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☞ Details: Complaint.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08
(session year)

Joint
(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

JERREL R. SELSOR #184143
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950

Date: February 18th, 2008

Re: ***State ex rel. Jerrel R. Selsor v. Rick Raemisch,***
Case No. 07CV4534, Branch 9, Dane County

Joint Committee for Review of
ADMINISTRATIVE RULES
Senator JAUCH, Co-Chairperson
ROOM 118 South, STATE CAPITOL
P.O. Box 7882
Madison, WI 53708-7882

NOTICE OF DECLARATORY JUDGMENT HAVING BEEN REQUESTED IN A CERTIORARI PROCEEDING IN DANE COUNTY CIRCUIT COURT

JCRAR,

A Petition for Writ of Certiorari with a Request for Declaratory Judgment, per Wis. Stat. § 227.40, has been filed in the circuit court of Dane County, (Honorable Richard G. Niess, Branch 9); concerning the Program Review Committee's Administrative rules and "Risk Rating Instructions,"

Of major concern here is the DOC and its Program Review Committee are utilizing a single method to classify at least (5) separate scheming schemes, ranging from "Old World" inmates under "Old Law" ; "New Law" ; "PMR Law" to "Truth in Sentencing" inmates under TIS-1 and TIS-2.

The PRC is primarily relying on their current Adm. Code Wis. Stat. § 302.07(13), which by reference only, invites use of an "instrument" which contains a "15 year or more" threshold rule. This "instrument" is being applied regardless of the type of sentencing scheme and/or to the exclusion of the individual record of each inmate. And thus, the PRC is classifying inmate's security risks and denying movement to minimum security facilities based upon this instrument. The procedural record of PRC decisions will bear out that their discretion has been wholly dependant upon this "instrument".

> *"The results **of specially designed** and **researched** risk rating instruments developed to assist with the individualized and objective assessment of a custody classification or program and treatment assignments and placements." DOC 302.07(13).*

The predecessor to 302.07(13) read;

DOC 302.14(15) The inmate's risk rating as high risk, moderate risk or low risk, **determined** by employing the department's risk rating system. Under the risk rating system, if one or more factors are rated high risk, the risk rating **is** high risk. If one or more factors are rated moderate risk and no factors are rated high risk, the risk rating **is** moderate risk. If all factors are rated low risk, the risk rating is low risk. In this subsection, "risk rating system" means the interpretive guidelines, procedures and forms used to assess the risk that an inmate presents that an inmate presents to public safety and to the security and management of the correctional institution. (**emphasis** added). (c1990)

This "system" inherently allows the risk associated with the Sentence Structure section, as determined by the "system," to exclude and dominate all other factors. And the "Risk Rating Instructions," guideline itself, makes clear no consideration is given to other factors, such as the inmate's amenability to treatment or rehabilitation; See pg.12, RISK RATING INSTRUCTIONS FOR RISK RATING FORMS DOC-113 DOC-114,(in part);

"*No attempt is made to address the multiple factors that may be involved and/or the wide range (length) of commitments that would be included in this group.*"

Notably the very previous paragraph had stated;

"*This group of inmates is to be treated separately, acknowledging that longer commitments will generally reflect the seriousness of the offenses and aggravating factors considered by a sentencing court.*"

The "Sentence Structure's" sectional application alone is allowed to overrule all other sections' results and consideration of factors contained therein.

Ironically, though the DOC found reason to repeal and recreate the entire Chapter 302 of the Adm. Codes, it did not repeal this "instrument" which was vicariously introduced under the same repealed DOC 302.14(15) (c1990) and instead, gave it a descriptively eleviated status as being a "specially designed" instrument. Where, when, and by whom was it specially designed?

Prior to 1990, the PRC was required to consider only the factors listed under HSS 302.14 (c1979). And the DOC made this declaration prior to the repeal and recreation of the entire DOC Adm. Codes ch.302; "*Personnel staffing committees and reviewing recommendations came from within the system and did not permit independent review or decision making.*" (in part); ORDER OF THE DEPARTMENT OF CORRECTIONS REPEALING AND RECREATING RULES, and REVISION AND PUBLICATION OF ADMINISTRATIVE CODE 302 Effective: February 1st, 2002.

Though your status in these matters is yet to be determined, I am left to assume your interests in these proceedings. Wis. Stat. § 803.03(1) or (2). Depending on the discretion of the Joint Committee on Legislative Organization per Wis. Stat. § 227.40(5), you may be a party and have a right to be heard; or as yet may be judicially determined under § 803.03(3) you could be joined as a party of interest.

I am without knowledge of your interests in these matters, Wis. Stat. § 803.03(4); and nor have I been informed by the circuit court of Dane County as them having given you notice as required under Wis. Stats. § 227.40(5); thus

Of my own accord and not admitting any statutory obligation to do so, I am giving a general notice of the Declaratory Judgment requested in the above stated case as to possibly avoiding duplicate litigation. I believe you may see my legal views as being representative of the State's interests; in which case I would pray you come forward as an interested party to preserve justice in these matters.

Please notify me in kind, of your intention, if any, in these proceedings.

I certify under penalty of perjury that the above statements are to the best of my knowledge true and accurate.

Sincerely,

Jerrel R. Selsor

JERREL R. SELSOR, Pro se 2/18/08

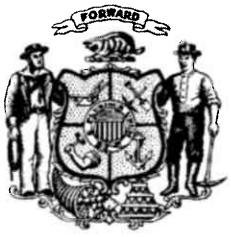
Cc: file

Copy: Mr. Carol Esqueda, Clerk
Dane County Circuit Court
215 S. Hamilton Street
Madison, WI 53703-3285

c/o Honorable Richard G. Niess, Branch 9
Circuit Court Judge
5103 Dane County Courthouse

Copy: Department of Corrections
Rick Raemisch, Secretary
P.O. Box 7925
Madison, WI 53707-7925

WISCONSIN STATE LEGISLATURE



CORRESPONDENCE/MEMORANDUM

State Public Defender

DATE: August 5, 1991

TO: All SPD Trial Offices

FROM: Martha K. Askins
Assistant State Public Defender
Mary E. Waitrovich
First Assistant State Public Defender
Appellate Division

RE: SECURITY CLASSIFICATION RULES AS NEW FACTOR

INTRODUCTION

Many inmates are making requests for representation by counsel for sentence modification motions based on the Department of Corrections security classification system and its effect on treatment opportunities and realistic parole eligibility. This memo is intended to provide information to assist in evaluating these requests.

BACKGROUND

In 1983, the Division of Corrections implemented a system to assign inmates to appropriate security classifications. Under Wis. Admin. Code sec. 302.19(6), staff were required to consider only the criteria in Wis. Admin. Code sec. 302.14, in determining an inmate's security classification. These criteria included the nature of the offense, the criminal record of the inmate, the length of sentence , the motivation for the crime, the inmate's attitude toward the offense and sentence, escape history, any special needs of the inmate, and the like.

In addition to these criteria, staff used the inmate's score on the Department's "Inmate Custody Rating" form, although that was not authorized by the plain meaning of the administrative rule. The practice of using the inmate custody rating form was successfully challenged by an inmate in *State ex rel. Richards v. Traut*, 145 Wis.

2d 677, 681, 429 N.W.2d 81 (Ct.App. 1988). The court found that the rule required that the inmate's custody rating could be determined by using *only* those criteria in the rule; therefore, the custody rating form could not be relied on by staff.

Approximately five months later, on December 2, 1988, the Department of Corrections issued emergency rules concerning security classification of inmates. These were later promulgated as permanent rules. The new classification rules are essentially the same as the rules in effect before *Richards v. Traut,* except that they added a "risk rating system" which incorporates the inmate custody rating form into the factors listed in now DOC 302.14 (see 302.14(15). It also creates additional criteria for classifying lifers.

The risk rating system gives inmates a score in several categories believed to be relevant to determining security classification: Current offense; offense history; sentence structure, institution adjustment, escape history; emotional/mental health; behavior/attitude & program participation; and temporary factors such as detainers. The inmate receives a score of either high, moderate or low risk in each category. The risk rating manual states that the score is reached like this:

1) If the inmate has at least one risk factor rated as high risk, the total risk rating is high risk.
2) If the inmate has no high risk factors, but has at least one moderate risk factor, the total risk rating is moderate risk.
3) If the inmate has all factors rated as low risk, the total risk rating is low risk.

Thus, the inmate's one highest level risk rating score on all categories will control his or her risk rating.

It is important to note that risk rating is a factor to be used in determining security classification, and is not synonymous with security classification. It is, however, an extremely important factor, and in practice probably controls the inmates' institution placement.

Of particular importance is the inmate's sentence structure. An inmate who has a sentence of more than 15 years will be rated high risk as long as he or she has served less that 50% of the time to

mandatory release. He or she will be rated moderate risk in this category upon reaching 50% of the time to MR. The inmate will not be rated low risk in this category until he or she has twelve months or less to MR or receives a defer of less than 12 months from the parole board, or with "clear statement of anticipated parole at next appearance, or clear statement of high potential for parole within 24 months."

The effect of this rule is that institution staff essentially determine security classification based on numbers alone, rather than the behavior of the inmate. Generally, it also appears that an inmate will move more slowly through the system. This means that there will be delays in receiving the programs that are available at medium and minimum security institutions, and may even mean delays in parole. This can be illustrated with an example of what happens to an inmate with a 20 year sentence.

The inmate with a 20 year sentence should have a mandatory release of about 13 years. This means that he or she will be high risk for one-half of that 13 years, or 6.5 years. His or her parole eligibility date should be 25% of the sentence, or 5 years. Therefore, the inmate will have been parole eligible for at least 1.5 years before even being rated as moderate risk for sentence structure. We all know that it is very unusual for the parole board to parole someone from a maximum security institution; therefore, to the extent that risk rating controls institution placement, the risk rating system may delay releases on parole.

CURRENT LITIGATION

The lifers brought a suit to declare the new security classification rules unconstitutional on the grounds that they are prohibited by the ex post facto clause of the U.S. and Wisconsin constitutions with respect to inmates whose crimes were committed prior to the effective date of the new regulations. They won in the trial court (Judge Steingass in Dane County) and the state appealed. The case is now briefed and is awaiting a decision by the court of appeals.

If the lifers win on appeal, the Department may decide not to seek review by the supreme court. Whatever the final outcome, it is

likely that the Department would apply the decision to all inmates for administrative convenience.

Martha Askins has also begun informal discussions with the Department of Corrections to see if they will reconsider the wisdom of the security classification risk rating system.

SECURITY CLASSIFICATION AS NEW FACTOR

The risk rating system may constitute a new factor for some inmates under some circumstances. Because it controls inmate placement, it may frustrate the sentencing judge's plan for that inmate in the system. Because it may delay the inmate's movement through the system, it may also delay treatment and programs. This may make it difficult or impossible for the inmate to get needed programming or treatment. In certain cases, the risk rating system may directly nullify a sentencing judge's recommendation for treatment or other programming.

It is highly unlikely that the judge will have been aware of the existence of the risk rating system at the time of sentencing because it is not contained in any statute or administrative rule; it is just a policy manual of the Department of Corrections. And of course, if the inmate was sentenced before the new rule, the judge could not have known of the rules, and the effect of the rules could constitute added punishment in violation of the ex post facto clause of the constitution.

Changes in an inmate's eligibility for parole can constitute a new factor justifying a sentence modification. ***Kutchera v. State***, 69 Wis. 2d 534, 553, 230 N.W. 2d 750 (1974). This rule was confirmed in ***State v. Stuhr***, 92 Wis. 2d 46, 52, 284 N.W. 2d 459 (Ct. App. 1979). However, in ***State v. Franklin***, 148 Wis. 2d 1, 14, 434 N.W. 2d 609 (1989), the court held that "a change in parole policy cannot be relevant to sentencing unless parole policy was actually considered by the circuit court."

In ***State v. Michels***, 150 Wis. 2d 94, 441 N.W.2d 278 (Ct. App. 1989), the court held that a new factor must be an event or development which frustrates the purpose of the original sentence. There must be some connection between the factor and the sentencing; something which strikes at the very purpose for the sentence selected by the trial court. Therefore, unless the

sentencing judge made some comment at least arguably directed toward eligibility for parole, receiving certain treatment or other programming, or an inmate's movement through the system, the risk rating system will not really qualify as a new factor.

CONFIRMING THE INFORMATION

If you receive a request for appointment of counsel in these types of cases, probably the easiest way to confirm the situation is to ask the inmate to sent you a copy of his or her Program Review Committee(PRC) sheet. An inmate generally sees PRC every six months. The PRC makes decisions regarding security classification, job placement, treatment programs, etc. Next to the programming need will be a number code which will state whether the individual is currently enrolled, on a waiting list, has refused the program, or other relevant information. It should also state the person's security classification, and may contain a recommendation regarding security classification. You may also want to check the person's "Program Review Inmate Risk Assessment"(DOC-114) form(sample attached).

cc: Ken Casey
Chief, Appellate Division

Mark Lukoff
First Assistant State Public Defender
Milwaukee Appellate