COLORADO COURT OF APPEALS **2 East 14th Street, 3rd Floor** **Denver, Colorado 80203**	
District Court, Logan County, Colorado Case: 05CV216 **110 Riverview Road, Box 41** **Sterling, Colorado 80751 Honorable Judge Michael Singer**	
THOMAS WILLSEY AND DAN IMMEL, **Appellants-Plaintiffs** **v.** **BILL OWENS: Governor-State of Colorado** **ALAN STANLEY: Chairman-Colorado Board of Paroles** **BOARD MEMBERS: Colorado Board of Paroles** **JOE ORTIZ: Executive Director-Department of Corrections** **CASE MANAGERS: Colorado Dept, of Corrections** **Appellees-Defendants**	**COURT USE** Only
Thomas Willsey, DOC# 63529 **CMRC-2925 E. Las Vegas** **Colorado Springs, CO 80906** **and,** **Daniel Immel DOC # 57862** **1651 Kendall St.** **Lakewood, CO 80214**	
	CASE NUMBER: **06CA718**

OPENING BRIEF

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Thomas Willsey, D.O.C. No. 63529 CMRC-2925 Las Vegas Colorado Springs, CO 80906 and, Daniel Immel, D.O.C. No. 57862 1651 Kendall St. Lakewood, CO 80214	Case Number: **06CA718**

OPENING BRIEF

INTRODUCTION

COMES NOW, The Plaintiff's-Appellants, **Daniel Immel** and **Thomas Willsey**, pro se, by and through Plaintiff-Appellant Thomas Willsey, do hereby tender their **APPEAL** from the trial court's dismissal pursuant to **C.A.R. 3(a)** with this **OPENING BRIEF.**

NATURE OF CASE

This case that was filed in the 13th District Court in Sterling Colorado, County of Logan on September 16th, 2005. Appellants were asking for **"Declaratory Relief"**, the complaint asserted, that Governor Owens, the Colorado Parole Board, and the Colorado Department of Corrections were incorrectly and improperly applying the Statutory Guidelines for Parole consideration found in **C.R.S. 17-22.5-404.** In addition, the Appellants asked for **Class Action Certification** because similar claims apply virtually to all inmates who committed their crimes between **July 1, 1985 and July 1, 1993**. Many affidavits were filed in support of the claims. The Appellants asked for clarification of their rights under **C.R.S. 17-22.5-404** Pursuant to **C.R.C.P. Rule 57.** The

Colorado Attorney Generals Office Represented the Appellees and filed a **Motion to Dismiss.** Appellants Complaint on October 28, 2005. On November 8, 2005, Appellants filed a **Motion to Proceed with the Case in Forma Pauperies** and a **Reply to the Defendants' Motion to Dismiss Complaint.**

On November 30, 2005, the Honorable Judge Michael Singer entered an **Order Granting Defendants' Motion to Dismiss Complaint, Subject To Privilege to Amend.** In said order, the District Court ruled that the **"Declaratory Judgment"** was an inappropriate vehicle to examine that status of a prisoner of the Department of Corrections (DOC). The Plaintiff's did **not** seem to be challenging the constitutionality of the parole statute, and that the Plaintiff's failed to state a claim upon which relief could be granted. The Order also states "the court **Granted the Forma Pauperies Status"** on November 15, 2005, and allowed Plaintiff's time to amend complaint, but denied Class Action certification and appointment of counsel.

On December 1, 2005, the Plaintiff's also filed a Motion for **Jury Demand** pursuant to **C.R.C.P., Rule's 38 (b) and 57(m).** On December 12, 2005, Judge Singer **Denied Jury Demand** under **C.R.C.P. Rule 106 (a) (2).**

On December 20, 2005, the Plaintiff's filed a **MOTION FOR EXTENSION OF TIME** to File Amended Complaint. The Court granted said Motion. On January 17, 2006, Plaintiff's filed their **Amended Complaint** that re-asserted their original claims and averred some new claim's pursuant **42 U.S.C. 1983 under C.R.C.P. Rule 106.** On January 27, 2006, the defendants filed a **Motion to Dismiss Amended Complaint.** However, "it does not appear" that the defendant's have not asserted *any kind* of defense to the new claims asserted in the Amended Complaint.

On March 23, 2006, the trial court entered a final **ORDER** granting the defendant's **MOTION TO DISMISS AMENDED COMPLAINT.**

Plaintiffs have filed a **NOTICE OF APPEAL** and **DESIGNATION OF RECORD** on April 12, 2006 and are now prepared to bring this **APPEAL** forward.

ISSUES

I. Whether the trial court erred by denying **Declaratory Judgment** to Plaintiff's, by finding that the court had no jurisdiction, and that it was an improper approach for the Plaintiff's to take.

II. Whether the trial court erred by denying **Class Action.**

III. Whether the trial court erred by denying hearings to determine genuine issues of fact and the controversy concerning whether the Parole Board is following **The Statutory Guidelines** for determining whether or not to grant parole.

IV. Whether the trial court erred by failing to determine the **"DUE PROCESS"** rights of inmates under parole statute's **17-22.5-404,** As intended by the Colorado State Legislature.

V. Whether the Trial Court erred by **failing to recognize** that the **defendants failed** to assert any kind of defense against the Plaintiff's' new claims in the AMENDED COMPLAINT pursuant to **42 U.S.C. 1983** and **C.R.C.P. 106.** Thereby making the Plaintiff's new claim's **admitted to.**

VI. Whether the Trial court erred by determining it had no jurisdiction to **appoint counsel.**

VII. Whether the Trial Court **erred** by not discerning and finding the ambiguity created in **C.R.S. 17-22.5-404(2) (b)** as asserted by the Plaintiff's.

VIII. Plaintiff's are asking the Court for **clarification** of all the components mentioned in **17-22.5-404**, in it's entirety. Inmates are not getting any kind of answers from the agencies or individuals who have the information that is vital to knowing how to get paroled. There are **criteria's** that are mentioned in the parole statutes that are supposed to guide the Parole Board, Department of Corrections, and the Department of Justice. (*See exhibits* 2, 3, 4, 5, & 6)

SUMMARY

In the Plaintiff's complaint, they were asking the District Court to review the **Parole Statutes** of **C.R.S. 17-22.5-404,** and to see if the Parole Board and Case Managers are applying the statute's **properly** and **correctly**. Plaintiffs contend the Parole Board in its actions *are not* following the statute's as it is written, and this is creating conflicts with the **"Actual Practices"** of the Parole Board. Inmates are not asking for **release, compensation** or a **new hearing** as the Attorney General and District Court implies, but would like some interpretation and clarification of the parole laws that were in place when the mentioned Class Action of inmates/prisoners that were sentenced to the Department of Corrections.

The Plaintiff's believe that the Parole Board appointed, by the Governor, have strayed from their mission, and *are not* using the parole guidelines approved by the state legislature's, this is causing the prison population to swell with the mentioned Class Action of inmates being kept years beyond their parole eligibility date.

Inmates/prisoners recognize that the Parole Board *does have* the discretion to grant or deny parole, providing that they follow all of the "**Guidelines**" set up by the States Legislature's. The decisions that are now being made have the appearance of a ***no parole policy*** with 9,000 + (plus) inmates who are past their parole eligibility. Appellant's, after going before the Parole Board several times and having talked to hundreds of inmates in State and Private Prisons, along with several Case Managers, and with experts and advocates over the years that the Parole Board seems to be following the Governors own philosophy of no parole that has been aired in the Public and Press before and after Governor Owens was elected.

ARGUMENT

THE ISSUES RAISED AND CLAIMS PRESENTED ALONG WITH THE CASE CITES BRING FORTH QUESTIONS CONCERNING CONSTITUTIONALITY AND THE AMBIGUITY OF THE COLORADO PAROLE LAW, AND THE PROCEDURES USED TO IMPLEMENT THOSE LAWS MAKE IT CLEAR THAT INMATES HAD A RIGHT TO HAVE DISTRICT COURT RULE ON THE CLAIMS PRESENTED.

Plaintiff's are in similar situations and as are many inmates sentenced between **July 1, 1985 and July 1, 1993.** The court could have **certified** this as a Class Action and could have **appointed** counsel to bring about a fair and just decision to all. There are over 9,000 plus inmates who are past their parole eligibility with many in the mentioned Class to say the Parole Boards interpretation of the parole statutes is absolute and not challengeable for clarification under a **Declaratory Judgment.** This pro se Plaintiff's believes that a closer look at the **CRS 17-22.5-404** sections of the **Parole Law** will show that the Parole Board Members ***are not*** following the statute as it is written, thus not following the Legislative Intent. The Plaintiff's recognize that the Parole Board retains extensive discretion in determining the appropriateness for parole for each and every particular prisoner or inmate; ***never the less*** the **Parole Board** is not at liberty to deny arbitrarily and

capriciously parole **authorized** by **State Statute**. While the parole statutes conferred no liberty interest in parole, it did not grant the parole board absolute discretion to use sections of the statutes that were meant for other purposes, like determining the conditions and the length of parole.

The Parole Board guidelines are rules and instructions designed to **direct** the Members of the Board so **they** do not abuse their discretion by increasing the **uncertainty** in the application of the parole statutes. Inmates are only asking for **clarification** in the way parole statutes in **17-22.5-404** is being **applied.** It appears that the Parole Board's interpretation of the State's Statute's concerning inmates in denying or granting parole is creating an ambiguous response by not following the Statutes as it is written. Clearly **Sections 2, 3,** and **4** of the Parole Statute **cannot** be reasons for granting or denying parole, **but** only for setting the **length** and **conditions** of parole. Inmates believe the legislative intent of the parole statutes were to be applied as it is written, and not the way the Parole Board is applying the mentioned Statute. There are many ambiguous interpretations between the Parole Board Members, D.O.C. Case Managers, and the inmates as to what it takes to gain parole.

The Department of Corrections and the Department of Public Safety both say they have no input into the decision making process. If this is true, then why does **17-22.5-404 (6)** state, "The three departments" ***will work together*** to develop an "Objective Parole Criteria," and keep statistics on what is successful. Inmates are only asking for **clarification** to what the **"Objective Parole Criteria"** is so that inmate/prisoners can work towards gaining parole. Inmates believe they have a limited right to know what the **Objective Parole Criteria is, and how it is administered.** (see: exhibit 7, page 5)

The Plaintiff's are asking the same questions of the **APPEALS COURT** as was asked of the District Court, there appears to be **ambiguity** in this part of the parole laws of **17-22.5-404(2)(b)?** Can the Parole Board Members take any sections of the statute and use it to deny parole, even if the sections are supposed to be used to ***set*** the **length** and **conditions** of **parole?** If this is true then the statute appears to be conflicting and confusing in the way it is being interpreted and applied by the Parole Board Members. Also, when members contradict the **statutes** and make off the wall comments have they crossed the line and violated legislative intent? The comments **also** create an uncertainty as to what the inmates have to do to gain parole or even **work** towards parole. Inmates cannot find out what **tools, instruments** or **formulas** that are being used in making their decisions. Inmates are only asking for **clarification** in the form of a **"Declaratory Judgment"**.

RULE 57, DECLARTORY JUDGEMENT

Plaintiff's filed a complaint in the form of a "**Declaratory Judgment**" seeking only **clarification** of the statutes and sections of **17-22.5-404** that are being used in **denying** and **granting** parole.

Plaintiff's utilized the recent **Supreme Court Ruling** of ***Wilkerson v. Dotson*** 125 S. Ct. 1242 (2005) holding that inmates/prisoners could **challenge** the **constitutionality** of State Parole proceedings in actions under **1983 "Declaratory Judgments"** and injunctive relief if the Plaintiff's were **not** seeking monetary damages or asking for release, the original complaint only sought relief with utilization of **C.R.C.P. Rule 57 "Declaratory Judgment".**

In the Attorney Generals reply and the District Courts Ruling, both the original and amended complaint **missed** the boat when **they** said plaintiff failed to state a claim, and that **Declaratory Judgment** was not the proper vehicle to examine the status of prisoners in the Department of Corrections. Defendants cite, ***Taylor v. Tinsley***, 138 Colo. 182, 330, P2d 954(1958). The court and the Attorney General suggest that the only remedy available is a **Habeas C.R.C.P. 106(a) (4)** proceeding. The Plaintiff's **disagree** as Habeas is an action seeking **release, shorting** their term or seeking a **new** Parole Board hearing. This is **farther** from the **truth**. Plaintiff's

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have **only** sought a procedural clarity in the Parole Boards ability to access and use other parts of the "Parole Guidelines" **especially** under CRS 17-22.5-404(6) **"Titled Objective Parole Criteria."**

Defendant's failed to address the true issues of the complaint, that is: the uncertainty and insecurity being raised by the Plaintiff's concerning **C.R.S. 17-22.5-404** used by the Defendants implementation and executions of that Statute.

"Relief in the notice of a Declaratory Judgment will be afforded in appropriate circumstances to those persons who claim uncertainty and insecurity with respect to their rights under a penal law.
Ratheke v. MacFarlane 648 P2d. 648 (Colo. 1992).

The purpose of a **Declaratory Judgment** Action is to terminate a controversy, giving rise to the proceeding, in situations where the parties face some uncertainty regarding their legal relations
People v. ex-rel-Inter Church v. Baker, 133 Colo. 398, 404, 297 P2d 273, 277(1956).

"Declaratory relief under this rule is an appropriate means of challenging Administrative Governmnet Action that are not subject to review under **CRCP 106(a) (4)."Chellsen v. Pena**, 857 P.2d 472 (Colo.App. 1992).

"The rights or status to a declaratory judgment extends to a party who claims to be adversely affected by regulation." **Martinez v. Department of Human Services**, 97 P.3d 152 (Colo.App.2003).

"One whose rights are affected by **statute** my have its construction or **validity** determined by a declaratory judgment." **Tonclay v. Dolan**, 197 Colo. 382, 593 P.2d 956(1979).

"One whose rights are favorably by statute is entitled to seek a judicial determination, so long as the court is provided with a proper adverse context." **Silverstein v. Sisters of Charity**, 38 Colo. App. 286, 559, P2d 716 (1976).

"One whose rights or status may be affected by **statute** is entitled to have any question of construction determined provided that a substantial controversy between adverse parties of sufficient enough to the issuance of a declaratory judgment exists." **Silverstein v. Sisters of Charity**, 38 Colo. App. 286, 559, P2d 716 (1976).

"When the questions presented are **not** uncertain or hypothetical, and they are presented in an action seeking a Declaratory Judgment, they are **no less** justifiable than if presented by injunction or otherwise".
San Luis Power & Water Co. v. Trujillo, 93 Colo. 385, 26 P2d 537 (1933)

Seeking Declaratory Judgment is proper concerning the issues is proper. In **Wilkenson v. Dotson**, 125 S. Ct. 1242 (2005). The Supreme Court held that prisoners/inmates could challenge constitutionality of state parole proceedings in action under **1983** seeking **Declaratory Judgment** and **Injunction Relief** if the Plaintiff's were **not** seeking **Money Damages** or **Release.**

CLASS ACTION & APPOINT OF COUNCEL

The Parole Board is appointed by Governor Owens and is sworn to up hold the Parole Laws seems to have lost its way in the lock um up, and keep um locked up in the late 80s and 90s to the present date. Inmates in the Class Action believe the Parole Board is using **parts** of the statute that are made to set the **length** and **terms** of parole and **not** the **denial** of parole. Inmates used the **Declaratory Judgment** route as they were **not** asking for

release or monetary gains, but only would like some **clarification** as to what exactly is the **"Objective Parole Criteria," and how does one gain parole??** (see Exhibit 4 & 5

In asking the District Court for **Class Action** status for inmates sentenced between the dates **July 1, 1985 and July 1, 1993**, inmates who are under what is sometimes called the "**Discretionary Parole Laws**" have similar issues and questions that apply to hundreds and possibly thousands of inmates in Colorado State, Private and out of state prisons. "**Rule 23**" of the **Colorado Rules of Civil Procedures** provides the mechanism as the Class Action mentioned is so numerous that joinder of all members would be impracticable. There are questions of law and facts that are common to the mentioned Class Action. Clarification concerning their status pursuant to **17-22.5-404** is paramount to inmates of this Class Action as it would bring a fair and efficient adjudication to this controversy.

It also appears that this Class Action of inmates and the state would benefit from **appointment** of a Lawyer because of the number of inmates involved and the distances of inmates in the Class Action. Willsey and Immel (Plaintiff's) have constraints that may cause impairments to the Class Action. Certifying as a Class Action with appointment of counsel would be of benefit to all, and would bring justice to the Class Action.

Procedure Rule allowing Class Action status is intended to promote efficient resolutions of claims involving multiple parties with similar claims to eliminate repetitive litigation, and to avoid inconsistent judgments, Prescribe procedures to represent careful balancing of need for efficiency with the need of adequate protection for individual members of the Class Action Action. (See **Gottileb v. Wells** 11F3d 1004(10th Cir. 1993)

"Class Action certification is discretionary with the trial court judge, and maybe altered, expanded, subdivided or abandoned as the case develops." **Vaszlavik v. Storage Technology Corp.**, 183 F.R.D. 264 (D.Colo.1998)

"Whether Class Action is Superior to other available methods for the fair and efficient adjudication of the controversy, and whether a Class Action is a superior method of adjudicating such controversy constitute an area which calls for the exercise of discretions." **Federal Rules of Civil Procedure Rule 23 (b)(3), 28 U.S.C.A.** (D.Colo.1971) **Alameda Oil Company v. Ideal Basic Industries Inc.**326 F. Supp. 98 (D.Colo.1971)

"Criteria for assessing adequacy of representation for the purpose of Class Action certification include whether the Plaintiff has common interest with the Class Action members and whether the representative will vigorously prosecute the interests of the Class Action through qualified counsel."
Federal Rules of Civil Procedure Rule 23(a)(4), 28 U.S.C.A. Vaszlavik v. Storage Technology Corp., 183 F.R.D. 264 (D.Colo.1998)

Non-Attorney suing pro se was not adequate Class Action representative. **Fymbo v. State Farm & Cas.Co.** 213 F3d 1320 (10th Cir. 2000)

"Dismissal of a complaint for failure to state a claim is reviewed de novo." Federal Rules of Civil Procedure Rule 12(b)(6), 28 U.S.C.A. **Fymbo v. State Farm & Cas.Co.** 213 F3d 1320 (10th Cir. 2000)

"District Courts finding that plaintiff was not adequate Class Action representative was viewed for abuse of discretion." **Federal Rules of Civil Procedure, Rule 23(a)(4)**, U.S.C.A. **Fymbo v. State Farm & Cas.Co.** 213 F3d 1320 (10th Cir. 2000)

"District Courts finding that Plaintiff was not adequate Class Action representative were reviewed for abuse of discretion." **Federal Rules of Civil Procedure, Rule 23 (a)(4), 28 U.S.C.A. Fymbo v. State Farm & Cas.Co.** 213 F3d 1320 (10th Cir. 2000)

"Federal cases under **Federal Rule of Civil Procedure 23** are persuasive because Colorado Rules under Civil Procedure is virtually **identical** to the **Federal Rule.** "**Goebel v. Dept. of Institution**, 764 P2d 785 (Colo.1988) **Higley v. Kidder, Peabody & Co.** 920 P2d 884 (Colo.App. 1996)

DUE PROCESS

Plaintiff's believe the evidence will show that the Governors Appointed Parole Board and Department of Corrections are ***abusing*** their authority by abusing and/ or denying the substantive and procedural **Due Process** required by Colorado Law when considering inmates parole suitability. Plaintiff's know there is no right to parole, that has long been established. however, Plaintiff's also believe there is a measure of Substantive and ***Procedural Due Process*** required concerning the decision-making process Concerning the Parole Boards mandate by Colorado law, especially **CRS 17-22.5-404** concerning parole guidelines.

Willsey and Immel (Plaintiff's) have been eligible for Parole for several years as has those in the Class Action, and have been turned down for parole in what appears to be the use or non use of the sections of Parole Statutes of **17-22.5-404**. There are 8 parts to this statute. The Parole Board members, along with Mr. Stanley, Board Chairman, Routinely claim they are following **17-22.5-404** which includes the ***mandate*** for the Board to use the "**Colorado Actuarial Risk Assessment Scale**" (**CARAS**). The Plaintiff's and those in the Class Action believe this to be a false claim of the Parole Board. The Board consistently and routinely denies parole applications based on **three** primary reasons: ***a) Aggravating Circumstances, b) Public Risk, c) Needs More Time***. These questions need clarification as to what are the underlying reasons and justification based upon, other than the crime the Plaintiff's were sentenced for? *All* of these issues were taken into consideration when the Plaintiff's were ***sentenced***.

According to **CRS 17-22.5-404**, "**Aggravating Factors**" are to be considered when determining the "**length** and **conditions** of parole"; not whether or not parole should be granted. Those guidelines are outlined in separate subsections of **17-22.5-404**. Furthermore, it is clearly apparent that the Board seems to be abusing its use of the **Colorado Actuarial Risk Assessment Scale (CARAS)** tool. They seem to ignore the score when it is favorable to the inmate, or they contradict the score on the "Parole Boards Action Form" by stating that the inmate is a **public risk** or **parole risk** when in fact the score is **Zero** or **low**. Colorado law provides that a Parole Board Member can be removed from the board for failure to utilize this Scale; Plaintiff's need **clarification** as to what constitutes ***not*** utilizing it. How can an inmate score **Zero** or **Low** points and still be labeled a Public Risk or Parole Risk, especially if he has had a clean prison record and a low custody rating that would support he is not a Risk? See: exhibit 7, page 5

It should be noted that inmates/prisoners who are sentenced for **aggravating** factors have served more **prison** time to begin with **before** becoming eligible for parole.

Parole Guidelines under **CRS 17-22.5-404** are to be utilized for determining Parole **Suitability**, and the **length** and **condition** of Parole. This needs **clarification**.

Section **17-22.5-404(2) (a) (I)** through **(XIII)** are to be used to **determine** whether or not to **grant** parole, in addition to use of the "Risk Assessment Scale" Pursuant to section **17-22.5-404(6)**.

Then sections **17-22.5-404(3)** "**Aggravating**" criteria," and **17-22.5-404(4)** "**Mitigating** criteria" are to be used "to **determine** the **length** and **conditions** of Parole".

17-22.5-404 (6)(a) says, "It is the **intent** of the **General Assembly**" that the **Objective Parole Criteria** is intended to be used by the State Board of Parole as additional consideration in determining whether to grant or deny parole for an offender who is eligible.

17- 22.5-404(6)(b)(d)(e)(f) Gives **further** directions and guidelines that ***not only*** include the Board of Parole, but the Department of Corrections and the Dept. of Public Safety, and a Commission on Parole Guidelines to be used by the State Board of Parole in making decisions based upon factors defined in this section.

In addition, Section **17-22.5-404(7)(a) mandates** responsibility to the Parole Board to" **implement ALL aspects of sections**.

Inmates believe that the 13th District Court had the authority to review the Claim and could have **certified as a Class Action and appointed counsel** in the interest of justice. The District Court appears to have shrugged its duties in passing up this very important issue that affects several hundred inmates and their families with the tax payer footing the bill for the errors being made by the Governors appointed Parole Board. Inmates both Men and Women are lingering in prisons because the Parole Board fails to recognize and apply appropriate statutes. Inmates recognize they have **Minimum Protections** of the **Due Process Clause**, but it is ***still*** protections regardless what the District Court and the Attorney General say. If the Parole Board used the Proper Sections of the Statutes that the legislature approved there would not be over **9,000 +** (plus) inmates past their **Parole Eligibility**.

When the Parole Board Member **checks a box** on the **Parole Action Form** and there is no explanation **or** written reasons for the denial. Plaintiffs believe that they have some sort of an **explanation is** in order as to how they reached those conclusions. As of now it seems to inmates that the Board Member had made up their mind before the inmate was seen at the hearing, or there is some sort of secret **formula** being used that the **inmates** cannot find out how the Board Member reached their conclusion. In many cases the Department of Corrections Case Managers say they are just as baffled as to why one is denied or how they reached the conclusion. No one seems to know what the **"Objective Parole Criteria"** is or if they **know** they are **not** telling the inmates.

The Parole Board Guidelines are rules or instructions designed to direct so that they don't abuse their discretion. **These guidelines are principles** set up by the legislature to help govern the Parole Board in which manner its business **shall** be conducted.

The Plaintiff's in this case argues that although we have no liberty interest in Parole we have a **Due Process Right** to be **fairly** considered for parole when we become **eligible**. Plaintiffs contend that the defendant's reliance on other sections of the Parole Statute and **comments** made by the defendants in order to deny them parole violates this minimum DUE PROCESS RIGHT.

Plaintiffs believe that these claims are recognizable under Colorado Law as Plaintiff's are challenging the Parole decision making, not the **outcome**. Plaintiff's claims are about **Due Process** being denied use of **proper** parole **procedures.**

Plaintiff's recognize that the Parole Board retains extensive discretion in determine the appropriateness of parole for each particular prisoner, **never** the less , the Parole Board is not at liberty to deny arbitrarily and capriciously parole authorized by state statute. While parole statutes conferred no liberty interest in parole, it did not grant the Parole Board discretion to use sections of the statutes that were meant for other purposes like determining conditions of parole and length of parole that has been going on for years.

A Simple question to the Appeals Court: ***"why would the State Legislature distinguish between specific sections for specific phrases and purpose, if their intent was to allow the potential free reign in the decision making process with no guides". Plaintiff Inmates contend there is rhyme and reason behind the specific sections of* 17-22.5-404 *that the state of Colorado passed into law?***

All Prisoners/inmates potentially **eligible** for Parole **have** a liberty interest **regardless** of Particular **Statutory** Language. **BOP v. Allen**, 96 L.Ed 2nd U.S. 482, Page 309.

Decision of the Board to deny parole is not an abuse of discretion as long as there is sufficient evidence before the board to support its decision **Mulberry V. Neal**. 06F Supp.2d 1149

PAROLE ACTION FORM (PAF)

The PAF **used** by the Parole Board Member, and Department of Correction Case Managers to deny parole under the guise that **17-22.5-404 (2)(b)** statue **covers all** creates **ambiguity** that leaves **the** door wide open for abuse, and leaves the inmates in uncertainty as to what guides them towards parole. In reading the statute, Plaintiff's have several issues of fact and controversy concerning the Parole Boards action.

The parole hearing itself **produces** a **controversy** when looking at the PAF; the Parole Statutes produce some conflicts with those involved. **The** Department of Corrections Case Managers can score the inmate a **Low** or **Zero** by using the "Risk Assessment Scale **Mandated** by statute, and the Parole Board Member will call the inmate a parole or public risk. The inmate could have completed **all required** programs, treatment or Class Action and the Parole Board Member will make the **same** recommendations as if the Parole Board Member had not reviewed the file or listened to the Case Manager who comes to the hearing 1st and goes over what the inmate has done during the past year or years leaving the impression that the Parole Board Member had not reviewed the inmates file or paid any attention to what the Case Manager had gone over or reviewed. Very few inmates see the same Parole Board Member the next year, so if one Board Member made a recommendation for the inmate to take a Class, get a Trade, see Mental Health, go to ARP, GED The **new** Board Member does not recognize what the previous Parole Board Member has told the inmate, and may even recommend something else or the same thing. It seems that one Board Member does not know what the other one has done in the previous year. The inmate is **left** in the *dark* as to what they have to do to **gain** parole. One Board Member may recommend something else or just check a box and send the inmate away to do another year or several years wondering what the **"Objective Parole Criteria"** is.

A closer look at the **PAF** will divulge that there are no places on the form that would show what the inmate has done before coming to prison or during the inmate's incarceration. There is no way of knowing if the Board Member has even looked at an inmate's record and file before or during incarceration in making their decision. When asking DOC Case Managers, they say they did not know what the Board Member based their opinions on.

It should be noted that the Department of Corrections no longer **submits** an official **pre-parole plan** investigation. The Department of Corrections in the past would request this plan pursuant to **D.O.C. AR 550-08** "**Pre-parole Planning**, and Parole Board **Presentation**, Parole **Release**." Plaintiffs believe that this practice and procedure was **common** until Owens became Governor, as there now were fewer inmates getting paroled. It seems to Plaintiff's that an inmate **verified** parole plan would be of some **importance** when making a **decision** to grant or deny parole.

On the PAF, the Parole Board Member will mark "**needs more time**" or "**aggravated circumstances,**" "**inadequate time** served." This gives the appearance that the Parole Board is holding **a** sentencing hearing, and not a parole hearing. The inmate must have served enough time or the inmate would not be before the Parole Board. The aggravated circumstances and needs more time were dealt with at the original sentencing hearing years before. There are no clear markings on the PAF that gives an inmate some indication on what the "**Objective Parole Criteria**" is or how to work towards parole most of the time just checked boxes without any explanation from the Parole Board Member or the inmates Case Manager. See exhibit

Plaintiff Willsey has been **told** by Board Members that they wanted to see him **Progress** or **Transition** through Community Correction, ISP, and stabilize **implying** that his would help gain parole in the future. In **reality** neither the Parole Board **nor** the Department of Corrections can help the inmate get to the **recommended** Community Correction Program. This appears to be another way to keep someone in prison for a longer period of time. The Parole Board makes a **recommendation knowingly** can't be fulfilled by Parole Board or Department of Corrections. This gives a false hope to the inmate/prisoners and their families. This ruse is paid for by the tax payer.

Common Comments made to Willsey and Immel (Plaintiff's) and other inmates by the Parole Board who believe inappropriate as they cannot be found in the Parole Statutes concerning parole. Plaintiff was told by his Department of Corrections Case Manager in a pre- Parole Board interview that he would **not** get paroled and that he should go through the motions of the hearing and with Governor Owens in office there would not be many getting paroled. Plaintiff also has been told by Parole Board Member that it was to **political** to give parole or even to have **him submitted** to the full board for **possible** parole. Plaintiff was told that to give him parole would be a **gift** by a Parole Board Member. These quotes are not in the states statutes and are out of line and have the appearance of mocking the inmate who has worked to become eligible for parole. In many cases it has taken years.

The Supreme Court has held that a prisoners institutional record is paramount in determining his/hers ability to adhere to societies laws upon release. **Moody v. Daggett**, 429 U.S. 78, 88-90, 50 L.Ed. 236, 97 S.Ct. 274 (1976) (Holding that an inmates institution record is one of the [most significant factors] in predicting an inmates ability to assume his place in society.)

Parole procedures, the opportunity to be heard, and notification of reasons for denial of are paramount to the inmate. **Greenholtz v. Inmates of Nebraska Penal and Correctional Complex**, 1979, 99 S.CT. 2100, 442 U.S. 1 60 2 F2d 155.

An inmate has a substantial interest in knowing the reason or reasons from the Parole Boards denial and the Board ***must give*** written reasons not with standing any other policy contrary. The Parole Board must by the very terms and conditions of its own rules and regulations, give written reasons for denial or referral of parole to the inmate concerned. **Johnson v. Higgie,** 362, F.Supp. 85 j(Colo. 1973).

CONCLUSION

As shown above the inmates are at a substantial disadvantage if the parole board is allowed to use the entire statute to deny an inmate parole, as it excludes the opportunity to gain parole. It seems to this writer and others who are affected that by allowing the Parole Board to use sections of the statute to deny parole that is supposed to be used to grant and set terms and condition of parole is **unfair**.

Lawful incarceration itself does not extinguish all of the inmates protected rights. The right to parole review cannot be arbitrarily **vitiated** with out depriving inmates of a liberty interest in violation of **Due Process. Due Process** can only be satisfied with the Inmates going to a Parole Board Hearing facing the **proper** Sections of **17-22.5-404**. These are guidelines designed to direct the Parole Board so they don't abuse their discretion. These **guidelines are principals** set up by the states legislature to help guide the members of the Parole Board so that their decisions are actually made on the designated criteria.

C.R.S. 17-22.5-404 in its entirety contains **mandatory** language that **creates** such **due process** that is due inmates of the Class Action when applying for parole, therefore the claim of due process in the decision making process of the Parole Board would be legitimate as **ARISEN** from the **statutory source.**

The Colorado Legislature has created a Substantive Right by **passing** the **guidelines** for Parole Board Members and Department of Correction, along with the Department of Justice to **follow.**

THEREFORE, in closing Plaintiffs pray that the appeals court will review all the arguments and cases presented in considering these important issues being raised that not only effects the class of inmates, their families, and the taxpayers, but society in general. There are just to many inmates who have demonstrated by applying themselves to programs mandated or self-referred to Educational and Mental Health programs to say that almost half of the Prison Population of Colorado who is eligible for parole is being kept in prison years past eligibility because the Parole Board is not following the statues or divulging how one in Colorado Penal system gets paroled. The appointment of counsel would help sort out these errors being made by Members of the Parole board. The Appeals Court in the interest of justice can stop these practices by having who ever is responsible for the **"OBJECTIVE PAROLE CRITERIA"** let those who are affected the most know. Referral back to the District Court Level for findings or hearings for a solution would be most appropriate.

Respectfully submitted by,

Thomas Willsey pro se
DOC # 63529
CMRC -2D
2925 East Las Vegas
Colorado Springs, CO 80906

On this day of September, 2006

TABLE OF CASES

C

TABLE OF STATUTES & RULES

ABREVIATIONS

ARP- Alcohol Recovery Program

GED-General Education Diploma

PAF-Parole Action Form

AG-Attorney General

CARAS-Colorado Actuarial Risk Assessment Scale

CRCP-Colorado Rules of Civil Procedure

CRS-Colorado Revised Statutes

CERTIFICATE OF MAILING

I Thomas Willsey, HEREBY CERTIFY that a true and correct copies of the Plaintiffs OPENING BRIEF Case # 06CA718 was sent by U.S. Mail from Cheyenne Mountain Re-entry Center through the Facility Mail Room on the below date.

On this 15 day of September, 2006.

5 **Copies** of the OPENING BRIEF to:
COLORADO COURT OF APPEALS
2 East 14th Ave., 3rd Floor
Denver, Colorado 80203

1 Copy to Attorney General
1525 Sherman St., 5th Floor
Denver, Colorado 80203

Thomas Willsey #63529
CMRC-2D
2925 East Las Vegas
Colorado Springs, CO 80906

NOTICE OF COLORADO PAROLE BOARD ACTION

0 ☐ Table ☐ Full Board Review Date: September 13 2005 Tape No: 1427

Name: WILLSEY, THOMAS DOC#: 63529 Exhibit 1

Location: STERLING Statutory Discharge Date 09/08/2015
(Pursuant to C.R.S. 18-1-105)

Offense(s): MURD1ST-CRIMINAL ATTEMPT * IMPRCRIM

PAST 05/10/2001
Parole Eligibility Date

MRD

Sentence(s): *32Y-32Y* *1Y-1Y*

PED/6
Sentencing Type

☒ DEFER TO: 9/06
(DATE)

☒ AGGRAVATING FACTORS/INADEQUATE TIME SERVED
(Circumstances of Offense; Needs More Time)

☐ PUBLIC RISK
(Substantial Parole Risk; Prior Criminal Record)

☐ DISCIPLINARY INFRACTION
Conduct In Correctional Facility)

☐ RISK CONTROL PROBLEMS

- ☐ Needs Continued Correctional Treatment
- ☐ Psychological Reports Indicate Problems
- ☐ Incomplete/Unacceptable Parole Plan

☐ WAIVED

Reasons:

- ☐ To Discharge

☐ **RELEASE**

Parole/Reparole to:

Period of:

Effective Release Date:

In addition to C.R.S. 17-2-201(5) (f) (I) the following Special Conditions are added

- ☐ Mental Health
- ☐ Drug/Alcohol Program
- ☐ Monitored Antabuse/Alternative if medically able
- ☐ No Alcohol Intake or Possession
- ☐ ISP _____ days
- ☐ Obtain AA/NA Sponsor
- ☐ No Liquor Establishments

Exhibit 2

June 14, 2005

RE: September 2004
Board Appearance

Dear Mr. Allen Stanley;

During my last Parole Board Hearing in 2004 I was denied again, and the basis given for this denial was "Aggravated Circumstances & Not Enough Time Served."

Parole Board Member Mr. Rosen did not discuss the offence or the circumstances surrounding the offence. I can't help wondering how he came to this conclusion? My Case Manager thought I was a good candidate for Parole and discussed at length with me this subject. The other question is about the saying "Not Enough Time Served." This is kind of baffeling to me as I have been eligible for Parole since 2000. I can't help but wonder if Parole Board Member Rosen did not have me mixed up with someone else. I am under the older law and not required to served 75% of my time.

This last appearence has been the shallowest appearence I have had, and I feel I have a basic right for some clarification as to what exactly is the ammount of time I will need to serve in order to gain Parole. I am 66 years old, I have been to Community, and did very well I worked as a sales man in downtown Durango dealing will hundreds of people without incident. I was regressed because I had some Medical Problems, and was not allowed to use my Social Security and Medicare Retirement Benifits. If you would address some of my question and concerns so I can pass them onto my Family and friends would be most helpful I am at a lost as to what to say.

I thank you for your time and will look forward to hearing from you in the near future.

Sincerely,

Tom Willsey #63529
Box 6000 Unit 31
Sterling, CO 80751

Exhibit 3

COLORADO BOARD OF PAROLE
1600 W. 24th Street, Building 54
Pueblo, Colorado 81003
Telephone: (719) 583 5800
Fax: (719) 583-5805
Website: www.doc.state.co.us

June 27, 2005

Tom Willsey #63529
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

Dear Mr. Willsey:

Reference is made to your letter received at the Colorado State Board of Parole on June 21, 2005 in which you request clarification of your parole application deferral.

Parole considerations are numerous. These considerations are outlined under Colorado Revised Statute Title 17. Parole Board Members attempt to do the very best job possible through review of available facts. Each Board Member decides of their own volition the merits of each case and makes determination as to the appropriateness of parole on a case-by-case evaluation. Mr. Rosen for his own reasons decided against discretionary release at this time.

Parole is not a Constitutional "right," it is totally discretionary. Parole eligibility is the earliest date parole can be granted it in no way binds the Board in any way.

Upon review of the record of your hearing and file, it is my feeling that the Board acted within its statutory authority and the decision will stand. Your letter will be forwarded to your facility Case Manager for presentation to the Board Member(s) conducting your next scheduled parole application hearing.

Sincerely,

Allan F. Stanley
Chairman

AFS/brl

Exhibit 4

OPEN RECORDS ACT REQUEST

October 11, 2005

Colorado Divison of Criminal Justice
Records Custodian
700 Kipling St., Suite 1000
Denver, CO 80215

Thomas Willsey #63529
Box 6000 Unit 31
Sterling, CO 80751

RE: Open Records Act Request pursuant to CRS 24-72-304

Dear Records Custodian;

Pursuant to 17-22.5-404(6)(7), the Division of Criminal Justice is responsible for, among other things: 1. Collecting Data on Parole Decisions; 2. To report on that data; 3. To validate the Colorado Risk Assessment Scale; and 4. To provide training to the Department of Corrections on the proper use of the "Objective Parole Criteria" to be carried out semi-annually.

In light of CRS 17-22.5-404 (6)(7), the following request is being made under the Open Records Act, and CRS 24-72-304.

1. Copy of the current "Objective Parole Criteria", What is the Criteria?
2. Any form or forms that are approved for use by the Colorado Parole Board and / or the Department of Corrections for reviewing Parole Criteria in relation to parole applications being considered;
3. Any Report or documents that are related to, or consist of current parole policies, including "Mission Statements", etc. for the State of Colorado.
4. The most recent report concerning the training pursuant to CRS 17-22.5-404(6), as well as the curriculum used for that training;

According to the Open Records Act, Pursuant to CRS 24-72-203(3)(b), I "must notify you that an answer to the above requested information "should" be forth coming from your Department within a reasonable number of days, and "should' not exceed thirty(30) calender days.

Furthermore, incompliance with CRS 24-72-203(3)(a), I request now in writing, that if the above mentioned information are not in the custody or control of the Records Custodian of the DOJ with whom this application is made, such person or persons "shall" forthwith in writing notify this applicant of the actions taken, and inform this applicant where this information can and maybe obtained.

Respectfully submitted,

Thomas Willsey

Exhibit 5

cdps
COLORADO
DEPARTMENT
OF PUBLIC SAFETY

Division of Criminal Justice
Raymond Slaughter, Director
700 Kipling St.
Suite 1000
Denver, CO 80215-5865
(303) 239-4442
FAX (303) 239-4491

October 18, 2005

Thomas Wilsey #63529
Box 6000, Unit 31
Sterling, CO 80751

Dear Mr. Wilsey:

The enclosed book is the only item that we are able to provide you with from the list of documents that you requested.

Due to budget cuts, we have not been able to do the mentioned analysis.

Thank you for your inquiry.

Sincerely

Pat Lounders

PL/me

DCJ

Exhibit 5

Mr. Don VanPelt, Chairman
Colorado Board of Paroles
Pueblo, Colorado

RE: Inaccurate, Incomplete & False Information
Provided to Comm.Corr.

Dear Chairman VanPelt;

When I appeared before the Board of Paroles in September 2001. The Board Recommended that I progress to Community Corrections, ISP, and stabilize.

My Case Manager Jon Hall at ACC submitted a DOC Community Release Form 250-03 A.

I was denied placement, and could not find out why. I wanted the reason so I could discuss this with the Board at my September 2002 hearing.

I waved the September 2002 hearing, and attempted to get further information or clarification for my denial of placement.

I recently got a copy ofthe Referral Information from the Attorney Generals Office that Case Manager Hall submitted.

This Referral Form DOC 250-03 A submitted by Case Manager Hall was incomplete, and contained inaccurate and false information that I believe played a roll in the denial for placement at a Community Correction Facility, and full filling the Parole Boards Recommendation. According to 17-27-101 Legislative Declaration Community Corrections was to provide the Parole Board with more flexibility, and a broader range of correctional options. Case Manager Hall interfered with this process.

As an inmate trying to pay my debt for wrongs I have committed, and to progress through th system to show sincerity and consistincey in rehabilitating myself, Correct Records are needed.

Many people have supported me through out the years since my trial and incarceration.Family,friends and former co workers are some who have written to you, and to the CommunityCorrections Center in Durango offering tohelp withmy reintegration in many ways. This report that Case Manager Hall submitted is a contradiction to what people said, andwhat I said also, and creates a conflict with all expressing their desires to help me achieve success in the total re integration process.

Many people in the free world have suggested that I write to you to report this un-called for behavior late in my sentence, and eligible for Community, ISP and Parole. This I am doing so I will not have a conflict with the Board of Paroles.

I do believe that an order from you to investigate would help ... ... clear the air, and the Board of Paroles would see how Case Manager Hall interfered with the process, and mayhave harmed me in his doing so.

Hopefully I have clarified the need for this letter, and my writing to you will not be used against me for reporting Mr. Halls dereliction of duty. I do have the Form he submitted for proof.

I thank you for your time in this serious matter that effects others besides myself.

Sincerely,

Tom Willsey # 63529
FMCC Box 200 Unit D
CanonCity, CO 81215

Exhibit #7

C.R.S.A. § 17-22.5-404

WEST'S COLORADO REVISED STATUTES ANNOTATED
TITLE 17. CORRECTIONS
CORRECTIONAL FACILITIES AND PROGRAMS
FACILITIES
ARTICLE 22.5. INMATE AND PAROLE TIME COMPUTATION
PART 4. PAROLE ELIGIBILITY AND DISCHARGE FROM CUSTODY

Current through the end of the 2005 First Regular Session of the 65th General Assembly

§ 17-22.5-404. Parole guidelines

(1) As to any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony who is eligible for parole pursuant to > section 17-22.5-403, the board may consider all applications for parole, as well as all persons to be supervised under any interstate compact, and may parole any person who is sentenced or committed to a correctional facility when the board determines, by using the guidelines established by this section, that there is a strong and reasonable probability that the person will not thereafter violate the law and that his release from institutional custody is compatible with the welfare of society. **The board shall** first consider the risk of violence to the public in every release decision it makes.

(2)(a) In considering offenders for **parole**, the board **shall** consider, but need not be limited to, the following factors:

(I) The testimony of the victim of the crime or a relative of the victim, if the victim has died, pursuant to > section 17-2-214;

(II) The offender's conduct which would indicate whether he has substantially observed all of the rules and regulations of the institution or facility in which he has been confined and has faithfully performed the duties assigned to him;

(III) The offender's demonstration of good faith efforts to make restitution to the victim of his conduct for the actual damages that were sustained, pursuant to > section 17-2-201(5)(c);

(IV) The offender's demonstration of good faith efforts to pay reasonable costs of parole supervision pursuant to > section 17-2-201(5)(b);

(V) The offender's demonstration of good faith efforts to devote time to a specific employment or occupation;

(VI) The offender's good faith efforts to enroll in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment;

(VII) Whether the offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income, whether the offender has an employment disability, or whether the offender's age prevents him or her from obtaining employment;

(VIII) The offender's demonstration of good faith efforts to remain within prescribed geographical boundaries and notify the court or the parole officer of any change in the offender's address or employment;

(IX) The offender's demonstration of good faith efforts to report as directed to the parole officer;

(X) The offender's demonstration of good faith efforts to participate in some type of community service work;

(XI) The offender has not harassed the victim either verbally or in writing;

(XII) The offender's demonstration of good faith efforts to provide support, including any court-ordered child support, for any minor children;

(XIII) The offender's participation in the literacy corrections programs.

(b) Nothing in this subsection (2) shall preclude the board from considering factors other than those stated in paragraph (a) of this subsection (2) when considering applicants for parole.

(3)(a) The board shall consider the following extraordinary aggravating circumstances when determining the conditions for parole and length of parole supervision when such aggravating circumstances show that an offender has a high risk of recidivism or a high risk of violence:

(I) The crime involved serious bodily injury, threat of serious bodily injury, or other acts disclosing a high degree of cruelty, viciousness, or callousness.

(II) The offender was armed with or used a deadly weapon at the time of the commission of the offense.

(III) The offense involved multiple victims.

(IV) The victim was particularly vulnerable due to advanced age, disability, ill health, or extreme youth.

(V) The offender's conduct was directed at an active officer of the court or at an active or former judicial officer, prosecuting attorney, defense attorney, peace officer, correctional employee, or firefighter during or because of the exercise of his or her official duties.

(VI) The offender induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants in its commission.

(VII) The offender took advantage of a position of trust or confidence to commit the offense.

(VIII) The offender committed the offense pursuant to an agreement that he either pay or be paid for its commission.

(IX) The circumstances surrounding the offense indicate that the crime was carried out following substantial planning and deliberation.

(X) The object of the crime was to acquire or to obtain control of a controlled substance or other item or material, the possession of which is illegal.

(XI) The offender has engaged in a pattern of violent conduct which indicates a serious danger to society.

(XII) The offender was on parole or on probation for another felony when he committed the offense.

(XIII) The offender was charged with or was on bond for a previous felony when he committed the offense, and for which previous felony he was subsequently convicted.

(XIV) The offender was under confinement in prison or in any correctional institution within this state as a convicted felon, or was an escapee from any correctional institution within this state or another state when he committed the offense.

(XV) The offender has numerous or increasingly serious convictions as an adult or adjudications of delinquency as a juvenile.

(b) Nothing in this subsection (3) shall preclude the board from considering aggravating circumstances other than those stated in paragraph (a) of this subsection (3) when considering applicants for parole.

(4)(a) The board <u>shall</u> consider the following extraordinary mitigating circumstances when determining the conditions for parole and length of parole

supervision which show that an offender has a **low** risk of recidivism or a **low** risk of violence:

(I) The offender was a passive participant or played a minor role in the commission of the offense.

(II) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(III) Substantial grounds exist tending to excuse or justify the offender's conduct, though failing to establish a defense.

(IV) The offender committed the crime under duress, coercion, threat, or compulsion, insufficient to constitute a complete defense but which significantly affected his conduct.

(V) The offender has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time prior to the commission of the offense.

(VI) The offender voluntarily acknowledges wrongdoing or evidences remorse or penitence for his criminal conduct.

(VII) The offender is responsible for the maintenance or financial support of others and, to avoid undue hardship to his dependents, a shorter period of incarceration is warranted.

(VIII) Rehabilitation of the offender would be enhanced by imposing a shorter period of incarceration.

(IX) Before the parole hearing, the offender compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(b) Nothing in this subsection (4) shall preclude the board from considering mitigating circumstances other than those stated in paragraph (a) of this subsection (4) when considering applicants for parole.

(4.5)(a) The parole board, in addition to any other conditions, may require, as a condition of parole, any defendant who is less than eighteen years of age at the time of parole and who was convicted of an offense to attend school or an educational program or to work toward the attainment of a high school diploma or a GED, as that term is defined in > section 22-33-102(4.5), C.R.S.; except that the parole board shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education.

(b) Following specification of the terms and conditions of parole for a defendant who is less than eighteen years of age at the time of sentencing, where the conditions of parole include the requirement that the defendant attend school, the parole board shall notify the school district in which the defendant will be enrolled of such requirement.

(5) Deleted by Laws 2000, Ch. 202, § 42, eff. May 24, 2000.

(6)(a) It is the intent of the general assembly that the objective parole criteria developed pursuant to this subsection (6) shall not be construed to override or supersede the parole guidelines established pursuant to subsections (2), (3), and (4) of this section. The objective parole criteria developed pursuant to this subsection (6) are intended to be used by the state board of parole as additional considerations in determining whether to grant or deny parole to any particular offender who is eligible for parole.

(b) In addition to the guidelines contained in subsections (2), (3), and (4) of this section, **the division of criminal justice in the department of public safety shall develop objective parole criteria** which shall also be **used** by the state board of parole in evaluating inmates for parole. As used in this subsection (6), **"objective parole criteria" means the criteria which statistically have been shown to be good predictors of risk to society of release on parole.**

(c) Deleted by Laws 2000, Ch. 202, § 42, eff. May 24, 2000.

(d) The division of criminal justice **shall** collect **data** on parole **decisions** and **report** the results of such data collection quarterly to the state board of parole and the division of adult parole. The state board of parole **shall** provide **copies** of the **parole guidelines** forms and parole action forms to the division for such purpose.

(e) The division of criminal justice shall validate the Colorado Accrual Risk Assessment Scale (CARAS) whenever the predictive accuracy, as determined by data collection, falls below an acceptable level of predictive accuracy of the scale as determined by the state board of parole and the division of adult parole. Such validation shall be carried out at least every five years.

(f) The division of criminal justice shall, in cooperation with the department of corrections and the state board of parole, provide training on the use of the objective parole criteria to personnel of the department of corrections. Such training shall be carried out on a semiannual basis.

(g) The division of criminal justice, the department of corrections, and the state board of parole **shall** cooperate to develop **forms** containing **objective** parole criteria which **shall** be published as **official** forms of the **department of corrections**.

(7)(a) The department of corrections, the state board of parole, the division of adult parole, and the division of criminal justice **shall cooperate** in implementing **all aspects** of this section.

(b) Deleted by Laws 2000, Ch. 202, § 42, eff. May 24, 2000.

(8) This section shall apply to any person to whom > section 17-22.5-303.5, as it existed prior to May 18, 1991, would apply pursuant to the operation of > section 17-22.5-406, because the provisions of such sections are substantially similar.

CREDIT(S)

Added by Laws 1990, H.B.90-1327, § 19, eff. June 7, 1990. Amended by Laws 1991, S.B.91-58, § 1, eff. May 18, 1991; Laws 1993, S.B.93-242, § 16, eff. July 1, 1993; Laws 1997, H.B.97-1220, § 9, eff. Aug. 6, 1997; Laws 1998, Ch. 226, § 18, eff. Aug. 5, 1998; Laws 1999, Ch. 24, § 5, eff. July 1, 1999; Laws 2000, Ch. 202, § 42, eff. May 24, 2000.

> <General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2005 Electronic Pocket Part Update

This section is reprinted to conform to the state edition.

Laws 1998, Ch. 226, § 18, in subpar. (2)(a)(I), substituted "17-2-214" for "17-2-214(2)(a)".

Laws 1999, Ch. 24, § 5, inserted subsec. (4.5).

Laws 1999, Ch. 24, § 7, provides:

"Effective date--applicability. This act shall take effect July 1, 1999, and shall apply to offenses committed on or after said date."

Laws 2000, Ch. 202, § 42, in par. (6)(b), deleted "Such criteria shall be subject to the approval of the Colorado commission on parole guidelines established pursuant to subsection (7) of this section."; and in pars. (6)(d) and (6)(e), substituted "state board of parole and the division of adult parole" for "Colorado commission on parole guidelines" in the first sentence of each.

Laws 2000, Ch. 202 § 42 also deleted subsec. (5) and par. (6)(c), and rewrote subsec. (7), which provided, respectively:

"(5) The division of adult services shall develop a form incorporating the guidelines set forth in subsections (2), (3), and (4) of this section, which form shall be used by the members of the board when considering each application for parole. Such form shall be accompanied by the parolee's arrest record. Such form shall be made available to any member of the public who requests it."

"**(6) (c)** The Colorado commission on parole guidelines **shall** also develop advisory guidelines to be used by the state board of parole in making parole decisions based upon other factors defined in this section."

"(7) **(a)** There is hereby established in the department of public safety the Colorado commission on parole guidelines. The commission shall consist of the attorney general who shall serve as chairperson, the executive director of the department of public safety, the executive director of the department of corrections, the chairperson of the state board of parole, the chairperson of a community corrections board, a parole officer, a law enforcement officer, and a private citizen. The latter four members shall be appointed by the governor and confirmed by the senate. The director of the division of criminal justice of the department of public safety shall serve as an ex officio member of the commission.

"(b) The commission established pursuant to this subsection (7) shall have the power to approve objective parole criteria, as defined in subsection (6) of this section, which are developed by the division of criminal justice."

1998 Main Volume

The 1991 amendment rewrote subsec. (6), which prior thereto read:

"In addition to the guidelines contained in subsections (2), (3), and (4) of this section, the division of criminal justice in the department of public safety shall develop **objective parole** criteria which shall also be used by the state board of parole in evaluating inmates for parole. Such criteria **shall** be subject to the approval of the Colorado commission on parole guidelines established pursuant to subsection (7) of this section and the general assembly by bill in the next regular session of the general assembly following approval by the commission on parole guidelines. As used in this subsection (6), 'objective parole criteria' **means** the criteria which statistically have been shown to be **good predictors** of risk to society of release on parole.";

and added subsec. (8).

The 1993 amendment, in subpar. (2)(a)(VII), changed a reference from "handicap" to "disability".

The 1997 amendment, in subpar. (2)(a)(I), substituted "17-2-214(2)(a)" for "17-22.5-106"; and in subpar. (3)(a)(V), substituted "firefighter" for "fireman", and inserted "or her".

REFERENCES

CROSS REFERENCES

Administrative procedure act, applicability of provisions, see > § 17-1-111.

RESEARCH REFERENCES

Treatises and Practice Aids

15 Colorado Practice Series § 20.14, Enhanced Penalty Offender-Habitual Criminal Statute.

15 Colorado Practice Series § 20.27, Parole-Eligibility and Criteria for Granting Parole.

15 Colorado Practice Series § 20.24, Presentence Confinement Credit.

ANNOTATIONS

NOTES OF DECISIONS

Activities prior to offense > 1
Judicial review > 2

> 1. Activities prior to offense

Statute requiring parole board to consider inmate's activities prior to commission of his or her offense when determining conditions for parole did not require board to consider inmate's activities prior to his incarceration when determining his eligibility for parole, in light of other provisions indicating legislature intended parole board to consider applicant's behavior after incarceration in determining parole eligibility by requiring board to consider applicant's demonstration of good faith efforts to become employed, to go to school, or to participate in community service work. > **Fraser v. Colorado Bd. of Parole**, App.1996, 931 P.2d 560. Pardon And Parole K 58

> 2. Judicial review

Trial court had jurisdiction to consider merits of inmate's pro se complaint challenging parole board's denial of parole by treating complaint as request for mandamus relief, even though inmate had not expressly sought mandamus relief, in light of gravamen of complaint asserting that parole board had failed to consider any events or circumstances prior to inmate's incarceration in direct violation of statutory guidelines for parole. > **Fraser v. Colorado Bd. of Parole**, App.1996, 931 P.2d 560. Attorney And Client K 62

Current through the end of the 2005 First Regular Session of the 65th General Assembly