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Prisons and Corrections Forum

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Contents

Update: Juvenile Life Without Parole (JLWOP)

The most recent update in Michigan regarding the JLWOP issue comes from the United States District Court, in *Henry Hill v. Rick Snyder,* E.D.Mich. No. 10-14568 (Jan. 30, 2013) 2013 WL 364198. *Hill* is a class action pursuant to 42 U.S.C. § 1983 claiming an Eighth Amendment constitutional violation in the application of M.C.L. § 791.234(6)(a), which prohibits the Michigan Parole Board from considering for parole those sentenced to life in prison for first-degree murder. Plaintiffs, juvenile lifers, sought a declaration that M.C.L. § 791.234(6)(a) is unconstitutional as applied to those who were convicted when they were under the age of eighteen.

On January 30, 2013, Judge John Corbett O'Meara agreed, concluding that continuing to deny parole consideration to juvenile lifers is unconstitutional under *Graham v. Florida*, 560 U.S. ---, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012). In his decision, Judge O'Meara found that "compliance with *Miller* and *Graham* requires providing a fair and meaningful possibility of parole to each and every Michigan prisoner who was sentenced to life for a crime committed as a juvenile." The parties in *Hill* were ordered to file further briefing by March 29, 2013 concerning how parole determinations should be made for juvenile lifers.

If nothing else were to happen, *Hill* would mean that all juvenile lifers would eventually become parole eligible. This would take place without resentencing hearings. Additionally, Judge O'Meara clearly intends to give the parole board a directive to treat juvenile lifers differently than adults with life sentences and provide them with a "meaningful opportunity for release." The Michigan Attorney General disputes that the decision in *Hill* applies to all of Michigan's juvenile lifers, asserting instead it only applies to the parties in that particular case.

There are many events which may interfere with implementing the remedy in *Hill*. There are various criminal appeals still pending, including *People v. Carp*, 298 Mich. App. 472 (2012) (leave to appeal to the Michigan Supreme Court filed January 9, 2013), a decision in which a panel of the Michigan Court of Appeals concluded that *Miller* is not retroactive. When the Michigan Supreme Court weighs in on these cases, the legal landscape may change. The Michigan Legislature is considering legislation which could change the legal framework. *Hill* itself could be appealed by the Attorney General to the United States Court of Appeals for the Sixth Circuit. Ultimately, the retroactivity of *Miller* is likely to be decided by the United States Supreme Court. ■

New Court Rules for Appeals from MDOC Hearings Decisions

By Raymond C. Walen, Jr.

If you have previously appealed a misconduct ticket to the circuit court using the rules in effect between 1979 and May 2012, be prepared for substantial changes the next time you do.

The Michigan Department of Corrections Hearings division[1] is responsible for conducting hearings on class I misconduct,[2] security classification to segregation, special designations that permanently preclude community placement, visitor restrictions, high and very high assault risk classifications, and excess legal property. M.C.L. § 791.251, *et seq,* governs proceedings at the hearings. M.C.L. § 791.255 provides for circuit court review of the decisions in these hearings decisions.

To appeal to the circuit court, the prisoner (or the prisoner's visitor in the case of visitor restrictions) must exhaust administrative remedies by filing a request for rehearing with the MDOC. Within 60 days after the denial of rehearing, or the hearing decision on rehearing, he or she may file a petition for judicial review in the circuit court for the county in which he or she resides or in the Ingham County circuit court. Within 60 days of filing and service, the MDOC must file a certified copy of the record of the entire proceedings with the circuit court. "In the case of an alleged irregularity in procedure not shown on the record, proof may be submitted to the court." M.C.L. § 791.255(3). Review is confined to the record and any supplemental proofs submitted under subsection 3. The scope of review is limited to whether the decision is authorized by law or rule and whether the decision is supported by competent, material, and substantial evidence on the whole record. The court may affirm, reverse, or modify the agency decision, or remand the case for further proceedings.

The practice for more than thirty years under MCR 7.105 and its predecessors were relatively straightforward and easy to file without counsel on forms such as those that used to be available from Prison Legal Services of Michigan, Inc. (PLSM), which is no longer in operation. One simply filled out the form, stating the charge, the finding, date of decision, and grounds for appeal, and attached a copy of the hearing decision and order denying rehearing, along with the filing fee or motion to waive or suspend fees. This package was copied, filed, and served on the MDOC. The MDOC's receipt of the petition was its cue to file the record, and the attorney general's office then usually filed and served either a brief on the merits or a motion to dismiss or affirm. Some courts relied on the former MCR 7.105(K) to require the prisoner to file a brief on the merits, others would decide the case provided the prisoner stated grounds for appeal in his or her form petition. Some courts would grant the MDOC's motion to dismiss or affirm if the prisoner did not respond to it. Most seemed to recognize the prisoners' limitations and rendered a decision on the merits whether or not the prisoner responded to the state's filing.

The entire procedure changed on May 1, 2012, when the Michigan Supreme Court repealed all of MCR Chapter 7.100 and replaced it with MCR 7.101-7.123. The Staff Comment to the amendments explains, "These rules reflect a total rewrite of the rules relating to appeals to circuit court, and are modeled on the rules of the Court

of Appeals." MDOC hearing decisions are now governed by MCR 7.101-7.115 and MCR 7.123. It can be confusing because many of the provisions in MCR 7.101-7.115 are modified by MCR 7.123. Here are the new procedures in a nutshell:

When to File

Within 60 days of rehearing denial or the MDOC decision on rehearing. M.C.L. § 791.255, MCR 7.104(A)(1).

Where to File

In the circuit court for the county where the prisoner resides or in the Ingham County Court. M.C.L. § 791.255(2).

What to File

The claim of appeal. MCR 7.123(B)(2). It must:

> Have a case caption with the prisoner or visitor designated as appellant and the MDOC as appellee.
>
> State "[Name of appellant] claims an appeal from the decision on [date] by the [name of agency].
>
> State the nature of the proceedings, e.g., class I misconduct hearing, visitor restriction hearing, etc.
>
> Citation to the statue enabling the agency to conduct the hearing: M.C.L. § 791.251.
>
> Citation to the statute or constitutional provision that authorizes appellate review in the circuit court: M.C.L. § 791.255(2) and Mich. Const. Article 6 § 28.
>
> The signature of counsel or the pro per appellant.

The filing fee or motion to suspend fees. MCR 7.104(B)(2).

Copies of the hearing report and the order denying rehearing. MCR 7.104(D)(1).

A statement that there is no transcript of the proceeding. MCR 7.104(D)(2).

A copy of your request to the MDOC to send the certified record to the circuit court. MCR 7.104(D)(3).

Proof of service that the claim of appeal and other documents listed above have been served on the MDOC. MCR 7.104(D)(9).

Appearance by MDOC

Within 14 days after service of the claim of appeal, the MDOC shall file an appearance. MCR 7.123(B)(3).

The Record on Appeal

The record on appeal is defined in MCR 7.210(A)(2). MCR 7.109(A)(2).

If evidence is excluded, the record on appeal must contain the substance of the excluded evidence or the transcript of the proceedings excluding it. MCR 7.109(A)(3).

Within 14 days after a certified copy of the record has been requested, the MDOC shall send the record to the circuit court except for things omitted by written stipulation of the parties, and weapons, drugs, or money. MCR 7.109(G)(1).

The circuit court must notify the parties when the record is filed. MCR 7.109(G)(3).

Motions

Motion practice is governed by MCR 2.119. Motions may include those identified in MCR 7.211(C), such as motions to dismiss, affirm, for peremptory reversal, to remand, or to seal part of the record. "Absent good cause, the court shall decide motions within 28 days after the hearing date." MCR 7.110.

MCR 7.123(E) allows a motion for stay of enforcement of the MDOC decision. Given that exhaustion of administrative remedies before filing can take several months, it seems that only in a very rare case could one make the showing required by MCR 7.123(E)(3) to obtain a stay.

Briefs

Appellant's brief is due 28 days after the record is filed. MCR 7.111(A)(1)(a).

It must conform to MCR 7.212(B) and (C). MCR 7.111(B).

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Appellee's brief is due 21 days after the appellant's brief is filed, and must conform to MCR 7.212(B) and (D). MCR 7.111(A)(2).

The time for either party's brief may be extended 14 days by stipulation and order; the court may extend the time on motion; filing a motion to extend the time does not stay the time for filing a brief. MCR 7.111(A)(1)(a) and (2).

Oral Argument

A party filing a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in capital letters or bold face type on the title page of the brief. MCR 7.111(C). The court may dispense with oral argument. MCR 7.114(A).

Relief

In addition to its general appellate powers, the circuit court may grant relief as provided in MCR 7.213. MCR 7.112.

Taxation of Costs

The prevailing party is entitled to costs. MCR 7.115(A).

File a bill of costs within 28 days of decision. MCR 7.115(B).

Objections to the bill of costs must be filed within 7 days of service. MCR 7.115(C).

The court will review a bill of costs on motion filed within 7 days of the date of taxation, but it will only review those that were objected to. MCR 7.115(E).

The new rules may make it easier for attorneys familiar with appellate practice in the Michigan Court of Appeals to file the circuit court appeals from MDOC hearing decisions, but they are full of pitfalls for the inexperienced, including most prisoners and those who are not alert to changes from the old rule. Some of those include:

The prison mailbox rule in the former M.C.L. § 7.105(B)(3) is gone. Prisoners must mail their papers far enough in advance to account for delays by the prison mailroom and the post office, so plan on reducing all deadlines by at least a week.

If the appellant does not file a brief or other papers on time, the court will notify the parties that the appeal will be dismissed if the defect is not remedied within 14 days. MCR 7.113(A)(1). There appears to be no sanction for untimely filing by an appellee.

The motion to take additional evidence under the former MCR 7.105(I) is gone. A party wishing to submit additional evidence under M.C.L. § 791.255(3) should cite the statute in the claim of appeal and state what the evidence is. Include in the request for rehearing and brief a claim based on M.C.L. § 791.254(2)(a) (the record made at the hearing is inadequate for judicial review) and ask to add evidence under M.C.L. § 791.255(3).

The rule that specifically allowed the appellant to file a reply brief, former MCR 7.105(K)(1), is gone.

The rule that allowed the court to order the appellee to file an answer, former MCR 7.105(F), is gone, but MCR 7.112 adopts MCR 7.216, the "do anything" rule from the Court of Appeals.

The rule that required the case to be scheduled for oral argument or submission within 14 days of filing of the last brief, the former MCR 7.105(K)(4), is gone.

The court must state its reasons for granting relief, but need not state reasons for denying relief. MCR 7.123(G)(1) and (2).

Until someone develops forms and instructions similar to those that were formerly available through Prison Legal Services of Michigan, anyone appealing a MDOC hearing decision should carefully read these new court rules and M.C.L. § 791.255. The Court of Appeals manual for *pro per* appeals, "Filing Appeals and Original Actions: A Guide for Appellants Without Attorneys," contains many helpful forms that can be modified for

use in the circuit court. It is available online at <http://courts.mi.gov/Courts/COA/clerksoffice/ Documents/Appellant%20Manual.pdf>. It would also be helpful to review the book, *Prisoners' Self-Help Litigation Manual*, by John Boston and Daniel E. Manville, Fourth Edition (Oceana Press, 2010) Chapter 4, H.1. (pp 331-73). ■

About the Author

Raymond C. Walen, Jr. worked as a staff paralegal at Prison Legal Services of Michigan from 1987 to 2008.

Endnotes

1 Hearing Officers work for the Department of Licensing and Regulatory Affairs (LARA).

2 See Richard Stapleton, "Due Process of Prisoner Discipline in the Michigan Department of Corrections," Prisons and Corrections Forum, Vol. 11, No. 1 (Winter 2011); Raymond C. Walen, Jr., "Due Process of Prisoner Discipline in the Michigan Department of Corrections," Prisons and Corrections Forum, Vol. 11, No. 2 (Fall 2011).

Update: Proposed Changes to MCR 7.118 Are Denied by the Michigan Supreme Court

The Michigan legislature eliminated prisoners' right to appeal adverse parole decisions (denying parole) in the 1990s. At the same time, the legislature extended to crime victims and prosecutors the right to appeal decisions favorable to prisoners (granting parole). *See* MCL 791.234(11).

In parole appeals, prosecutors are typically represented by lawyers from their own offices, the parole board is represented by the Attorney General's Office, and victims can hire counsel. But the indigent prisoners who have been brought into court involuntarily, and whose liberty is at stake, go unrepresented.

On March 5, 2011, the Section Council adopted a formal public policy position statement advocating appointment of counsel for prisoners whose parole is appealed.[1] The Section noted that Michigan already recognizes the right to counsel in the context of parole revocation proceedings. The Section also noted that the AG's Office does not represent the parolee, but rather defends the authority of the board to grant the parole. The Section said that an unrepresented prisoner is no match for a county prosecutor or a victim with a lawyer, and the unfairness is plain.

The Section asked the Michigan Supreme Court to adopt a court rule requiring the appointment of defense counsel for indigent prisoners whom the board had approved for parole and whose parole grant was being challenged by prosecutors or crime victims. The Criminal Law Section and the Appellate Practice Section joined the Prisons & Corrections Section in seeking relief on this issue via amendments to the court rules.

The Court responded by proposing amendments to MCR 7.118 which would require courts to advise prisoners that they "may be entitled to appointed counsel if the court finds that the appellee is financially unable to retain an attorney." *See* Order, ADM File No. 2011-10, published at 491 Mich. 12115-1218 (Part 2, 2012). The Court then held a public hearing on the issue September 27, 2012.

Meanwhile, on November 8, 2012, the Court of Appeals decided a case that touched on the same issue. In *In re Parole of Hill,* 298 Mich. App. 404 (2012), the court held that although a prisoner does not have a constitutional right to counsel in a parole appeal, the circuit court nevertheless has inherent authority to appoint counsel to represent indigent prisoners. The Court of Appeals upheld the appointment of counsel in this case.

Following that decision, the Michigan Supreme Court entered an order on March 20, 2013, stating as follows: "ADM File No. 2011-10: On order of the Court, the proposed amendment of Rule 7.118 of the Michigan Court Rules having been published for comment at 491 Mich 1215-1218 (2012), and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action. Cavanagh, J., would adopt the proposed amendment of the rule." ■

Section Files Amicus Brief to U.S. Supreme Court

On January 18, 2013, the Section (together with the American Friends Service Committee) filed an *amicus* brief in support of a petition for *certiorari* in *Burnside v. Walters,* U.S. Supreme Court File No. 12-7892.

Since 1997, the Sixth Circuit has required that when federal district courts screen complaints filed by indigent plaintiffs pursuant to the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(e), any dismissal of a complaint must be *with prejudice and without leave to amend*. *See McGore v. Wrigglesworth,* 114 F.3d 601 (6th Cir. 1997). This means that complaints that might be meritorious but that are technically deficient (due to the ignorance of the *pro se* plaintiff) will be dismissed for all time.

In *Burnside*, the Sixth Circuit declined an invitation to abandon its no-amendment rule, even though it is the only circuit to retain such a rule after *Jones v. Bock*, 549 U.S. 199 (2007). *Jones* held that the PLRA "does not – implicitly or explicitly – justify departing from … usual procedural practice beyond the departures specified by the PLRA itself." *Id.* at 214. Nothing in the PLRA requires that deficient complaints be dismissed with prejudice or without leave to amend. The *amicus* brief argues that the hardline no-amendment rule flies in the face of Federal Rule of Civil Procedure 15(a), which permits liberal amendments to pleadings to ensure that cases are decided on their merits rather than on formalities or technicalities.

The U.S. Supreme Court ordered the defendants to file a response to the petition, but no response was filed. A decision on the petition is expected by the end of April 2013. The petition was filed by attorney Christian Grostic of Cleveland, Ohio, on behalf of Mr. Burnside. The *amicus* brief was filed by Paul Reingold and student attorney Mark Osmond of the Michigan Clinical Law Program, and by Alistair Newbern of the Vanderbilt Law School Appellate Litigation Clinic. ■

Preparing for Eventual Re-Entry:

Creating a Plan, Documenting Your Efforts, and Conveying it to the Judge or the Parole Board

By Jackie Ouvry, Attorney, and Nicole George, MSW, of the State Appellate Defender Office

The vast majority of those who are incarcerated will at some point return home to the community. The return to the community or release from incarceration is what many criminal justice practitioners generally refer to as "re-entry." All too often, however, incarceration itself will do little to prepare anyone for the transition.

Conduct while incarcerated is a significant factor in one's access to release and in a positive transition to the community. This includes everyday conduct and means *not just quitting getting in trouble but staying out of trouble*. Positive conduct includes pro-active self-help efforts, completing required and voluntary programming, pursuing work and education opportunities, and planning for re-entry. Access to release requires planning for re-entry, something one can start as early as someone knows they will be incarcerated. It is never too soon to prepare a re-entry plan.

Re-entry planning begins with identifying needs and goals for incarceration (as well as for eventual re-entry), and using the time incarcerated to work towards achieving those goals while taking actions to address those needs. Every re-entry plan must answer the basic question: "What will I need to transition from incarceration to society to be sure that I will not return to prison?" The answer to this question is unique to every individual. What follows is a sample checklist of needs and responsibilities that might be addressed in a re-entry plan:

- Housing
- Employment

- Education
- Identification
- Health Care/Medications
- Dental Care
- Vision
- Mental Health Care
- Transportation
- General Assistance (Food/Clothing/Bus Fare, etc)
- Substance Abuse Treatment
- Veteran's Assistance
- Social Security
- Child Support
- Phone
- Money Management
- Life Skills (computer skills, resume writing)
- Positive Peers
- Plans for productive use of free time

Each individual prisoner, along with their loved ones and professionals (such as attorneys, counselors, etc.), can assess what resources they have, what needs are present in their case and then seek resources to address those needs. Many individuals find it helpful to draft a checklist of their own re-entry resources and needs, then to document their efforts to meet the needs on the same list. The re-entry plan or checklist is meant to be both a way of organizing needs (so as to make sure to address them comprehensively) and a way of documenting resources one already has to support their re-entry. For example, when making a re-entry checklist, include all basic necessities, even if at this time you are fairly certain that goal will be met. Thus, "Housing" would be on every person's checklist, even if they plan to live with their spouse once released.

The re-entry plan should be organized in a way that works best for its author. One common way is to create a chart with three columns. In the first column would be the need, resource or goal, such as "Substance Abuse Treatment", with potential subgroups if needed, such as "AA Meetings" or "Find a Sponsor". The second column would be the actions to be taken and the actions already taken towards that achieving that goal. If "Substance Abuse Treatment" was the need listed then what might be written in the second column are the dates of AA meetings attended while in prison, the date a kite was sent to get into Phase I substance abuse, a letter written to a church on the outside asking about a schedule of meetings following release, etc. The third column would be the contact(s) or resource(s) that address that goal. For "Housing" it might be the name and contact information of the person with whom one plans to live. For "Substance Abuse" it might have the information for an AA Sponsor, an individual counselor or location for AA meetings, or all of the above. The long-term goal is to have the third column completely filled out prior to appearing before a judge for re-sentencing or before the Parole Board. This means that each person's re-entry plan will follow a very different timeline. Again, the three-column checklist is an example of just one way to identify, record, and organize a plan for re-entry. The key is that each person finds a way that works best for him or her.

The re-entry planning checklist will be an evolving document. It will constantly be changed and modified. As goals are met and insight is gained things will be added and checked off. The owner of the checklist just needs to remember that it is a tool for their benefit and for their success, and to be patient with themselves and to ask for help when they need it. In addition to creating and organizing a re-entry planning checklist, it is equally as important to document all efforts made to meet the needs and goals on the list.

Having an organized collection of the paperwork that supports ones efforts and achievements while incarcerated is very valuable. This documentation might consist of: copies of "kites" to get into programming; work, block, and programming reports; letters written to programming groups on the outside; letters from employers offering a job; letters of family members confirming you can live with them; letters of admission to a school, etc. For someone who may not be able to enter institutional programming or find community programming, documentation of self-help can support a re-entry plan (books read in the library, self-help workbooks, journaling to gain insight.) Any documentation collected can be presented to anyone making a re-entry decision – this might be the Parole Board, this might be a judge at a resentencing or might be an employer,

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school or community program that needs to see why the former prisoner should participate.

Once needs are identified, a plan is formulated to meet the needs, and any additional documents are in order, it is time to think about articulating the plan. The need to articulate a re-entry plan could come in many contexts. While some prisoners may have determinate sentences or life sentence without parole, many men and women in the Michigan Department of Corrections Prison system will have an interview with a parole board member at some point. Some prisoners may win an appeal and have an opportunity to speak to a judge at resentencing. While those who are released into the community may find many instances where they are asked to talk about their crime and how they spent their time while incarcerated, following release. Each of these instances provides an opportunity to focus not just on the crime that occurred but to present oneself as a whole person, and use the re-entry plan to assist in this presentation.

Insight, ability to follow rules and control behavior are among the many concerns that judges and Parole Board Members have regarding the people that come before them asking for release. The re-entry plan is an excellent tool for demonstrating insight. At a parole board interview and at a resentencing, the prisoner will undoubtedly be expected to discuss the crime that resulted in incarceration. Anything said must be absolutely genuine, and if it can genuinely include any statements of remorse (especially empathy for any victim) and statements of responsibility regarding what occurred, those statements will have a favorable impact. Any statement about insight learned from time spent incarcerated will also be viewed favorably, especially insight that is specific to a behavior that may have contributed to the commission of the crime leading to incarceration. The re-entry plan is also a good way to remind someone of their goals, track achievements and resources, and keep focused on the bigger picture. The plan serves as a reminder and motivation to think before one acts, and ask: "Is the choice I am about to make going to help me or hurt me? Is getting caught doing this worth putting my goals in jeopardy?" Making good goal-oriented choices can lead to actually developing a habit of being positive and productive. There is no better way of convincing a judge or Parole Board Member that you can follow the rules and control your behavior than by being someone who can now follow rules and control your behavior.

An example of expressing insight would be if the crime was Armed Robbery and the motivation was to gain money to buy drugs, then the risk factors/problems articulated might be substance abuse and poverty, the needs would be employment and substance abuse treatment, and the potential resources could be a job in the community, as well as a relapse prevention plan, including AA meetings, a sponsor and counseling. The person can refer to the problem or risk factor identified which created a need, the actions taken to address the need thus far, and then the institution programming or community resource that will address the need and will prevent the prisoner's return to incarceration. The person might also discuss instances in which he or she exhibited positive and productive behavior when faced with a choice between positive and negative behavior.

Finally, whether a parole board or appeal decision is positive or negative and however far away the eventual release date might be, a re-entry plan can connect a prisoner to their support network and to the documented support collected to create the re-entry plan. Creating a plan and re-entry checklist assists a former prisoner in staying on the right track once back in the community and provides accountability. Once developed, the re-entry plan and the support network it creates, gives its author a structured set of attainable goals for eventual release as well as support and accountability to attain those goals. Even for someone serving a mandatory life sentence and will likely not be released, it is still important to have a plan for future goals. Each prisoner can work towards education goals, pro-social connections in the community, self-help efforts, jobs in prison, and vocational training, etc.

As soon as someone enters prison, they have a choice to make between wasting their time or using their time productively and grow as a person. Sometimes the best thing any attorney, criminal justice professional, or support person can do for a prisoner is

work with them to create a road map for achievement – their re-entry plan. Listen to your client or loved one, and assist them in setting goals that are meaningful for them. No matter what happens, self-growth creates meaning and direction, in or out of prison. Once out of prison, self-growth can provide one the right tools so one does not return – especially that growth and those tools are documented in a re-entry plan. The bad choices made cannot not be taken back, but the choices made going forward in how someone does their time can tell a story to others about risk, potential and motivation for positivity and productivity once in the community. ■

Register Now
Re-Entry Strategies: Preparing Your Client to Re-Enter Society Following Incarceration
Saturday, June 1, 2013

The Prisons and Corrections Section will present its Spring program for attorneys interested in sentencing mitigation and prisoner re-entry issues on Saturday, June 1, 2013 from 9:00 a.m. until 1:00 p.m. at the State Bar of Michigan, 306 Townsend Street Lansing, Michigan 48933-2012. Topics will include: How to Litigate with Re-Entry in Mind; Re-Entry Programming within the Michigan Department of Corrections; and Re-Entry Programming within the Community. The registration fee is $30 ($20 for Section Members and law students) and includes a Continental breakfast and program materials. Limited free parking is available for registered attendees. Registration is due by Friday, May 24, 2013. For questions, contact Law Offices of Patricia Streeter, 221 North Main Street, Suite 300, Ann Arbor, Michigan 48104 (734) 222-0088, or cclay@patstreeter.com.

Registration information: A check in the amount of $30 ($20 for Prisons and Corrections Section members and law students) **payable to "State Bar of Michigan"** should be mailed with the Registration Form below.

Registration Form

Please register me for the seminar: **Re-Entry Strategies: Preparing Your Client to Re-enter Society Following Incarceration** presented by the Prisons and Corrections Section of the State Bar of Michigan, Saturday, June 1, 2013 at the State Bar of Michigan, 306 Townsend Street Lansing, Michigan 48933-2012

Name _____ P-Number _____

Address _____

Telephone _____ Email _____

Enclosed is my payment in the amount of $30 ____ Section Member $20 ____

Checks should be payable to "State Bar of Michigan" and mailed with this completed form to:

Law Offices of Patricia Streeter, 221 North Main Street, Suite 300, Ann Arbor, Michigan 48104
so that it is **received by Friday, May 24, 2013**

Conference on the Mentally Ill Prisoner and Prisoner Representation A Success

We are pleased to report a successful conference on February 8, 2013 addressing prisoners who are mentally ill and representing prisoners. The program was jointly sponsored by the Prisons and Corrections and the Young Lawyers Sections of the State Bar of Michigan, together with the Michigan Corrections Association. Despite a snow storm, we hosted about 100 attendees at the MSU Tollgate Education Conference Center in Novi, Michigan.

The program covered the identification, classification, and treatment of the mentally ill prisoner in Michigan's jails and prisons, and representation of prisoners in administrative proceedings and the courts. Presenters included Keith Barber, Michigan Legislative Corrections Ombudsman; Officials from Kent County on their jail program for mentally ill prisoners; Kathleen Schaefer, Professional Probation & Parole Consulting, Inc.; Attorney Stuart Friedman; Paul D. Reingold, Clinical Professor of Law, University of Michigan Law School; and Daniel E. Manville, Associate Clinical Professor of Law, Michigan State University College of Law. ■

Recent Legislative & MDOC Policy Developments

By Richard B. Stapleton, retired MDOC Legal Affairs Administrator

Pending Legislation

HB 4189 would eliminate the authority of successor judges to prevent the parole board from releasing a parolable lifer by amending M.C.L. § 791.234(8)(c). The bill will still permit successor judges to have their input considered by the parole board but would no longer allow them to exercise veto power over the board's decision to grant parole in these cases. Michigan prisons house about 850 parolable lifers who are currently eligible for release. Many have now served decades longer than their sentencing judges had intended. A substantial proportion of lifer paroles have been stopped by successor judges who can simply write a note to the parole board stating that they object to parole release. Sentencing judges who are still are on the bench at the time of parole consideration for a prisoner serving a parolable life sentence will retain veto power over the board's decision. (Introduced by Rep. Ellen Lipton (D) on February 5, 2013.)

SB 0098 and **HB 4451** would provide for compensation and other relief for individuals wrongfully imprisoned for crimes. As proposed under these bills, a plaintiff who was convicted and sentenced to a term of imprisonment and who served at least a portion of the sentence, must establish that the conviction was reversed or vacated as result of a dismissal or a finding of not guilty and that DNA or equally reliable scientific or physical evidence resulted in the dismissal or vacation of the conviction. A wrongfully convicted plaintiff would be entitled to compensation up to $60,000.00 for each year of imprisonment, reasonable attorney fees, and economic damages, including lost wages and any costs paid in defending against the criminal charges. (SB 0098 introduced by Sen. Steve Bieda (D) on January 29, 2013 / HB 4451 introduced by Rep. Jon Switalski (D) on March 13, 2013.)

HB 4186 would revise the grounds for seeking to have a criminal record expunged from a person's record. The bill would allow a person convicted of only one felony offense and not more than two misdemeanors, to apply to have the felony "set aside," or expunged from the person's public record. A person convicted of not more than two misdemeanors could apply to have one of them set aside. This would not apply to convictions for criminal sexual conduct, domestic violence, or crimes punishable by life imprisonment. (Introduced by Rep. Stacy Erwin Oakes (D) on February 5, 2013.)

HB 4040 would revise the Crime Victims' Rights Act that currently requires a crime victim to be notified about the perpetrator's release or parole hearing, so that the victim would also receive notification if the offender absconds while on bail or other release, requests a commutation or pardon, or dies. The bill would also allow a victim to testify and present exhibits in person at a parole hearing, rather than simply by a written statement as cur-

rently allowed. (Introduced by Rep. Stacy Erwin Oakes (D) on February 5, 2013.)

SB 221 would require individuals on the public sex offender registry to pay $50 each year, rather than just a one-time $50 fee. (Introduced by Sen. Rick Jones (R) on February 26, 2013.)

Recently Passed Legislation

PA 599 of 2012 amended M.C.L. §§ 791.220i, 791.229, 791.263, 791.263a, 791.265, 791.265a, 791.269a, and 791.270 to allow, but not require, the Department of Corrections to contract out the incarceration of prisoners to a private prison in a five year contract, if doing so would save at least 10 percent. This revision will allow the department to contract with a private vendor to house adult prisoners at the former Michigan youth correctional facility in Baldwin, a prison facility owned by the GEO Group, Inc. and whose previous contract with the state was revoked by Gov. Jennifer Granholm in 2005. The department has taken bids on the operation of a 960-bed facility.

PA 002 of 2013 amended M.C.L. § 28.728 to place on the state's public sexual offender registry individuals who committed certain crimes previously deemed insufficiently serious to warrant this consequence, but in which the victim is a minor. This would include indecent exposure, knowingly possessing child sexually abusive material, surveillance of an undressed individual, and knowingly restraining another person. This revision is retroactive thereby requiring individuals convicted of these additional offenses in the past to be placed on the sex offender registry.

PA 126 of 2012 amended M.C.L. § 205.54a to eliminate the sales tax exemption on purchases by prisoners at prison stores. The state's General Sales Tax Act had contained an exemption for sales to prisoners since 1971.

PA 24 of 2012 added M.C.L. § 791.234c to require prisoners to make efforts to obtain a driver license or a state identification card before their release, and to require the Department of Corrections and the Secretary of State to help them get the necessary documents. The Act also requires the department to notify prisoners of the need for these document and to issue all prisoners a photo identification card when they are released.

Recent MDOC Policy Revisions

PD 6.05.104, "Parole Process" was revised effective June 1, 2012 and again on March 1, 2013. The revisions permit the parole board to reconsider prisoners who are denied parole at 60 month intervals if the "majority of the Parole Board concludes that the prisoner's history of predatory, deviant, or violent behavior indicates there is a present risk to public safety which cannot reasonably be expected to be mitigated in less than 60 months. "By policy, the board previously could issue 60 month "flops" only to prisoners who had a prior parole revoked, or were returned with a new sentence that occurred during parole release, for behavior that "involved the prisoner owning or possessing a firearm or, without authorization, being in the company of a person who the prisoner knew possessed a firearm." A policy of issuing 5 year "flops" for parolee gun violations was implemented by Jennifer Granholm in 2004. The policy requires that prisoners who are denied parole in all other cases be reconsidered again at intervals not to exceed 24 months.

PD 06.06.100, "Parole Violation Process" was revised effective March 1, 2013 to include a practice

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implemented by the department in 2010 to allow a parolee charged with a parole violation to plead guilty or no contest to one or more of the charges. The plea can be taken by a parole board member, a parole violation specialist (field operation staff member) or an attorney hearing officer. If the plea is accepted, or the violation is sustained by a criminal conviction, only a hearing on the issue of mitigation will be scheduled. If the parolee waives the hearing on mitigation in writing, s/he will be provided an opportunity to present evidence in mitigation; however, witness testimony and attorney representation will be allowed only at a hearing.

Director's Office Memorandum 2013-13, "International Telephone Service" expands prisoner telephone service to an extensive list of countries identified within the for 75 cents a minute. Telephone service had previously been limited to the United States, Canada, Mexico, Puerto Rico, the Virgin Islands, and Guam.

Director's Office Memorandum 2013-28, "Detroit Reentry Center" provides exceptions to other policy directives in order for Field Operations Administration (FOA) to operate the previously closed Ryan Correctional Facility in the City of Detroit. The facility has been reopened to provide additional beds to house parole violators. The new facility is called the Detroit Reentry Center (DRC) and houses parolees who are required, as a special condition of parole, to participate in and satisfactorily complete residential reentry programming as well as parolees who are believed to have violated a condition of parole and are being considered for parole violation revocation proceedings. The facility will also house prisoners in one or more housing units specially designated by the Correctional Facilities Administration (CFA) Deputy Director.

Director's Office Memorandum 2013-24, "Use of Electronic Control Devices (ECD's) in Correctional Facilities" authorized the use of taser devices by prison custody staff. The DOM is exempted from public disclosure. The department has indicated, however, that use of electric stun guns began as an experiment in December 2011 in five of the state's 31 prisons. It has since been expanded to all prisons, except to the Woodland Center Correctional Facility which houses mentally ill prisoners. An MDOC spokesperson reported to the Detroit Free Press in February 2013 that, "Officers have displayed Tasers about 775 times and fired them about 500 times, with no serious injuries or deaths resulting." The department cites security reasons for not disclosing details of the policy requirements for use of the devices and for not releasing information concerning the circumstances of their use. ■