

## Chapter DOC 330

## PAROLE

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Note: Chapter HSS 30 was renumbered chapter DOC 330 and revised under s. 13.93 (2m) (b) 1, 2, 6 and 7, Stats., Register, September, 1991, No. 429.

**DOC 330.01 Authority.** These rules are promulgated under ss. 46.03 (6) (c), 57.06 and 227.11 (2), Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81.

**DOC 330.02 Purpose.** (1) **DISCRETIONARY PAROLE.** Discretionary parole is release of an incarcerated felon to supervision prior to the completion of the maximum sentence imposed by the court and prior to release mandated by statute. Its function is threefold: 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; and 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.

(2) **PURPOSE.** These rules structure the parole procedure toward the end that it will be better understood by the general public and by 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.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81.

**DOC 330.03 Definitions.** In this chapter:

(1) "Board" means the parole board comprised of members appointed by the secretary to provide advice and recommendations to the secretary, the secretary's designee and the board chairperson in matters pertaining to parole.

(2) "Deferral" means the action by the assigned board member or members, following consideration and a decision to deny discretionary parole, to establish the next date on which the inmate becomes eligible to be considered for discretionary parole.

(3) "Discretionary parole" means parole granted, under the authority of s. 57.06, Stats., by the secretary, the secretary's designee or the board chairperson prior to the mandatory parole date.

(4) "Extraordinary circumstances" means advanced age, infirmity or disability of the inmate, need for treatment or services not available within a correctional institution, having received a sentence to serve a term of imprisonment that is substantially disparate from the sentence usually imposed for a particular offense, or other circumstances warrant-

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ing an early release made known to the sentencing court pursuant to s. DOC 330.04 (1) (a).

(5) "Mandatory release" means release of a convicted felon to supervision as required by s. 53.11 (7) (a), Stats., and as determined by the term for which the person is sentenced minus all time credited pursuant to s. 53.11 (1), Stats.

(6) "Parole consideration" means the process by which the assigned board member or members review all relevant information on an inmate approaching parole eligibility and either decide to deny the inmate parole, in which case a new parole eligibility date is established, or recommend to the secretary or designee that parole be granted.

(7) "Parole-eligible" means qualified to be considered for parole.

(8) "Parole grant" means the action by the secretary or, by delegation of the secretary, the board chairperson or other designee of the secretary, ordering the release of an inmate to field supervision by the department on or after a specific date.

(9) "Secretary" means the secretary of the department of health and social services.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. and recr. Register, September, 1984, No. 345, eff. 10-1-84.

**DOC 330.04 Eligibility for parole. (1) BECOMING ELIGIBLE.** An inmate becomes eligible for discretionary parole pursuant to s. 57.06, Stats., after serving 25% of the sentence imposed for the offense or after 6 months, whichever is longer, or after serving 20 years of a life term less the deduction earned for good conduct as provided in s. 53.11, Stats., except when incarceration follows revocation of discretionary parole or mandatory release. The department may waive the 25% or 6-month service of sentence requirement for an inmate upon the recommendation of the parole board. The parole board may recommend a waiver of the requirement only if it determines that extraordinary circumstances warrant an early release and the sentencing court has been notified and permitted to comment upon the proposed recommendation.

(b) When incarceration follows revocation without the imposition of a new sentence, eligibility shall be established 6 months from the date of return to the institution, less credit for county jail time.

(c) When incarceration follows revocation and involves the imposition of a new sentence or sentences the following provisions apply:

1. If the new sentences or aggregate of new sentences is imposed before first consideration of the inmate for parole following revocation, and the new sentence or aggregate of new sentences is more than 18 months, the new eligibility date is one year after reception at the institution, less credit for county jail time, or the parole eligibility date on the new sentence or aggregate of new sentences, whichever is later.

2. If the new sentence or aggregate of new sentences is imposed before first consideration of the inmate for parole following revocation, and the new sentence or aggregate of new sentences is 18 months or less, the new eligibility date is 6 months after reception at the institution, less credit for county jail time, or the parole eligibility date on the new sentence or aggregate of new sentences, whichever is later.

3. If the new sentence or aggregate of new sentences is imposed following first consideration of the inmate for parole following revocation, the parole eligibility date shall be that date established by the board following the first consideration, unless the new sentence or aggregate of new sentences requires a later parole eligibility date.

4. In no case may parole consideration occur less than 60 days following reception or return to the institution.

(2) **CONSECUTIVE SENTENCES.** Whenever an inmate is committed following more than one conviction, with consecutive sentences, the inmate becomes parole-eligible when the time served equals the sum of the terms required for parole eligibility for each sentence, as set forth in s. 57.06 (1) (a), Stats.

(3) **WAIVER OF ELIGIBILITY.** An inmate may waive parole eligibility at any time by notifying the board in writing through the institution staff. If an inmate intentionally declines to appear before the board 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 board, shall be construed as a waiver of parole eligibility. In no case may a waiver have a negative effect on future board considerations.

(4) **REESTABLISHMENT OF ELIGIBILITY.** To reestablish eligibility following a waiver, the inmate shall apply to the board through the institution staff. Parole eligibility shall be reestablished 4 months from the date of application. Parole consideration shall occur during the second month prior to the parole eligibility date.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am. (1) (b) and (3), r. and recr. (4), Register, December, 1982, No. 324, eff. 1-1-83; renum. (1) (Intro.) to (b) to be (1) (a) to (c) and am. (1) (a) and (b), am. (3), Register, September, 1984, No. 346, eff. 10-1-84.

**DOC 330.05 Parole consideration.** (1) Unless waived in writing by the inmate, the initial parole consideration shall be provided for each inmate during the month prior to the date of first statutory eligibility for parole.

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

(3) (a) Parole consideration shall be based on information available to the assigned board member or members. When the inmate is available at the scheduled time, an interview shall be conducted at the inmate's place of incarceration or at a facility designated by the board. The interview, except for the deliberations of the assigned member or members of the board prior to reaching a decision, 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 an out-of-state facility, parole consideration may take place in the inmate's absence, but the inmate shall receive notice, be given access to documentary information, and have an opportunity to correct errors of fact in the record as set forth in pars. (b) to (d).

(am) An interview need not be conducted more frequently than once every 12 months. When parole consideration occurs without an interview, the inmate shall be given access to documentary information and

have an opportunity to correct errors of fact in the record and provide additional relevant information as set forth in pars. (b) to (d). This rule applies until October 1, 1992.

(b) The institution responsible for scheduling parole consideration shall notify the inmate, in writing, at least 15 days prior to the week of the scheduled parole consideration as to when the inmate will be considered for parole. The inmate may waive the 15-day notification requirement at any time. When consideration follows a one month deferral, notification may be other than in writing and the 15-day requirement may be set aside when failure to do so would extend the period of deferral.

(c) The inmate shall have access to the documentary information considered by the assigned board member or members, except that the board may restrict inmate access to information that has been obtained under an assurance of confidentiality or submitted to the department with the expectation that the information would be held confidential. The board shall make a decision whether to restrict inmate access to that information on a case-by-case basis, weighing the right of public access to documents against the harm that may be done to the public interest by disclosure. Information restricted by statute is confidential and may not be disclosed. The board shall make and keep a written record of any decision to withhold information from an inmate and shall notify the inmate that it will consider information which has been withheld from the inmate in accordance with this paragraph. An inmate shall have access to information to which he or she 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.

(d) Prior to consideration by the assigned members of the board, 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 board consideration.

(e) The parole board 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 members of the board as assigned by the board chairperson.

(5) Representation by legal counsel during the interview is not allowed. Correspondence from legal counsel will be received, however, and made a part of the record. A spokesperson for the inmate will be allowed only in cases of severe speech impediment or where the inmate suffers a severe physical disability which impedes verbal 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 meetings legislation and is closed to the public as provided by s. 19.85 (1) (d), Stats. However, upon request to and with the approval of the secretary, the secretary's designee, or board chairperson, persons with a civic, academic, or professional interest in the paroling process may be allowed to observe individual parole proceedings. Observers will 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. 57.06, Stats., and s. DOC 330.04;
- (b) Served sufficient time for punishment, considering the nature and severity 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 board, discretionary parole would not pose an unreasonable risk to the public.

(8) The notice of consideration for parole under sub. (3) (a) shall include the factors which will be considered by the board in assessing the fulfillment of each of the requirements under sub. (7).

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am. (3) (a), r. and recr. (3) (intro.) and (7), cr. (8), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), renum. (3) (intro.) to (c) to be (3) (a) to (d) and am. (3) (a) and (c), cr. (3) (c), r. and recr. (4), Register, September, 1984, No. 346, eff. 10-1-84; r. and recr. (3) (c), Register, November, 1987, No. 383, eff. 12-1-87; emerg. am. (4) (a), eff. 8-25-89; r. (4) (a) and (b), Register, February, 1990, No. 410, eff. 3-1-90; emerg. cr. (3) (am), eff. 1-7-91; cr. (3) (am), Register, September, 1991, No. 429, eff. 10-1-91.

**DOC 330.06 Parole board recommendations.** (1) After consideration, the assigned board members may recommend parole with or without special conditions, or they may deny parole. If parole is denied, the assigned board members shall establish a date providing for reconsideration in accordance with s. DOC 330.05 (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. DOC 330.05 (2).

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

(3) If the inmate is serving a life sentence, the board chairperson shall review the parole consideration and shall decide whether to defer or to recommend a grant of parole and whether to request a preparole plan.

(4) A recommendation for parole may be withdrawn by the board members who made the recommendation any time prior to the approved grant of parole whenever the circumstances affecting the original recommendation have, in the opinion of the members, changed sufficiently to require such action.

(5) If, subsequent to a grant of parole by the secretary, the secretary's designee, or board chairperson, but prior to release, circumstances require reconsideration of the grant, the inmate will be provided written notice of the reasons for the reconsideration, disclosure of evidence against him or her, a right to appear and be heard by an impartial hearing examiner, the right to present witnesses and evidence and to confront and cross-examine witnesses against him or her, a right to receive a written statement of the evidence relied upon and a right to be represented by counsel. After a review of the findings of fact, conclusions of law, and recommendation of the examiner, a final decision relative to the grant of

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parole will be made by the secretary, the secretary's designee, or board chairperson.

(6) The inmate shall be advised of the decision to defer or to recommend a grant of parole and the reasons for it 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 board members' explanation of it, orally if an interview has been provided, in writing if an interview has not been provided.

(8) The secretary, secretary's designee, or board chairperson may call for reconsideration of a board recommendation at any time that unusual circumstances affecting an individual inmate develop and are documented and verified.

**History:** Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. (7), renum. (8) to be (7), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, September, 1984, No. 345, eff. 10-1-84; emerg. renum. (3) to (7) to be (4) to (8), cr. (3) eff. 12-7-88; renum. (3) to (7) to be (4) to (8), cr. (3), Register, August, 1989, No. 404, eff. 9-1-89.