Forum for Understanding Prisons(FFUP)
a 501c3 non profit

June 2014 FFUP Report on OLD LAW PRISONERS
Mechanisms used for keeping parole stuck
Ways to unstuck parole

INTRO

Because FFUP's main mission is to provide a voice for inmates and their families, I get a lot of mail. Of late that mailbox has been full of data and information on the various mechanism used to keep inmates in and also, ideas from other states and statutes we can use to set very convoluted system straight.

It is important to know about these letters to understand that there are no laws that need to be passed to get parole back on track .This was a political move and can be undone with a political move. Here are parole figures taken from an investigative article by the Milwaukee Journal sentinel in 2002 . In this same time period the DOC population went from 7,500 to 22,000.

1992, the board released 2,921 prisoners on parole and 648 prisoners had to wait until MR

1993	3,624 paroled	607 waited for MR
1994	3,325 paroled	698 waited for MR
1995	3,941 paroled	965 waited for MR
1996.	3,705 paroled	1,086 waited for MR
1997.	3,637 paroled	1,291 waited for MR
1998.	2,627 paroled	2,006 waited for MR
1999.	1,567 paroled	3,347 waited for MR
2000.	2,325 paroled	4,424 waited for MR
2001	1,872 paroled	4,131 waited for MR

There were 3 ,624 inmate released in 1993:before the memo went into effect . There were 150 old law releases in 2012. This was done without substantive legislative action.

We believe we can restore the integrity of the system by governor mandate and/or rule change.

Statute 227.12 provides that 5 or more people can petition for a rule change:

227.12 Petition for rules.

(1) *Unless the right to petition for a rule is restricted by statute to a designated group or unless the form of procedure for a petition is otherwise prescribed by statute, a municipality, an association which is representative of a farm, labor, business or professional group, or any 5 or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.*

(2) *A petition shall state clearly and concisely:*

(a) *The substance or nature of the rule making requested.*

(b) *The reason for the request and the petitioners' interest in the requested rule.*

(c) *A reference to the agency's authority to promulgate the requested rule.*

(3) *Except as provided in sub. (4), within a reasonable period of time after the receipt of a petition under this section, an agency shall either deny the petition in writing or proceed with the requested rule making. If the agency denies the petition, it shall promptly notify the petitioner of the denial, including a brief statement of the reason for the denial. If the agency proceeds with the requested rule making, it shall follow the procedures prescribed in this subchapter.(entire statute exhibit 6)*

The rest of this report will include a list of unwritten rules that muck up the system as well as best practices of other states so we can best create a set of rules that will finally make parole work again.

We do not pretend that any of this is exhaustive, it is intended to spark creative discussion.

We also want to thank our incarcerated friends for this wonderful information and for their undying and often misplaced trust in me. From the bottom of m heart I apologize for my most confused society that has treated them so unjustly and work for the day when they will be home with their families and communities. As one inmate who has been in administrative segregation for 15 years wrote:

"In solidarity we stand, fall and rise again and again until the day we die . But even then, I left instructions to bury me standing up."

First the law:

Are old law prisoners eligible for release?

1)**WI 1989-1990 statutes 304 and 302**.(attachment 1a and 1b) The relevant parts are 304.06 (b)where it says (in sum) prisoners are eligible for parole after serving 25% of their time, or 6 months, whichever is greater. An inmate serving a life term is eligible after 20 years.

2)**Then there is good time calculation** which inmates now say is irrelevant since all inmates incarcerated under this old law statute have served at least twenty years. This good time statute reduces that 20 years to 13 years and 4 months. Before 1984, lifers were eligible, with good time, to be released after 11 years 3 months.

MR (Mandatory Release) meant that with good behavior , the inmate must be released when he/she had finished 2/3rd of his/her time. **In 1998 PMR was introduced (Presumptive Mandatory Release)** which says that if the inmate has not finished all his programming, the prison does not have to release him/her . This is the way many old law prisoners are kept infinitely

second, the hows and whys of how this got stuck are important.

Exhibit 1 (click here to view)

The famous memo of Thompson to Sullivan. In order to get the grant money, Thompson had to devise a way to keep "violent offenders' in as long as possible. Truth in sentencing took care of current offenders, for old law people there could be no new laws so Thompson ordered the DOC to pursue "any and all available avenues to block the release if violent offenders who have reached their mandatory release date.

Exhibit 2 through 4 (click here to view)

3 grant award letters. BIG federal bucks: 42 U.S.C- 13701-13704, "violent crime control act of 1994" gave the state of Wisconsin Millions of federal dollars to Keep a sub class of offenders, classified as 'violent' locked up as long as possible. This was the bill that built the supermaxes around the country and spurred the whole prison boom Letter three states as of 1999 Wisconsin had received $12,476,558.

Exhibit 5- 2007 letter from Tamara Grigsby to the Parole Chairman Alfonso Graham proposing rule PAC 1.06 (5) and (7) changes.

Exhibit 6 (Click here to view)

This memo prepares for SAND RIDGE- involuntary commitment for sex offenders after they have reached their mandatory release date. This is the biggest unknown boondoggle, costing the state $158.000 per inmate, not counted on DOC roles ,this is considered a "treatment facility" and the inmates are "patients" and are kept till they die generally. Essay by one inmate included here in **EXHIBIT 7(click here to view)**

Listing of excuses and unwritten rules messing system up (FFUP has documentation)

This is not complete

The usual excuses:

Has not served enough time-(no criteria given)

Must be released from minimum security institution

Must have 11 month defer before release

All above are bogus, no written rules behind them yet used consistently in parole action reports. On the moving to minimum before release: According to reports, inmates with life sentences are kept in minimum because the public perceives these are "Good inmates" then when they come up for parole , the Parole commission says "he killed someone, and has not served enough time." Those with lesser sentences stay in maximums until just before they "max" out. (serve every minute of their sentence). The litigators and activist STAY in maximums and "max" out finally or die.

less known examples of unwritten rules used to confuse and befuddle/and statutes misapplied

1) mandatory Programming must be assigned by the judge. Many reports of programs assigned retroactively

Larry Brown: They applied the 2004 PMR rule retroactively and required that him take a 4 year sot program, He had already completed the required SOT program; also John Washington and many others

2) catch 22 of administrative segregation: Luis Ramirez : mentally ill in seg are not allowed programming / he is being threatened with being give extra time because he has not cooperated with programming. Wants good programming desperately

3) 1997 Life means life act is being used retroactively. For example, Roberto Hinojosa, in 30 years so far, sentenced to life in 1983. 1983-1984 statutes regarding lifers stated release in part: "or when he or she has served 20 years less than deduction of good time."
4) complaints of misapplication of Presentence investigation (PI) reports - these are reports done with victim, prisoner's friends and neighbors and families etc before sentencing- filled with heresay and often inflated stories. They are used for sentencing and also throughout prison term for custody assignments and length of stay. I believe the prisoner cannot even see them.
5) The most frustrating: Parole eligible inmates are not allowed to take programming until they are very close to their mandatory release date- which is often decades away-the prisoner call the intervening time "dead time". Often these same inmates have statements from the judge such as "I am sentencing you to forty years because you are in your early twenties and I want you to be ten years older when you get out. " again , unwritten rule-no programming until near mandatory release date.
6) FFUP is looking into reports that there are hundreds of Old Law inmates from Mexico and South America who have orders from the judge that that they be deported to their home country on completion of their sentence. They are long past parole eligibility date. Incredulously, These people are being told they are still too much a danger to be released.

Template for rule changes

"If the parole board doesn't like the crime, you are not getting out,"
"The problem today is that the parole board often acts as if it were responsible for sentencing. It simply reexamines the underlying crime and history-factors that will never change" The board has adopted a cavalier attitude that its decisions are above judicial scrutiny." They know how to manipulate the system so as to run out the clock on the inmates claims
"The board should not be allowed to Continue to warehouse human beings for its own self-preservation and political and economic interests. It must stop."

No, the discussion above is not about Wisconsin although it sounds like it. It is about NY, which almost passed the Safe and Fair Evaluations (SAFE) Parole Act (A.4108/S.1128)which would have undid a 1998 law eliminating discretionary parole for all violent offenders. Something very watered down finally did pass but the debate has resulted in much rethinking anyway and prisons are emptying.

Because Wisconsin merely needs to obey the statutes already on the books which worked fine when not cobbled with unwritten and contradictory rules, we do not need to go through the legislature but might want to craft rule changes and use the petition statute(227.12) cited above to get a hearing . Here are some of the provisions of the safe parole law to consider.

This is a summary:
The basic goal NY SAFE PAROLE ACT:"move parole to a place where makes it less of a subjective process and provides justice to all those involved."

1) The bill would also make any documents the parole board has access to available to parole applicants. (this would included presentence investigation)
2) applicants' psychiatric evaluation to be made available to the victim or to the victims' families with the consent of the applicant;
3) would require that release on parole should be granted based on good conduct and efficient performance of duties while confined, including preparedness for re-entry;
4) would require the Parole Board to state in detail the specific requirements an applicant should meet to be released on parole
5) and would require the Department of Corrections and Community Supervision to provide applicants access — within 90 days — to the programs or facilities needs to complete the requirements for their release.

Summary of best practice in report on NY / This is a report that includes analysis on parole practices in all states, easily found on internet by googling. recommended reading:
EVALUATION AS THE PROPER FUNCTION OF THE PAROLE BOARD: AN ANALYSIS OF NEW YORK STATE'S PROPOSED SAFE PAROLE ACT*/Amy Robinson-Oost*

Maryland, New Jersey, and Rhode Island provide strong examples of parole laws that incorporate the best practices in parole theory, with Maryland serving as perhaps the gold standard
The parole laws of these three states share the following exemplary characteristics:
(1) they provide specific and numerous guidelines for the parole board to consider;
(2) the predominant focus of the factors is on the parole applicant's rehabilitation and progress during his or her incarceration;

(3) they do not contain a catch-all provision that might allow the decision-maker to base his or her decision on an unenumerated factor; and
(4) they utilize a risk assessment instrument, such as a matrix, yet this instrument does not limit the parole board's discretion. The guidelines thus allow for individualization in decision making that can be based on consistent, forward-looking factors. The mere presentation of a risk assessment tool, along with guidelines or factors, is not sufficient on its own. When legislatures provide multi-factored guidelines for determining parole, the considerations should be unambiguous. Nebulous factors such as "whether there is reasonable probability that such inmate will live and remain at liberty without violating the law" and whether the release is in the best interests of the people of this state are not instructive to decision-makers or to parole applicants because they do not provide substantive guidance against which to judge the applicant's preparedness for reentry. Statutes that rely on such factors to the exclusion of others may enable parole board members to exercise improper discretion. Thus, the risk assessment instrument is helpful in guiding the process but cannot and should not be relied on exclusively. One of the many advantages of the SAFE Parole Act over the current parole law is its presentation of unambiguous guidelines.

RULE CHANGE PROPOSALS for WISCONSIN

IN sum, I suggest that much pressure be out on the Governor to enact the suggestions made by WISDOM in appointing a retired judge to serve as ombudsman. PLUS we seriously explore the use of statute 271 to enact new rules . Here are rule suggestions:

1)Release on parole should be granted based on good conduct and efficient performance of duties while confined, including preparedness for re-entry.

2) The Parole Board must state in detail the specific requirements an applicant should meet to be released on parole . This cannot contain a catch-all provision that might allow the decision-maker to base his or her decision on an unenumerated factor .

3) The Department of Corrections and Community Supervision to provide applicants access — within 90 days — to the programs or facilities needed to complete the requirements for their release

4) Prisoner's family members are to be allowed at the parole hearing. At present only victim and victim advocates are allowed.

Exhibit 1- 1994 Thompsons memo to Sullivan starting no parole
Exhibit 2-4 1997-1999 federal grants to WI amounting to 12 million for prison expansion
Exhibit 5- 2007 letter from Tamara Grigsby to the Parole Chairman Alfonso Graham proposing rule PAC 1.06 (5) and (7) changes.
Exhibit 6-1994 negotiations on how to keep sex offenders in forever- possibly starting SANDRIDGE treatment center. (Note: stipulation that only those that were violent after incarceration would be further detained was not implemented.)
Exhibit 7 - essay on Sandridge boondoggle by 70 year old "patient".

Peg Swan
Member, FFUP
29631 Wild Rose Drive
Blue River, WI 53518
pgswan3@yahoo.com
1-608-536-3993
Web:prisonforum.org