure. Some were decreased a few months, some were increased a few months, some stayed the same and some were not even considered. Twice now the courts have told the Members of this Board that you have violated the law in applying extended sentences to serve policy. It is submitted that the Members of this Board must follow the statutory parole laws and the statutorily mandated Parole Decision Guidelines in the reconsiderations of the parole dates for the inmates who have formerly had their sentences to serve extended by the illegal de facto ninety percent extended sentences to serve policy. It is time for the Members of this Board to not only abandon the substantially extended sentences to serve policy, but to set a course in the future of following the enacted parole laws and the Parole Decision Guidelines subject only the statutory exceptions of O.C.G.A. 42-9-42 (c).

When the Members of this Board in each inmate's case slavishly applied (actually the staff) the extended sentences to serve policy to override the existing parole laws affecting the length of the inmate's sentence to serve before consideration for parole, the Board is de facto and practically changing the enacted parole laws without fair legal notice of the increase of the inmates' punishment beyond the enacted parole laws and Parole Decision Guidelines in effect at the time of commission of their offenses.

Constitutionally the enacted parole laws and guidelines which are in existence at the time of commission of the offense attach to judicial sentences and those parole laws and guidelines provide for release on parole of inmates after serving one-third of judicial sentences or the months to serve calculated pursuant to the Parole Decision Guidelines.

The sentencing laws in Georgia provide for very long sentences which are substantially longer than most states' sentencing laws and guidelines because the statutory parole laws contemplate that deserving inmates will be released after serving one-third of their judicial sentences or the months to serve calculated under the Parole Decision Guidelines. The underlying economic motivation for the substantially extended sentences to serve policy was the desire of obtain grant funds from the federal government under Violent Offenders Incarceration - Truth in Sentencing Act ("VOITIS"), 42 U.S.C. § 13704, *et seq.* Rather than reducing the sentencing periods as other states did in order to comply with the 85% requirement for funding pursuant to the "VOITIS"), Georgia went the other way and required that inmates in seven most serious violent offender categories serve mandatory sentences without parole O.C.G.A. § 10-10-6.1. When a similar legislative attempt failed to increase sentences to serve for other violent felonies, the Board adopted and even retroactively implemented an unpublished "policy" that all

offenders in twenty other violent offense and residential burglary categories must serve ninety percent of their judicial sentences before being practically eligible for release on parole.

The Georgia "1998 Application for Violent Offenders Incarceration and Truth in Sentencing Incentive Grant" evidences that the ninety percent to serve policy was adopted to qualify for VOITIS grant funds. This Georgia application explains in bold type the Board's extended time to serve "policy" changes that were in effect tantamount to law in order for Georgia to be eligible for grant funds that: "The new policy makes it mandatory that these violent offenders serve 90% of their court imposed sentence prior to consideration of parole." A 1998 Supplemental Application even attaches a State Board of Pardons and Paroles' news release and explanation of the Board's "Amended Policy for the Parole of Violent Offenders" in order to quality for tier two VOITIS grant funds. Georgia was then successful and did receive funds through FY 2000 for a total of $82,236,509 received from the federal government under VOITIS.

Thus the Faustian deal, motivated to receive VOITIS grant funds, traded the freedom of many, many inmates to substantially retroactively extend their sentences to serve de facto ninety percent for the receipt by Georgia of over eighty-two million dollars in federal grant funds to build

new prisons. It is constitutionally shocking that in order to receive VOITIS federal grant funds, Georgia did increase its parole threshold for inmates in twenty offender categories from one-third to de facto ninety percent of judicial sentences by the this Board administratively adopting an unpublished policy having the practical force and effect of law that substantially and retroactively extended as well as continues to de facto substantially extend tens of thousands of inmates' sentences to serve motivated initially by money.

This substantially extended sentences to serve policy is the driving force of the explosion of inmate populations and has caused the Department of Corrections' budget crisis. The overcrowding of Georgia's prisons and back up of state prisoners in jails as well as the previous and current budget crisis are solely the responsibility of the State Board of Pardons and Paroles because many, many thousands of inmates are being held in prison beyond the time that they should be released on parole because the de facto extended sentences to serve policy has foreclosed their parole until they have served practically their entire judicial sentences. The de facto extended sentences to serve policy has caused an estimated additional eighteen thousand inmates in all twenty covered offender categories to serve extended incarcerations beyond their eligibilities for parole.

This enormity of the substantially extended sentences to serve policy being slavishly enforced by the staff at the Board is illustrated by the testimony of Michael Sullivan in 2003 as the Board's then designated representative established the reality that only 18 out of more than ten thousand inmates have been released on parole prior to serving ninety percent and all of those were prosecution deals. So essentially no inmates in these covered offense categories were being released on parole in accordance with the existing parole laws and the Parole Decision Guidelines and the Board has de facto changed the parole laws and ignored the Parole Decision Guidelines.

The annual upkeep costs are a staggering financial draft on the State's budget which the legislature has been forced to fund. Although the Board contend that only about 7,600 inmates were subject to the now declared illegal ninety percent to serve policy, the total is no doubt closer to 18,000 inmates arrived at by adding up the number of offenders in the twenty previously covered categories of which all are being required to serve sentences substantially beyond their statutory and guidelines eligibility for release on parole. Using the average annual cost for an inmate's upkeep published by the Department of Corrections of $17,332 per inmate per year calculates to an additional $311,976,000 annually that the Georgia tax

payers are required to pay to keep inmates incarcerated whose sentences to serve have long since been served and who should have been released under the parole laws and Parole Decision Guidelines. These administratively snared inmates are mainly offenders with good prison records, offenders who score high on Parole Success Likelihood Scores, first offenders and youthful offenders who have had their sentences to serve substantially extended from the statutory one-third to serve to de facto ninety percent or more to serve before any consideration for parole. The Board would still have the authority to withhold release on parole on an individually determined basis, if an offender's release would not be compatible with the welfare of society under O.C.G.A. § 42-9-42 (c).

This enormous costs of upkeep of inmates which has increased from 19,700 inmates in 1989 to well over 48,000 inmates today, plus an additional 4,000 state prisoners being held and paid for in county jails, has been driven by the extended sentences to serve of the de facto ninety percent to serve unofficial policy of the Board. The human cost is even more incalculable. Inmates may be able to be rehabilitated back into society after serving one-third of their sentences, but it becomes almost impossible for inmates to be successfully rehabilitated into society after serving almost triple their sentences to serve. The Board's unpublished internal policy also engenders a

disrespect for the law and an understandable resentment when the Board (actually the staff) calculates and in every case tells the inmates their Temporary Parole Month calculated under the enacted parole laws and the Parole Decision Guidelines, but then tells the inmates that the Board does follow the parole laws and the Parole Decision Guidelines arbitrarily almost tripling their sentences to serve not just on an individual case but for all inmates in these categories.

The Board is not subject to the core principles of the normal checks and balances of the Republic. The Board is constitutionally independent of the Executive Branch, they obviously do not follow the legislatively enacted parole laws and legislatively mandated Parole Decision Guidelines, and unless the courts exercise judicial supervision to cabin the Board's excesses they will continue their self proclaimed "unfettered discretion" to de facto wholesale extend tens of thousands of inmates' sentences to serve beyond their sentences to serve under the enacted parole laws and the Parole Decision Guidelines.

It is time for legislative changes that the State Board of Pardons and Paroles files are declared "confidential state secrets" under O.C.G.A. § 42-9-53(c). Total secrecy coupled with unfettered discretion do not comport with our constitutional protections and is simply un-American. It was un-

American by the President of the United States claiming presidential privilege to hide the Watergate scandal. The claim of secrecy of the Board files and even the votes of the members in granting or denying parole when coupled with their self-serving claim of unfettered discretion creates a very unusual confluence of secret unchecked power indeed. It is time that the Star Chamber secrecy of the Board be brought into the light of the twenty-first century. It is also time for the Board to afford inmates Due Process hearings. The public thinks that the this board affords inmates a right to a face to face hearing as to their parole like forty-six other state do, but that is a myth and there are no hearings or Due Process for inmates in Georgia. Madison cautioned that "temporary deviations from fundamental principle are more or less dangerous because once the deviation is made it becomes the rule."

The fact is that the Members of the Board re-sentence inmates to what they think their sentence to serve should be and often re-convict inmates of counts of which they think the inmates should have been convicted under such non-statutory rhetoric of "because of the circumstances of your offense" and "due to the seriousness of your crime." The seriousness of the offenses is already calculated into the Crime Severity Level of the offense. It is not the function of the Members of this Board to re-sentence or re-convict

inmates, but it is the responsibility of the Members of this Board to follow the enacted parole laws and Parole Decision Guidelines dictating when deserving inmates should be released. The proposed rulemaking codification continuing the substantially extended sentences to serve policy is reminiscent of the scorer's apprentice who just could not figure out how to turn off what he had started. It is submitted that it is time for the Board to stop re-sentencing inmates to substantially extended sentences to serve and to start following enacted parole laws and previous Parole Decision Guidelines.

The extended sentences to serve policy is perpetrating one of the most massive civil rights violation of our times. The Southern Center for Human Rights reports that Georgia now has the most incarcerated and offender supervised per capita rate of any state or country in the world. I am told that the extended sentences to serve policy has also resulted in a higher per capita rate of incarceration of African-Americans than South Africa incarcerated of their black population at the height of Apartheid.

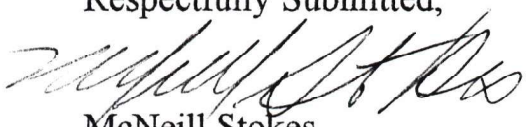
The Board must not only abandon the ninety percent sentences to serve policy but as well cease and desist their de facto extended sentences to serve policy, written or otherwise, and the Members of this Board must

follow the law - the legislative enacted parole laws and legislatively mandated Parole Decision Guidelines.

Mr. Chairman and Members of the Board: Haven't you done enough to totally foreclose tens of thousands of inmates' release on parole after they have served their sentences to be eligible for parole and who are deserving of release under the legislatively enacted parole laws as well as the mandated Parole Decision Guidelines? Have you no respect for following the parole laws? Have you no concern that you have and continue to virtually triple the sentences to serve of the offenders in the covered categories that is causing the inflated prison budgets now almost exceeding the educational budget in Georgia? Do you realize the human costs of your substantially extended sentences to serve policy? Do you realize that inmates might be able to successfully be able to be returned into society after serving one-third of their judicial sentences as recognized by the enacted parole laws, but that your actions of substantially tripling their sentences to serve requiring that their serve almost their entire sentences make it virtually impossible for inmates to successfully re-enter society? Do you realize that they will almost all be released and is it better to release them sooner rather than latter for the benefit of society. And have you who are charged with clemency in this state no compassion or sense of decency?

This 18th day of November, 2005.

Respectfully Submitted,



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PRINT THIS

Group pushes to open parole 'secrets'

State says files on inmates confidential

Carlos Campos - Staff
Friday, November 18, 2005

State parole board files considered "confidential state secrets" should be opened to shed light on decisions made to grant i release from prison , an Atlanta-based human rights group says.

The Southern Center for Human Rights will announce its "Operation Open Book" campaign at 1 p.m. today, an hour before Pardons and Paroles will consider the adoption of an early release policy.

Parole files are closed to public inspection under Georgia law; even prison inmates and their attorneys are not allowed to v documents within them. The parole board can declassify a parole file, but does not routinely do so.

Such secrecy can leave prison inmates and their families in the dark about when they might make parole, their advocates s

"There is ... absolutely no transparency or accountability within the parole decision-making process, due to both the lack of appeals procedure and the state secret status of parole files," states a letter from the group's attorneys to the parole board

Parole board spokeswoman Scheree Lipscomb said the files need to be secret because they often contain information fror individuals who have "shared confidences about inmates" considered for parole.

"Those individuals include law enforcement officials, family members and neighbors and we at no time want to break those Lipscomb said. "We want to protect those that speak with us openly and candidly. Without that input the process will not fe candidates for parole."

Sara Totonchi, public policy director for the Southern Center for Human Rights, said many inmates and their relatives are r have not been paroled and have no idea how the decisions are made.

"Family after family has called the ... parole board, desperate for any information at all on ... their loved ones' parole status 'It's being processed,' or 'It's under investigation,' or given other assurances that everything is under control," Totonchi said

But the files sometimes contain errors and inmates and their lawyers have no way of disputing those mistakes that the par relying on to make its decisions, she said.

Lipscomb noted that parole files contain some information that is open to public inspection, such as case files from local pr Parole files also include information on an inmate's behavior in prison, rehabilitative courses the inmate may have taken, p about the inmate and risk assessments used to determine an inmate's probability for success if released.

The parole board meets today at 2 p.m. to consider new guidelines for inmates convicted of certain serious felonies. Earlie board scrapped a policy requiring inmates to serve 90 percent of their sentences for those crimes after a judge found it hac implemented.

The board's new policy still classifies those crimes, including aggravated assault, robbery, child molestation and burglary o

residence, as among the most serious. But inmates considered good release risks may now be eligible for parole after ser of the sentence.

Find this article at:
http://www.ajc.com/friday/content/epaper/editions/friday/metro_34d7779ce1b8803310b1.html

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

Received
NOV 17 2005
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

Teresa G. Trusty

Received
NOV 18 2005
Legal Services

FACSIMILE

Name: **Tracy M isters**

Fax: **(404) 651 6670**

From: **Sara To nchi**

Date: Novemb 18, 2005

Subject: **Propose Rule 475-3-.05**

Pages: 5 (includi g cover page)

☐ Urgent ☐ Reply / SAP ☐ Please Comment ☐ For Your Records

Comments:

Please don't hesitate to contact me if you have any questions or concerns.

From the desk of...

Sara J. Totonchi
Public Policy Director
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Received
NOV 18 2005
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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 lor ger prison term than they would have served under prior rules. See Jackson v. State Boar l of Pardons and Paroles, 2002 WL 1609804 (N.D. Ga. May 30, 2002) (finding that th. 90% rule violated the Ex Post Facto Clause because the Board applied the policy to pers ns convicted before the rule's adoption, the rule undeniably increased the length of tir e plaintiff would spend in prison, and the Board exercised "unwavering adherence") that rule).

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

Fiscal Impact

The rule, if adopte , will cause a rise in prison population within a few years of its adoption and must be con dered in light of the limited number of beds in Georgia's Department of Correction For the past decade, the prison population has risen every year without fail, from 27, 84 people in 1994, to the current population of 48,619. (Source: *Georgia Departn ent of Corrections Annual Report 2004*). The proposed rule change will directly contra lict efforts by state officials who are looking for ways to reduce the overall populat on.

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

Additionally, longe prison sentences result in keeping people in prison into old age. As a prisoner gets ol r, his health care needs – and the cost of providing health care – rise exponentially. n 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 laims submitted. The number of aged inmates is already expected to rise by 39% be ween 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 discr tion are not necessarily the right thing." (*Atlanta Journal Constitution*, September 1 2004). At the October 4, 2005 Board meeting, Board member Mr. Garfield Ham ond asked whether the fiscal impact of the proposed policy had been calculated. There were no figures offered.

In 2002, the Georgi Department of Corrections estimated that the Board's 90% rule would result in an ave ge increase of 2.3 years for those sentenced under the rule. The Board has made no su a calculation with respect to the new ~~proposed~~ rule – or, if it has, it has not made that ca culation public. Particularly during this time of fiscal crisis, taxpayers are entitled to kn w the fiscal impact of the Board's proposed rule change. We

ask the Board to delay ad ption of this rule until it has assessed the fiscal implications of the rule and its correspon ing benefit to public safety.

Transparency and Acco ntability

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

The decision to gr nt or deny parole is deeply important to the prisoner, his family, and to society at l ge. 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 G eorgia, there is no face-to-face meeting between the prisoner and Board staff. There is o "hearing" at all. No one except Board staff may see the file on which the parole decisi n is based. There is no opportunity to correct mistakes in the parole file. The work of t e Board is done in secret.

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

The Board has a lo g way to go to regain the public trust. In January 2004, a member of the Board was onvicted 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 he 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 m ch 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 governm ental 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, inclu ing personal information, statements regarding the crime, and correspondence with the B ard 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

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."