

Meeting Minutes
SBM Prisons and Corrections Section Council
June 5, 2020
2pm-4pm (via Zoom)

Present

Keith Barber
John Brusstar
John Cooper
Marilena David-Martin
Nicole George
Dan Gilbert
Barb Levine
Mike Marutiak
Katherine Root
Kathleen Schaefer
Carol Siemon
Pat Streeter

Excused Absence

Hon. Clinton Canady
Kyle Kaminski
Hon. Michelle Rick

Unexcused Absence

Lisa Geminick
Natalie Holbrook
Dan Manville

1. Minutes passed.

2. Annual program

Mari will circulate a flyer

The task force will be meeting again and will decide when to open registration. It will probably be late August or early September.

There is an outstanding invitation to A.G. Nessel to speak at the reception; Carol expects to talk to her soon, and will bring it up. Mike will send the invitation to Carol.

3. Officers

Nominations will be at the annual meeting in October. Email Mari if you want to nominate yourself or somebody else.

Re chair position: Mari would love to support other interested potential chairs. Non-attorneys can serve as secretary or treasurer, but not as chair. Former chairs can become chairs again.

4. Court Rule proposals

Comments are due to the MSC by 7/1/2020.

The Section passed motions to accept all proposed amendments, but for an exception to MCR 6.425. Mari will write letters accepting all amendments as written, but for the one amendment to 6.425.

Mailbox rule. Criminal Law section supported it overwhelmingly.

MCR 6.425. Amendment would allow the attorney to be with the client at the time of the PSI interview.

MCR 6.425(E)(2)(a). Amendment would require the PO to certify that the incorrect report will never be used in the future for classification, programming, or parole purposes. P&C supports with change to language so onus is not on probation officer.

MCR 6.428. The amendment would extend the rule to plea cases, as well.

MCR 6.429, 6.431. These amendments are already encompassed in the new mailbox provision amendment already passed. No additional discussion.

5. Parole denial appeals

This is part of what the presumptive parole movement was trying to accomplish, and always ran into opposition. This is something that has always been on the table, and couldn't get done.

Prosecutors/victims have the right to appeal, but prisoners do not. The right to appeal was taken away from prisoners, but not from prosecutors/victims.

There are cases in St. Claire County and Grand Traverse County where prosecutors have won appeals.

Prosecutor perspective: prosecutors may bring them on behalf of the victim, unless they feel it is a wasted effort and gives victims false hope.

Mari will do factfinding on statistics, and then bring it back for discussion.

6. Miller extension workgroup

Barb asked members to prioritize issues. The top issue was automatic waiver and criteria for discretionary waivers. Jenny Pillette agreed to head the subgroup. This includes the issue that under Raise the Age, teens who never had to be waived before will now come under waiver provisions.

Interest in relief for juvenile lifers and LIDs not getting relief under *Miller*. Should there be a cap on the amount of time juveniles can do for anything?

Barb is assigning tasks to subgroups based on their own prioritization.

Safe and Just Michigan has identified everyone under 18 in for murder 2, and can break it down by county, offense, age, and sentence length.

Barb is floating the idea of taking MCL 769.25, 25a, and amending it so that a juvenile can't be sentenced to a minimum higher than 40 for murder 1, and capping minimum sentences for juveniles for offenses less than murder – mimic the *Miller* process, including retroactivity.

It would be worth talking to individual county prosecutors, because many of them with JLWOP cases can see the inequity of a 17-year-old doing more time for an offense less than murder 1, than a 17-year-old sentenced on murder 1.

7. MDOC Updates (Keith)

COVID-19

- Numbers are down; it seems to be leveling out. There are more recovered prisoners, and more in step-down units..
- No update on the antibody testing mix-up. 54 prisoners who were positive were told they were negative, and 54 who were negative were told they were positive, and all were managed accordingly. So 54 prisoners who were negative were put into positive unit, and 54 prisoners who were positive were put into negative units. This was apparently due to a miscommunication between Corizon and some facilities.
- The Wayne State study has created some concerns. Keith's main concern is what kind of data will be shared. There is no MOU yet, but it is reasonably certain that the study is going to happen. The MDOC does not believe they need to provide informed consent, because prisoners aren't providing identifying information. Wayne State is looking at the open bay cells versus two-man cells. Lay-offs and furloughs may become an issue, but it hasn't slowed things down so far.
- Parole grants and moves to parole are up. We only have data through mid-May. There are issues with delays because COVID concerns impact class sizes for prerelease programs. They have also stopped programming altogether at facilities with a lot of cases. Keith's office has raised this with Kyle and others, and has received assurance that the board is taking it into consideration. People are also being released to inpatient program. There have been delayed releases for D-47 paroles due to lack of bed space.
- More than 70% of prisoners testing positive for antibodies were asymptomatic. This may be skewed because people were not reporting symptoms because the consequences for doing so were seen as punishment.

- There is a list of who has died, but it is not public. Keith does not have the most recent list.
- Keith is not aware of additional step-down units. People are being tested at county and at reception. They are quarantined for 14 days, but reception usually takes longer than that anyway. The MDOC has started accepting people from some counties, but not all. They are reviewing county COVID prep plans, and making decisions based on that. As of 6/4, 30 counties had been approved.
- There has been a breakdown of communication at Gus Harrison, and the prison was moving people without telling them why.

Regarding ripple effects into the prisons of Black Lives Matter protests

- Rumors of a peaceful demonstration on the yard at Gus Harrison in support of George Floyd and BLM. Staff started talking to the population and suggested having a fundraiser to be designated to an appropriate charity. The prisoners did not end up having the demonstration.
- The biggest concern is how gatherings of prisoners will be perceived by staff, and what they would do if they saw gatherings, rather than what the prisoners are actually doing/planning when they are gathering.
- Kyle is communicating information, and there has not been word of any additional protests. Email Mari or Kyle with questions.

8. Subcommittees and other projects

Raise the Age: what will services look like when you have to have more juveniles in the system.

Waiver

Prospect of using *Miller* factors in the calculation of sentencing guidelines. Expanding discussion of trauma-informed sentencing to the adult system, so that sentencers have the benefit of a social history.

SORA: excluding juveniles from registration.

Concerns about differential treatment of different racial groups within the prison population.

Issues regarding use of force, and intersection of use in force in prisons with use of force in the world.

Pretrial taskforce

The pandemic and the floods have postponed a lot that was happening in the legislature.

9. This was the last meeting until the annual meeting on October 17.