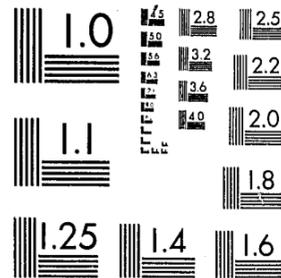


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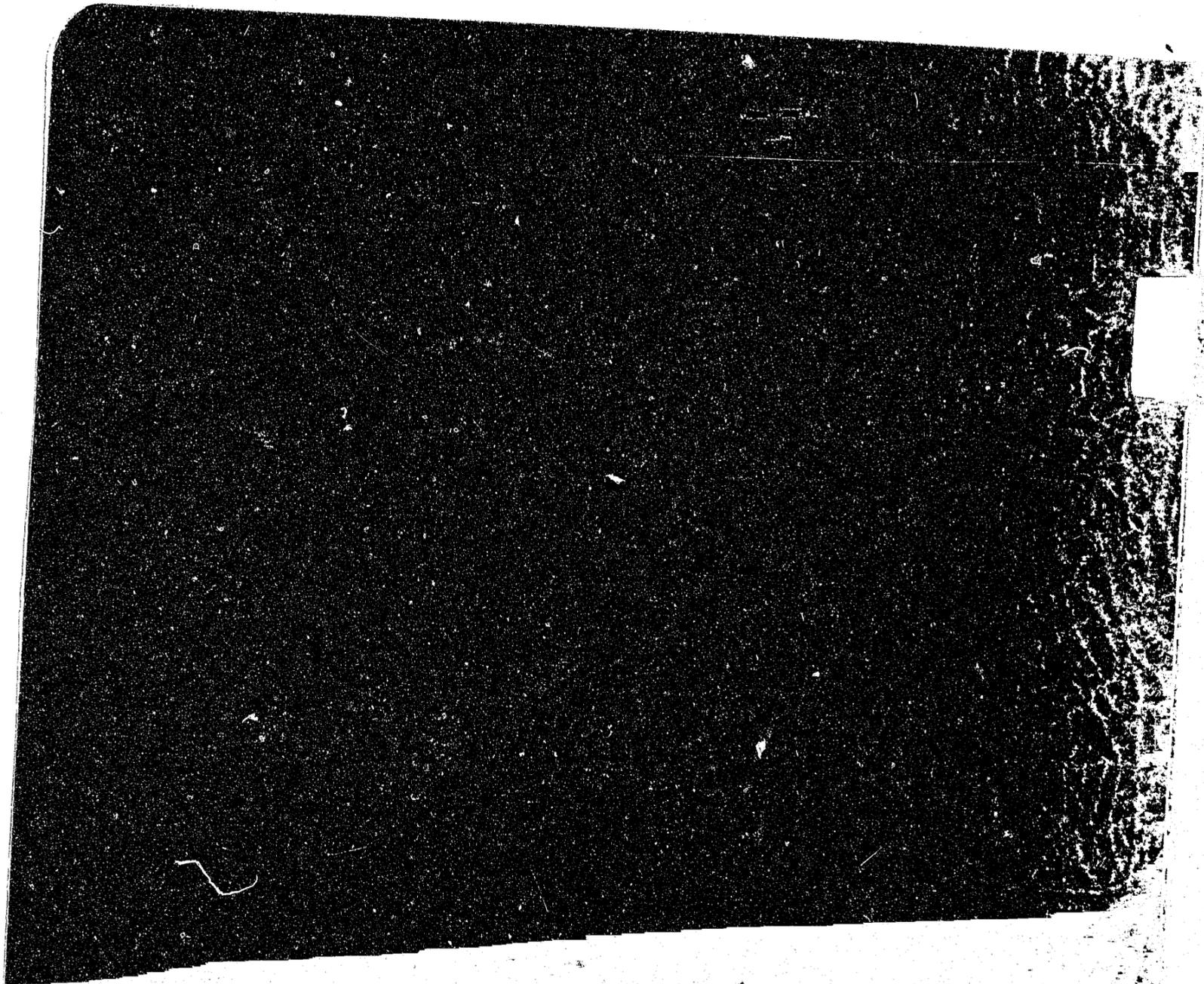
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WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM 78-43

Room 147 North
State Capitol
Madison, Wisconsin 53702

By: Ronald Sklansky,
Staff Attorney
September 18, 1978

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THE WISCONSIN PAROLE BOARD

INTRODUCTION

This Information Memorandum, prepared for the Legislative Council's Special Committee on Determinate Sentencing, briefly describes the historical origin, composition and operations of the Wisconsin Parole Board. Before examining the Parole Board itself, however, this Memorandum will also present an overview of changes which have occurred in the parole system in Wisconsin.

METHODS OF PRISON RELEASE IN WISCONSIN

In Wisconsin's early years of statehood, all criminal sentences were for definite periods of time and were to be fully served. Early discharge for rehabilitation or for good behavior was unknown. In fact, the only reward for good behavior was a lack of further punishment. There existed one method of early release and that was through the use of the executive pardon power by the Governor.

Within the first eight months of the state's organization, three persons were pardoned by the Governor. Basically, this was due to the lack of suitable places for confinement. The state prison at Waupun opened in 1852, but the use of executive clemency increased nonetheless since there was no other means to release prisoners before their sentences expired. For example, out of a total of 85 persons who were discharged from the prison system in 1855, 40 were pardoned (26 persons were pardoned one day short of their expiration dates). From 1852 to 1859, more than 1/3rd of the discharges from prison were the result of executive clemency. The emphasis on gubernatorial release from prison changed dramatically with the initiation of release for good time served in 1860. [See

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Ch. 324, Laws of 1860.] Of the 57 discharges from prison between 1861 and 1862, 51 were good time releases and only five were by pardon. [The source for the above material is Release Procedures in the State of Wisconsin, Gausewitz and Lowitsch, Part I, pages 2 - 8; and Part II, pages 1 - 10, undated.]

Although a system of parole existed for inmates in the state reformatory from 1898, Wisconsin's existing parole process can be said to have started in 1907. [See Ch. 346, Laws of 1897; Ch. 28, Laws of 1899; and Ch. 110, Laws of 1907.] In the 1907 Act, the Board of Control was given the authority to issue a parole to any prisoner in the state prison with the approval of the Governor.

It should be noted that the parole mechanisms for inmates of the state reformatory and inmates of the state prison were contained in separate statutes. Consequently, when the Legislature created the Wisconsin Industrial Home for Women in Ch. 723, Laws of 1913, a separate procedure was created by which the State Board of Control could grant a parole to any inmate of the Industrial Home. The statutes governing the power of parole have been consolidated over the years into one provision which provides, in part, that the Department of Health and Social Services "may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year, or more, in the Milwaukee county house of correction or a county reforestation camp...". [See s. 57.06 (1) (a), Wis. Stats., as affected by Ch. 353, Laws of 1977.]

BACKGROUND AND COMPOSITION OF THE WISCONSIN PAROLE BOARD

The Wisconsin Parole Board of today had as its most immediate ancestor the State Board of Control, which was created by Ch. 202, Laws of 1895. Under that law, the Governor was to nominate, and with the consent of the Senate, appoint five persons to the State's Board of Control. The Board was the management body for the Wisconsin reformatory, charitable and penal institutions. No two of the members were to be residents of the same congressional district, and the same political party could not be represented by all of the members. The members of the Board were to hold office for staggered five-year terms. The sum of \$2,000 was set as the annual compensation for Board members, and offices were provided in the Capitol building where monthly meetings were required to be held.

As indicated previously, the State Board of Control first received the power to grant paroles during the 1897 and 1907 Legislative Sessions. Other changes of interest which affected the Board from its creation in 1895 through the 1935 Legislative Session are as follows:

1. By Ch. 381, Laws of 1905, one of the members of the Board was required to be a woman.

2. By Ch. 403, Laws of 1919, the membership of the Board was reduced from five to three members with the requirement that one of the members be a woman.

3. By Ch. 403, Laws of 1919, the annual salary of Board members was set at \$5,000.

In the late 1930's, the formal structure of the State Board of Control was abolished. The functions of the Board relating to parole were eventually placed in the Department of Public Welfare, the predecessor to the present Department of Health and Social Services. [See Ch. 9, Laws of Special Session 1937; and Ch. 435, Laws of 1939.]

Administrative Order 1.06 of the Department of Health and Social Services prescribes the present structure of the Parole Board. Part I of the Administrative Order states, in part, that:

Since parole is an administrative function of the Department, the Secretary is the ultimate and final authority in all administrative matters pertaining to parole. In the exercise of this authority, the Secretary will consider recommendations for granting parole from the Parole Board.

The present chairperson of the Parole Board is the executive assistant of the Department of Health and Social Services, Mr. Burton Wagner. It is the chairperson's duty to designate a person as vice-chairperson who serves at the pleasure of the chairperson and will assist in the administration and supervision of the Board. The vice-chairperson and the eight other members of the Parole Board are full-time civil servants.

Among the general duties and responsibilities of the Board is the obligation to conduct regularly scheduled interviews on applications for parole of eligible residents at all adult correctional institutions operating under the direction and control of the Department. The Board must also conduct similar interviews at the Milwaukee County House of Corrections. The complete text of Administrative Order 1.06, as revised on March 1, 1977, can be found in Appendix A to this Memorandum.

In a memorandum dated June 20, 1978, from the Secretary of the Department of Health and Social Services, to the present vice-chairperson of the Parole Board, the Secretary delegated certain matters of authority which provide an idea of the Board's organization and lines of decision-making:

1. The vice-chairperson is authorized to review Parole Board recommendations for parole and, if determined appropriate, sign the Secretary's name to the parole order.

2. Recommendations for the parole of assaultive offenders must be made by all three members interviewing the applicant or by a majority of the full Board unless approved by the Secretary, deputy or executive assistant. A recommendation by two of the three members interviewing a non-assaultive case is sufficient for parole consideration. All cases, assaultive or non-assaultive, moved to the full Board must carry majority recommendation to grant parole.

3. Any recommendation for parole that cannot be approved must be referred to the Secretary, deputy or executive assistant with reasons for the disapproval.

4. Emergency parole in which there is insufficient time for regular Parole Board consideration can be extended only with the approval of the Secretary, deputy or executive assistant.

5. All cases of great public interest, first degree murder cases or cases of multiple heinous crimes must be referred to the Secretary, deputy or executive assistant.

SUMMARY

This Memorandum has presented a brief history of the present Wisconsin Parole Board. At this time, the Board is an administrative body within the Department of Health and Social Services. Although the Board is not recognized by specific enabling legislation, the functions of the Board are prescribed by the statutes. It appears that the Board conducts its duties under administrative orders and directives from the Secretary of the Department and there are no published administrative rules in the Wisconsin Administrative Code which regulate the Board.

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POLICY

Order Number 1.06
Originating Date 10-15-68
Latest Revision 3-1-77

SUBJECT: Rules and Regulations Governing the Parole Board

I. Authority

Pursuant to the authority vested in the Secretary of the Department of Health and Social Services under Sections 15.05 (1) (b) and 46.03 (6) (c) the rules, regulations and policies outlined herein have been established to govern the Parole Board.

Since parole is an administrative function of the Department, the Secretary is the ultimate and final authority in all administrative matters pertaining to parole. In the exercise of this authority, the Secretary will consider recommendations for granting parole from the Parole Board.

II. Membership of the Board

A. Chairman and Vice-Chairman

The Deputy Secretary of the Department is hereby designated the Chairman of the Parole Board and is responsible for its administrative supervision. The Chairman will designate one member of the Parole Board as Vice-Chairman who will serve at the pleasure of the Chairman and will assist in the administration and supervision of the Board. The Chairman and/or Vice-Chairman may assign such duties as are deemed appropriate to other members of the Board.

B. Members

In addition to the Chairman and Vice-Chairman, the Parole Board shall consist of eight full time civil service members. (The Vice-Chairman is also a civil service member.) If necessary to discharge the Board's responsibilities, the Chairman or Vice-Chairman may designate a staff member of the Department to serve temporarily as an alternate member.

III. General Duties and Responsibilities

A. Parole Decision Interviews

The Parole Board will conduct regularly scheduled interviews on applications for parole of eligible residents at all adult correctional institutions operating under the direction and control of the Department. It will also conduct interviews on eligible residents at the Milwaukee County House of Correction who apply for state parole.

All interviews will be conducted in a dignified and professional manner with due regard for the rights and feelings of the person appearing before the Board. Established parole criteria will be equitably applied to parole applicants.

III. General Duties and Responsibilities (continued)

No attorney, advocate, or any other person will be permitted to appear in person at a parole interview in support of or in opposition to any application for parole. Interested citizens and attorneys may, however, present their views regarding the application by letter or in person at the Parole Board offices. A memorandum regarding interviews or contacts shall be prepared for the permanent record by the member or members of the Board contacted. All letters expressing viewpoints or offering information will likewise become a part of the parole applicant's permanent file.

- B. The Parole Board will participate in the Mutual Agreement Program and will provide recommendations to the Secretary after negotiations conducted in accordance with the Mutual Agreement Program Manual. Members will participate in other phases of the program as indicated in that manual.
- C. At the time of Assessment and Evaluation Staffing the Parole Board will provide consultative services on each institution resident received at the adult reception centers. The Parole Board will also conduct an orientation meeting with each group of residents going through Assessment and Evaluation.
- D. The Parole Board will conduct parole violator interviews at adult correctional institutions and establish parole eligibility dates in appropriate cases. The Parole Board is delegated the authority to affix the signature of the Secretary to the necessary Department Orders in carrying out this function.
- E. The Chairman of the Parole Board is authorized to assign to the Board any duties deemed appropriate by the Chairman and/or Secretary.

IV. Duties and Responsibilities of the Vice-Chairman

- A. The Vice-Chairman is responsible for the routine conduct and coordination of Parole Board activities. Specific duties include responsibility for:
 - (1) Scheduling of parole decision-making interviews, Mutual Agreement Program negotiations and related matters, Assessment and Evaluation Program and assigning of members to these duties.
 - (2) General administration of the Revocation Hearing Examiner Unit.
 - (3) Personnel matters pertaining to Board Members, other Parole Board staff, budget, expense accounts and general office procedure.
 - (4) Correspondence involving parole procedures and policy.

IV. Duties and Responsibilities of the Vice-Chairman (continued)

- (5) The assignment, processing of and/or resolution (when referral to Chairman is not indicated) of split decisions of Board panels.
- (6) Review and processing of recommendations before their submission to the Chairman of those decisions involving cases in which public interest is a major factor.
- (7) Acting for the Parole Board in the mediation of MAP appeals made to the MAP Supervisor.
- (8) The assignment of routine and special duties to other members as the need requires.
- (9) Representing the Chairman and/or the Board, when indicated, at conferences and in relationship with other agencies, institutions or Divisions both within and outside the Department.
- (10) Modifying, when indicated, parole eligibility dates in cases of sentence modifications or changing circumstances after the Parole Order is signed.
- (11) Submitting to the Chairman recommendations on persons that may require emergency parole consideration such as cases of terminal illness, etc.
- (12) Developing the agenda and, in the absence of the Chairman, presiding at all Parole Board staff meetings.
- (13) Submitting recommendations to the Chairman on matters of major policy and proposing legislation that would improve the parole decision-making process.
- (14) Preparing responses to allegations in legal actions including responses to writ of certiorari in parole denial, working closely with Department counsel and/or the Department of Justice.

V. Schedule of Interviews

A schedule of parole interviews, MAP negotiations and other Parole Board activities shall be prepared and all institutions notified at least thirty days in advance of all such hearings and reviews.

VI. Ethical StandardsA. Personal Integrity

Parole Board membership carries with it a dignity and responsibility that cannot be compromised. Membership on the Board demands the highest standard of personal ethics and integrity.

VI. Ethical Standards (continued)

B. Gratuities

Parole Board members will not accept any favor, service or anything of value from any prospective parolee, any parolee, or former parolee, or from any friend or relative of these persons.

C. Bribes and Threats

Any attempt to bribe, threaten, coerce, or in any way exert pressure on the Chairman or members of the Parole Board shall be reported to the Secretary of the Department in writing, with supporting evidence, so that proper legal or other action may be taken.

D. Confidence of Records

Neither the Board nor its individual members will reveal information of a confidential nature concerning cases or contents of interviews to persons not legally or ethically entitled to receive it.

VII. Parole Board Observers

At the discretion of the Secretary of the Department, the Chairman, or Vice-Chairman of the Parole Board, persons having an authentic civic and/or professional interest in parole matters may be permitted to sit as observers at parole interviews. Such guests shall be seated as inconspicuously as possible and persons appearing before the Board shall be given the opportunity to ask the observer's exclusion during their interview if they so desire. Observers shall take no part in the discussion with the parole applicant. Observers shall normally be limited to no more than two at one time.

VIII. Parole Interview Facilities

Institutions and facilities at which the Parole Board conducts interviews will furnish interviewing accommodations which are appropriate to the importance of the parole decision making process and which provide for the comfort and safety of the Board.

Manuel Carballo

Manuel Carballo, Secretary
Department of Health and Social Services

END