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# **PAROLE: POST CONVICTION RELIEF FOR BATTERED WOMEN WHO KILL THEIR ABUSERS**

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Parole is the release of an inmate from imprisonment but not from legal custody. This procedure was established in this country in the late 1870's as a response to an appeal for a more human approach to prison policies.<sup>1</sup> Before parole, prisoners could only apply for an early release through the clemency process. Adopting parole procedures freed the governors from the burden of having the review and decide every petition for freedom. By 1900, twenty states had a parole system. By 1927 only three states, Florida, Mississippi and Virginia did not grant parole.<sup>2</sup> In recent years, the Parole process has been used not only as a longstanding function of modifying sentences to balance the goals and punishment and rehabilitation but it has also been considered a safety valve by prison officials to help ease tremendous overcrowding conditions.

Over the years, states have modified, and in some cases even abolished, their parole procedures and boards. These changes have primarily reflected the mood of the citizenry regarding the policies on punishment, rehabilitation, mandatory and indeterminate sentencing.

For example, between 1976 and 1979 California, Colorado, Illinois, Indiana, Maine and New Mexico either eliminated or severely limited parole release.<sup>3</sup> In 1990 Delaware abolished parole.<sup>4</sup>

## **Administrative Structures**

Parole boards are generally located within the Executive branch of the government. The governor, (in most states) appoints the members to these

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agencies. In six states, the Cabinet member responsible for prisons makes the appointments.<sup>5</sup> State legislatures have dictated the professional requirements for these appointments in twenty-two states. Six states require an undergraduate degree, and in Iowa board members must have completed a graduate program.<sup>6</sup>

In 29 states the governor selects the parole board chairperson.<sup>7</sup> Six states require the governor to share that appointment power with another official and in three states members of the board select a chairperson from among themselves.<sup>8</sup>

Thirty-one states operate full-time parole boards.<sup>9</sup> In thirteen states the board works part time and in seven states or territories there is a full-time and part-time mixture of personnel.<sup>10</sup>

Parole boards are responsible for the release of prisoners, their supervision upon release (except where the offender has completed a flat sentence) and revocation of parole because of violations. These agencies conduct investigations and hearings to determine the offender's fitness to return to society. Parole boards have the final word on whether an inmate will be released, after that person has served a statutory minimum. Generally their decisions are not appealable.

## **Hearings**

Depending on the state's size and statutory requirements, a parole board will conduct hundreds, (and in the case of larger jurisdictions, thousands) of hearings a year. For example, in Ohio, in 1990, 16,948 inmates came before that body for one of the following types of hearings: Shock Parole, Furlough, Statutory First Hearing, Continued Hearing, Review Hearing, Revocation Hearing and Clemency.<sup>11</sup> Forty-two percent of those inmates were released. In 1980, the release rate was sixty-one percent.<sup>12</sup>

## **Parole Guidelines**

Parole boards are most concerned about the risk of releasing a felon back to the community. States have established release criteria that fall into two major categories; guiding principles and grid guidelines. Guiding principles are more flexible than the statistical or actuarial tables that are used in the grid system. Parole boards use these criteria in an attempt to predict recidivism.

Nine states use the grid guidelines that have the components of:

- 1) time served
- 2) severity of offense
- 3) risk assessment<sup>13</sup>

Ohio, Pennsylvania, South Carolina and Texas assign an offender score and then consult a matrix guideline to determine eligibility for release.<sup>14</sup> According to a survey by Petersilia and Times,<sup>15</sup> the five most commonly used criteria are:

- 1) Number of parole revocations
- 2) Number of adult or juvenile corrections
- 3) Number of prison terms served
- 4) Number of incarcerations served
- 5) Violent or non-violent nature of crime

In most instances, parole board members can factor in mitigating circumstances that will allow them to deviate from the guidelines, if they so choose.

While the primary considerations for parole will be made based on the person's crime, characteristics, and institutional adjustment, most parole procedures also allow for input from victims, prosecutors and judges. Of these three categories, prosecutors are more apt to respond to a request for input.<sup>16</sup>

## **Battered Women and Parole**

Battered women who kill their abusers ought to be good candidates for parole if the decision to release is based on the risk to the community and the offender's characteristics. It is generally accepted knowledge that the overall recidivism rate for murderers is lower than that for other kinds of felons.<sup>17</sup> Institutional adjustment for these women are typically non-problematic. They are considered, in the words of one warden, "the good girls" of the prison.<sup>18</sup>

Sentences for these women tend to be very long. According to a 1991 Bureau of Justice Statistics report, women convicted of murder had the longest sentences, serving just over 16½ years.<sup>19</sup> In Ohio, 83.7% of the women surveyed who had seriously assaulted or killed their abusers received sentences ranging from twenty-five years to life.<sup>20</sup>

Deciding whether to apply for clemency or parole will be dictated by a number of factors including the eligibility of the women for parole, gun specification laws (to be discussed below), time left to be served on a sentence, the interest and aggressiveness of the parole board and the governor in battered women, the political climate and the type of sentence being served (i.e. death row vs. manslaughter).

When there is a weapon involved, states with a weapon specification law (commonly referred to as a gun spec) will require that before an offender can be considered for parole, a certain number of years must be served. For example, in Ohio that commitment is three years, which is not diminished by good time or earned credit. In such cases, the woman who has been recently sentenced may want to apply for clemency, if no corresponding weapon-related requirement is applicable.

In states like Ohio where crowding is a significant problem, there may be an Emergency Power Act, where the governor or legislature can release certain prisoners because of crowded conditions. While persons who have committed violent crimes are not normally first in line for release, an argument could be

made that battered woman are among those who should be given serious consideration.

The process for parole is similar to that of clemency.<sup>21u</sup> The major difference is that the board's determination is final and certain conditions can be imposed upon the parolee by the parole board as a condition of release.

### **Political Realities**

Because of the political climate of "getting tough on criminals," there may be initiatives to remove the discretionary release power of parole boards. Parole board personnel, even when protected by civil service, are greatly influenced by politics. Depending on the amount of political astuteness and insulation, the boards can also become political and undermine the policies of a governor or even the legislature by going to the media about intra- and interbranch disagreements.

When parole boards become highly visible and are criticized there is the bureaucratic tendency to become more conservative and perhaps even reactionary. If petitions are processed in this type of climate, the scrutiny is heightened and good candidates for parole may find their releases delayed.

There is no indication that the criticisms concerning the parole system are on the wane. In election years, the scrutiny of releasing felons, no matter how justified, is even stricter. However, despite this climate, considering prison overcrowding and the special circumstances of incarcerated battered women, parole boards that are educated by lawyers and advocates may be willing to consider release, if the case is made that these women are not a threat to society.

## ENDNOTES

1. Edward Rhine et al., *Paroling Authorities, Recent History and Current Practices* (1991).
2. *Id.* at 11.
3. *Id.* at 25.
4. *Id.*
5. *Id.* at 37.
6. *Id.*
7. *Id.* at 50.
8. *Id.* at 50.
9. *Id.* at 51.
10. *Id.* at 52, 53.
11. The Department of Rehabilitation and Correction, State of Ohio. The Ohio Parole Board (1990) at 1.
12. *Id.*
13. Rhine, *supra* note 1 at 67.
14. *Id.*
15. Joan Petersilia and Susan Turner, *Guideline Based Justice: Prediction and Racial Minorities, in Prediction and Classification 158*, (Don Gottfredson et al. eds., 1987).
16. Rhine, *supra* note 1 at 76.
17. Parole Risk of Convicted Murders (National Council on Crime and Delinquency Research Center/Uniform Parole Reports of the National Probation and Parole Institutes, Davis, CA.) Dec. 1972 at 2.
18. Interview with Harry Morris, Warden, Ohio Reformatory for Women, Marysville, Ohio in Marysville, Ohio, September, 1990.

19. Bureau of Justice Statistics, U.S. Department of Justice, Women in Prison (1991) 1.
20. Ohio Department of Rehabilitation and Corrections, Report and Research on the Battered Spousal/Woman Syndrome As It Affects The Ohio Department of Rehabilitation and Correction, Columbus, Ohio April 1990.
21. See Linda L. Ammons, Clemency: Post Conviction Relief for Battered Women Who Killed Their Abusers, American Bar Association National Institute on Defending Battered Women in Criminal Cases (1993) at Section F.