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## Wisconsin Parole Commission Folder

(FORM UPDATED: 08/11/2010)

### WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2011-12

(session year)

## Senate

(Assembly, Senate or Joint)

### Committee on ... Labor, Public Safety, and Urban Affairs (SC-LPSUA)

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- 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: Mike Barman (LRB) (July/2012)

COPY

WI-CURE  
Wisconsin Citizens United to Rehabilitate Errants  
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Ms. Kathleen Nagle, Chair  
Wisconsin Parole Commission  
P. O. Box 7960  
Madison, WI 53707

January 12, 2012

Subject: Jess Swinson 372937

Dear Chairperson Nagle;

This letter is in support of the parole for Jess Swinson. WI-CURE has been involved in the research of his case since 2005. We have studied some cases of embezzlement and have found that the Swinson's sentence was extremely harsh for the crime. Cases with much more severity have received less time.

The new Parole Regulations have excluded the criteria of unfair sentencing as an extenuating circumstance for parole. CURE has objected to the removal of that criterion since there are many cases where sentencing has been unjust.

Mr. Swinson is a good candidate for parole because he has family support for re-entry as well as shelter and has marketable skills for earning an income.

CURE is an organization dedicated to prison reform and has been working with the Parole Commission in the past to implement changes which would not require any legislation. We have also pointed out that in the past that one of the "extraordinary circumstances" for parole was "imprisonment that is substantially disparate from the sentence usually imposed for a particular offense" was a factor for Mr. Swinson's parole. However, the revisions made in 2010 removed that criterion and WI-CURE had objected to this at a public hearing in Milwaukee.

I am enclosing an Amicus Brief I did which explains recommendations which were submitted to the Parole Commission by the Incarceration Coalition for your information. If you have any questions or need further information, please contact me at the above address or email or phone 414 409 7028.

Thank you for your consideration.

Sincerely,



Kathleen Hart, Director

cc: Criminal Justice & Corrections & Labor, Public Safety & Urban Affairs Committees

JAMIE D. JARDINE and  
ERICK DARRINGTON

Plaintiffs

v.

Case No. 09-C-1114

ALFONSO GRAHAM, JAMES HART,  
JAYNE HACKBARTH, STEVE LANDREMAN,  
ARELY GONNERING, FRED A. MELENDEZ,  
M. JEANNE HUIBREGTSE, FRAN PAUL,  
SHARON WILLIAMS AND RICK RAEMISCH

Defendants

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**AMICUS CURIAE BRIEF - OCTOBER 25, 2010**

**WISCONSIN - CITIZENS UNITED TO REHABILITATE ERRANTS**

This brief is filed as a friend of the court to provide additional information pertinent to the parole system in the State of Wisconsin. This case may have broader implications regarding the parole system in the State of Wisconsin and our brief will introduce some very important concerns.

WI-CURE is a national organization dedicated to the reduction of crime through the reform of the criminal justice system (especially prison reform).

WI-CURE has been working for years trying to bring attention to the facts that the parole system in the State of Wisconsin is in need of reform. Recommendations were drafted by WI-CURE and were presented in November of 2006 to The Parole Commission, The Department of Corrections and the Governor's Office as well as to State legislators.

The recommendations were drafted by WI-CURE and presented by the Incarceration Coalition. The Coalition is dedicated to the betterment of society by working for the

Rehabilitation of inmates and reintegration of former inmates of the Wisconsin prison system.

### **INCARCERATION COALITION MEMBERSHIP**

The member organizations of the Incarceration Coalition in November, 2006 were as follows: Madison Area Urban Ministry, Forum for Understanding Boscobel Prison, Community Connections, American Civil Liberties Union of Wisconsin, Project Return, After Care Connections of Waukesha, Taskforce on Money, Education and Prisons, Project Reentry, Amnesty International, The Benedict Center, Voices Beyond Bars, Center for Family Policy and Practice, Forum for Understanding Prisons, Wisconsin Coalition for Advocacy, Prisoner Action, St. Vincent de Paul - Waukesha, NAACP, Support Group for Inmates Families and Wisconsin Citizens United to Rehabilitate Errants.

### **BACKGROUND INFORMATION**

In July, 2003 Governor Doyle announced "a new direction" for Wisconsin Correctional Policy. It was a very aggressive proposal. However, one thing that was not addressed was the parole system for inmates who are covered by the "old law" before Truth in Sentencing. Changes could be made which will free up beds and relieve overcrowding and aid in the reduction of costs of incarceration.

In the past the greater percentage of parole requests have been denied by the commissioners and the inmates are repeatedly given 12, 24 and 36 month deferments (defers). These are given even if the reasons are for lack of information in the inmates' files, lack of completion of a required program or insufficient time served. The commissioners are not considering the fact that the judges at sentencing set the date for parole

eligibility. They are stating "not enough time served" as the reason for "defers". Statutory eligibility is that inmates have served 6 months of the imposed sentence or 25% of the sentence, whichever is greater.

The inmates cannot have anyone with them at the hearings.

There are only 5 commissioners at the present time for the entire state of Wisconsin which has 36 prisons. There are thousands of inmates who are or will be eligible for parole who were sentenced before Truth in Sentencing. Some have served from 20 to 30 years and have been denied parole numerous times after meeting all requirements.

There is no assessment tool for the commissioners to use to determine whether the inmate would be a risk to the community. The process is very subjective and judgmental. The inmates are, in fact, being re-sentenced.

Parole decision making is far from an exact science. Few people can predict their own future much less anyone else's. Parole board members make decisions based on the best available evidence. If a substantial risk to public safety is demonstrated, parole can be reasonably denied. However, analysis of the data suggests that hundreds of persons are being denied release when the evidence of substantial risk is lacking. This is creating a great hardship on families who are waiting for their loved ones to come home. Women are raising children without the support of the fathers. Women are incarcerated who could be raising their children rather than have them in foster care. These children are at risk.

## **RECOMMENDATIONS**

### **1. Establish a clear standard creating a presumption of parole at the judicially imposed minimum unless specified post-sentencing factors exist.**

Such a standard would guide parole board decision making and set a benchmark for parole grant rates. By expressly acknowledging the significance of the minimum sentence, it would preserve the role of the courts in imposing sentences according to those guidelines and the roles of prosecutors and defense attorneys in plea-bargaining under the guidelines. Such a standard would establish a sort of "truth in parole" to complement "truth in sentencing". After serving every day of the minimum sentence, prisoners would be entitled to a presumption of release unless there are mitigating circumstances which have developed during incarceration.

### **2. Develop parole guidelines that complement the sentencing guidelines (Risk Assessment Tool).**

Develop a risk assessment tool to determine the risk factor of inmates. There are many available at other institutions. Balance the risk assessment and individual factors demonstrating rehabilitation; i.e., courses and behavior while incarcerated, support on the outside regarding housing, etc. What is happening is that the parole commission instead of having the presumption of parole eligibility is having the presumption of ineligibility. They are in fact re-sentencing the inmates. If there have been no violations while in prison, the parole should be granted. There are thousands of nonviolent offenders eligible for parole.

### **3. Establish a Parole Review Panel**

The decision on parole should not be in the hands of one commissioner and the ultimate

approval or disapproval by the Chair of the Parole Commission. The Parole Review Panel would include people with law enforcement backgrounds, corrections backgrounds, social workers and psychologists. The present practice of one commissioner interviewing the prisoner could be kept in place; however, it may not be necessary if a Parole Review Panel would be in place. If the one commissioner interview is continued, the audio tape of the hearing and the hard copy file could be forwarded to the Parole Review Panel. The Panel would review the tapes and the files before they meet with the inmates themselves.

**4. Allow inmates to have someone at their hearings; i.e., advocate, family member and/or attorney**

In Arizona the hearings of the Board of Executive Clemency (formerly called the Board of Pardons and Paroles) are "open public meetings". All business must be conducted "in the sunshine". The inmate is given a two-week notice of the hearing and the law requires that the sentencing judge, the district attorney and the victim or his/her family must be notified of the hearing. The inmate can have anyone who wants to be there. The Board must provide reasons why the inmate is denied that he/she can address. They cannot deny a parole due to the "nature of the crime" or "not enough time served".

**5. Make arrangements for inmates to participate in programs after release on parole**

The present policy of not allowing inmates to participate in programs until they are near their mandatory release date is causing denials of parole. The parole should not be denied because of prisoner's inability to complete programs that were not available. This is not the fault of the inmate.

**6. Establish adequate procedures for correcting misinformation or adding missing information to the file**

If information material in a file was incorrect or material was missing, allow the inmate

to request a re-hearing be conducted promptly to correct the problems. Sometimes information which should have been in the file has not been found and inmates have been given deferments because the commissioner did not have the correct information.

### **PAROLE GUIDELINES**

The Parole Guidelines which are not statutory but administered by administrative rule are adequate on paper but the implementation is ineffective and a hindrance to the criminal justice system. The division of responsibility between the Parole Review Committees (PRC) in the prisons and the Parole Commission has created roadblocks to the granting of parole. It is a Catch 22. The Parole Commission has decreed that in order to be given parole the inmate must be in a minimum security facility. A commissioner may recommend inmates to be sent to Minimum so they will be eligible for parole. However, if they need programs, when the programs at Minimum are full, the PRC will not transfer inmates. Others are not sent to Minimum even though they need no programs. The reason for this is that they do not want to waste a bed on someone who needs no programs. The PRC will only send inmates to Minimum if the Parole Commission has committed to a parole date or if the inmate is within 18 months of mandatory release. Improvement of the implementation of the rules will benefit the entire criminal justice System and relieve overcrowding.

### **CRITERIA FOR PAROLE RELEASE**

The Criteria for Parole Release are found in Chapter PAC 1, at 106.(7) (A-E). They are not complicated.

1. One is parole eligible after serving 25% of the sentence.
2. One has served sufficient time so that release would not depreciate the seriousness



- of the offense. An example would be to release someone after 4 years on a 20 year term for armed robbery which would clearly depreciate the gravity of the crime.
3. One has demonstrated satisfactory adjustment and program participation (institutional conduct is good and the prisoner has participated in treatment programs deemed essential by the DOC).
  4. One has submitted an adequate "parole plan" (the prisoner has acceptable living arrangements, support and so forth).
  5. Release, in the judgment of the Commission, would not present an unreasonable risk to the community.

The Commission has been abusing criterion 2 by saying the prisoner must "serve sufficient time for punishment". It is an abuse of the intent of the criterion and the sentence given by the judge. The United States Circuit Court of Appeals for the 7<sup>th</sup> Circuit has ruled that to deny parole on the basis of the "seriousness of the offense" is to deny parole "for an impermissible reason or no reason at all". (Scott v. Illinois Board of Pardons and Parole)

### **THE JFA INSTITUTE**

We have recommended that the DOC do an analysis of the prison system to determine where nonviolent offenders could be paroled without jeopardizing public safety and reduce incarceration. The JFA Institute conducts research into federal, state and local criminal justice and correctional issues in order to help provide policymakers insight into how to improve the cost and public safety effectiveness of their correctional systems. The principals of the JFA Institute have worked with policymakers in Connecticut, Georgia, Kentucky, Louisiana, New Jersey, Puerto Rico, Texas and California in

adoption of effective correctional policy reform. Offices are in Washington D. C. and Austin, Texas. When these state implemented their recommendations, they reduced costs, cut down recidivism and reduced prison populations. "The Diminishing Returns of Increased Incarceration - A Blueprint to Improve Public Safety and Reduce Costs" by Dr. James Austin and Dr. Tony Fabelo is an outstanding report which should be read by everyone in the criminal justice system concerned with parole issues. More information can be found on the website at [www.JFA-Associates.com](http://www.JFA-Associates.com)

### **CONTACT INFORMATION**

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Additional point of information. The 2007 -2009 Budget for prisons was \$2,431,555,900.00 (Source Wisconsin Blue Book 2009-2010)