

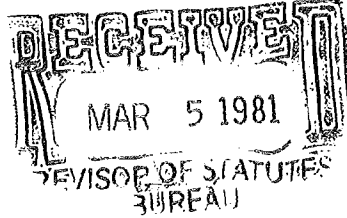
HSS 30



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE SECRETARY
1 WEST WILSON STREET
MADISON, WISCONSIN 53702



March 5, 1981

Mr. Orlan Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in section 227.023, Wis. Stats., there is hereby submitted a certified copy of HSS 30 relating to eligibility for and granting of discretionary parole to convicted felons.

This rule is being submitted to the Secretary of State as required by section 227.023, Wis. Stats.

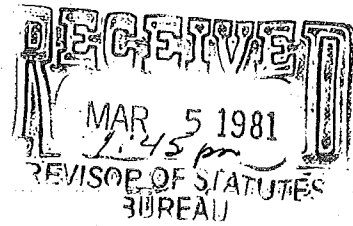
Sincerely,

A handwritten signature in black ink, appearing to read "D.E.P." with a large, stylized flourish at the end.

Donald E. Percy
SECRETARY

Enclosure

CERTIFICATE



STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

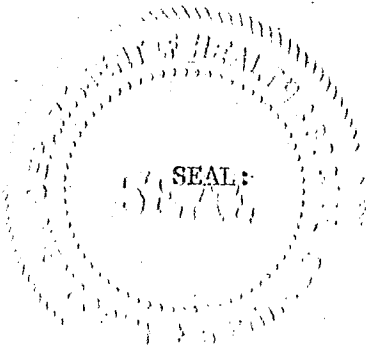
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

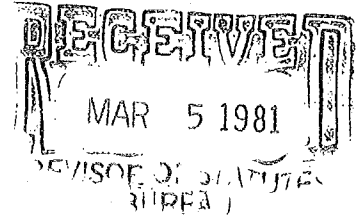
I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department do hereby certify that the annexed rules relating to eligibility for and granting of discretionary parole to convicted felons were duly approved and adopted by this department on March 5, 1981.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 5th day of March, A.D. 1981.

Donald E. Percy, Secretary
Department of Health and Social Services





Order of the
Department of Health and Social Services
Adopting Rules

Relating to rules concerning eligibility for and granting of discretionary parole to convicted felons.

Analysis

Prepared by the Department of Health and Social Services.

The authority to "administer parole and probation matters" is among the powers and duties extended to the department by s.46.03, Wis. Stats. Chapter 57 further defines the authority.

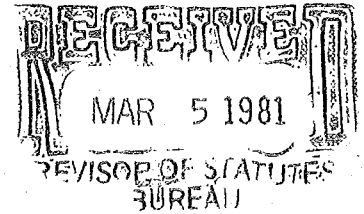
The Wisconsin Parole Board is part of the staff of the Secretary of the Department and is responsible to that office. Members of the Board are appointed from a list drawn up under civil service criteria by the Department's Bureau of Personnel and Employment Relations. The Chairperson, appointed by the Secretary to an unclassified position, is responsible for the Board's administrative matters and is delegated authority by the Secretary to sign and enter orders relating to the granting and vacating of parole.

The administration of this authority was specifically exempted from rulemaking requirements prior to the enactment of Chapter 306, Laws of 1977.

Chapter HSS 30 Parole defines discretionary parole as the 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. The functions of discretionary parole are to assure 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 as a result of early release along with the determination that there is a reasonable certainty of a crime-free reintegration of the inmate into society. Initial parole eligibility is established by statute with subsequent eligibility established by the Board. Following written notice to the inmate, but prior to parole consideration, an interview of the inmate is usually conducted. The inmate

is given access to all documentary information considered and is afforded an opportunity to correct any errors of fact contained therein. Consideration for discretionary parole is by two or more members of the Board and involves some or all of the following factors and others deemed to be significant to the individual case: sentence data, present offense, prior criminal record, changes in motivation and behavior, personal and social history, institutional experience and community resources. Consideration produces either a recommendation for the grant of parole or it produces a denial and a deferral. Reconsideration is not generally deferred for longer than twelve months.

Pursuant to authority vested in the Department of Health and Social Services by ss.46.03(6)(c), 57.06, and 227.014(2), Wis. Stats., the Department of Health and Social Services hereby adopts rules as follows--Chapter HSS 30 of the Wisconsin Administrative Code is adopted to read:



CHAPTER HSS 30

PAROLE

HSS 30.01 Authority	HSS 30.05 Parole Consideration
HSS 30.02 Purpose	HSS 30.06 Parole Board Recommendations
HSS 30.03 Definitions	HSS 30.07 Review, Evaluation, Revision
HSS 30.04 Eligibility for Parole	

HSS 30.01 Authority. These rules are promulgated under ss.46.03(6)(c), 57.06 and 227.014(2), Stats.

HSS 30.02 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 OF THESE RULES. 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.

HSS 30.03 Definitions. As used in this chapter, these words have the following meaning:

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

(2) "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.

(3) "Mandatory release" means release of a convicted felon to supervision as required by s.53.11(7), Stats., and is determined by maximum sentence minus all good time credited pursuant to ss.53.11(1) and 53.12(1), Stats.

(4) "Discretionary parole" means parole granted by the secretary, the secretary's designee or the board chairperson prior to the mandatory release date.

(5) "Parole eligible" means qualified for a grant of parole by either the secretary, the secretary's designee or the board chairperson.

(6) "Parole consideration" means the process by which assigned board members review all relevant information on an inmate approaching parole eligibility. Consideration produces either a recommendation for the grant of parole or it produces a denial and a deferral.

(7) "Deferral" means the action by the assigned board members, following consideration and a decision to deny parole, establishing

the next date on which the inmate becomes parole eligible.

(8) "Parole grant" means the action by the secretary, the secretary's designee, or board chairperson ordering the release of an inmate, under supervision, on or after a specific date.

HSS 30.04 Eligibility for Parole. (1) BECOMING ELIGIBLE. An inmate becomes eligible for discretionary parole pursuant to s.57.06, Stats., except when incarceration follows revocation of discretionary parole or mandatory release.

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

(b) When incarceration follows revocation and involves the imposition of a new sentence, the following provisions apply:

1. If the new sentence or aggregate of sentences is imposed before the inmate's first consideration for parole following revocation and the new sentence or aggregate of sentences is more than 18 months, the new eligibility 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 sentences, whichever is later.
2. If the new sentence or aggregate of sentences is imposed before the inmate's first consideration for parole following revocation and the new sentence or aggregate of sentences is 18 months or less, the new eligibility 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 sentences, whichever is later.

3. If the new sentence or aggregate of sentences is imposed following the inmate's first consideration for parole following revocation, the parole eligibility date will be as established by the board following the first consideration, unless the new sentence or aggregate of sentences requires a later parole eligibility date.
4. In no case will 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 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, such failure to appear, unless excused by the board, shall be construed as a waiver of parole eligibility. In no case will a waiver have a negative effect on future board considerations.

(4) REESTABLISHMENT OF ELIGIBILITY. To reestablish eligibility following a waiver, the inmate must apply to the board through the institution staff. Parole consideration will occur two months after the date of application; parole eligibility will be established four months after the date of application.

HSS 30.05 Parole Consideration. (1) 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 reconsideration. 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) Parole consideration shall be based on all information available to the assigned board members. An interview of the inmate shall be conducted prior to parole consideration in all cases where the inmate is available at the scheduled time. When the inmate is temporarily unavailable, the interview will be rescheduled. The interview will be at the place of the inmate's incarceration or a facility designated by the board. The interview, except for the deliberations of the assigned members of the board prior to reaching a decision, shall be recorded.

(a) 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. 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. The inmate may waive the 15 day notification requirement in this situation or at any other time.

(b) The inmate shall be given access to all the documentary information considered by the assigned board members. An exception may occur when the file contains information which is restricted by statute or information obtained under an assurance of confidentiality, as provided in administrative rule HSS 307.

(c) 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.

(4) Parole consideration will be by 2 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) Parole consideration shall involve some or all of the following factors:

(a) Sentence data.

1. Type of sentence.
2. Length of sentence.
3. Recommendation of judge and district attorney.

(b) Present offense.

1. Nature and severity of offense.
2. Mitigating factors.
3. Aggravating factors.
4. Activities following arrest and prior confinement, including adjustment on bail or probation, if any.

(c) Prior criminal record.

1. Nature and pattern of offenses.
2. Adjustment to previous probation, parole or confinement.
3. Detainers, if any, requesting the resident be held pending action in another jurisdiction.

(d) Changes in motivation and behavior.

1. Changes in attitude toward self and others.
2. Probable reasons underlying changes.
3. Personal goals.

(e) Personal and social history.

1. Family and marital factors.
2. Learning ability and educational background.
3. Employment and military experience.
4. Physical and emotional health.

(f) Institutional experience.

1. Program goals and accomplishments (academic or vocational education; training or work assignments; therapy).
2. General adjustment (relationship with staff and inmates; behavior).

(g) Community resources, including release plans.

1. Residence (live alone, with family or others).
2. Employment, training or academic education.
3. Special needs and resources to meet them.

HSS 30.06 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 will establish a date providing for reconsideration in accordance with s.HSS 30.05(2).

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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.HSS 30.05(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) 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.

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

(5) 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.

(6) 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.

(7) When the decision is to not recommend parole, the denial will be based on one or more of the following conclusions and reference will be made to the specific criteria under s.HSS 30.05(7) relied upon to support the conclusion or conclusions:

- (a) Continued confinement of the inmate is considered necessary to protect the public from further criminal behavior.
- (b) The inmate's particular needs require treatment that cannot safely be provided outside of a correctional institution.
- (c) Parole at this time would depreciate the seriousness of the inmate's criminal behavior.
- (d) There is a reasonable probability that the inmate will not comply with the requirements of parole.

(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.

HSS 30.07 Review, Evaluation, Revision. Within one year of the effective date of these rules, the board chairperson will provide a report to the secretary detailing the experience with the rules and including recommendations for such additions, deletions, and modifications as have been found necessary for the accomplishment of the purposes stated in s.HSS 30.02. Copies of the report will also be provided to those standing committees of the legislature which reviewed this chapter under s.227.018, Stats., prior to its promulgation. After review and approval by the department, the promulgation of such additions, deletions and modifications shall be sought pursuant to Chapter 227, Stats.

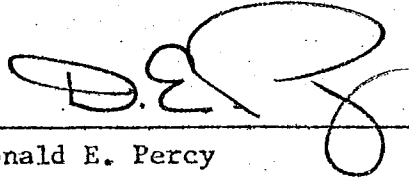
The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in Section 227.026(1), Wis. Stats.

Department of Health and Social Services

Dated:

3-5-81

By:



Donald E. Percy
Secretary

