

## AN FFUP COVID GATHERING

### **Evers denies clemency to inmates as high heat, COVID risks raise health concerns** **Rory Linnane /Milwaukee Journal Sentinel** [www.usatoday.com/story/news/2020/08/11/wisconsin-rejecting-release-requests-prisoner-health-concerns-rise/3311115001](http://www.usatoday.com/story/news/2020/08/11/wisconsin-rejecting-release-requests-prisoner-health-concerns-rise/3311115001)

Temperatures in at least one Wisconsin prison have reached at least 87 degrees this summer, intensifying health concerns in prisons, already considered among the most dangerous environments during the coronavirus pandemic.

Gov. Tony Evers has opted not to consider any clemency requests from inmates, and corrections officials have rejected nearly all applications for early release based on health conditions.

Already overcrowded, the population in state-run prisons is rising again after months of decline, though still down since the beginning of the year. More than 21,000 adults are held in buildings designed to house fewer than 18,000.

Inmates and their family members have reported troubling conditions, including poor ventilation, high temperatures and the impossibility of social distancing. In at least one facility, staff are forcing inmates to keep doors closed to restrict airflow in response to coronavirus risk.

“My sister said, ‘I am laying still, not moving, and I am soaking wet,’” said Alisha Niedziejko, whose sister is incarcerated at Robert E. Ellsworth Correctional Center in Union Grove.

Health experts say air restriction could actually worsen the risk. Stagnant air allows any viral droplets to build up inside shared cells. And stifling heat can weaken the body's ability to fight it off.

“There’s no way someone who has COVID should be in a hot environment,” said Dr. Susi Vassallo, a New York University medical school professor who studies effects of heat. “You’re going to get sicker.”

The American Civil Liberties Union has called on Evers to reduce the incarcerated population before further spread of the virus. More than 300 inmates in state prisons have been infected and 21 cases remain active. Outbreaks have been worse in other states’ prisons.

“Wisconsin could be next if it does not respond with more urgency than it has shown so far,” Sean Wilson, manager of the Wisconsin ACLU's Smart Justice Campaign, said in a statement Wednesday.

At least 131 Wisconsin inmates have applied since March 1 for what's known as compassionate release based on their old age or extraordinary health conditions, according to Department of Corrections spokesperson John Beard. A corrections committee has rejected 106 of those cases and forwarded 14 to courts for final decisions. Of those, courts have released two people and denied three while nine await hearings. Another 11 are waiting for consideration by the committee.

#### **'Light in the dark'**

It's hard to know exactly how hot it is inside Wisconsin prisons. Staff aren't required to check air temperatures inside, Beard said. But after several calls from concerned sister Niedziejko, staff did take air temperatures at Ellsworth in Union Grove. At 4 p.m. July 7, temperatures ranged from 81 to 87 degrees in cells and hallways, Beard confirmed. Cells do not have air conditioning, while staff offices have air conditioning units for the windows. Inmates can crack their windows and buy small fans if they can afford them. Niedziejko has drawn more than 300 people to a new Facebook group, “Light in the Dark,” looking to support inmates at the facility and beyond.

“They have a right to not undergo extreme heat conditions,” Niedziejko said. “That’s cruel and unusual punishment in my opinion.” In fact, when inmates at a prison in Boscobel sued the state in 2002 and argued the heat constituted cruel and unusual punishment, officials agreed to keep temperatures below 85 degrees. A judge ordered them to install air conditioning in order to meet that goal, case documents show. Other facilities continued operating without air conditioning. In other states, medical examiners have determined inmates have died from hyperthermia, or overheating. Vassallo, from NYU, was called upon as an expert in the Boscobel case. She said overheating could aggravate heart problems, asthma and other medical conditions. In a recent interview, Vassallo said a heat index over 80 degrees is a “dangerous range” and the threat of COVID makes overheating an even more concerning issue.

Beard said there is no maximum allowable temperature in DOC prisons. When the heat index (factoring in humidity) exceeds 90 degrees, inmates are encouraged to use wet towels, cancel strenuous sports and drink at least six glasses of water per day. If the heat index reaches 104 degrees, they're encouraged to drink at least 12 8-ounce glasses of water per day and cancel non-essential work involving physical activity.

As Niedziejko sought solutions for her sister, she came across Facebook videos by Niki Wilichowski, who was recently released after spending three years at Ellsworth. Wilichowski was also trying to improve conditions at the facility. Wilichowski inspired her church, Fox River Christian Church in Waukesha, to donate 25 fans to go to inmates who weren't able to purchase their own. She knows how hard it can be to scrape together money; she remembers making 10 cents per hour, working her way up to 45 cents per hour as a meat prep cook.

“Not everybody has family that takes care of them,” she said.

Wilichowski was especially concerned about the new closed-door policy, making conditions more stifling. Beard said the policy is due in part to security concerns and in part to the pandemic.

“Keeping doors closed prevents cross-air flow between rooms and also minimizes chances of persons in our care potentially spreading the virus by lingering or talking at each other’s open doors,” Beard said in an email. It’s not so simple, according to health experts. Dr. Jeff Pothof, chief quality officer at UW Health, said while it’s possible that small particles of the virus could be carried between rooms sharing air, the primary goal is to have enough air flowing that those particles are quickly diluted by cleaner air.

“Anything that improves air circulation is better than having it be stagnant,” Pothof said. “The longer the air stays in one place, the higher the potential viral load could become.”

Behind closed doors without proper airflow, any exhaled viral particles will continue to linger and add up in the air. That makes it more dangerous for cellmates, or anyone else exposed to the same air, because they’re more likely to breathe in enough of the virus to become infected. It also makes the heat harder to bear, inmates said.

A former Ellsworth inmate, Tammy Wieting, said the summer heat was sweltering even when they could open their doors. She said she had to visit health services multiple times, once in a wheelchair, because she was so dizzy.

Inmates have reported high temperatures at several other facilities as well. Robert Thibault, part of the Incarcerated Workers Organizing Committee, compiled notes from some.

An

“I feel very bad for the elderly and people with health problems ... they are the ones that suffer the most,” the inmate wrote. “I am just sitting in my cell writing a letter doing nothing (and) I get soaked in sweat just sitting there.”

Niedziejko and Wilichowski both hope to continue bringing attention to conditions inside the prisons. Niedziejko said she’s been trying to talk with prison officials about a way to provide air conditioning at Ellsworth and other facilities.

“At the end of the day we’re all human beings and if I were an inmate undergoing this treatment I would pray that there was somebody out there to do the same for me,” she said.

### **No clemency for inmates in Wisconsin**

Many inmates have applied for early release due to worrisome health conditions. Health experts have noted that the safest response to the pandemic in prisons is to reduce the population of people locked up, allowing those remaining to maintain more distance. Evers and corrections officials have multiple avenues available for this reduction.

This spring, corrections officials did release hundreds of inmates who were locked up, mostly in county jails, not for crimes but for infractions to their parole, probation or supervision agreements. From March 2 to April 27, that population shrank from 3,680 to 1,700. Since then, it has been crawling back up, reaching 2,153 as of Aug. 3.

Inmates and their advocates are disappointed there have been only two “compassionate releases” since March. The 131 applications filed for compassionate release since March is significantly higher than the 13 filed in the same period last year.

The department has additional tools it could use to release more inmates in response to the pandemic, which Beard said it has not used. There’s a “special action parole” option to release inmates to parole for the purpose of relieving overcrowding.

Individual wardens also have the option to release inmates when they deem someone is in need of emergency release.

Similarly, Evers has not used his clemency powers to cut short or delay sentences for any inmates. He has instructed the state pardons board to deny clemency to all who haven’t completed their sentences.

Dozens of inmates requested waivers from Evers’ criteria, asking that they be considered for clemency in light of the pandemic. Rayshun Woods, at Waupun Correction Institution where over 200 inmates have tested positive, said he was worried for his life due to having asthma, diabetes and cystic fibrosis.

“There is a great possibility that I can die from this COVID-19,” Woods wrote. “I want to see my love ones again, spend time with them. I want to show society that I have changed, I have grown.”

At Jackson Correctional Institution, Ryan Lemke also worried about his high risk for complications, noting he has a health condition that requires regular treatments that suppress his immune system. “I’m hoping this finds someone who sees the seriousness of my situation, understands the risk of being in this position at this time, and is able to help,” he wrote.

Other governors have released inmates who are particularly medically vulnerable and ordered commutations for thousands of others to reduce overcrowding. In Kentucky, New Mexico and Washington, governors ordered mass commutations for inmates not convicted of violent crimes who were due for release in the coming months. A commutation does not erase someone’s record but ends their incarceration early.

ACLU Wisconsin staff said they met with Evers’ staff to discuss such options for reducing the incarcerated population. They still hope to see releases. “We’ll continue to push that because how fast COVID is spreading,” said Melissa Ludin, regional organizer with the ACLU’s Campaign for Smart Justice. “These are human lives. We want to see our governor act on the solutions given him for how to get some of these people home.” *Rory Linnane reports on public health and works to make information accessible so readers can improve their lives and hold officials accountable. Contact Rory at (414) 801-*

*1525 or [rory.linnane@jrn.com](mailto:rory.linnane@jrn.com). Follow her on Twitter at [@RoryLinnane](https://twitter.com/RoryLinnane).*

Enclosed:1) squinched covid articles-use these to support your arguments that remaining in prison is now dangerous.

2) Template for sentence modification – goes to YOUR SENTENCING COURT/add at end an update on your situation and covid in prison in general – this was made out by PD madison months ago and needs updating.( working on that)

3)PAC 108- put out by DOC in July- use if you are over 60 (at least 10 years in) or over 65 ( 5 years in minimum)

4) Executive Directive 31: these are not getting to Tate- send to both Parole chairman and Ward OR send FFUP rejection and app and we will forward with cover letter /Complaint/recommendation/diatribe( take your pick)

## DISPARATE ARTICLES AND IDEAS YOU CAN USE- GOOD UPDATES ON COVID

In May the Wisconsin legislative Bureau ( LRB)put out a report on court findings around the country and the various release efforts ongoing in WI. Copies available- it lauds the DOC efforts but also goes into the weeds of the ways to obtain release. Something we have not tried is the overcrowding angle. For the courts, proving deliberate indifference seems to be the difficulty nation wide. Our former outreach worker, Ben Turk wrote an excellent article on this. Both are available (in 2pages on a side form.)

1)LRB Report May 2020: **Emergency release of prisoners due to Covid 19)**

2) Ben TURK report ( March) **WCI Response to COVID-19 Exposure: Lackadaisical and Punitive.**

3) Needed for newsletter is good up to date reports on numbers of cases and responses- I am getting your letters to powers and activists but cannot follow news or internet reports/ all I got it 200 or so tested positive in WCI and 57 in GBCI, covid reports now coming from FLCI- and there is a woeful lack of DRs and Nurses eerywhere. Nothing on hospitalizations or deaths etc

INMATE COMPLAINT template by Mustafa:

1)Briefly state who or what is the ONE issue of this complaint. What remedial action are you requesting?

I'm being held in an unsafe living condition due to Covid-19, and the DOC is being deliberately indifferent thereto. I request an elimination of overcrowding, beginning w/my release, and all other medically available treatment and recommended safety precautions

2)Who did you attempt to resolve the issue with, and what was the result?I've written the warden here, and the DOC Secretary Kevin Carr, to no avail. Attached is a copy of my letter sent to both of them (Exhibit #1). Both were ignored and/or denied.

What are the details surrounding this complaint?

There is a Covid-19 pandemic which has already claimed over 100,000 lives in the U.S., prisoners included, and requires social distancing as the main precaution, among other sanitary practices, to guard against infection and potential lifelong injuries or death. Due to this prison operating well beyond its capacity, as well as general overcrowding throughout the DOC, it is impossible for us to social distance and provide other protections for our own safety and lives in here. However, if this facility was operating at capacity, i.e., with all single cells, as it was designed to be, then we could properly social distance.

Currently, prisoners are getting infected at a rate of at least 5 times or greater than that of staff (in some cases as much as 10 times greater), from whom were contracting it. That is because once staff are infected they are able to social distance, and other staff here are provided a level of PPE (Personal Protective Equipment) and sanitary applications, which we are not, to protect themselves against infected prisoners.

See *Helling V. McKinney*, 509 U.S. 25, 31-32 (1993) ("It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment."). "It is cruel and unusual punishment to hold convicted criminals in unsafe conditions." *Id.* at 33 (quoting *Youngberg V. Romero*, 457 U.S. 307, 315-316, 73 L. Ed 2d 28, 102 S.Ct. 2452 (1982)). "It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. [ ] . . . a remedy for unsafe conditions need not await a tragic event." *Helling, Id.* at 33.

Thus, this prison and the DOC have an obligation to ensure that overcrowding is eliminated immediately, without further life-threatening delay, and that we are provided the same level of PPE, sanitary applications, and testing as staff, and the same medical treatment available in society, in lieu of our release or while awaiting it.

\*NOTE: Complaints regarding inmates health and personal safety are not subject to the 1 complaint per week rule.

In May the Wisconsin legislative Bureau ( LRB)put out a report on court findings around the country and the various release efforts ongoing in WI. Copies available- it lauds the DOC efforts but also goes into the weed of the ways to obtain release. For the courts, proving deliberate indifference seems to be the difficulty. Our former outreach worker, Ben Turk wrote an excellent article on this. Both are available (in 2pages on a side form.)

1)LRB Report May 2020: **Emergency release of prisoners due to Covid 182)**

2) Ben TURK report ( March) **WCI Response to COVID-19 Exposure: Lackadaisical and Punitive.**

3) Needed for newsletter is good up to date reports on numbers of cases and responses- I am getting letters to powers and activists but cannot follow news or internet reports/ all I got it 200 or so tested positive in WCI and 57 in GBCI, reports oming form FLCI- and there is a woeful lack of DRs and Nurses. Nothing on hospitalizations or deaths etc

Suggestion: use these articles by either refuting or confirming claims or to give you argument ideas.

### Wisconsin receives an F+ grade for handling of COVID-19 in prisons

- [Emily Hamer | Wisconsin State Journal](#) Jun 26, 2020

Wisconsin has received an F+ grade from the national American Civil Liberties Union and the Prison Policy Initiative for its handling of the COVID-19 coronavirus crisis in prisons, according to a report that analyzed all states' responses to the pandemic in jails and prisons. Nine states received D grades. The rest, except for Illinois, which was not graded because of pending litigation, received F grades. "This report confirms what we already know to be true: Wisconsin has not done nearly enough to combat the spread of COVID-19 in our jails and prisons," Sean Wilson, Smart Justice Statewide Organizer for the ACLU of Wisconsin, said in a statement. DOC is partway through testing its entire inmate and staff population. As of Thursday, 13,810 of DOC's roughly 22,000 adult inmates had been tested. The ACLU graded states based on several measures including testing, whether masks were given out, data availability, prison and jail population reductions, and orders from governors or correctional departments related to halting jail admissions or releasing inmates. Points were given out based on the state's performance on each measure. The largest chunk of points available were for significantly decreasing prison and jail populations. Another large chunk came from statewide orders to halt jail admissions or to release vulnerable prisoners and those nearing the end of their sentences — which most states did not do.

( this is a longer article heavy on DOC statements countering ACLU.

Wisconsin lost points because Gov. Tony Evers did not issue orders to release prisoners or stop jail admissions. **On March 23, Evers halted prison admissions**, but ACLU spokeswoman Alyssa Mauk said that action did not count in the report because it was for prisons, not jails. Prison admissions and transfers resumed June 1, with 14-day quarantines required for inmates who move between facilities.

Wisconsin also lost points for not providing a detailed breakdown of its data on the virus in prisons. DOC gives a daily update on COVID-19 cases among prisoners and staff — which it gained some points for — but that data is not broken down by race, the ACLU report notes.

Wisconsin gained partial points for distributing masks to staff and prisoners, and for committing to testing its entire prison population. Prisoners in the state have complained of **a slow response from DOC and inconsistent cleaning and social distancing** practices. They've also said that **not all guards wear masks**, putting them at risk. DOC has required all staff to wear face masks at 13 of its 37 facilities. Among other measures DOC has taken to address the crisis are: releasing more than 1,600 inmates, giving prisoners masks, enhancing cleaning efforts, locking down prisons with positive cases, quarantining individuals who have been exposed to COVID-19, suspending work release and implementing social distancing wherever possible.

But Wilson, the ACLU organizer, said that's not enough given the gravity of the coronavirus emergency.

"Wisconsin has repeatedly neglected to release vulnerable people from custody, which has endangered the health of incarcerated people, corrections staff, and members of surrounding communities," Wilson said. "We encourage the governor and Department of Corrections to take immediate action to release vulnerable people and stop this public health catastrophe."

### Update on Release Efforts

It is difficult to understand why this is so difficult. Executive Directive 31 applications are still being denied by wardens and NOT being passed on to the parole chairman. Confusing language in the PAC108 stops many from even applying and News from the Public defender's sentence modification application is mixed. We hear of some hearing dates coming up with judges and so denials stating "The pandemic cannot be a new factor." The consistent good news comes from the parole chairman's desk who is the final decider on defer-hange and he is reducing some. Old Law prisoners are being paroled- a dribbling . The TIS kids are still being dumped without treatment or training only to come right back.

There is a new awareness and gathering however and we see we need to do a suit. WE have some complaints underway and are looking for an experienced litigator to be one of the plaintiffs in a joinder suit- we will go after a lawyer but need someone "inside" to help guide.

Here are comments on the three release mechanism.

- 1) PAC 1.08 : I have changed the wording on the PAC handout as I am getting complaints buy people in their 60s ad 70s that they cannot get two physician affidavits to attest to their health conditions. The little incredibly important word **IF** is hidden in the original. **IF** you are not 60 and have been in 10 years minimum or 65 and served 5 years **but** you have a serious medical condition, you can qualify **IF** you get two physician affidavits. One has to be your DOC doctor. Forget that one. **BUT IF you are over 60 , this is a good one to try as it was devised by the DOC- they would love to tout their benevolence.** My question is whether this "commission" deciding is the parole commission, which is all about revenge forever.
- 2) Executive Directive 31: **THESE ARE STILL NOT GETTING TO TATE:** The problem here is that the wardens are denying the petition and not forwarding them to the parole chairman . We suggest you send your exec dir 31 to both Tate and warden at

onset OR when warden denies, send his decision with your app to FFUP and I will send on to Tate with cover letter. The exec order is clear, the memo is not:

The role of the warden in the directive itself:

- 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

here is the statement confirming it's existence, which took years:

We have received your letter regarding Executive Directive 31. Prison wardens have access to ED 31. Persons-in-custody sentenced under TIS are not eligible for ED31. For those that are eligible, they will have to make a request for consideration at the institution. The Parole Commission will consider requests under ED31 upon recommendation from the Warden. Those sentenced under TIS can file a petition to modify bifurcated sentences for geriatric/extraordinary health conditions with the Bureau of Offender Classification and Movement (BOCM) at their institution under DAI policy 302.00.13.

The most hopeful is the sentence modification template the Public defenders in Madison made out . We hear of hearings in front of judges and denials stating the pandemic is not a new factor. It depends on your judge. = Racine and Fond du Lac seem to be "no gos." I will include a dew squinched articles here and suggest that you to at end of PD application , update the judge on the covid generally and how it effects you personally

.Note: I will be putting out a 200 copy newsletter- would like input as to what this should include. This will have to be shared and I can make it larger than usual.one of the things that might be needed are DAI rules and policies hard to get. Suggestions appreciated and please tell me if pac 108 and executive directive31 still needed in newsletter.

## Release Mechanisms

### A) PAC 1.08. Release due to extraordinary health condition or age., WI ADC § PAC 108

(1) Eligibility. An inmate serving a bifurcated sentence imposed under *s. 973.01, Stats., or, notwithstanding s. 973.014 (1g) (a) or (2), Stats., serving a life sentence imposed under s. 973.014, Stats.,* may petition the commission for modification of the inmate's sentence to be released to extended supervision **if the inmate meets one**, of the following eligibility criteria:

(a) The inmate is 65 years of age or older and has served at least 5 years of the term of confinement in the prison portion of the bifurcated sentence for a sentence imposed under *s. 973.01, Stats.,* or has served at least 5 years for a life sentence imposed under *s. 973.014, Stats.***OR**

(b) he inmate is 60 years of age or older and has served at least 10 years of the term of confinement in the prison portion of the bifurcated sentence for a sentence imposed under *s. 973.01, Stats.,* or has served at least 5 years for a life sentence imposed under *s. 973.014, Stats.***OR**

(c) The inmate has an extraordinary health condition.

(2) Right to representation. An inmate who is eligible to petition for modification of the sentence under this section has a right to be represented by counsel in proceedings under this section. An inmate or the department on the inmate's behalf, may apply to the state public defender for determination of indigency and appointment of counsel under *s. 977.05 (4) am), Stats.,* before or after the filing of the petition.

(3) Petition. An inmate who files a petition for release under this section shall include all of the following in support of his or her petition:

(a) Date of birth.

(b) Dates of incarceration for current sentence.

(c) *note this is where confusion occurs and I have changed the order of the phrases)*

**IF the inmate is alleging that he or she has an extraordinary health condition** , affidavits of 2 physicians, as defined under *s. 448.01 if (5), Stats.,* who practice in this state, setting forth the inmate's • diagnosis; medical condition, including physical or mental limitations or disabilities, treatment, and One of the affidavits shall be from the inmate's current attending physician.

(d) A signed authorization on a form specified by the commission, authorizing the release of a copy of the petition and supporting documentation to the sentencing court, the district attorney, and victims of the inmate's crime for purposes of reviewing and processing the petition.

(e) Other information as required by the commissioner.

(4) Hearing.

(a) Upon receipt of a petition from an inmate, the commission shall review the petition to determine if the inmate is eligible for consideration under sub. (1). If the inmate meets one of the criteria for review, the commission shall schedule the petition for hearing to determine whether the public interest would be served by a modification of the inmate's sentence under s. 302.1135, Stats. The commission may seek additional information regarding the factual bases of the inmate's petition for sentence modification under this section, including additional medical information.

(b) The commission shall notify in writing the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff, of the date, time and location of the hearing. The commission will notify victims through the department's office of victim services. The notice of hearing shall be sent to the last-known address of the inmate's victim, postmarked at least 10 days before the date of the hearing.

(c) In advance of the hearing the commission may request from the agent or social worker additional information, including the inmate's release plan. The commission may request the department to provide information concerning the inmate's status regarding civil commitment under ch. 980, Stats., and community notice under ss. 301.45, 301.46, and 301.47, Stats.

(d) The commissioner conducting the hearing shall review the inmate's social service and legal files prior to the hearing.

(e) The commission shall permit the inmate, the attorney representing the Inmate, if applicable, the district attorney, and any victims of the inmate's crime to attend the hearing and give a written or oral statement regarding the inmate's petition for sentence modification, specifically addressing the issue of whether the public interest would be served by the modification. During the hearing the commission may request additional information. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(f) Information about the address of a victim will not be released or disclosed.

(g) The inmate has the burden of proving by the greater weight of the credible evidence that a modification of the sentence under this section would serve the public interest.

(h) The hearing shall be recorded. A transcript shall be prepared only upon an order of the court which has jurisdiction over a petition for judicial review of the decision.

(5) Decision. (a) Upon conclusion, of the hearing, the commissioner conducting shall prepare a report for submission to the chairperson. The report shall contain a summary of the information provided at the hearing, including relevant documents, a recommendation to approve or deny the petition, and the justification for the recommendation.

(b) The commission may defer making a decision or hold a decision in abeyance in order to receive additional relevant information, including medical information. If additional information is received, the commission shall reconvene the hearing. Notice will be given to individuals who were present at the initial hearing. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(c) The chairperson shall issue a decision on the petition based on the report and documents submitted by the commissioner.


1. If the petition is approved, the chairperson shall modify the sentence by establishing a new release date and give notice to the department. The department shall release the inmate to extended supervision within 30 days after the date on which the commission modified the sentence. The modification shall reduce the term of confinement in the prison portion of the inmate's sentence and lengthen the term of extended supervision imposed so that the total length of the sentence originally imposed does not change.

2. If the petition is denied, the inmate may not file another petition within one year of the date of the denial.

3. The commission shall provide notice of its decision in writing to the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff.

(6) Appeal. (a) An inmate may seek review of the decision to deny the petition for modification only by common law writ of certiorari.

(b) The state may appeal the decision to grant the petition to circuit court.

<p style="text-align: center;">WISCONSIN DEPARTMENT OF CORRECTIONS</p>  <p style="text-align: center;">EXECUTIVE DIRECTIVES</p> <p>3099 E. Washington Ave. P.O.Box 7925 Madison, WI 53707-7925 (608) 240-5000</p>	DOC Library # 600.500.0031	
	Original Effective Date: August 1993, revised October 1993	New Effective Date: November 1, 2013
	Reference:	Date of Approval: <i>10-15-13</i>
	By: <i>[Signature]</i> Secretary <i>[Signature]</i> Parole Commission Chair Owner: Wisconsin Parole Commission Chairperson	

## 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 PAC 1

**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 offense, or other circumstances warranting an early release which are made known to the sentencing court pursuant to section PAC 1.05 (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 a 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. (See s. 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 s. 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 1.05 (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 it is 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.



STATE OF WISCONSIN CIRCUIT COURT  
BRANCH COUNTY

STATE OF WISCONSIN,  
Plaintiff,

v.

Case No.  
(the case no. for the sentence you want modified)

\_\_\_\_\_  
(your name as it appears on judgment of conviction)  
Defendant.

**FORM NOTICE OF MOTION AND MOTION  
FOR SENTENCE MODIFICATION DUE TO COVID-19**

Pursuant to *State v. Harbor*, 2011 WI 28, ¶ 36, 38, 797 N.W.2d 828 (2011), \_\_\_\_\_, the Defendant in the above-  
(your name)

captioned case, moves this court for modification of his/her sentence, based upon the existence of a “new factor”, namely the COVID-19 pandemic. The basis for this motion is as follows:

1. On \_\_\_\_\_, the Defendant was convicted of the  
(date you were convicted)  
offense(s) of \_\_\_\_\_. On \_\_\_\_\_,  
(list of offense(s) you were convicted of) (date you were sentenced)

the Defendant was sentenced as follows: \_\_\_\_\_  
(explain what sentence you received on each count)

2. The circuit court has the “inherent authority to modify a sentence.” *State v. Trujillo*, 2005 WI 45, ¶ 10, 279 Wis. 2d 712, 721, 694 N.W.2d 933 (2005). “This inherent power can be used to prevent the continuation of unjust sentences and must be exercised within defined parameters.” *Id.* A new factor is one such parameter. *Id.* It is within the circuit court’s discretion to decide whether the new factor warrants sentence

modification. *Id.* at ¶ 11. Therefore, the defendant must first show by clear and convincing evidence that a new factor exists, and second, that the new factor justifies sentence modification. *State v. Harbor*, 2011 WI 28, ¶ 36, 38, 797 N.W.2d 828 (2011).

3. A new factor is “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 the parties.” *Id.* at ¶ 40. Although the new factor must be highly relevant to the imposition of sentence, it does not need to frustrate the purpose of the original sentence. *Id.* at ¶ 48.

#### COVID-19

4. The COVID-19 pandemic warrants either a stay or modification of Mr. Doe’s sentence. At the time of Mr. Doe’s sentencing, no one knew about the widespread devastation the new strain of coronavirus, which causes COVID-19, would cause. As of March 30, 2020, COVID-19 has infected over 729,100 people, leading to at least 34,689 deaths worldwide.<sup>1</sup> In Wisconsin, there are over 1,112 confirmed cases and 13 deaths.<sup>2</sup> On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.<sup>3</sup> Governor Evers declared a State of Emergency on March 12, 2020. On March 17, 2020, Governor Evers ordered that no more than 10 people congregate in a public place, and on March 23, 2020, Governor Evers issued a

---

<sup>1</sup> *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 30, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

<sup>2</sup> Outbreaks in Wisconsin, WI Department of Health Services, (March 29, 2020) <https://www.dhs.wisconsin.gov/outbreaks/index.htm> (updating regularly).

<sup>3</sup> WHO Characterizes COVID-19 as a Pandemic, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>.

“safer-at-home” order, requiring all businesses but those providing “essential services” to shut down.<sup>4</sup>

5. The CDC has issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions such as lung disease, heart disease, and diabetes—take immediate preventative actions, including avoiding crowded areas and staying at home as much as possible.<sup>5</sup> With confirmed cases in Wisconsin that indicate community spread, we must take every necessary action to protect vulnerable populations and the community at large.

6. Public health and governmental officials are strongly urging the public to practice social distancing, but social distancing is impossible for imprisoned individuals, who are kept in close proximity to one another. Infectious diseases that are uncommon in the general public, such as tuberculosis, form wide-spread outbreaks in prisons. Moreover, Wisconsin’s prison system is currently 33% over capacity, and severely understaffed, which can only serve to worsen the problem.<sup>6</sup>

7. Incarceration creates the ideal environment for the transmission of contagious disease. Inmates regularly cycle in and out of jails from all over the country and world, and people who work in the facilities leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in jails.<sup>7</sup> Many people who are incarcerated also have chronic conditions which

---

<sup>4</sup> Gov. Tony Evers to Order Wisconsinites to Stay at Home, Will Close Non-Essential Businesses, JS Online (March 23, 2020) at <https://www.jsonline.com/story/news/politics/2020/03/23/wisconsin-gov-tony-evers-issues-safer-place-order/2897821001/>.

<sup>5</sup> *People at Risk for Serious Illness from COVID-19*, CDC (March 23, 2020) at <https://bit.ly/2vgUt1P>.

<sup>6</sup> WisContext, <https://www.wiscontext.org/bumpy-path-efforts-cut-wisconsins-prison-numbers>.

<sup>7</sup> Laura M. Maruschak et al. (2015). *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfji1112.pdf>.

make them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at a special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe.”<sup>8</sup> “Infection control is challenging in these settings.”<sup>9</sup>

8. Inmates are not the only people in the jails and prisons who are at risk. Members of prison and jail staff are also at high risk because of contact with other staff and inmates. There are already confirmed COVID-19 cases for staff and inmates in prisons and jails in Wisconsin. As of March 27, 2020, there have been confirmed staff cases in Waupun Correctional, Columbia Correctional, and the Milwaukee Secure Detention Facility and confirmed cases with inmates at the Dane County Jail.<sup>10</sup> Unfortunately, it is likely COVID-19 could reach all of Wisconsin’s prisons and jails.

---

<sup>8</sup> “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

<sup>9</sup> *Id.*  
<sup>10</sup> Wisconsin Department of Corrections, COVID-19 (Coronavirus) Information Home, [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx); *Two Dane County jail inmates test positive for COVID-19, results pending for 6 others* FOX6 (March 27, 2020) <https://fox6now.com/2020/03/27/2-dane-county-jail-inmates-test-positive-for-covid-19-results-pending-for-6-others/>



WHEREFORE, on the basis of the "new factor", the COVID-19 pandemic outlined above, the Defendant asks the court to modify his/her sentence as follows:

---

---

---

---

---

---

---

---

---

---

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Respectfully submitted,

\_\_\_\_\_  
(your signature)  
(your typed or printed name)  
(your address)  
DEFENDANT PRO SE

cc: name and address of District Attorney

This form was created by the Office of the Wisconsin State Public Defender as a courtesy during a national pandemic. It is for informational purposes only; no attorney/client relationship is intended.