FINAL RULES PROPOSED in our
Petition for Parole Rule changes using Statute 227

Sent to DOC secretary, parole Chairman and Director of DOC Health Services April 2015

Here are the broad outlines of what we would like to achieve for
WISCONSIN'S OLD LAW INMATES

1) For inmates sentenced for crimes committed prior to December 3 1st, 1999, the mandated *25%* of their sentence shall be considered sufficient time for punishment. Afterwards, release on parole shall be granted, absent substantive extenuating circumstances, based on conduct and accomplishments while incarcerated.

2) If parole is not granted, the Parole Board must state in written detail the specific requirements an eligible inmate must meet to be granted parole. This cannot contain a catch-all provision that might allow the decision-maker to base his or her decision on a factor of which the inmate has no control such as "insufficient time for punishment" or "seriousness of the crime". Also, There is no statutory requirement that a prisoner be transitioned to a minimum security prison before release. Yet unwritten rules today usually require it and overcrowded conditions leave many parole -ready inmates waiting years for the next transition. If timely transition to a lower level security prison is not possible, a prisoner who can otherwise show himself ready for release shall be paroled without regard to the security level of the prison in which he resides. Likewise, working outside the prison before release, although laudable, is not a prerequisite for release as there are many times the applicants for these jobs than there are openings.

3) Also, availability of programs and prison overcrowding cannot be a factor in determining release eligibility. The Department of Corrections and Community Supervision shall provide parole eligible inmates access to the programs/facilities necessary to complete the requirements for their parole release within 90 days of denial of parole for reasons of programming. If this is not possible, the prisoner will be allowed to complete the program in the community or it will be waived.

4) The Parole Board shall have the widest possible view of the prisoner. In addition to allowing victims and victim advocates to testify at the hearing, prisoners shall be able to invite family members and advocates. Also, the prisoners shall be allowed to submit letters of recommendation by WIDOC staff and WTDOC volunteers who have worked with him/her. Staff and community members who are against the release shall be allowed to speak.

5) The decision whether to release an inmate shall be made based on testimony at the hearing and documents in the prisoner's file only and the prisoner shall be able to view and contest contents of his/her file beforehand.

THE PROPOSED RULES

Below is a Rewriting of PAC 106 (16) through (20) with proposed changes inserted
Here we have expanded and added details in order to fold the new rule proposals into the existing PAC rules

PAC 1.06(16) thru (20) A RECOMMENDATION FOR A PAROLE GRANT OR RELEASE TO EXTENDED SUPERVISION ORDER MAY BE MADE AFTER CONSIDERATION OF ALL THE FOLLOWING CRITERIA:

(NEW RULES IN BOLD PRINT)

PAC 1.06(16)(a) The inmate has become parole or release to extended supervision eligible under s. 304.06, Stats., and s. PAC *1.05*.

PAC 1.06(16)(b) Once a prisoner has served the statutorily imposed minimum amount of time necessary to become parole-eligible, the Parole Commission shall recognize that the prisoner has served the "sufficient time for punishment"- portion of his/her sentence.) For inmates sentenced for crimes committed prior to December 311t, 1999, the mandated 25% of their sentence shall be considered sufficient time for punishment, for those with life sentences, it is 13 '/2 years. For Prisoners sentenced pre-1981, parole eligibility for those serving life sentences started at 11 yrs,3 months.

PAC 1.06(16) (c) The inmate has demonstrated satisfactory adjustment to the institution.

PAC 1.06(16) (d) The inmate has not refused or neglected to perform required or assigned duties.

PAC 1.06(16)(e) The inmate has participated in and has demonstrated sufficient efforts in required or recommended programs which have been made available by demonstrating one of the following

PAC 1.06(16)(e)(1) P.A.C.1.06 (16)(e) 1.1 Inmate has participated in the community OR

PAC 1.06(16)(e)(2.) The inmate can complete programming in the community OR

PAC 1.06(16)(e)(3) The inmate has not been able to gain entry into programming because the program was not available at his institution. In cases where the inmate is in administrative confinement, a non punitive status, all efforts shall be made to see that programming required for release is successfully taken. If the inmate requests such programming and a good faith attempt to supply it is not made, this lack of programming shall not be used against the inmate when deciding readiness for release.

PAC 1.06(16)(e)(4) Where such inmate chances to obtain favorable parole is contingent upon his completion or participation in such program or treatment, the Parole Commission and Program Review Committee, shall work together in securing an inmate a space in required programs and treatment, as required by DOC 302.15 (4)(9) WI Adm. Code.

PAC 1.06(16)(f) The inmate has developed an adequate release plan.

PAC 1.06(16)(g) The inmate is subject to a sentence of confinement in another state or is in the United States illegally and may be deported.

PAC 1.06 (16)(h)Inmates who committed their crimes before 1999 who were ordered by the judge to be deported upon release, shall , if permission is given by the host country and the inmate, be deported to his or her country of origin.

PAC 1.06(16)(i)In order to assess whether or not release would pose an unreasonable risk to the public and would be in the interest of justice, the Parole Commission shall be afforded the widest possible view of the prisoner. Therefore:

PAC 106(16)(i)(1) In addition to permitting victims and victim advocates the opportunity to be heard at each hearing, the Parole Commission shall permit interested parties to speak at parole hearings on behalf of the prisoner. These interested parties may consist of family, friends, members of the prisoner's support group, clergy, employers or other advocates as well as prison staff who support release.

PAC 106(16)(i)(2) The Parole Commission shall also permit two institutional staff and/or community members who voice opposition to release to speak at the hearing. In addition, Correctional staff or any person in the community will be allowed to submit written testimony in opposition to the parole.

PAC 106 (16)(i)(3) The commission may use the independently scored findings of evidence-based-practice evaluations used initially to identify essential program needs during the Assessment & Evaluation process and subsequently used to evaluate current dangerousness to the community in preparation for release. IF these test scores are used in the assessment, copies of the questions and answers and test results shall be made available to the prisoners before the parole hearing. He/she shall be able to comment on test process and fairness.

PAC 106(16)0)All documents used in accessing whether to release an inmate shall be made available to the prisoner.

PAC 1. 06 (19)If parole is not granted, the Parole Commissioner must detail in writing, exactly what specific, achievable requirements the prisoner needs to satisfy to become suitable for release. These requirements cannot contain any highly subjective, catch-all provisions that might allow a decision-maker to base his or her decision on immutable factors over which neither the prisoner nor the Parole Commission has any control such as "seriousness of the offense" or "unreasonable risk to the community" without detailing exactly what achievable requirements the prisoner needs to satisfy to become suitable for release. Any such requirements shall then be endorsed for prompt implementation/action in the written decision of the hearing in which they were made.

PAC 1.06 (20) Once the prisoner has been issued a deferment, the Parole Commission shall not increase or repeat that deferment for any reason other than the following:

The prisoner's negative institution conduct based upon a lawful finding of guilt made by Department of Corrections personnel authorized by rule to make such findings;

The prisoner's refusal to participate in essential programming mandated by the court or • The negative removal of the prisoner from such essential programming during the current deferment period for a well documented cause.

PAC 1.06 (21)In every case, each Parole Commissioner shall be required to maintain continuity in the decision making process by continuing with the case plan set forth in any written decision which was made subsequent to the implementation of these proposed rules.

IN addition we add this rule which honors the education effort made by many old law prisoners. A *similar provision was in the 1989-90 statutes (304.06(1 r) (a) (2):*

PAC 1.06 (22) a parole eligible prisoner who came into prison without a high school diploma, GED or HSED, and has attained his HSED or GED shall be paroled unless the prisoner has received a major provable behavior conduct report within the last one year or if his current parole review that indicates his or her release would post a significant risk to the public. Also a prisoner who gained a college degree or completed a vocational course while in prison shall be paroled if there is no provable evidence within the last one year to show that his or her release would pose a significant risk to the public.

NEED FOR THE NEW PAC RULES

We believe that the intent of statutes regarding parole has been circumvented and parole for Old Law prisoners has virtually stopped since Truth –in-Sentencing (TIS) was enacted. Most Old Law Prisoners are not released until their Mandatory Release (MR) dates and for "lifers," who have no MR date, this policy means they will die in prison. At the time of their sentencing, the prisoner was eligible for release after serving 25% of his or her sentence; the average lifer was eligible for release consideration after 13 ½ years (statute 304.6).For those convicted before 1981, parole eligibility for "lifers" started after the mandatory 11yrs 3 months.

It is difficult to get exact data on old law prisoners as little is kept by the DOC.

Here is some of what we know:

1) There are approximately 2, 800 Old law prisoners in the system today.

2) IN 1993, before present changes were put into place, Wisconsin paroled 3,624 prisoners while 607 waited for MR

3) By the time Lenard Wells was chairman, the numbers of releases had dramatically lessoned. According to the Milwaukee Journal Sentinel, under Lenard Wells in 2005, there were 6294 reviews and 1161 grants. In 2006, under Alfonso Graham , there was another drop: 4705 reviews, and 688 grants. Each time the pool of old law prisoners lessons in relation to the growing number of TIS prisoners, yes, but also each time these old law prisoners go to parole they are older and more mature and most are more deserving of release.

4) Only 154 old law prisoners were released in 2012, most because they had reached their mandatory release dates (MR) and the prison is forced by statute to release them if they cannot be proven dangerous. This near stoppage of parole was done without substantive legislative action.

5) In this same time period the DOC population went from 7000 to 22,000.

1993- 3624 old law prisoners released

2005- 1161 released

2006 - 688 released

2012- 154 released

The changes began in 1994, with the passage of the VOI/TIS bill in the US congress which brought billions of dollars in federal grants to build new prisons, increase penalties and which mandated receiving states keep "violent offenders" in prison longer. This catalog of events is important here only because it helps to prove the point that laws need not be changed to correct the situation as laws were not changed to create the situation. Rule changes will serve to right the system.

There were two federal bills that funded the prison boom and caused the collapse of parole in WI:

1994 Violent Crime Control and Law Enforcement Act/ $9.7 billion in funding for Corrections

1996 Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Program

In appendix and online here is the then Governor Tommy Thompson's memo to the secretary of Corrections Michael Sullivan. Here he is laying out the proposal to block the mandatory release of violent offenders and because legal counsel told him "any retroactive change in the law would be unconstitutional." His solution was:

"*In order to implement this policy as fully as possible, I hereby direct the Department of Corrections to pursue any and all available legal avenues to block the release of violent offenders who have reached their mandatory release date.*"

Truth in sentencing was enacted and ALL old law prisoners- violent offenders, non- violent offenders and party to a crime offenders alike were treated them same- as if they had been sentenced under "Truth in sentencing". Parole became rarer and rarer. Our prison population rose from 7 thousand (approx) to 22 thousand. In appendix and online we include besides Governor Thompson's memo to Sullivan, a letter from the US Assistant attorney General to WI DOC Secretary Jon Litscher and Justice Department data on how much money was received by all states.

Again, we include this material in order to make our point that PAC rule changes that give specific criteria for release, can, if implemented in good faith, make the Wisconsin parole system work as statutes and judges intended and the public expects: Those who are ready to be released, will get a true second chance.

Until 1994 the existing Statutes were enough to effect the regular release of old law prisoners. After 1994 the statute's broad and vague language and the non specific nature of the PAC rules has been used to craft guidelines with much subjective criteria and with requirements that are completely open ended. The result is that the finish line is forever moved ahead for the parole eligible inmate. Many inmates have begun to waive their right to a hearing because they feel it is a complete sham.

Each Old Law Prisoners is given a "Notice of Parole Commission consideration as he /she prepared for the hearing . In it is a list of criteria for parole consideration. Next to most of the listing are the words: **"may include but not limited to"** and the subjective nature of the listing gives the inmates nothing to aim for. The full notice is online here and in appendix on page 22.

From the subjective and vague PAC rules have evolved a two page list of criteria even more subjective and unreachable by the prisoner.

Here are two example:

Sufficient Time for Punishment, (may include but not limited to)

Length of sentence or sentences /Mitigating (makes crime less serious) and aggravating (makes the crime more serious) factors/**Reason for committing the crime**/Your part in the crime

Type of crime (person or property)/**Your feelings about the crime and the victim(s)/Attitude of judge and district attorney;**

Another, " Risk to the Public (may include but not limited to)" includes:"**Is parole/ES violation likely by breaking parole/ES rules, or for new offense" and "Do you demonstrate good judgment and control**? "

This subjective criteria has resulted in a myriad of what prisoners and their families call "excuses" given to parole ready individuals as to why their release will be deferred yet another time. We give a listing of some of the most prevalent "excuses" that have been endured by prisoners and their families year after year.

Following is a listing of some of the unwritten rules and contradictory rules that keep the old law prisoners in:

Most used:

1) *"Has not served enough time for punishment" or " release would pose an unreasonable risk to the public"*

Many times no evidence of risk other than original crime is given , no criteria give for what is sufficient time. Our rules will give specifics while allowing more public input to give rounded view of risk imposed by release.

2) "Has not completed programming". The usual reason for not completing programming are :

a) the needed programming is not offered in the prison he is in and he /she is on perpetual waiting list to be transferred to appropriate institution.

b) he/she is told he cannot complete till almost at MR date.

c) PRC and PAC contradict each other in recommendations.

The following are again nowhere in the statues but inmates are repeatedly given these reason for continuance of incarceration:

3) Needs to transition to minimum security institution : nowhere in the statutes is this mandated yet is one of the main sticking points to parole. Transition through the security system is blocked by:

a) PRC recommends programming a lower security institution and BOCM blocks it.

b) PAC and PRC contradict each other

4) There are no rules prohibiting a parole release from medium security or a higher security level but inmates are repeatedly told they have to be at a minimum security prison to be released. Once arriving at the minimum, the situation is worse: As Gina Barton has noted in her recent Milwaukee Journal Sentinel, there are over 400 parole eligible individuals in minimum security now, some who have been there a decade or more and they are not being released. Many of the inmates are told they need to be on work release . They there are a dozen jobs and hundreds of applicants. These minimum facilities are called "pretend minimums" by many inmates.

5) Must have 11 month defer before release. Defers are given arbitrarily and give the inmate no real hope.

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

1)We have many reports of programs assigned retroactively using the Compass Test and there is much mistrust in this method. The test is given verbally, the inmates are not allowed to see the test questions, their answers or the results. We know of inmates given new program requirements through compass testing who have had multiple degrees gained when there were Pell grants available, are in their 60's have been ready for release for decades.

2)Catch 22 of administrative confinement : this is supposedly a non punitive status yet many segregation rules do not allow programming and the inmates are given extra time for not doing programming.

We have reports of many inmate waiving parole hearings because they feel they are a sham and heart break for them and their families.

With the current system, prisoners know that their personal efforts count of nothing except as a negative tool. If they get a conduct report or bad review, it will be used to deny them parole but there is nothing they can do positively to affect their own release. They know that most old law prisoners being release today are being released because they have reached their Mandatory release date and the prison has no choice but to release the inmate unless there is real cause/danger proven.

The overall purpose of our new rules is for the Parole Commission to evaluate the specific measurable criteria while opening up the hearing process so that any subjective criteria and the responsibility for decisions on it is spread to a wider base. By allowing testimony both for and against release of a specific inmate and ensuring that the inmate has access to all documents used in the evaluation, we are removing the arbitrariness of the decision made to ensure that a true second chance for these inmates is opened up.

A few notes on specific rule proposals

PAC 106 (16)(i)(3) The commission may use the independently scored findings of evidence-based-practice evaluations used initially to identify essential program needs during the Assessment & Evaluation process and subsequently used to evaluate current dangerousness to the community in preparation for release. IF these test scores are used in the assessment, copies of the questions and answers and test results shall be made available to the prisoners before the parole hearing. He/she shall be able to comment on test process and fairness.

This is in response to the recent practice of using compass testing to assign programs to otherwise parole ready inmates. Social Workers give the test verbally, the inmate is not allowed to see the test questions or his/her answers or to question the results. One inmate did two open records request to get the test and was refused and he and others I know of ,in their 60's with multiple degrees gained through the Pell Grant program, were assigned cognitive training programs. At minimum, for the inmate or their families to have any faith in the process, they must be able to view the questions the answers and the results and be able to comment/appeal

2) PAC 1.06 (22) a parole eligible prisoner who came into prisoner without a high school diploma, GED or HSED, and has attained his HSED or GED shall be paroled unless the prisoner has received a major provable behavior conduct report within the last two years or if his current parole review indicates his or her release would post a significant risk to the public. Also a prisoner who gained a college degree or completed a vocational course while in prison shall be paroled if there is no provable evidence within the last 2 years to show that his or her release would pose a significant rick to the public.

This is similar to a 1989-89 statute. There are many old law prisoners with multiple degrees , college education paid for by the taxpayer through the PELL grant program. With the VOTIS act of 1994, all Pell grants funding was stopped. We need these prisoners and their learning out here. Also, many of old law prisoners came to prison as juveniles or young men and were illiterate or with little reading and math abilities . The prison gave them an opportunity to learn and with these tools they have matured and have much to give.

3)PAC 1.06 (23)Inmates who committed their crimes before 1999 who were ordered by the judge to be deported upon release, shall , if given permission of the host country and the inmate, be deported to his or her country of origin. Incredibly, Wisconsin is holding many non- resident old law prisoners who were ordered deported by the judge at completion of their sentence. When they were eligible for release long ago why are we holding them? We know of about 15 examples but are sure there are many more.