

CR 92-98

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CERTIFICATE

STATE OF WISCONSIN)
) SS
PAROLE COMMISSION)

I, John Husz, Chairperson of the Parole Commission and custodian of the official records of the Commission, do hereby certify that the annexed rule relating to parole consideration was duly approved and adopted by the Commission on December 3, 1992.

I further certify that this copy has been compared by me with the original on file in the Commission and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Commission at the State Office Building, 149 E. Wilson Street, in the city of Madison, this 3d day of December, 1992.

SEAL:

John Husz, Chairperson
Parole Commission

2-1-93

ORDER OF THE
PAROLE COMMISSION
REPEALING AND CREATING RULES

To repeal DOC 330 and create PAC 1 relating to parole procedure.

ANALYSIS PREPARED BY THE PAROLE COMMISSION

1989 Wisconsin Act 121 created the Parole Commission, which is an agency separate and distinct from the Department of Corrections. The proposed rule incorporates this change, redefines parole eligibility after revocation and makes the parole consideration process more efficient by the use of phone interviews. The proposed rule also redefines parole eligibility for consecutive sentences and repeals ch. DOC 330 which is the current rule relating to parole.

Pursuant to authority vested in the Parole Commission by s. 227.11(2) Stats., the Parole Commission proposes to repeal and create rules interpreting ss. 304.01, 304.06 and 304.071, Stats., as follows:

SECTION 1. Chapter DOC 330 is repealed.

SECTION 2. Chapter PAC 1 is created to read:

CHAPTER PAC 1

PAROLE PROCEDURE

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PAC 1.01 AUTHORITY. This chapter is promulgated under s. 227.11(2), Stats.

PAC 1.02 PURPOSE This chapter structures the parole procedure so that it will be better understood by the general public and the prospective parolee, more equitable in its application, and more certain in its consequences, while providing for the exercise of informed discretion in considering individual differences among inmates, their offenses, their institutional records, and their abilities to comply with the rules of parole and to maintain themselves in open society without engaging in criminal activity.

PAC 1.03 DEFINITIONS. In this chapter:

(1) "Chairperson" means the chairperson of the commission.

(2) "Commission" means the "parole commission" which is comprised of the chairperson and the commissioners appointed by the chairperson to provide advice and recommendations to the chairperson or designee in matters pertaining to parole.

(3) "Deferral" is an action by a commissioner or commissioners following parole consideration, which denies discretionary parole for a specified period of time or until additional information can be obtained, after which the inmate becomes eligible for consideration for discretionary parole.

(4) "Department" means the department of corrections.

(5) "Discretionary parole" means parole granted, under the authority of s. 304.06, Stats., by the chairperson or designee, prior to the mandatory release date.

(6) "Extraordinary circumstances" means advanced age, infirmity or disability of the inmate, need for treatment or services not available within a correctional institution, a sentence to a term of imprisonment that is substantially disparate from the sentence usually imposed for a particular offense, or other circumstances warranting an early release which are made known to the sentencing court pursuant to s. PAC 1.04 (1) (a). *s.b. 1.05*

(7) "Mandatory release" means release by the department of an inmate to supervision as required by s. 302.11 (1), Stats.

(8) "Parole consideration" means the process by which the chairperson or a commissioner or commissioners review all relevant information on an inmate approaching parole eligibility and either deny parole, in which case a new parole eligibility date is established, or recommend to the chairperson or designee that parole be granted.

(9) "Parole-eligible" means qualified to be considered for parole at any time pursuant to s.304.06, Stats.

(10) "Parole grant" means the action by the chairperson or designee ordering the release of an inmate to field supervision by the Department of Corrections on or after a specific date.

PAC 1.04 FUNCTIONS OF DISCRETIONARY PAROLE The function of discretionary parole is fourfold: to assure, in light of the nature and severity of the crime, that early release will not depreciate the seriousness of the offense; to determine that optimum benefit has been derived from programs of education, training, and therapy; to assess the risk to the community of early release; and to determine in each individual case that there is a reasonable certainty of a crime-free reintegration of the inmate into society.

PAC 1.05 ELIGIBILITY FOR PAROLE (1) BECOMING ELIGIBLE. An inmate becomes eligible for discretionary parole pursuant to s. 304.06, Stats., after serving 25% of the sentence imposed for the offense or after 6 months, whichever is greater, or after serving 20 years of a life term, as modified by the formulas in ss. 302.11(1), 302.11(2), and 973.155 Stats., except when the court has set a parole eligibility date pursuant to s. 973.014(2), Stats.

(a) The chairperson may waive the 25% service of sentence requirement if the chairperson determines that extraordinary circumstances warrant an earlier parole consideration and the sentencing court, district attorney and the victim, if available, have been notified and permitted to comment upon the proposed recommendation.

(b) The commission shall not consider an inmate for parole until the inmate has been confined in the custody of the department for at least 60 days.

(c) When incarceration follows parole revocation without the imposition of a new sentence, parole eligibility shall be established at 6 months from the date of return to the institution, less the sentence credit under s. 973.155 (1), Stats.

(d) When incarceration follows parole revocation and involves the imposition of a new sentence or sentences, parole eligibility shall be established at 6 months, less sentence credit under s. 973.155 (1), Stats., or the parole eligibility date of the new sentence or sentences, whichever is later.

(e) If a new sentence or sentences are imposed following first consideration of the inmate for parole following revocation, the parole-eligibility date shall be the date established by the Commission following the first consideration, unless the new sentence or sentences require a later parole eligibility date.

(2) CONSECUTIVE SENTENCES. When an inmate is committed with consecutive sentences, the inmate's parole eligibility date shall be calculated by treating the consecutive sentences as one continuous sentence.

(3) **WAIVER OF CONSIDERATION.** An inmate may waive parole consideration at any time by notifying the commission in writing, through the institution staff. If an inmate declines to appear before the commission at the time of a scheduled interview, following notice of the scheduled interview, or if the inmate appears but refuses to participate, the failure to appear or to participate, unless excused by the commission, shall be construed as a waiver of parole consideration. In no case may a waiver have a negative effect on future parole decisions.

(4) **REESTABLISHMENT OF CONSIDERATION.** To request another date for parole consideration following a waiver, the inmate shall apply in writing to the commission through the institution staff. The first parole eligibility date shall be 4 months from the date of receipt of the application by the institution staff. Parole consideration shall occur during the second month prior to the parole eligibility date.

PAC 1.06 PAROLE CONSIDERATION. (1) Unless waived in writing by the inmate, the initial parole consideration shall be scheduled for each inmate during the month prior to the date of first statutory eligibility for parole.

(2) Parole consideration for persons denied parole shall occur no later than the last day of the calendar month prior to the consideration date established by the commission. Reconsideration shall not be deferred for longer than 12 months except with the written approval of the chairperson or the chairperson's designee.

(3)(a) Parole consideration shall be based on information available to the assigned commissioner. When the inmate is available at the scheduled time, an interview shall be conducted at the inmate's place of incarceration or by phone conference. The interview shall be recorded. When the inmate is temporarily unavailable for the interview, the interview shall be rescheduled. When the inmate is incarcerated in a federal facility or in a facility in another state, parole consideration may occur in the inmate's absence, but the inmate shall receive notice as provided in par. (c), shall be given access to documentary information, and shall have an opportunity to correct errors of fact in the record as set forth in pars. (d) and (e).

(b) When parole has been denied or deferred within the preceding 12 months, an inmate may be considered for parole, upon notice as provided in par. (c) without an interview, unless the inmate provides the commission through the institution staff with a written request for an interview. The inmate shall be given access to documentary information and have an opportunity to correct errors of material fact in the record as set forth in pars. (d) and (e).

(c) The institution responsible for scheduling parole consideration shall give the inmate at least a 15 day written notice of the consideration. The inmate may waive the 15-day

notification requirement at any time. When consideration follows a one month deferral or an informational deferral, notification may be other than in writing. The 15-day requirement may be set aside when failure to do so would extend the period of deferral.

(d) The inmate shall have access to the documentary information considered by the assigned commissioner or commissioners, except that the commission may deny the inmate access to information that has been obtained under an assurance of confidentiality or submitted to the commission with the expectation that the information would be held confidential. The commission shall make a decision whether to deny inmate access to such information on a case-by-case basis, weighing the potential harm to the inmate against the harm that may be done to the public interest by disclosure. Information restricted by statute shall be confidential and may not be disclosed. The commission shall make and keep a record of any decision to withhold information from an inmate and shall notify the inmate that it shall consider information which has been withheld from the inmate in accordance with this paragraph. An inmate shall have access to information to which the inmate is entitled under this paragraph in accordance with procedures governing inmate access to records at the correctional institution in which the inmate is confined or at the Wisconsin Resource Center if the inmate is confined there.

(e) Prior to parole consideration by the assigned commissioner or commissioners, the inmate shall be afforded an opportunity to correct any errors of fact which are found in the record, and to provide additional relevant information for the commission's consideration.

(f) The inmate interview shall be recorded, and the recording shall be retained for 6 months following the interview. A transcript shall be prepared only upon an order of the court which has granted a petition for judicial review of the parole decision.

(4) Parole consideration shall be by one or more commissioners as assigned by the chairperson.

(5) Representation by legal counsel during the interview shall not be permitted. Correspondence from legal counsel shall be accepted, however, and made a part of the record. A spokesperson for the inmate shall be allowed only in cases of severe speech impediment, where the inmate suffers a severe physical disability which impedes oral communication, or in cases where the inmate's primary language is not English and the individual lacks adequate fluency to represent himself or herself.

(6) Parole consideration is specifically exempt from open meeting legislation and shall be closed to the public as provided by s. 19.85 (1) (d), Stats. However, upon request and with the approval of the chairperson or designee, persons with a civic, academic, or professional interest in the parole process may be allowed to

observe individual parole proceedings. Observers shall not be allowed if the inmate objects.

(7) A recommendation for parole and a grant of parole shall be made only after the inmate has:

(a) Become parole-eligible under s. 304.06, Stats., and s. PAC 1.05;

(b) Served sufficient time so that release would not depreciate the seriousness of the offense.

(c) Demonstrated satisfactory adjustment to the institution and program participation at the institution;

(d) Developed an adequate parole plan; and

(e) Reached a point at which, in the judgment of the commission, discretionary parole would not pose an unreasonable risk to the public.

(8) The notice of consideration for parole under sub. (3)(c) shall include each of the requirements under sub. (7).

PAC 1.07 PAROLE COMMISSION RECOMMENDATIONS. (1) After parole consideration, the assigned commissioner or commissioners may recommend parole with or without special conditions, or they may deny parole. The recommendation of parole shall be made to the chairperson or designee. If parole is denied, the assigned commissioner or commissioners shall establish a date for reconsideration in accordance with s. PAC 1.06 (2). However, a date for further consideration of discretionary parole need not be established if the inmate will reach the mandatory release date prior to the time established according to s. PAC 1.06 (2).

(2) Any commissioner assigned to parole consideration may, with the approval of the chairperson, refer the case to the full commission for a decision.

(3) If the inmate is serving a life sentence, the chairperson or designee shall review the parole consideration and shall decide whether to defer or to grant parole.

(4) A recommendation for parole may be withdrawn by the commissioner or commissioners who made the recommendation any time prior to the issuance of the grant of parole whenever the circumstances affecting the original recommendation have, in the opinion of the commissioner or commissioners, changed sufficiently to require withdrawal of the recommendation.

(5) (a) If the chairperson disagrees with a recommendation by the assigned commissioner or commissioners to grant or deny parole, the chairperson shall inform the inmate that the recommendation has been rejected.

(b) The chairperson or designee may grant or deny parole at any time prior to the issuance of a grant of parole, if extraordinary circumstances affecting an inmate are documented and verified.

(c) If, subsequent to the issuance of a grant of parole by the chairperson or designee, but prior to release of the inmate, circumstances require denial of the grant, the inmate shall be provided written notice of the reasons for the denial, disclosure of evidence against the inmate, the right to appear and be heard by an impartial hearing examiner from the division of hearings and appeals in the department of administration, the right to present witnesses and evidence and to confront and cross-examine witnesses against the inmate, the right to receive a written statement of the evidence relied upon and the right to be represented by counsel. After a review of the findings of fact, conclusions of law, and recommendation of the hearing examiner, a final decision relative to the grant of parole shall be made by the chairperson or designee.

(6) The inmate shall be advised in writing of the decision to defer or to recommend a grant of parole, the reasons for the decision and the next opportunity for parole consideration as soon as feasible following the decision, but in no case later than the last day of the month following the month in which the interview occurred.

(7) The inmate shall be afforded an opportunity to comment on the decision following the commissioner's explanation of the decision, orally if an interview has been provided, or in writing if an interview has not been provided.

This rule created in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

Wisconsin Parole Commission

Date:

12/3/92

By:

John Husz
Chairperson

SEAL