Evers faces tough sell on prison changes with GOP lawmakers

TODD RICHMOND Associated Press/Nov 12, 2018

Democratic Gov.-elect Tony Evers has some big ideas about how to change Wisconsin's overcrowded prison system. The questions now are: How will he do it and will Republican legislators let him?

Outgoing Republican Gov. Scott Walker drew plenty of criticism over how he handled the Department of Corrections. He never visited a youth prison outside Irma. Evers is trying to draw a stark contrast with Walker, beginning with a pledge to visit the youth prison during his first week in office in January. The rest of his objectives are ambitious. He wants to cut the state's prison population in half, end solitary confinement and give ex-convicts more help. He hasn't said whether he'll start issuing pardons again after Walker refused to consider any during his tenure.

One thing is all but certain: It's going to be an uphill fight as he struggles with a Republican-controlled Legislature. "We're really hopeful," said David Liners, executive director of WISDOM, a coalition of Wisconsin religious congregations working on social justice issues, including ending mass incarceration. "The fear tactics have stopped working and we can get back to saying, 'What's the rational thing here?'"

Evers inherits a state prison system grappling with a host of problems. In addition to abuse allegations at the youth prison, the system incarcerated a record number of adults last year and the population is expected to only keep growing. Republicans have been pushing to build a new prison and have warned that Evers would have to release violent offenders to reduce the population by half.

Evers hasn't released a specific plan, but he has called for eliminating mandatory minimum sentences and to stop revoking convicts' parole and extended supervision unless they commit a new crime.

Evers could make a strong push to end crimeless revocations on his own. Judges within the Department of Administration make revocation decisions based on recommendations from the Department of Corrections, and Evers will control both agencies. GOP legislators would have to sign off on eliminating mandatory minimums, however. The governor-elect will also have to wrestle with a shortage of guards. The vacancy rate statewide was nearly 15 percent at the end of October, according to Corrections Department data.

Evers hasn't addressed the shortage specifically. He has said he would like to restore collective bargaining rights for public workers, which might make prison jobs more attractive. Walker did away with union rights for most public workers in his signature Act 10 law in 2011. Restoring those rights would be difficult, if not impossible, to get through the Republican Legislature. GOP lawmakers overcame massive protests and public pressure to pass Act 10.

Evers also has called for ending solitary confinement, a move he could make unilaterally. He also wants to improve ex-convicts' access to housing and jobs and bar employers from asking about job applicants' criminal history. He could loosen eligibility for housing and job programs on his own through Corrections Department policy, but devoting more money to such programs would take legislative approval. Barring criminal history questions on job applications also would take a green-light from the Legislature.

Republican state Rep. Michael Schraa, chairman of the Assembly Corrections Committee, said the state has "some serious issues with overcrowding" and called the guard vacancies an unsustainable "crisis." He said Evers and the Republican-controlled Legislature might find common ground on ending mandatory minimums. But he doesn't expect agreement on much else.

Republican Van Wanggaard, chairman of the Senate Judiciary Committee, said Evers sounds like he's "all over the board" with broad proposals and will need the Legislature to accomplish his goals. He said he's "absolutely not" in favor of eliminating mandatory minimums. "I don't think he's had an opportunity to understand the gravity," Wanggaard said. "You try to say the things (during the campaign) you think may make sense. I don't want to lock more people up either, but in the same respect I don't want somebody who is a serious violent offender in my house at two in the morning, either."

From: Ex-prison chief for Wisconsin eviscerates Scott Walker and Brad Schimel in a new book

Unethical. Life in Scott Walker's Cabinet and the Dirty Side of Politics Paperback –
August 10, 2018 :by Ed Wall  (Author)

Patrick Marley, Milwaukee Journal Sentinel Published 10:39 a.m. CT Aug. 10, 2018

Gov. Scott Walker declined to meet with his corrections secretary as a crisis unfolded at the state’s teen prison and his staff deliberately kept him from visiting the facility, according to a new book by Walker’s former prisons chief. The book by former Corrections Secretary Ed Wall is highly critical of the Republican governor and GOP Attorney General Brad Schimel’s handling of problems at Lincoln Hills School for Boys, a juvenile prison north of Wausau that has been under criminal investigation for more than three years.

Schimel fired Wall from a Department of Justice job in 2016 after he told a Walker aide he should feel free to destroy a document. Wall writes in the book that that incident was misconstrued and he was nearly driven to suicide because of how he was treated by Walker, Schimel and their staffs.

Wall appointed Wall to lead the Department of Corrections, but the two are now deeply at odds. Wall recently cut a video criticizing Walker for state schools Superintendent Tony Evers, one of eight Democrats challenging Walker.

Walker aides said they would not respond to everything in Wall’s book but that Wall had shown himself to be untrustworthy. "These are false attacks being made by someone who was fired from the Department of Justice for asking a state employee to break the law," said a statement from Walker spokesman Amy Hasenberg.

The book — “Unethical: Life in Scott Walker’s Cabinet and the Dirty Side of Politics” — is mostly about Wall’s time at the departments of Corrections and Justice but also touches on politics. Wall contends Walker feared Donald Trump would “destroy the Republican Party” but later tried to "prostitute himself" to get Trump's backing.

Wall writes that he was the only cabinet secretary who was not allowed to meet with Walker in the fall of 2015 over his budget. At the time, the problems at Lincoln Hills were coming to a head and Walker was nearing the end of his short-lived bid for the Republican nomination for president.

“When I asked (Walker aide Rich) Zipperer why he was canceling my budget meeting with the governor, he replied, ‘We can’t have you or the DOC anywhere near him right now,’ ” Wall writes. “I understood the ‘right now’ to be related to his struggling presidential bid and the Lincoln Hills issues.”

Some Tools:

We have received multiple requests for the documents below. Here are 2 Executive Directives and Statutes on abuse.

Work rules and statutes on Abuse

1) EXECUTIVE DIRECTIVE # 43 Subject Work Rules

I. Authority

Each state agency has the authority to set policies to carry out its responsibilities and charge. Wis. Stats. §15.0001(2)(a).
Wis. Stats. Ch. 111
Wis. Stats. Ch. 230
Wisconsin Administrative Code Employment Relations
Wisconsin Administrative Code Employment Relations Merit Recruitment and Selection
Department of Corrections Executive Directives
Department of Corrections Human Resources Manual
Department of Corrections Supervisor Guide to Human Resources

II. Background

The Department of Corrections has established work rules that regulate the conduct of employees in order that the Department can achieve its objectives in an orderly and efficient manner.

IV. Scope

This policy applies to all employees, contractors, unpaid interns and volunteers.

V. Policy

The Department of Corrections has established Work Rules which govern employee conduct so that the Department can carry out its mission and ensure the public’s confidence of our ability to do so. When a work rule is violated, disciplinary action, up to and including discharge, may be taken. Work rules apply to on-duty conduct and off-duty conduct which adversely affects the ability of the Department to carry out its mission or adversely affects the ability of an employee to perform his or her duties and responsibilities.

The work rules are not intended to restrict the rights of employees, but rather advise employees of prohibited conduct. The Department of Corrections will apply the work rules in a fair and equitable manner. Work rules may apply to off-duty employee conduct which adversely affects the ability of the Department to carry out its mission or adversely affects the ability of an employee to perform his or her duties and responsibilities. All employees are required to acknowledge receipt of the DOC work rules by the process established by the Department. An employee who refuses to acknowledge receipt of the work rules remains responsible for adhering to the work rules. A copy of the DOC work rules is attached.

2
The Department of Corrections has established Work Rules which govern employee conduct so that the Department can carry out its mission and ensure the public's confidence in our ability to do so. When a work rule is violated, disciplinary action, up to and including discharge, may be taken. Work rules apply to on-duty conduct and off-duty conduct which adversely affects the ability of the Department to carry out its mission or adversely affects the ability of an employee to perform his or her duties and responsibilities.

1. Insubordination, disobedience, or refusal to carry out oral or written directives or assignments.
2. Failure to comply with written policies or procedures including but not limited to Executive Directives and Administrative Directives.
3. Inattentiveness while on duty, including sleeping.
4. Negligence in the performance of assigned duties or failure to exercise good judgment in dealing with employees, juveniles, offenders or the public.
5. Unauthorized access, disclosure, or use of confidential Information or records including health care or personal information.
6. Falsification of records, knowingly giving false information, or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate and complete information when required.
7. Making false, inaccurate, or knowingly malicious statements about employees, inmates, offenders, juveniles, or the Department.
8. Falsification of employment applications or records, or omission of facts.
9. Failure to comply with health, safety, or sanitation rules, regulations, or practices.
10. Violating a criminal statute, ordinance, or other regulation or rule having the force and effect of law.
11. Threatening, attempting, or inflicting bodily harm on another employee, an inmate, juvenile, offender or the public.
12. Verbally threatening, intimidating, demeaning, interfering with another employee, an inmate, juvenile, offender, the public or an investigation; or using profane or abusive language with another employee, an inmate, juvenile, offender or the public.
13. Harassment, including but not limited to harassment based on protected status (race, gender, religion, etc.), towards employees, the public, inmates, juveniles or offenders.
14. Horseplay, practical jokes, or other disruptive or unsafe behavior.
15. Unauthorized possession, misuse or mishandling of weapons or ammunition.
16. Unauthorized posting, changing, defacing or removal of notices or signs; or unauthorized distribution of written or electronic material.
17. Engaging in unauthorized activities while on duty, including but not limited to gambling, operating a personal business, soliciting or playing games.
18. Failure to submit to the inspection of items taken from or into work premises.
19. Driving a state vehicle without a valid driver's license or when disqualified under the DOA Fleet Policy.
20. Failure to comply with or violating any rule, regulation or order of a professional licensing agency when the license is related to the employee’s position.
21. Requesting, accepting, retaining, or failing to report the offer of a bribe or gratuity.
22. Inappropriate dress, grooming, or personal hygiene including, but not limited to, the improper use of a uniform, badge, or other article of clothing or identification.
23. Failure to report a crime committed by a DOC employee in his or her capacity as a DOC employee.
24. Unauthorized or improper use of state or private property, services or authorizations, including but not limited to vehicles, telephones, electronic communications, mail service, credit cards, computers, software, keys, passes, security codes, or identification while In the course of one's employment; or to knowingly permit, encourage or direct others to do so.
25. Theft or unauthorized possession of state or private property, equipment or materials, including the unapproved salvaging of waste or discarded items or food.
26. Manifesting signs of having consumed alcohol or illegal drugs; or reporting to work or working in an Impaired condition so as to be unsafe to the employee, others, or physical property.
27. Unauthorized entry into state property, including unauthorized entry outside of assigned work hours or unauthorized entry into restricted areas.
28. Interfering with, misleading or obstructing the Employer In the performance of official functions of the department, including investigations and audits.
29. Failure to report for work at the scheduled start time or leaving before the scheduled end time.
30. Failure to notify the proper authority of an absence or tardiness in a timely manner.
31. Unexcused absence or excessive absenteeism.
32. Failure to observe time limits for meal, rest break, or wash up periods.
33. Using sick leave when not permitted by statute, administrative rule, State of Wisconsin Compensation Plan or DOC policy. These work rules do not constitute the entire list of violations which governs the conduct of employees, contractors, unpaid Interns, and volunteers. Other rules may be provided by statute, Administrative Code, and by administrative procedures established by management. Violations of these rules may also result in appropriate disciplinary action. Additional work rules may be established by management to meet special requirements of work units or as circumstances require.
EXECUTIVE DIRECTIVE #31

Subject: Extraordinary Circumstances For Parole Consideration

I. Authority
Wisconsin Statutes s 15.145(1)
Wisconsin Statutes SS 304.01,304.02,304.06(1m)
Wisconsin Administrative Code Chapter DOC 330 / Wisconsin Administrative Code chapter PAC1

II. Background
This directive formalizes the process by which the Parole Commission reviews Inmates for parole consideration under extraordinary circumstances.

III Definitions, Acronyms & References
"Chairperson" means the chairperson of the Commission. "Chairperson" includes a commissioner who is designated by the Chairperson to perform a specific assignment or duty
"Commission" means the Parole Commission, including the Chairperson and the Commissioners.
"Commissioner" means a member of the Parole Commission, including the Chairperson.
"Extraordinary circumstances" means advanced age, infirmity or disability of the Inmate, need for treatment or services not available within the correctional Institution, a sentence to a term of imprisonment that is substantially disparate from the sentence usually imposed for a particular offence, or other circumstances warranting an early release which are made known to the sentencing court pursuant to section PAC 105 (1) (a), Wis. Adm Code
"Inmate" means a person who is incarcerated in a DOC facility or a facility under contract with the DOC for a crime committed in the state of Wisconsin
"Parole" means release from prison of an inmate before the expiration of his or her sentence to the supervision of the Division of Community Corrections
"Parole eligibility date" means the date whereby the inmate has served 25 percent of the sentence imposed or six months of the sentence, whichever is greater, or the date imposed by the sentencing court.
"Victim" means a person against whom a crime has been committed, or if the victim is deceased, an adult member of the victim’s family or, if the victim is under 18 years old, the victim’s parent or legal guardian (Sees 304.06 (1) (c)3,Stats)

IV Scope
This Executive Directive applies only to inmates who are statutorily eligible for parole consideration in accordance with Wisconsin Statutes s 304.01. Inmates serving a sentence under s. 973.01, Stats., are not eligible for parole consideration for extraordinary circumstances for that sentence but may petition for release under the procedures set forth in 5.302.113 (9g) Wis. Stats.

V. Policy
Inmates who have not reached their parole eligibility date may be considered for extraordinary circumstances release under s. 304.06 (im), Stats. The sentencing court, district attorney and victim, if available, must be notified and permitted to comment upon the proposed recommendation for release.

VI. Procedure General Guidelines
A The Chairperson, Warden, inmate or the inmate's guardian may request consideration for release due to extraordinary circumstances regardless of the parole eligibility date. If an inmate has previously waived parole eligibility, the inmate or the inmate’s legal guardian must request reinstatement of parole eligibility prior to any action being taken in accordance with s PAC 105 (6), Wis Adm Code
B. All requests will be forwarded to the Warden who will review the request to determine if the inmate is statutorily eligible for consideration and forward the request to the Chairperson with a recommendation.
C. The Chairperson shall consider all of the following eligibility for parole, sufficiency of time served, satisfactory adjustment to institution, satisfactory program participation, adequate release planning and risk to the public
D. The Department will provide the Chairperson with requested information, including release plans.
E. The Chairperson will determine whether or not his appropriate to waive the 25 percent of service sentence requirement under s 304.06 (1) (b), Stats. In accordance with S PAC 1.05 (1) (a), notice of the determination to the court, district attorney and victim is required.
F. The Chairperson will make a decision to approve, deny, or defer for continued monitoring of the extraordinary circumstances.
Directly below are addresses to two organizations able to handle complaints however the DOJ requires multiple complaints on the same issue in order to investigate. We also request that IF you contact either of these organizations, you also send your complaint or a summary to us at our new Post Office Box: SECOND CHANCE; c/o PO Box 272; Muscoda, WI 53573. We will be checking this once a week.

1) US Department of Justice 950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section 1425 NYAV
Washington, D.C. 20530
You may also file a complaint online at www.ada.gov/complaint/. If you have questions about filing an ADA complaint, please call: ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY). Main Section Telephone Number: 202-307-0663 (voice and TTY)

2) Wisconsin Department of Safety and Professional Services / Division of Legal Services and Compliance
Mail To: P.O. Box 7190 Ship To: 1400 E. Washington Avenue
Madison, WI 53707-7190 Madison, WI 53703
FAX #: (608) 266-2264 Email: dsp@wisconsin.gov
Phone #: (608) 266-2112 Website: http://dsps.wi.gov

Summation of COMPLAINT FORM suggested by WDPS
a) Give your contact information
b) Questions:
   1. When did the incident occur (If you do not know the exact date, make as close an estimate as possible)?
   2. Where did the incident occur (include town/city/village/county)?
   3. Have you tried to resolve this matter? If so, please provide details.
   4. If your complaint is, or has been, under consideration by another agency or court please provide that information.
   5. Who else has information related to this incident? Provide names, addresses, email addresses and phone numbers for those persons.
   6. Describe the incident. Include as much specific information as possible. Attach additional pages if needed. Attach copies of any relevant documents or evidence such as contracts, photographs, medical records, billing statements, personal notes, pill bottles, etc. It is very important that you do not dispose of any information or evidence even after you have filed a complaint.

2) Wisconsin Statutes 302.08 – Humane treatment and punishment
Current as of: 2017

The wardens and the superintendents and all prison officials shall uniformly treat the inmates with kindness. There shall be no corporal or other painful and unusual punishment inflicted upon inmates.

Universal Citation: WI Stat § 940.29 (2012 through Act 45)
940.29 Abuse of residents of penal facilities. Any person in charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects or ill-treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class I felony.
940.285 Abuse of individuals at risk.

(1) DEFINITIONS. In this section:
(a) "Abuse" means any of the following:
   1. Physical abuse, as defined in s. 46.90 (1) (fg). “Physical abuse” means the intentional or reckless infliction of bodily harm.
   2. Emotional abuse, as defined in s. 46.90 (1) (cm). (cm) “Emotional abuse” means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed
   3. Sexual abuse, as defined in s. 46.90 (1) (gd).
   4. Treatment without consent, as defined in s. 46.90 (1) (h). “Treatment without consent” means the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.
   5. Unreasonable confinement or restraint, as defined in s. 46.90 (1) (i) “Unreasonable confinement or restraint” includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.
   6. Deprivation of a basic need for food, shelter, clothing, or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement, or court order.
Denied parole 6 times, inmate wins release

Bruce Vielmetti, Milwaukee Journal Sentinel; Aug. 16, 2018

In 1996, Baron Walker was sentenced to 60 years in prison for being part of a pair of bank robberies in which no one was hurt. This was before Wisconsin adopted Truth in Sentencing, when it was expected that after serving 25 percent of a sentence, a deserving inmate would be paroled.

There was also a presumptive mandatory release after two-thirds of the sentence. After he became eligible for parole — Walker, 44, remains in prison, despite having taken every possible avenue for treatment and education while incarcerated. He's also maintained close contact with his wife and five children and they were all featured prominently in the award-winning 2016 documentary film "Milwaukee 53206," about the ZIP code with the highest incarceration rate of African-American men in the nation. More than 60% were imprisoned by age 34.

On Thursday, Milwaukee County Circuit Judge Mark Sanders modified Walker's sentence to time served on one count, and a stayed seven-year sentence and five years of probation on the second, plus 40 hours of community service and re-entry programming after agreeing with lawyers that Wisconsin's changed policy on granting parole is a new factor unknown to the original sentencing judge.

Assistant District Attorney Thomas Potter, a 33-year veteran prosecutor, said the office has never been about always getting the maximum possible punishment but about doing justice. It jointly recommended the new sentence after months of collaboration with defense attorney Craig Mastantuono. Potter said the bank manager who testified about the emotional trauma of the robberies at Walker's original sentencing was surprised he was still in prison and supported the modification. Sanders said the state's backing was critical to his decision to grant the motion.

During his years in prison, Walker has earned certification in food service, pesticide application, forklift operation and building maintenance. He's done cognitive group intervention three times, restorative justice training and a parole re-entry simulation program. "No therapeutic or vocational training programs remain for Mr. Walker to complete to achieve parole, yet he has not been released," wrote Mastantuono, in a motion to modify Walker's sentence.

Modifying a sentence requires an inmate to show a new factor exists that was not known or considered at his sentencing. For Walker, and hundreds like him, Mastantuono argued that factor is Wisconsin's sharp change in parole policy since Gov. Scott Walker was elected. In effect, the administration's approach functions like an ex-post facto law, one of the first things prohibited in the U.S. Constitution. About 3,000 of Wisconsin's more than 22,000 inmates were sentenced before 2000, when it was understood that parole was a built-in element of the sentencing decision.

But far fewer than 10 percent of those who have sought parole have gotten it since Walker took office. Last year about 187 were granted out of 1,738 hearings, said Tristan Cook, spokesman for the state Department of Corrections, a 10.7 percent rate. It was the same year the Parole Commission and staff were cut in half after the governor proposed eliminating it entirely. Mastantuono's motion cited the specific language of then-Circuit Judge Patricia McMahon when she sentenced Walker in 1996: "You need extensive rehabilitation treatment, but that needs to be in a secure setting so society's protected from your preying on them. And whether you accept that treatment or not will have an impact on whether you will return to the community," McMahon said.

Mastantuono argued that McMahon's warning to Walker that how well he accepted treatment would bear on his release reflects a clear indication he intended he would be paroled sooner if he embraced rehabilitation. If she had known that Wisconsin would years later change its parole policy to extending the vast majority of sentences to the maximum two-thirds, she would not have imposed a full 60 years, he suggested.

He also found audio from Walker's last parole hearing, when a commissioner told him, "You were sentenced at a time when judges thought, like, programming was the cure-all, and you know, and then we found out it's not." Sanders said that language was "a direct line" back to McMahon, confirming to him that the Parole Commission's changed policy was a new factor. Mastantuono said it was like "changing the rules in the middle of a contest, changing the matrix," or context McMahon relied on. Sanders noted Walker's character as a young man was bad— he had a record, and a bad attitude, before the bank robberies— but that over the past 20 years, he has shown, "on the whole, significantly improved character."
DEFENDANT'S NOTICE OF MOTION & MOTION FOR SENTENCE MODIFICATION

PLEASE TAKE NOTICE that the defendant, Baron Walker, through Attorney Craig Mastantuono, will appear before the Milwaukee County Circuit Court, Br. 28, the Honorable Mark A Sanders presiding, on the 16th day of August, 2018, at 1:30 p.m.,(6) and will respectfully move the Court for the entry of an order modifying the sentence imposed by the Honorable Patricia McMahon on June 12 1996. The defendant makes this motion pursuant to State v. Harbor, 2011 WI 28,333 Wis. 2d 53, and requests a hearing.

THE PARTIES AGREE that a new factor warranting a hearing on modification currently exists, as outlined further below. The parties also agree on the sentence modification sought. Following is an explanation of the current sentences (the Judgment of Conviction is attached separately as Exhibit A), and the jointly requested modifications of those sentences:

Count 6: Armed Robbery, Party to a Crime.
- Jointly proposed modified sentence: 22 years, 6 months Wisconsin State Prison (time served).

- Jointly proposed modified sentence 7 years Wisconsin State Prison imposed and stayed for 5 years of probation supervision with specified conditions
  - Attend and complete re-entry programming and domestic counseling through Alma Center/Milwaukee,
  - Participate in a combination of employment/school,
  - Complete 40 hours community service.

The proposed modification would result in Mr. Walker's release from the Wisconsin State Prison system, where he has served a continuous period without release since the original sentencing hearing in 1996. Mr. Walker is currently held in a minimum security institution.

AS GROUNDS for this sentence modification request, the defense asserts that there is a new factor justifying modification that was not considered at his sentencing. Specifically, at the sentencing hearing, Judge McMahon considered and referenced Wisconsin parole policy as the Court believed it to be at that time concerning prison treatment and rehabilitation. The sentencing judge voiced the Court's expectation about how that policy would impact Mr. Walker's eventual release and return to the community. The Court made these remarks, illustrative of the Court's expectations, in determining the length of the Mr. Walker's sentence. Since that time, Wisconsin parole policy has changed, shifting the focus for parole release away from acceptance of treatment and rehabilitation, toward lengthier and more punitive sentences. In the present case, Baron Walker has not been granted parole despite his clear acceptance and completion of treatment and programming, and despite the sentencing judge's expectation that acceptance of treatment would cause Mr. Walker to be released to the community on supervision. This constitutes a new factor warranting sentence modification.

ADDITIONALLY, THE DEFENSE NOTES that undersigned counsel has communicated with Assistant District Attorney Thomas Potter about this motion. ADA Potter has advised the Defense that the State does not dispute that changes in Wisconsin parole policy subsequent to Mr. Walker's sentencing constitutes a new factor for the purpose of granting a hearing on this motion in this case, and based upon the specific facts and circumstances involved here. Further, the State agrees with the specific modification sought here to each sentence.

IN FURTHER SUPPORT, the defense states as follows:

Statement of Facts:

1) Mr. Walker was convicted and sentenced in June of 1996 in Milwaukee County Circuit Court Branch 18, Honorable Patricia McMahon presiding on two criminal counts of Armed Robbery, Party to a Crime. Mr. Walker's offense convictions stemmed from his involvement, with three co-actors, in two bank robberies on 12/21/96 and 1/3/96. Mr. Walker's three co-defendants also committed four additional robberies and other offenses on separate dates; those offenses did not involve Mr. Walker. The court sentenced Mr. Walker on 6/12/96 to a total of 60 years Wisconsin State Prison, 25 years on count 1, and 35 years on count 2, consecutive to each other. Mr. Walker has been in continuous custody since the time of his sentencing hearing.

2) At the time of Mr. Walker's sentencing, the Truth in Sentencing (TIS) and Truth in Sentencing II (TIS-II) acts were not yet enacted as Wisconsin State law; the Court sentenced Mr. Walker under the indeterminate (pre-TIS) Wisconsin sentencing scheme. Under pre-TIS sentencing law in Wisconsin, Mr. Walker would be eligible for release from prison on parole after serving one quarter of his sentence, and mandatory release would be required after serving two thirds of his sentence. Wis. Stat. §304.06(1)(b), 302.11. Generally, a Wisconsin inmate sentenced pre-TIS was expected to complete rehabilitative programming in prison in order to be released after reaching parole eligibility. The sentencing Court in Mr. Walker's case addressed this issue squarely at Mr. Walker's sentencing hearing:

You need extensive rehabilitation treatment, but that needs to be in a secure setting so society's protected from your praying On them. And whether you accept that treatment or not will have an impact on whether you will return to the community. Sentencing Hearing Transcript, F 960232, at 28 (emphasis added) (attached separately as Exhibit B).

Prior to TIS and TIS-II in Wisconsin, litigants, attorneys, and courts in criminal cases typically practiced a type of "short-hand math" when prison sentences were imposed to predict the parole eligibility and maximum discharge dates on an indeterminate prison sentence recommended or imposed. Lawyers formed their recommendations and judges imposed their sentences after engaging that short-hand math, working backwards from that point to predict a likely release date if the inmate served good time. If an inmate completed treatment and programming and served good time in prison, he could expect to discharge on or shortly after reaching parole eligibility, or 25% of the prison sentence. Lawyers and judges knew and expected this: that service of so-called "good time" would result in discharge at parole eligibility. In Mr. Walker's case, as quoted above, the sentencing judge directly stated her expectation(7)
that if Mr. Walker accepted treatment, Wisconsin sentencing law and parole policy would in fact result in his release from prison after he reached his parole eligibility date.

3) Baron Walker was 22 years old at the time of the sentencing hearing; he is now 44 years old. His mandatory release date is 3/21/2037. He began parole commission reviews in 2011 when he reached the 25% completion mark, and has received 6 deferrals, most recently in December of 2017. He has completed all treatment programs and vocational certifications offered, completing the restorative justice program, three different cognitive group intervention programs, and the Madison Urban Ministry parole re-entry simulation program. Mr. Walker has earned a Serve Safe food service certification, pesticide, certification, forklift certification, building maintenance services certification, and has also finished his GED and HSED: He is now serving his sentence at Oakhill Correctional Institute in Waupun, a minimum-security prison where he works in the kitchen No therapeutic or vocational training programs remain for Mr Walker to complete to achieve parole yet he has not been released June of 2018 marks seven years since Mr. Walker reached parole eligibility.

4) Wisconsin parole policy has significantly changed in the time since Mr. Walker was sentenced, resulting in comparatively fewer pre-TIS and TIS-11 inmates being released on parole currently than prior to 8 years ago. This change has been noted in various reports documenting the far fewer pre-TIS inmates being released to parole.' More significantly, it was also referenced directly at Mr Walker's Parole Commission review hearing on March 301, 2017, when the parole commissioner made the following statement: I looked at the sentencing transcripts and one of the things the judge said was un, 'whether or not you accept treatment will have impact on whether or not you return to the community.' Now you were sentenced at a time when judges thought, like, programming was the cure all, you know, and then we found out it's not. It's like leading a horse to water. If they stand in front of it, it does no good If they drink it, it nourishes the body.Wisconsin Parole Commission Review Hearing, Baron Walker DOC # 182074 audio recording, 3/30/2017, at 12:25 (emphasis added) (copy provided to ADA Tom Potter)'

"The parole commissioner's remark is both revelatory and quixotic. Revelatory because it directly confirms the policy change that is keeping Mr. Walker in prison: the Department of Corrections and the Parole Commission have decided that treatment no longer provides an inmate with the key to his release that judges presumed it did when sentencing pre-TIS defendants. Quixotic because Mr. Walker has in fact accepted and completed treatment. If one adopts the commissioner's analogy, Mr. Walker is the horse that drinks the water, that has accepted treatment; the remark is thus inapplicable to a fair analysis of Mr. Walker's prison adjustment. He is being kept in prison - despite accepting and completing treatment - because parole policy has changed. Both demonstrably and significantly in this case, current policy differs from the policy backdrop that the sentencing judge relied upon when sentencing Mr. Walker."

Argument

5) The Circuit Court has inherent authority to modify a sentence when the defendant shows there is a new factor. State v Harbor, 2011 WI 28, 333 Wis 2d 53, 135. A new factor is defined as "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." Id at ¶ 40 (citing Rosado V. State, 70 Wis. 2d 280, 88 (1975)).

1. Baron Walker is married to Beverly Walker, and they have five children In addition to completing his rehabilitative programming, job training, and education, Mr. Walker has engaged in extraordinary efforts to support his family while incarcerated including doing homework with his children through mail and phone contacts and cutting and mailing grocery coupons to his wife so that she can save money while shopping for their family. These efforts became the subject of a local public radio story, which in turn attracted the attention of Transform Films Inc and Director/Producer Keith McQuirter. As a result Mr. Walker and his family are featured prominently in the documentary film Milwaukee 3206 which chronicles the high toll that prison sentences have on individuals and families https://www.milwaukee53206.com/about (last accessed 1/15/18). Milwaukee 53206 debuted locally at the 2016 Milwaukee Film Festival, and has had several statewide and national screenings.

2. See, e.g., Dee J. Hall, Parolees plummet under Scott Walker, Wisconsin State Journal, Mar. 2, 2014 ("New numbers show only a small percentage of inmates are paroled each month a proportion that dropped sharply soon after Walker, a Republican took office in January 2011 Under Walker, 6 percent of parole requests were granted in 2013 and 5.3 percent in 2012 That compares to 14.5 percent in 2009 and 13 percent in 2010, the final year of the administration of Democrat Gov. Jim Doyle.")."

6) A sentence modification based on a new factor involves two steps. First, the defendant must demonstrate there is anew factor by clear and convincing evidence. Harbor, 233 Wis. 2d 53 at 36. Second, if there is a new factor, the court exercises its discretion in determining whether sentence modification is justified. Id at 37. In a sentence modification analysis, a change in parole policy can be deemed relevant to the original sentencing, justifying modification, where the sentencing judge's express intent is thwarted by new policy subsequent to the original imposition of sentence. State V. Franklin, 148 Wis. 2d 1, 14 (1989).

7) The sentencing Court did not anticipate the policy change that would later impact the parole decisions in Mr. Walker's case. Indeed, the Court clearly relied on policy in place at the time, expressly predicting that treatment would in fact impact Mr. Walker's release. This was highly relevant to the imposition of the sentence. The State, represented by Assistant District Attorney Tom Potter, has advised the defense it agrees that the change in parole policy since the time of Mr. Walker's sentencing, combined with Judge McMahon's comments at Mr. Walker's sentencing hearing, constitute a new factor for the purpose of granting a hearing on this motion, based upon the specific facts and circumstances involved here. Additionally, the State agrees that Mr. Walker has already served far longer than the parties and Court would have expected at the time of his sentencing hearing in 1996. The defense is authorized to make these representations for the State in this motion.

8) Because Mr. Walker has demonstrated the existence of a new factor, the parties request that the Court exercise its discretion in determining whether that factor justifies modification of his sentence. The parties jointly request that the Court modify the sentences as specified above, accepting the time served in Count One (over 22 years) as sufficient but no longer than necessary (8)
to accomplish and reflect the sentencing factors outlined in State v. Gallion, 2004 WI 42, 44, and allowing for Mr. Walker's release to the community on supervision with the specified conditions on Count Two.

FOR THESE REASONS, the defense respectfully requests that the Court grant a hearing on this motion and modify Mr. Walker's sentences as proposed herein.

Dated at Milwaukee, Wisconsin this 17th day of July, 2018
Respectfully Submitted, Electronically Signed by Craig Mastantuono / Attorney for Baron Walker/State Bar No. 1020125

**Founders notes and Fundraiser blurb**

Everyone’s excited about the new governor and possibilities of real reform. Compassionate release, pardons and sentence modifications are all more possible now and old law prisoners are finally front and center in the discussion. I am excited, as this group - old law prisoners are truly ready for release in the main and will be an incredible asset to their communities and families. The system has drained much of Milwaukee of its fathers and those days we hope are coming to an end. We are also researching what other states have done to end revocations without new felonies. Help is needed on all levels. Although we are starting with Compassionate release and old law prisoners, we feel that once “the barn door is opened” all the rest of the corruptions will be plain even to the general public and TIS inmates, Juveniles and all the rest will have their day.

A request: We need to update our parole blog. You know who you are: if your case is on there, please send a one page focused update on your parole. We also will be filing a new compassionate release application and will be trying to get our rough draft comprehensive reform bill looked at by those in power. It is an amalgamation of FFUP and prisoner’s 18 year of working together - lots of good things—maybe the time has come. Now some updates:

**ON THE MONEY SCAM: NO NEWS- STILL ON APPEAL**

ON OUR SOLITARY SUIT: we have filed for a voluntary dismissal without prejudice. This will give us time to regroup. We did not get a lawyer and communication was very bad. Unable to coordinate the cases effectively, we are asking for a break while we redo our complaint and find someone who knows the law and can work directly with the plaintiffs to coordinate responses to the court. It was hard learning for me but we will go forward. Meanwhile the suicides and suicide attempts continue to increase and conditions in solitary remain unendurable. We are crafting injunctions for prisoners at risk. These need to be filed with a case and can furnish the quickest way to a place of safety.

Finally, fundraising and rabble rousing. As years roll on it becomes important to find ways to make our stamps program sustainable and to continue to help experienced prisoner litigators and help them help beginning litigators. We have a gofundme account as a non profit, and all fees are paid by paypal. It does well for the amount of attention it gets but much more time and skill is needed in outreach and I have no time or skill in engaging the public. If you or your families are thinking of donating, you can be sure the funds are well spent. Lots of stuff in the works as maturity and hindsight reaches FFUP and her prisoner friends- we have all been in this sadistic game long enough to know what is possible and, at least, what DOESN’T work. So besides a shout out for donations, I also ask that if you have a family members who would like to help with our facebook or paypal site or do any kind of outreach a couple hours a week or month, ask them to contact me. I have been asked many times to “DO a GOFUNDEME account” for specific inmates. FFUP’s account can have many campaigns , yes, BUT SOMEONE NEEDS TO WORK THEM. Otherwise they sit. I have done a couple separate inmate gofundme accounts and they get nothing. There is nothing magic about gofundme- it is just an internet site. Here people connect with other people using social media and it takes a lot of work.

Here is donation address and contact number: Http: https://www.gofundme.com/prisonforum or send check or money order to Prison Forum/c/o peg swan; 29631 Wild Rose Drive; Blue River, WI 53518. Your donation is tax deductible. My email is pgswan3@aol.com for any questions.

On the stamps program: I am deluged with requests and am told that some people are passing my name around to those who are not indigent, but want to trade stamps for other stuff. I have no problem with that in general but not on FFUP’s limited funds. We need to confront the hygiene problem from a larger perspective- for example see that indigent prisoners get enough soap to keep clean/ get hygiene products on vendor sites so families can help when canteen is out of reach. But this stamp program is for those that need the stamps and I again request that you send your account statement – once every 6 months is fine. FFUP does not have the funds to send all requests monthly but will do them in order so it is fair and I hope that once I weed out those who do not send statements- we will be more regular.

Sara Ariel Wong for The Marshall Project /Filed 10.18.2018

**from: The Isolation of Being Deaf in Prison** By Jeremy Woody as told to Christie Thompson

When I was in state prison in Georgia in 2013, I heard about a class called “Motivation for Change.” On the first day, the classroom was full, and the teacher was asking everybody’s name. When my turn came, I had to write my name on a piece of paper and give it to a guy to speak it for me. The teacher wrote me a message on a piece of paper: “Are you deaf?” “Yes, I’m deaf,” I said. Then she told me to leave the room. I waited outside for a few minutes, and the teacher came out and said, “Sorry, the class is not open to deaf individuals. Go back to the dorm.”

I was infuriated. I asked several other deaf guys in the prison about it, and they said the same thing happened to them. From that point forward, I started filing grievances. They kept denying them—the basic computer class, vocational training, a reentry program—I would get there, they would realize I was deaf, and they would kick me out. I was just asking for basic needs; I didn’t have a way to communicate. And they basically just flipped me the bird.

While I was in prison they had no American Sign Language (ASL) interpreters. None of the staff knew sign language, not the doctors or the nurses, the mental health department, the administration, the chaplain, the mail room. Nobody. In the barbershop, in the chow hall, I couldn’t communicate with the other inmates. When I was assaulted, I couldn’t use the phone to call the Prison Rape Elimination Act hotline to report what happened. And when they finally sent an interviewer, there was no interpreter. Pretty much everywhere I went, there was no access to ASL. Really, it was deprivation.

I met several other deaf people while I was incarcerated. But we were all in separate dorms. I was isolated. They housed us sometimes with blind folks, which for me made communication impossible. They couldn’t see my signs or gestures, and I couldn’t hear them. They finally celled me with another deaf inmate for about a year. It was pretty great, to be able to communicate with someone. But then he got released, and they put me with another blind person.
When I met with the prison doctor, I explained that I needed a sign language interpreter during the appointment. They told me no, we’d have to write back and forth. The doctor asked me to read his lips. But when I encounter a new person, I can’t really read their lips. And I don’t have a high literacy level, so it’s pretty difficult for me to write in English. I mean, my language is ASL. That’s how I communicate on a daily basis. Because I had no way to explain what was going on, I stopped going to the doctor.

My health got worse. I came to find out later that I had cancer. When I went to the hospital to have it removed, the doctor did bring an interpreter and they explained everything in sign language. I didn’t understand, why couldn’t the prison have done that in the first place? When I got back to prison, I had a lot of questions about the medicines I was supposed to take. But I couldn’t ask anyone. I did request mental health services. A counselor named Julie was very nice and tried her best to tell the warden I needed a sign language interpreter. The warden said no. They wanted to use one of the hearing inmates in the facility who used to be an interpreter because he grew up in a home with deaf parents. But Julie felt that was inappropriate, because of privacy concerns. Sometimes, we would try to use Video Remote Interpreting, but the screen often froze. So I was usually stuck having to write my feelings down on paper. I didn’t have time to process my emotions. I just couldn’t get it across. Writing all that down takes an exorbitant amount of time: I’d be in there for 30 minutes, and I didn’t have the time to write everything I wanted to. Julie wound up learning some sign language. But it just wasn’t enough.

My communication problems in prison caused a lot of issues with guards, too. One time, I was sleeping, and I didn’t see it was time to go to chow. I went to the guard and said, "Hey man, you never told me it was chow time." I was writing back and forth to the guard, and he said he can’t write because it’s considered personal communication, and it was against prison policy for guards to have a personal relationship with inmates. That happened several times. I would have to be careful writing notes to officers, too, because it looked to the hearing inmates like I was snitching.

Once they brought me to disciplinary court, but they had me in shackles behind my back, so I had no way to communicate. Two of the corrections officers in the room were speaking to me. All I saw were lips moving. I saw laughter. One of the guards was actually a pretty nice guy, one of the ones who was willing to write things down for us deaf folks. He tried to get them to take the cuffs off me. He wrote, guilty or not guilty? But the others would not uncuff me. I wanted to write not guilty. I wanted to ask for help. He wrote, guilty or not guilty? But the others would not uncuff me. I wanted to write not guilty. I wanted to ask for help.

Prison is a dangerous place for everyone, but that’s especially true for deaf folks.

Jeremy Woody, 48, was released from Central State Prison in Georgia in August 2017. He is currently suing Georgia corrections officials over his treatment in prison, with the help of the ACLU Disability Rights Program and the ACLU of Georgia. Woody spoke to The Marshall Project through an American Sign Language interpreter. The GA DOC did not respond to a request for comment.

My friends, do not lose heart. We were made for these times

To see so many of the poor, the elderly, the unguarded, the children, the helpless is breathtaking.

Yet I urge you, ask you, gentle you, to please not spend your spirit dry by bewailing these difficult times,

Especially do not lose hope. Most particularly because, the fact is that we were made for these times. For years we have been learning, practicing, been in training for and just waiting to meet on this exact plain of engagement.

In the dark time, there is a tendency to veer toward fainting over how—much is wrong or unmended in the world. Do not focus on that. There is a tendency, too, to fail into-being weakened by dwelling on what is outside our reach, by what we cannot yet be. Do not focus there. That is spending the wind without raising the sails.

We are needed, that is all we can know. And though we meet resistance, we more so will meet great souls who will hail us, and we will know them when they appear. One of the most calming and powerful actions you can do to intervene in a stormy world is to stand up and show your soul. The light of the soul throws sparks, can send up flares, cause proper matters to catch fire.

To display the lantern of the soul in shadowy times like these -to be fierce and to show mercy toward others; both are acts of immense bravery and greatest necessity. Struggling souls catch light from other souls who are fully lit and willing to show it. If you would help to calm the tumult, this is one of the strongest things you can do.

We recognize we each have a purpose in being here known to no one else. But it is true. There can be no despair when you remember why you came to earth. When a great ship is in harbor and moored, it is safe, there can be no doubt. But that is not what great ships are built for.

My friends, do not lose heart. We were made for these times.

Excerpt from WE WERE MADE FOR THESE TIMES by Clarissa Pinkola Estes, poet, post-trauma specialist, Jungian analyst and author of Women Who Run With the Wolves. Submitted by Ras AtumRa Uhuru Mutawakkil