



MICHIGAN DEPT. OF CORRECTIONS

EFFECTIVE DATE

September 1, 1981

NUMBER

PD-DWA-45.12

SUPERSEDES NO.

New

DATED

POLICY DIRECTIVE

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 4

APPLICATION: All residents serving life sentences and those serving long-indeterminate sentences who are not eligible for special parole consideration or release under the provisions of the "Lifer Law" (MCLA 791.234, paragraph 4)."

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, because of the extraordinary severity of some individual sentences, or because of extraordinary accomplishment during incarceration. Commutation is not a routine mechanism of release to be used when other means of mitigation of sentence are available.

In the past only those prisoners serving for Murder in the First Degree were denied the possibility of any consideration for special parole or "Lifer Law" release, and the volume of commutations was, therefore, not great. Now that commutation is the only avenue of mitigation for virtually all persons arriving in prisons with long terms, the burden of commutation review will be much greater. This increase in volume makes it incumbent that guidelines be established to expedite review of these cases; however, a final decision to recommend commutation remains solely with the Parole Board.

While it is not feasible to construct guidelines which will cover all conceivable cases, those promulgated herein will apply to all but a few of the cases for whom commutation review is justified by virtue of meritorious prison performance and who are serving life and extraordinarily long-indeterminate sentences.

These guidelines shall be the basis for referring most cases to the Governor with a recommendation for commutation. It must be recognized that the final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover residents serving life or long-indeterminate sentences who are not eligible for special parole consideration or release under the "Lifer Law" and who are serving for offenses of homicide, robbery, or sexual assault. These three crime groups cover the majority of offenders whose terms are of such length that commutation may be indicated.

Please note
Final
pg. 4

Notification and Appeal:

By the effective date of this policy, the policy and the copies of the guideline score sheets and grids shall be published in the penal press of each facility or otherwise made available to all residents serving for one of the crime groups covered by the guidelines and who also meet the criteria in the application sentence of this policy; this is done so they may be aware of their own probable status with respect to commutation recommendations.


If any resident feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under Rule 310 on the matter. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guidelines:

The Parole Board may at any future time revise the guidelines or grids as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the guidelines may not have that date delayed by any later revision of this kind.

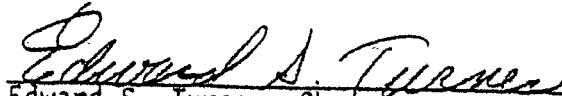
AUTHORITY: MCL 791.202, .204, .206, .232, .244.
Corrections Commission, March 11, 1981.

APPROVED:


Perry M. Johnson, Director

MAY - 6 1981

Date


Edward S. Turner, Chairman
Michigan Parole Board

MAY - 6 1981

Date

PMJ:EST:WLK:ks
5/6/81



MICHIGAN DEPT. OF CORRECTIONS

EFFECTIVE DATE

September 1, 1981

NUMBER

PD-DWA-45.12

SUPERSEDES NO.

New

DATED

POLICY DIRECTIVE

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 4

APPLICATION: All residents serving life sentences and those serving long-indeterminate sentences who are not eligible for special parole consideration or release under the provisions of the "Lifer Law" (MCLA 791.234, paragraph 4)."

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, because of the extraordinary severity of some individual sentences, or because of extraordinary accomplishment during incarceration. Commutation is not a routine mechanism of release to be used when other means of mitigation of sentence are available.

In the past only those prisoners serving for Murder in the First Degree were denied the possibility of any consideration for special parole or "Lifer Law" release, and the volume of commutations was, therefore, not great. Now that commutation is the only avenue of mitigation for virtually all persons arriving in prisons with long terms, the burden of commutation review will be much greater. This increase in volume makes it incumbent that guidelines be established to expedite review of these cases; however, a final decision to recommend commutation remains solely with the Parole Board.

While it is not feasible to construct guidelines which will cover all conceivable cases, those promulgated herein will apply to all but a few of the cases for whom commutation review is justified by virtue of meritorious prison performance and who are serving life and extraordinarily long-indeterminate sentences.

These guidelines shall be the basis for referring most cases to the Governor with a recommendation for commutation. It must be recognized that the final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover residents serving life or long-indeterminate sentences who are not eligible for special parole consideration or release under the "Lifer Law" and who are serving for offenses of homicide, robbery, or sexual assault. These three crime groups cover the majority of offenders whose terms are of such length that commutation may be indicated.

Please note
final paragraph
pg. 4

Each person meeting these criteria for commutation shall have his or her guideline scores computed on the basis of the offense and prior criminal record. These scores shall then be applied to the appropriate grid to determine the number of years to be served before commutation may be recommended. If that number of years is significantly less than the time which must otherwise be served before community release, then the individual will be a potential candidate for release recommendation under these guidelines. If the resident could be released on parole or to a community program before the time indicated by the guidelines, then commutation will not be considered. This will be true of a majority of cases, since guidelines are intended for extraordinary relief where sentences are much longer than normal and behavior is exemplary.

Exception From the Guidelines:

In some cases, the circumstances surrounding the offense or the offender's past history may be such that a recommendation for commutation based on the guidelines will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the offender may never be safely released. Where such cases occur, the Board will, on its first review of the guidelines recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case, and will include the reasons therefore.

Commutation of Cases Not Included in the Guidelines:

- (1) Some persons receive life or very long sentences for crimes such as kidnapping or conspiracy for which guideline grids have not been promulgated. The Board will consider these cases on an individual basis, considering both the prior criminal record and the offense in order to make recommendations for commutation in a manner which will be equitable with cases that are covered by the guidelines. In making this judgment, the Board may find it helpful to compute the prior record score using a guideline score sheet, and by making a determination that the severity of the offense is "similar" to the severity of an offense covered by the guidelines; it may then use an appropriate grid to reach a time for recommendation.
- (2) There are instances in which persons serving for robbery, sexual assault or homicide are technically eligible for release under the "Lifer Law," but for whom the same court which set a much longer than usual sentence refuses to allow

BUREAU/INST. NUMBER

SUPERSEDES NO.
New

release under the "Lifer Law" even after the individual has served much more time than would be usual for persons with similar backgrounds committing similar crimes. In such cases, the Board may, at its discretion, make a recommendation for release based on the length of time recommended by the guidelines.

- (3) Irreversible and totally disabling, or terminal medical conditions may result in a recommendation of commutation in cases not covered or not yet eligible under the guidelines when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious and/or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no guilty major misconduct finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered, the prisoner has been found guilty of an assaultive crime by court of law or, by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.
- (4) Three or more major misconducts within the last five years will delay consideration by one year.
- (5) A prisoner whose work and conduct has been exemplary will receive recommendation one year earlier than indicated in the guideline grid.

Implementation:

Procedures will be developed by the reception centers, the various institutions, and the Parole Board for the scoring and review of cases meeting the above criteria. Cases serving life terms and Proposal "B" cases with minimum terms of five years or longer already in the system as of the effective date should be scored and screened by the institutions by January 1, 1982; all new arrivals coming under the guidelines should be scored and screened while in the reception process. Residents will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review.

Notification and Appeal:

By the effective date of this policy, the policy and the copies of the guideline score sheets and grids shall be published in the penal press of each facility or otherwise made available to all residents serving for one of the crime groups covered by the guidelines and who also meet the criteria in the application sentence of this policy; this is done so they may be aware of their own probable status with respect to commutation recommendations.

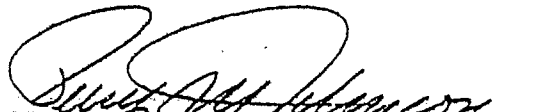
If any resident feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under Rule 310 on the matter. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guidelines:

The Parole Board may at any future time revise the guidelines or grids as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the guidelines may not have that date delayed by any later revision of this kind.

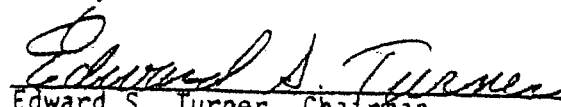
AUTHORITY: MCL 791.202, .204, .206, .232, .244.
Corrections Commission, March 11, 1981.

APPROVED:


Perry M. Johnson, Director

MAY - 8 1981

Date


Edward S. Turner, Chairman
Michigan Parole Board

MAY - 8 1981

Date

PMJ:EST:WLK:ks
5/6/81



MICHIGAN DEPT. OF CORRECTIONS

EFFECTIVE DATE

September 1, 1981

NUMBER

PD-DWA-45.12

SUPERSEDES NO.

New

DATED

POLICY DIRECTIVE

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 4

APPLICATION: All residents serving life sentences and those serving long-indeterminate sentences who are not eligible for special parole consideration or release under the provisions of the "Lifer Law" (MCLA 791.234, paragraph 4)."

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, because of the extraordinary severity of some individual sentences, or because of extraordinary accomplishment during incarceration. Commutation is not a routine mechanism of release to be used when other means of mitigation of sentence are available.

In the past only those prisoners serving for Murder in the First Degree were denied the possibility of any consideration for special parole or "Lifer Law" release, and the volume of commutations was, therefore, not great. Now that commutation is the only avenue of mitigation for virtually all persons arriving in prisons with long terms, the burden of commutation review will be much greater. This increase in volume makes it incumbent that guidelines be established to expedite review of these cases; however, a final decision to recommend commutation remains solely with the Parole Board.

While it is not feasible to construct guidelines which will cover all conceivable cases, those promulgated herein will apply to all but a few of the cases for whom commutation review is justified by virtue of meritorious prison performance and who are serving life and extraordinarily long-indeterminate sentences.

These guidelines shall be the basis for referring most cases to the Governor with a recommendation for commutation. It must be recognized that the final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover residents serving life or long-indeterminate sentences who are not eligible for special parole consideration or release under the "Lifer Law" and who are serving for offenses of homicide, robbery, or sexual assault. These three crime groups cover the majority of offenders whose terms are of such length that commutation may be indicated.

Please note
Final paragraph
Pg. 4

Each person meeting these criteria for commutation shall have his or her guideline scores computed on the basis of the offense and prior criminal record. These scores shall then be applied to the appropriate grid to determine the number of years to be served before commutation may be recommended. If that number of years is significantly less than the time which must otherwise be served before community release, then the individual will be a potential candidate for release recommendation under these guidelines. If the resident could be released on parole or to a community program before the time indicated by the guidelines, then commutation will not be considered. This will be true of a majority of cases, since guidelines are intended for extraordinary relief where sentences are much longer than normal and behavior is exemplary.

Exception From the Guidelines:

In some cases, the circumstances surrounding the offense or the offender's past history may be such that a recommendation for commutation based on the guidelines will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the offender may never be safely released. Where such cases occur, the Board will, on its first review of the guidelines recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case, and will include the reasons therefore.

Commutation of Cases Not Included in the Guidelines:

- (1) Some persons receive life or very long sentences for crimes such as kidnapping or conspiracy for which guideline grids have not been promulgated. The Board will consider these cases on an individual basis, considering both the prior criminal record and the offense in order to make recommendations for commutation in a manner which will be equitable with cases that are covered by the guidelines. In making this judgment, the Board may find it helpful to compute the prior record score using a guideline score sheet, and by making a determination that the severity of the offense is "similar" to the severity of an offense covered by the guidelines; it may then use an appropriate grid to reach a time for recommendation.
- (2) There are instances in which persons serving for robbery, sexual assault or homicide are technically eligible for release under the "Lifer Law," but for whom the same court which set a much longer than usual sentence refuses to allow

BUREAU/INST. NUMBER

SUPERSEDES NO.
New

release under the "Lifer Law" even after the individual has served much more time than would be usual for persons with similar backgrounds committing similar crimes. In such cases, the Board may, at its discretion, make a recommendation for release based on the length of time recommended by the guidelines.

- (3) Irreversible and totally disabling, or terminal medical conditions may result in a recommendation of commutation in cases not covered or not yet eligible under the guidelines when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious and/or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no guilty major misconduct finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered, the prisoner has been found guilty of an assaultive crime by court of law or, by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.
- (4) Three or more major misconducts within the last five years will delay consideration by one year.
- (5) A prisoner whose work and conduct has been exemplary will receive recommendation one year earlier than indicated in the guideline grid.

Implementation:

Procedures will be developed by the reception centers, the various institutions, and the Parole Board for the scoring and review of cases meeting the above criteria. Cases serving life terms and Proposal "8" cases with minimum terms of five years or longer already in the system as of the effective date should be scored and screened by the institutions by January 1, 1982; all new arrivals coming under the guidelines should be scored and screened while in the reception process. Residents will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review.

Notification and Appeal:

By the effective date of this policy, the policy and the copies of the guideline score sheets and grids shall be published in the penal press of each facility or otherwise made available to all residents serving for one of the crime groups covered by the guidelines and who also meet the criteria in the application sentence of this policy; this is done so they may be aware of their own probable status with respect to commutation recommendations.


If any resident feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under Rule 310 on the matter. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guidelines:

The Parole Board may at any future time revise the guidelines or grids as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the guidelines may not have that date delayed by any later revision of this kind.


AUTHORITY: MCL 791.202, .204, .206, .232, .244.
Corrections Commission, March 11, 1981.

APPROVED:


Perry M. Johnson, Director

MAY - 6 1981

Date


Edward S. Turner, Chairman
Michigan Parole Board

MAY - 6 1981

Date

PMJ:EST:WLK:ks
5/6/81



MICHIGAN DEPT. OF CORRECTIONS

EFFECTIVE DATE

September 1, 1981

NUMBER

PD-DWA-45.12

SUPERSEDES NO.

New

DATED

POLICY DIRECTIVE

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 4

APPLICATION: All residents serving life sentences and those serving long-indeterminate sentences who are not eligible for special parole consideration or release under the provisions of the "Lifer Law" (MCLA 791.234, paragraph 4)."

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, because of the extraordinary severity of some individual sentences, or because of extraordinary accomplishment during incarceration. Commutation is not a routine mechanism of release to be used when other means of mitigation of sentence are available.

In the past only those prisoners serving for Murder in the First Degree were denied the possibility of any consideration for special parole or "Lifer Law" release, and the volume of commutations was, therefore, not great. Now that commutation is the only avenue of mitigation for virtually all persons arriving in prisons with long terms, the burden of commutation review will be much greater. This increase in volume makes it incumbent that guidelines be established to expedite review of these cases; however, a final decision to recommend commutation remains solely with the Parole Board.

While it is not feasible to construct guidelines which will cover all conceivable cases, those promulgated herein will apply to all but a few of the cases for whom commutation review is justified by virtue of meritorious prison performance and who are serving life and extraordinarily long-indeterminate sentences.

These guidelines shall be the basis for referring most cases to the Governor with a recommendation for commutation. It must be recognized that the final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover residents serving life or long-indeterminate sentences who are not eligible for special parole consideration or release under the "Lifer Law" and who are serving for offenses of homicide, robbery, or sexual assault. These three crime groups cover the majority of offenders whose terms are of such length that commutation may be indicated.

Please note
final
pg. 4
paragraph

Each person meeting these criteria for commutation shall have his or her guideline scores computed on the basis of the offense and prior criminal record. These scores shall then be applied to the appropriate grid to determine the number of years to be served before commutation may be recommended. If that number of years is significantly less than the time which must otherwise be served before community release, then the individual will be a potential candidate for release recommendation under these guidelines. If the resident could be released on parole or to a community program before the time indicated by the guidelines, then commutation will not be considered. This will be true of a majority of cases, since guidelines are intended for extraordinary relief where sentences are much longer than normal and behavior is exemplary.

Exception From the Guidelines:

In some cases, the circumstances surrounding the offense or the offender's past history may be such that a recommendation for commutation based on the guidelines will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the offender may never be safely released. Where such cases occur, the Board will, on its first review of the guidelines recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case, and will include the reasons therefore.

Commutation of Cases Not Included in the Guidelines:

- (1) Some persons receive life or very long sentences for crimes such as kidnapping or conspiracy for which guideline grids have not been promulgated. The Board will consider these cases on an individual basis, considering both the prior criminal record and the offense in order to make recommendations for commutation in a manner which will be equitable with cases that are covered by the guidelines. In making this judgment, the Board may find it helpful to compute the prior record score using a guideline score sheet, and by making a determination that the severity of the offense is "similar" to the severity of an offense covered by the guidelines; it may then use an appropriate grid to reach a time for recommendation.
- (2) There are instances in which persons serving for robbery, sexual assault or homicide are technically eligible for release under the "Lifer Law," but for whom the same court which set a much longer than usual sentence refuses to allow

BUREAU/INST. NUMBER

SUPERSEDES NO.
New

release under the "Lifer Law" even after the individual has served much more time than would be usual for persons with similar backgrounds committing similar crimes. In such cases, the Board may, at its discretion, make a recommendation for release based on the length of time recommended by the guidelines.

- (3) Irreversible and totally disabling, or terminal medical conditions may result in a recommendation of commutation in cases not covered or not yet eligible under the guidelines when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious and/or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no guilty major misconduct finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered, the prisoner has been found guilty of an assaultive crime by court of law or, by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.
- (4) Three or more major misconducts within the last five years will delay consideration by one year.
- (5) A prisoner whose work and conduct has been exemplary will receive recommendation one year earlier than indicated in the guideline grid.

Implementation:

Procedures will be developed by the reception centers, the various institutions, and the Parole Board for the scoring and review of cases meeting the above criteria. Cases serving life terms and Proposal "B" cases with minimum terms of five years or longer already in the system as of the effective date should be scored and screened by the institutions by January 1, 1982; all new arrivals coming under the guidelines should be scored and screened while in the reception process. Residents will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review.

Notification and Appeal:

By the effective date of this policy, the policy and the copies of the guideline score sheets and grids shall be published in the penal press of each facility or otherwise made available to all residents serving for one of the crime groups covered by the guidelines and who also meet the criteria in the application sentence of this policy; this is done so they may be aware of their own probable status with respect to commutation recommendations.

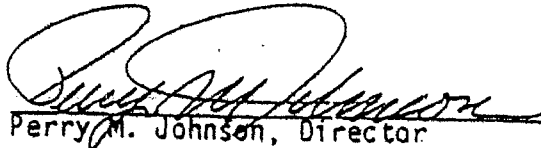
If any resident feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under Rule 310 on the matter. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guidelines:

The Parole Board may at any future time revise the guidelines or grids as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the guidelines may not have that date delayed by any later revision of this kind.

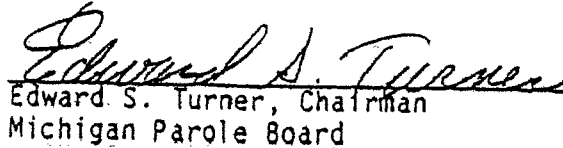
AUTHORITY: MCL 791.202, .204, .206, .232, .244.
Corrections Commission, March 11, 1981.

APPROVED:


Perry M. Johnson, Director

MAY - 6 1981

Date


Edward S. Turner, Chairman
Michigan Parole Board

MAY - 6 1981

Date

PMJ:EST:WLK:ks
5/6/81



MICHIGAN DEPT. OF CORRECTIONS

EFFECTIVE DATE

September 1, 1981

NUMBER

PD-DWA-45.12

SUPERSEDES NO.

New

DATED

POLICY DIRECTIVE

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 4

APPLICATION: All residents serving life sentences and those serving long-indeterminate sentences who are not eligible for special parole consideration or release under the provisions of the "Lifer Law" (MCLA 791.234, paragraph 4)."

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, because of the extraordinary severity of some individual sentences, or because of extraordinary accomplishment during incarceration. Commutation is not a routine mechanism of release to be used when other means of mitigation of sentence are available.

In the past only those prisoners serving for Murder in the First Degree were denied the possibility of any consideration for special parole or "Lifer Law" release, and the volume of commutations was, therefore, not great. Now that commutation is the only avenue of mitigation for virtually all persons arriving in prisons with long terms, the burden of commutation review will be much greater. This increase in volume makes it incumbent that guidelines be established to expedite review of these cases; however, a final decision to recommend commutation remains solely with the Parole Board.

While it is not feasible to construct guidelines which will cover all conceivable cases, those promulgated herein will apply to all but a few of the cases for whom commutation review is justified by virtue of meritorious prison performance and who are serving life and extraordinarily long-indeterminate sentences.

These guidelines shall be the basis for referring most cases to the Governor with a recommendation for commutation. It must be recognized that the final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover residents serving life or long-indeterminate sentences who are not eligible for special parole consideration or release under the "Lifer Law" and who are serving for offenses of homicide, robbery, or sexual assault. These three crime groups cover the majority of offenders whose terms are of such length that commutation may be indicated.

Please note
Final paragraph
pg. 4

Each person meeting these criteria for commutation shall have his or her guideline scores computed on the basis of the offense and prior criminal record. These scores shall then be applied to the appropriate grid to determine the number of years to be served before commutation may be recommended. If that number of years is significantly less than the time which must otherwise be served before community release, then the individual will be a potential candidate for release recommendation under these guidelines. If the resident could be released on parole or to a community program before the time indicated by the guidelines, then commutation will not be considered. This will be true of a majority of cases, since guidelines are intended for extraordinary relief where sentences are much longer than normal and behavior is exemplary.

Exception From the Guidelines:

In some cases, the circumstances surrounding the offense or the offender's past history may be such that a recommendation for commutation based on the guidelines will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the offender may never be safely released. Where such cases occur, the Board will, on its first review of the guidelines recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case, and will include the reasons therefore.

Commutation of Cases Not Included in the Guidelines:

- (1) Some persons receive life or very long sentences for crimes such as kidnapping or conspiracy for which guideline grids have not been promulgated. The Board will consider these cases on an individual basis, considering both the prior criminal record and the offense in order to make recommendations for commutation in a manner which will be equitable with cases that are covered by the guidelines. In making this judgment, the Board may find it helpful to compute the prior record score using a guideline score sheet, and by making a determination that the severity of the offense is "similar" to the severity of an offense covered by the guidelines; it may then use an appropriate grid to reach a time for recommendation.
- (2) There are instances in which persons serving for robbery, sexual assault or homicide are technically eligible for release under the "Lifer Law," but for whom the same court which set a much longer than usual sentence refuses to allow

BUREAU/INST. NUMBER

SUPERSEDES NO.
New

release under the "Lifer Law" even after the individual has served much more time than would be usual for persons with similar backgrounds committing similar crimes. In such cases, the Board may, at its discretion, make a recommendation for release based on the length of time recommended by the guidelines.

- (3) Irreversible and totally disabling, or terminal medical conditions may result in a recommendation of commutation in cases not covered or not yet eligible under the guidelines when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious and/or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no guilty major misconduct finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered, the prisoner has been found guilty of an assaultive crime by court of law or, by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.
- (4) Three or more major misconducts within the last five years will delay consideration by one year.
- (5) A prisoner whose work and conduct has been exemplary will receive recommendation one year earlier than indicated in the guideline grid.

Implementation:

Procedures will be developed by the reception centers, the various institutions, and the Parole Board for the scoring and review of cases meeting the above criteria. Cases serving life terms and Proposal "B" cases with minimum terms of five years or longer already in the system as of the effective date should be scored and screened by the institutions by January 1, 1982; all new arrivals coming under the guidelines should be scored and screened while in the reception process. Residents will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review.

Notification and Appeal:

By the effective date of this policy, the policy and the copies of the guideline score sheets and grids shall be published in the penal press of each facility or otherwise made available to all residents serving for one of the crime groups covered by the guidelines and who also meet the criteria in the application sentence of this policy; this is done so they may be aware of their own probable status with respect to commutation recommendations.

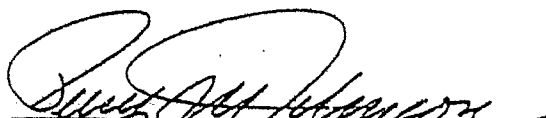
If any resident feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under Rule 310 on the matter. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guidelines:

The Parole Board may at any future time revise the guidelines or grids as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the guidelines may not have that date delayed by any later revision of this kind.


AUTHORITY: MCL 791.202, .204, .206, .232, .244.
Corrections Commission, March 11, 1981.

APPROVED:


Perry M. Johnson, Director

MAY - 6 1981

Date


Edward S. Turner, Chairman
Michigan Parole Board

MAY - 6 1981

Date

PMJ:EST:WLK:ks
5/6/81

OPERATING PROCEDURE

EFFECTIVE DATE

8-1-84

NUMBER

01.01.123-H

SUPERSEDES

OP-DWA-45.05 (5-25-82)

AUTHORITY

PD 01.01.123; PD-DWA-45.12

SUBJECT COMMUTATION AND LONG TERM INTERVIEW, REPORT AND REVIEW GUIDELINES

PAGE

1

OF

4

I. FORMS USED: CSO-452 a/b/c, Commutation and Long-Term Release Guidelines
CAX-116, Parole Board Hearing Comments
CAX-114A, Notice of Action/Parole Board

- II. INFORMATION:
- A. PD-DWA-45.12 provides for completion of commutation guideline grids and recommendations by the Parole Board for commutation of sentence if the guideline score is confirmed by a majority of the Parole Board membership. This procedure is necessary to develop a comprehensive formula for report preparation, interview schedules, guideline confirmation or non-confirmation, and subsequent interviews.
 - B. This procedure applies to all prisoners serving sentences in the following categories:
 1. Murder First Degree
 2. Life terms other than Murder First Degree
 3. Long indeterminate sentence with 10 (ten) calendar years or more to be served.
 - C. Prisoners in the above categories are eligible for an initial interview after the service of 4 (four) calendar years with subsequent interviews every 2 (two) years thereafter.
 - D. An initial progress report will be requested on Murder First Degree cases prior to the fourth interview (about the 10th year served). All other initial progress reports will be requested prior to the third interview (about the 8th year served). Updated progress reports for all categories will be requested 6 (six) years after the initial report and every 6 (six) years thereafter. A Board member may request a report earlier than the normal schedule.
 - E. While PD-DWA-45.12 does not apply to all cases in "2" and "3" as listed above, the Parole Board does intend to use the commutation guidelines to assist in the decision to recommend special parole consideration or consideration for the Lifer Law process as provided for in MCL 791.234.

III. PROCEDURE

WHO

DOES WHAT

RUM/Counselor
or Designate

1. Completes applicable commutation guidelines grid and distributes as follows:

WHODOES WHATRUM/Counselor
or Designate

- a. white copy - Parole Board
- b. canary copy - Counselor File
- c. pink copy - Record Office File
- d. goldenrod copy - Prisoner

Data Processing
Division

2. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have just completed 4 (four) calendar years and are due an initial interview.
3. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with two months existing between the next action date and official date, and are due a routine interview.
4. Generates for the Parole Board and each institution a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with 4 months existing between the next action date and official date, and a progress report and routine interview are due.

Parole Board
Member or
Designate

5. Reviews the cases in Category "3" who appear on the monthly listings to determine which prisoners no longer have 10 (ten) calendar years to serve, and are therefore not properly identified as long indeterminate cases.
6. Removes the case from the long indeterminate category without a full Board review except where the grid score is 9 (nine) years or less, and is also less than the number of years from the corrected date to the minimum. These cases will be referred to the full Board for review.
7. Notifies prisoners who have been removed from the long indeterminate category by issuing a Notice of Action and Code 96.

Parole Board
Secretary

8. Provides the Case Compiler with a listing of those cases where a progress report is not needed and are ready to be scheduled for an interview.

RUM/Counselor
or Designate

9. Prepares the report requested in Step 4 as follows:
 - a. Initial progress reports to include sections covering:
 1. Official version of the instant offense.
 2. Offender's version of the instant offense.
 3. Prior criminal history.
 4. Institutional adjustment and accomplishments.
 5. Any medical/psychiatric contacts/problems.
 6. Release plans/detainers.
 7. Commutation guideline grid (if not previously completed.)

WHO

DOES WHAT

Parole Board
Members

20. Issue a Notice of Parole Board Action to the prisoner. The notice will contain an official date and a next action date. The official date will reflect when the next interview is due and the next action date will reflect desired future handling (see Steps 3 and 4). This applies to the following codes:

- a. Codes 91 - Long Indeterminate, and 92 - Lifer Law (Commutation not necessary OR decision on score deferred)
- b. Code 93 - Murder First Degree (Decision on score deferred)
- c. Code 94 - Commutation score confirmed
- d. Code 95 - Commutation score unconfirmed

Code 96 indicates an LID is removed from category. Both action dates will reflect the current minimum.

Parole Board
Secretary

21. Enters appropriate code on CMIS with indicated next action date and official date.

Parole Board
Member

22. Refers case to the Administrative Assistant for processing toward a public hearing under the Lifer Law or commutation procedure.

Administrative
Assistant

23. Processes the case received in Step 22 as provided for in MCL 791.234.

Data Processing
Division

24. Generates monthly listings as described in Steps 2, 3 and 4.

Appropriate
Parole Board and
Institutional Staff

25. Repeat Steps 5 through 23.

APPROVED:

Perry M. Johnson /s/
Perry M. Johnson, Acting Director

7-16-84
Date

OPERATING PROCEDURE

EFFECTIVE DATE

8-1-84

NUMBER

01.01.123-H

SUPERSEDES

OP-DWA-45.05 (5-25-82)

AUTHORITY

PD 01.01.123; PD-DWA-45.12

SUBJECT

COMMUTATION AND LONG TERM INTERVIEW, REPORT
AND REVIEW GUIDELINES

PAGE

1

OF

4

I. FORMS USED:

CSO-452 a/b/c, Commutation and Long-Term Release Guidelines
CAX-116, Parole Board Hearing Comments
CAX-114A, Notice of Action/Parole Board

II. INFORMATION:

- A. PD-DWA-45.12 provides for completion of commutation guideline grids and recommendations by the Parole Board for commutation of sentence if the guideline score is confirmed by a majority of the Parole Board membership. This procedure is necessary to develop a comprehensive formula for report preparation, interview schedules, guideline confirmation or non-confirmation, and subsequent interviews.
- B. This procedure applies to all prisoners serving sentences in the following categories:
 1. Murder First Degree
 2. Life terms other than Murder First Degree
 3. Long indeterminate sentence with 10 (ten) calendar years or more to be served.
- C. Prisoners in the above categories are eligible for an initial interview after the service of 4 (four) calendar years with subsequent interviews every 2 (two) years thereafter.
- D. An initial progress report will be requested on Murder First Degree cases prior to the fourth interview (about the 10th year served). All other initial progress reports will be requested prior to the third interview (about the 8th year served). Updated progress reports for all categories will be requested 6 (six) years after the initial report and every 6 (six) years thereafter. A Board member may request a report earlier than the normal schedule.
- E. While PD-DWA-45.12 does not apply to all cases in "2" and "3" as listed above, the Parole Board does intend to use the commutation guidelines to assist in the decision to recommend special parole consideration or consideration for the Lifer Law process as provided for in MCL 791.234.

III. PROCEDURE

WHO

DOES WHAT

RUM/Counselor
or Designate

1. Completes applicable commutation guidelines grid and distributes as follows:

WHODOES WHATRUM/Counselor
or Designate

- a. white copy - Parole Board
- b. canary copy - Counselor File
- c. pink copy - Record Office File
- d. goldenrod copy - Prisoner

Data Processing
Division

2. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have just completed 4 (four) calendar years and are due an initial interview.
3. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with two months existing between the next action date and official date, and are due a routine interview.
4. Generates for the Parole Board and each institution a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with 4 months existing between the next action date and official date, and a progress report and routine interview are due.

Parole Board
Member or
Designate

5. Reviews the cases in Category "3" who appear on the monthly listings to determine which prisoners no longer have 10 (ten) calendar years to serve, and are therefore not properly identified as long indeterminate cases.
6. Removes the case from the long indeterminate category without a full Board review except where the grid score is 9 (nine) years or less, and is also less than the number of years from the corrected date to the minimum. These cases will be referred to the full Board for review.
7. Notifies prisoners who have been removed from the long indeterminate category by issuing a Notice of Action and Code 96.

Parole Board
Secretary

8. Provides the Case Compiler with a listing of those cases where a progress report is not needed and are ready to be scheduled for an interview.

RUM/Counselor
or Designate

9. Prepares the report requested in Step 4 as follows:
 - a. Initial progress reports to include sections covering:
 1. Official version of the instant offense.
 2. Offender's version of the instant offense.
 3. Prior criminal history.
 4. Institutional adjustment and accomplishments.
 5. Any medical/psychiatric contacts/problems.
 6. Release plans/detainers.
 7. Commutation guideline grid (if not previously completed.)

WHODOES WHATRUM/Counselor
or Designate

- b. Updated progress reports to include sections covering:
1. Institutional adjustment and accomplishments since last report.
 2. Any medical/psychiatric contacts/problems since last report.
 3. Release plans/detainers.
 4. Commutation guideline grid (if not previously completed).

Parole Board
Secretary

10. Upon receipt of the report requested in Step 4, places report and grid in prisoner's Central Office file.
11. *Refers the file to the Case Compiler to schedule an interview with prisoner under consideration.*

Case Compiler

12. Schedules prisoner under consideration for an interview and notifies the appropriate institutional staff of pending interview.

Institutional Staff

13. Advises prisoner of pending interview date and procedure.

Parole Board
Member

14. Interviews prisoner under consideration in accordance with PD-DWA-45.12.
15. If an initial interview, issues Code 91, 92 or 93 with an official date two years hence, and a next action date to reflect desired future handling (see Steps 3 and 4).

OR

16. If previously interviewed and a full Board review is not to take place at this time, issues the same code used in the last Parole Board action. The official date is set for two years hence, and the next action date should reflect desired future handling (see Steps 3 and 4).

OR

17. If a full Board review is to occur following the current interview, issues the same code used in the last Parole Board action. No action dates will be issued until a majority of the full Board has reached a decision.

Parole Board
Secretary

18. Enters the action in Step 15/16/17 of CMIS.

Parole Board
Members

19. Discuss case under consideration.

WHO

DOES WHAT

Parole Board
Members

20. Issue a Notice of Parole Board Action to the prisoner. The notice will contain an official date and a next action date. The official date will reflect when the next interview is due and the next action date will reflect desired future handling (see Steps 3 and 4). This applies to the following codes:

- a. Codes 91 - Long Indeterminate, and 92 - Lifer Law (Commutation not necessary OR decision on score deferred)
- b. Code 93 - Murder First Degree (Decision on score deferred)
- c. Code 94 - Commutation score confirmed
- d. Code 95 - Commutation score unconfirmed

Code 96 indicates an LID is removed from category. Both action dates will reflect the current minimum.

Parole Board
Secretary

21. Enters appropriate code on CMIS with indicated next action date and official date.

Parole Board
Member

22. Refers case to the Administrative Assistant for processing toward a public hearing under the Lifer Law or commutation procedure.

Administrative
Assistant

23. Processes the case received in Step 22 as provided for in MCL 791.234.

Data Processing
Division

24. Generates monthly listings as described in Steps 2, 3 and 4.

Appropriate
Parole Board and
Institutional Staff

25. Repeat Steps 5 through 23.

APPROVED:

Perry M. Johnson /s/
Perry M. Johnson, Acting Director

7-16-84
Date

OPERATING PROCEDURE

SUBJECT COMMUTATION AND LONG TERM INTERVIEW, REPORT AND REVIEW GUIDELINES

EFFECTIVE DATE

8-1-84

NUMBER

01.01.123-H

SUPERSEDES

OP-DWA-45.05 (5-25-82)

AUTHORITY

PD 01.01.123; PD-DWA-45.12

PAGE

1

OF

4

I. FORMS USED: CSO-452 a/b/c, *Commutation and Long-Term Release Guidelines*
CAX-116, *Parole Board Hearing Comments*
CAX-114A, *Notice of Action/Parole Board*

- II. INFORMATION:
- A. PD-DWA-45.12 provides for completion of commutation guideline grids and recommendations by the Parole Board for commutation of sentence if the guideline score is confirmed by a majority of the Parole Board membership. This procedure is necessary to develop a comprehensive formula for report preparation, interview schedules, guideline confirmation or non-confirmation, and subsequent interviews.
 - B. This procedure applies to all prisoners serving sentences in the following categories:
 - 1. Murder First Degree
 - 2. Life terms other than Murder First Degree
 - 3. Long indeterminate sentence with 10 (ten) calendar years or more to be served.
 - C. Prisoners in the above categories are eligible for an initial interview after the service of 4 (four) calendar years with subsequent interviews every 2 (two) years thereafter.
 - D. An initial progress report will be requested on Murder First Degree cases prior to the fourth interview (about the 10th year served). All other initial progress reports will be requested prior to the third interview (about the 8th year served). Updated progress reports for all categories will be requested 6 (six) years after the initial report and every 6 (six) years thereafter. A Board member may request a report earlier than the normal schedule.
 - E. While PD-DWA-45.12 does not apply to all cases in "2" and "3" as listed above, the Parole Board does intend to use the commutation guidelines to assist in the decision to recommend special parole consideration or consideration for the Lifer Law process as provided for in MCL 791.234.

III. PROCEDURE

WHO

DOES WHAT

RUM/Counselor
or Designate

- 1. Completes applicable commutation guidelines grid and distributes as follows:

DOCUMENT TYPE OPERATING PROCEDURE	EFFECTIVE DATE 8-1-84	NUMBER 01.01.123-H	PAGE 2 OF 4
<u>WHO</u>	<u>DOES WHAT</u>		
RUM/Counselor or Designate	a. white copy - Parole Board b. canary copy - Counselor File c. pink copy - Record Office File d. goldenrod copy - Prisoner		
Data Processing Division	2. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have just completed 4 (four) calendar years and are due an initial interview. 3. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with two months existing between the next action date and official date, and are due a routine interview. 4. Generates for the Parole Board and each institution a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with 4 months existing between the next action date and official date, and a progress report and routine interview are due.		
Parole Board Member or Designate	5. Reviews the cases in Category "3" who appear on the monthly listings to determine which prisoners no longer have 10 (ten) calendar years to serve, and are therefore not properly identified as long indeterminate cases. 6. Removes the case from the long indeterminate category without a full Board review except where the grid score is 9 (nine) years or less, and is also less than the number of years from the corrected date to the minimum. These cases will be referred to the full Board for review. 7. Notifies prisoners who have been removed from the long indeterminate category by issuing a Notice of Action and Code 96.		
Parole Board Secretary	8. Provides the Case Compiler with a listing of those cases where a progress report is not needed and are ready to be scheduled for an interview.		
RUM/Counselor or Designate	9. Prepares the report requested in Step 4 as follows: a. Initial progress reports to include sections covering: <ol style="list-style-type: none"> 1. Official version of the instant offense. 2. Offender's version of the instant offense. 3. Prior criminal history. 4. Institutional adjustment and accomplishments. 5. Any medical/psychiatric contacts/problems. 6. Release plans/detainers. 7. Commutation guideline grid (if not previously completed.) 		

WHO

DOES WHAT

Parole Board
Members

20. Issue a Notice of Parole Board Action to the prisoner. The notice will contain an official date and a next action date. The official date will reflect when the next interview is due and the next action date will reflect desired future handling (see Steps 3 and 4). This applies to the following codes:

- a. Codes 91 - Long Indeterminate, and 92 - Lifer Law (Commutation not necessary OR decision on score deferred)
- b. Code 93 - Murder First Degree (Decision on score deferred)
- c. Code 94 - Commutation score confirmed
- d. Code 95 - Commutation score unconfirmed

Code 96 indicates an LID is removed from category. Both action dates will reflect the current minimum.

Parole Board
Secretary

21. Enters appropriate code on CMIS with indicated next action date and official date.

Parole Board
Member

22. Refers case to the Administrative Assistant for processing toward a public hearing under the Lifer Law or commutation procedure.

Administrative
Assistant

23. Processes the case received in Step 22 as provided for in MCL 791.234.

Data Processing
Division

24. Generates monthly listings as described in Steps 2, 3 and 4.

Appropriate
Parole Board and
Institutional Staff

25. Repeat Steps 5 through 23.

APPROVED:

Perry M. Johnson /s/
Perry M. Johnson, Acting Director

7-16-84
Date

OPERATING PROCEDURE

EFFECTIVE DATE

8-1-84

NUMBER

01.01.123-H

SUPERSEDES

OP-DWA-45.05 (5-25-82)

AUTHORITY

PD 01.01.123; PD-DWA-45.12

SUBJECT COMMUTATION AND LONG TERM INTERVIEW, REPORT AND REVIEW GUIDELINES

PAGE

1

OF

4

I. FORMS USED: CSO-452 a/b/c, Commutation and Long-Term Release Guidelines
CAX-116, Parole Board Hearing Comments
CAX-114A, Notice of Action/Parole Board

- II. INFORMATION:
- A. PD-DWA-45.12 provides for completion of commutation guideline grids and recommendations by the Parole Board for commutation of sentence if the guideline score is confirmed by a majority of the Parole Board membership. This procedure is necessary to develop a comprehensive formula for report preparation, interview schedules, guideline confirmation or non-confirmation, and subsequent interviews.
 - B. This procedure applies to all prisoners serving sentences in the following categories:
 1. Murder First Degree
 2. Life terms other than Murder First Degree
 3. Long indeterminate sentence with 10 (ten) calendar years or more to be served.
 - C. Prisoners in the above categories are eligible for an initial interview after the service of 4 (four) calendar years with subsequent interviews every 2 (two) years thereafter.
 - D. An initial progress report will be requested on Murder First Degree cases prior to the fourth interview (about the 10th year served). All other initial progress reports will be requested prior to the third interview (about the 8th year served). Updated progress reports for all categories will be requested 6 (six) years after the initial report and every 6 (six) years thereafter. A Board member may request a report earlier than the normal schedule.
 - E. While PD-DWA-45.12 does not apply to all cases in "2" and "3" as listed above, the Parole Board does intend to use the commutation guidelines to assist in the decision to recommend special parole consideration or consideration for the Lifer Law process as provided for in MCL 791.234.

III. PROCEDURE

WHO

DOES WHAT

RUM/Counselor
or Designate

1. Completes applicable commutation guidelines grid and distributes as follows:

WHODOES WHATRUM/Counselor
or Designate

- a. white copy - Parole Board
- b. canary copy - Counselor File
- c. pink copy - Record Office File
- d. goldenrod copy - Prisoner

Data Processing
Division

2. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have just completed 4 (four) calendar years and are due an initial interview.
3. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with two months existing between the next action date and official date, and are due a routine interview.
4. Generates for the Parole Board and each institution a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with 4 months existing between the next action date and official date, and a progress report and routine interview are due.

Parole Board
Member or
Designate

5. Reviews the cases in Category "3" who appear on the monthly listings to determine which prisoners no longer have 10 (ten) calendar years to serve, and are therefore not properly identified as long indeterminate cases.
6. Removes the case from the long indeterminate category without a full Board review except where the grid score is 9 (nine) years or less, and is also less than the number of years from the corrected date to the minimum. These cases will be referred to the full Board for review.
7. Notifies prisoners who have been removed from the long indeterminate category by issuing a Notice of Action and Code 96.

Parole Board
Secretary

8. Provides the Case Compiler with a listing of those cases where a progress report is not needed and are ready to be scheduled for an interview.

RUM/Counselor
or Designate

9. Prepares the report requested in Step 4 as follows:
 - a. Initial progress reports to include sections covering:
 1. Official version of the instant offense.
 2. Offender's version of the instant offense.
 3. Prior criminal history.
 4. Institutional adjustment and accomplishments.
 5. Any medical/psychiatric contacts/problems.
 6. Release plans/detainers.
 7. Commutation guideline grid (if not previously completed.)

WHODOES WHATRUM/Counselor
or Designate

- b. Updated progress reports to include sections covering:
1. Institutional adjustment and accomplishments since last report.
 2. Any medical/psychiatric contacts/problems since last report.
 3. Release plans/detainers.
 4. Commutation guideline grid (if not previously completed).

Parole Board
Secretary

10. Upon receipt of the report requested in Step 4, places report and grid in prisoner's Central Office file.
11. Refers the file to the Case Compiler to schedule an interview with prisoner under consideration.

Case Compiler

12. Schedules prisoner under consideration for an interview and notifies the appropriate institutional staff of pending interview.

Institutional Staff

13. Advises prisoner of pending interview date and procedure.

Parole Board
Member

14. Interviews prisoner under consideration in accordance with PD-DWA-45.12.
15. If an initial interview, issues Code 91, 92 or 93 with an official date two years hence, and a next action date to reflect desired future handling (see Steps 3 and 4).

OR

16. If previously interviewed and a full Board review is not to take place at this time, issues the same code used in the last Parole Board action. The official date is set for two years hence, and the next action date should reflect desired future handling (see Steps 3 and 4).

OR

17. If a full Board review is to occur following the current interview, issues the same code used in the last Parole Board action. No action dates will be issued until a majority of the full Board has reached a decision.

Parole Board
Secretary

18. Enters the action in Step 15/16/17 of CMIS.

Parole Board
Members

19. Discuss case under consideration.

DOCUMENT TYPE OPERATING PROCEDURE	EFFECTIVE DATE 8-1-84	NUMBER 01.01.123-H	PAGE 4 OF 4
--------------------------------------	--------------------------	-----------------------	-------------

WHO

DOES WHAT

Parole Board
Members

20. Issue a Notice of Parole Board Action to the prisoner. The notice will contain an official date and a next action date. The official date will reflect when the next interview is due and the next action date will reflect desired future handling (see Steps 3 and 4). This applies to the following codes:

- a. Codes 91 - Long Indeterminate, and 92 - Lifer Law (Commutation not necessary OR decision on score deferred)
- b. Code 93 - Murder First Degree (Decision on score deferred)
- c. Code 94 - Commutation score confirmed
- d. Code 95 - Commutation score unconfirmed

Code 96 indicates an LID is removed from category. Both action dates will reflect the current minimum.

Parole Board
Secretary

21. Enters appropriate code on CMIS with indicated next action date and official date.

Parole Board
Member

22. Refers case to the Administrative Assistant for processing toward a public hearing under the Lifer Law or commutation procedure.

Administrative
Assistant

23. Processes the case received in Step 22 as provided for in MCL 791.234.

Data Processing
Division

24. Generates monthly listings as described in Steps 2, 3 and 4.

Appropriate
Parole Board and
Institutional Staff

25. Repeat Steps 5 through 23.

APPROVED:

Perry M. Johnson /s/

Perry M. Johnson, Acting Director

7-16-84

Date

OPERATING PROCEDURE

EFFECTIVE DATE

8-1-84

NUMBER

01.01.123-H

SUPERSEDES

OP-DWA-45.05 (5-25-82)

AUTHORITY

PD 01.01.123; PD-DWA-45.12

SUBJECT COMMUTATION AND LONG TERM INTERVIEW, REPORT
AND REVIEW GUIDELINES

PAGE

1

OF

4

I. FORMS USED: CSO-452 a/b/c, Commutation and Long-Term Release Guidelines
CAX-116, Parole Board Hearing Comments
CAX-114A, Notice of Action/Parole Board

- II. INFORMATION:
- A. PD-DWA-45.12 provides for completion of commutation guideline grids and recommendations by the Parole Board for commutation of sentence if the guideline score is confirmed by a majority of the Parole Board membership. This procedure is necessary to develop a comprehensive formula for report preparation, interview schedules, guideline confirmation or non-confirmation, and subsequent interviews.
 - B. This procedure applies to all prisoners serving sentences in the following categories:
 - 1. Murder First Degree
 - 2. Life terms other than Murder First Degree
 - 3. Long indeterminate sentence with 10 (ten) calendar years or more to be served.
 - C. Prisoners in the above categories are eligible for an initial interview after the service of 4 (four) calendar years with subsequent interviews every 2 (two) years thereafter.
 - D. An initial progress report will be requested on Murder First Degree cases prior to the fourth interview (about the 10th year served). All other initial progress reports will be requested prior to the third interview (about the 8th year served). Updated progress reports for all categories will be requested 6 (six) years after the initial report and every 6 (six) years thereafter. A Board member may request a report earlier than the normal schedule.
 - E. While PD-DWA-45.12 does not apply to all cases in "2" and "3" as listed above, the Parole Board does intend to use the commutation guidelines to assist in the decision to recommend special parole consideration or consideration for the Lifer Law process as provided for in MCL 791.234.

III. PROCEDURE

WHO

DOES WHAT

RUM/Counselor
or Designate

- 1. Completes applicable commutation guidelines grid and distributes as follows:

WHO

DOES WHAT

RUM/Counselor
or Designate

- a. white copy - Parole Board
- b. canary copy - Counselor File
- c. pink copy - Record Office File
- d. goldenrod copy - Prisoner

Data Processing
Division

2. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have just completed 4 (four) calendar years and are due an initial interview.
3. Generates for the Parole Board a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with two months existing between the next action date and official date, and are due a routine interview.
4. Generates for the Parole Board and each institution a monthly listing of lifers and long indeterminates who have previously been interviewed and issued Codes 91 through 95 with 4 months existing between the next action date and official date, and a progress report and routine interview are due.

Parole Board
Member or
Designate

5. Reviews the cases in Category "3" who appear on the monthly listings to determine which prisoners no longer have 10 (ten) calendar years to serve, and are therefore not properly identified as long indeterminate cases.
6. Removes the case from the long indeterminate category without a full Board review except where the grid score is 9 (nine) years or less, and is also less than the number of years from the corrected date to the minimum. These cases will be referred to the full Board for review.
7. Notifies prisoners who have been removed from the long indeterminate category by issuing a Notice of Action and Code 96.

Parole Board
Secretary

8. Provides the Case Compiler with a listing of those cases where a progress report is not needed and are ready to be scheduled for an interview.

RUM/Counselor
or Designate

9. Prepares the report requested in Step 4 as follows:
 - a. Initial progress reports to include sections covering:
 1. Official version of the instant offense.
 2. Offender's version of the instant offense.
 3. Prior criminal history.
 4. Institutional adjustment and accomplishments.
 5. Any medical/psychiatric contacts/problems.
 6. Release plans/detainers.
 7. Commutation guideline grid (if not previously completed.)

WHODOES WHATRUM/Counselor
or Designate

- b. Updated progress reports to include sections covering:
1. Institutional adjustment and accomplishments since last report.
 2. Any medical/psychiatric contacts/problems since last report.
 3. Release plans/detainers.
 4. Commutation guideline grid (if not previously completed).

Parole Board
Secretary

10. Upon receipt of the report requested in Step 4, places report and grid in prisoner's Central Office file.
11. Refers the file to the Case Compiler to schedule an interview with prisoner under consideration.

Case Compiler

12. Schedules prisoner under consideration for an interview and notifies the appropriate institutional staff of pending interview.

Institutional Staff

13. Advises prisoner of pending interview date and procedure.

Parole Board
Member

14. Interviews prisoner under consideration in accordance with PD-DWA-45.12.
15. If an initial interview, issues Code 91, 92 or 93 with an official date two years hence, and a next action date to reflect desired future handling (see Steps 3 and 4).

OR

16. If previously interviewed and a full Board review is not to take place at this time, issues the same code used in the last Parole Board action. The official date is set for two years hence, and the next action date should reflect desired future handling (see Steps 3 and 4).

OR

17. If a full Board review is to occur following the current interview, issues the same code used in the last Parole Board action. No action dates will be issued until a majority of the full Board has reached a decision.

Parole Board
Secretary

18. Enters the action in Step 15/16/17 of CMIS.

Parole Board
Members

19. Discuss case under consideration.

WHO

DOES WHAT

Parole Board
Members

20. Issue a Notice of Parole Board Action to the prisoner. The notice will contain an official date and a next action date. The official date will reflect when the next interview is due and the next action date will reflect desired future handling (see Steps 3 and 4). This applies to the following codes:

- a. Codes 91 - Long Indeterminate, and 92 - Lifer Law (Commutation not necessary OR decision on score deferred)
- b. Code 93 - Murder First Degree (Decision on score deferred)
- c. Code 94 - Commutation score confirmed
- d. Code 95 - Commutation score unconfirmed

Code 96 indicates an LID is removed from category. Both action dates will reflect the current minimum.

Parole Board
Secretary

21. Enters appropriate code on CMIS with indicated next action date and official date.

Parole Board
Member

22. Refers case to the Administrative Assistant for processing toward a public hearing under the Lifer Law or commutation procedure.

Administrative
Assistant

23. Processes the case received in Step 22 as provided for in MCL 791.234.

Data Processing
Division

24. Generates monthly listings as described in Steps 2, 3 and 4.

Appropriate
Parole Board and
Institutional Staff

25. Repeat Steps 5 through 23.

APPROVED:

Perry M. Johnson /s/
Perry M. Johnson, Acting Director

7-16-84
Date



MICHIGAN DEPARTMENT OF CORRECTIONS

POLICY DIRECTIVE

CSO-216 Rev. 1/88

EFFECTIVE DATE

12-14-87

NUMBER

PD-DWA-45.12

ACA STANDARDS

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 3

SUPERSEDES: PD-DWA-45.12

APPLICATION: All prisoners serving Murder First Degree life sentences.

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, or because of extraordinary accomplishment during incarceration.

Prisoners serving for Murder in the First Degree and certain drug law violations are denied the possibility of any consideration for special parole or "Lifer Law" release. Historically, commutation has been their only avenue of release. A decision to recommend commutation rests solely with the Parole Board.

The guideline shall be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation. The final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover prisoners serving life for Murder in the First Degree. Prisoners serving mandatory life sentences not subject to parole for drug law violations MCLA 333.7401 and 7403 are not covered by these guidelines. Those prisoners will be considered for possible commutation referral on a case-by-case basis.

Each prisoner serving for Murder First Degree shall have his or her guideline score computed on the basis of the offense and prior criminal record. This score shall then be applied to the commutation grid to determine the number of years to be served before commutation may be recommended.

Exception From the Guideline:

In some cases, the circumstances of the offense or the prisoner's past history may be such that a recommendation for commutation based on the guideline will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the

offender may never be safely released. Where such cases occur, the Board will, on its first review of the guideline recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case and will include the reasons.

Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not yet eligible under the guideline when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no major misconduct guilty finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered the prisoner has been found guilty of an assaultive crime by a court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.

Implementation:

Procedures will be developed by the reception centers, the institutions, and the Parole Board for the scoring and review of cases.

Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Notification and Appeal:

By the effective date of this policy, the policy and the guideline score sheet and grid shall be published in the penal press of each facility or otherwise made available to all prisoners serving for First Degree Murder; this is done so they may be aware of their own probable status with respect to commutation recommendations.

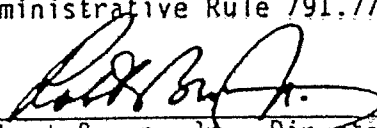
If any prisoner feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under R 791.3310. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guideline:

The Parole Board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.


AUTHORITY: MCLA 24.207(k); 791.202, .204, .232, .244.
Administrative Rule 791.7760

APPROVED:


Robert Brown, Jr., Director

11-17-87

Date


William J. Hudson, Chairperson
Michigan Parole Board

11/10/87
Date

RB:gs
10/29/87

PREPARED BY: Marvin C. May, Administrative Assistant
Michigan Parole Board



MICHIGAN DEPARTMENT OF CORRECTIONS

POLICY DIRECTIVE

CSO-216 Rev. 2/81

EFFECTIVE DATE	NUMBER
12-14-87	PD-DWA-45.12
ACA STANDARDS	

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 3

SUPERSEDES: PD-DWA-45.12 9/1/81

APPLICATION: All prisoners serving Murder First Degree life sentences.

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, or because of extraordinary accomplishment during incarceration.

Prisoners serving for Murder in the First Degree and certain drug law violations are denied the possibility of any consideration for special parole or "Lifer Law" release. Historically, commutation has been their only avenue of release. A decision to recommend commutation rests solely with the Parole Board.

The guideline shall be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation. The final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover prisoners serving life for Murder in the First Degree. Prisoners serving mandatory life sentences not subject to parole for drug law violations MCLA 333.7401 and 7403 are not covered by these guidelines. Those prisoners will be considered for possible commutation referral on a case-by-case basis.

Each prisoner serving for Murder First Degree shall have his or her guideline score computed on the basis of the offense and prior criminal record. This score shall then be applied to the commutation grid to determine the number of years to be served before commutation may be recommended.

Exception From the Guideline:

In some cases, the circumstances of the offense or the prisoner's past history may be such that a recommendation for commutation based on the guideline will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the

offender may never be safely released. Where such cases occur, the Board will, on its first review of the guideline recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case and will include the reasons.

Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not yet eligible under the guideline when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no major misconduct guilty finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered the prisoner has been found guilty of an assaultive crime by a court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.

Implementation:

Procedures will be developed by the reception centers, the institutions, and the Parole Board for the scoring and review of cases.

Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Notification and Appeal:

By the effective date of this policy, the policy and the guideline score sheet and grid shall be published in the penal press of each facility or otherwise made available to all prisoners serving for First Degree Murder; this is done so they may be aware of their own probable status with respect to commutation recommendations.

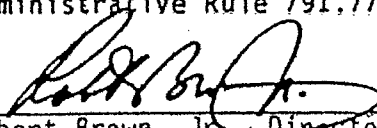
If any prisoner feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under R 791.3310. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guideline:

The Parole Board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.

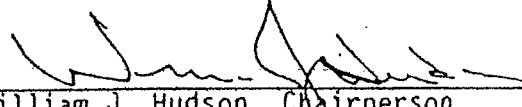
AUTHORITY: MCLA 24.207(k); 791.202, .204, .232, .244.
Administrative Rule 791.7760

APPROVED:


Robert Brown, Jr., Director

11-17-87

Date


William J. Hudson, Chairperson
Michigan Parole Board

11/10/87
Date

RB:gs
10/29/87

PREPARED BY: Marvin C. May, Administrative Assistant
Michigan Parole Board



MICHIGAN DEPARTMENT OF CORRECTIONS

POLICY DIRECTIVE

CSO-216 Rev. 7/81

EFFECTIVE DATE

12-14-87

NUMBER

PD-DWA-45.12

ACA STANDARDS

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 3

UPERSEDES: PD-DWA-45.12 (9/1/81)

APPLICATION: All prisoners serving Murder First Degree life sentences.

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, or because of extraordinary accomplishment during incarceration.

Prisoners serving for Murder in the First Degree and certain drug law violations are denied the possibility of any consideration for special parole or "Lifer Law" release. Historically, commutation has been their only avenue of release. A decision to recommend commutation rests solely with the Parole Board.

The guideline shall be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation. The final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover prisoners serving life for Murder in the First Degree. Prisoners serving mandatory life sentences not subject to parole for drug law violations MCLA 333.7401 and 7403 are not covered by these guidelines. Those prisoners will be considered for possible commutation referral on a case-by-case basis.

Each prisoner serving for Murder First Degree shall have his or her guideline score computed on the basis of the offense and prior criminal record. This score shall then be applied to the commutation grid to determine the number of years to be served before commutation may be recommended.

Exception From the Guideline:

In some cases, the circumstances of the offense or the prisoner's past history may be such that a recommendation for commutation based on the guideline will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the

offender may never be safely released. Where such cases occur, the Board will, on its first review of the guideline recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case and will include the reasons.

Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not yet eligible under the guideline when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no major misconduct guilty finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered the prisoner has been found guilty of an assaultive crime by a court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.

Implementation:

Procedures will be developed by the reception centers, the institutions, and the Parole Board for the scoring and review of cases.

Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Notification and Appeal:

By the effective date of this policy, the policy and the guideline score sheet and grid shall be published in the penal press of each facility or otherwise made available to all prisoners serving for First Degree Murder; this is done so they may be aware of their own probable status with respect to commutation recommendations.

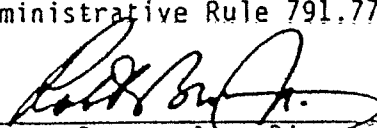
If any prisoner feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under R 791.3310. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guideline:

The Parole Board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.

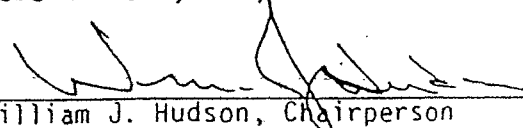
AUTHORITY: MCLA 24.207(k); 791.202, .204, .232, .244.
Administrative Rule 791.7760

APPROVED:


Robert Brown, Jr., Director

11-17-87

Date


William J. Hudson, Chairperson
Michigan Parole Board

11/10/87
Date

RB:gs
10/29/87

PREPARED BY: Marvin C. May, Administrative Assistant
Michigan Parole Board



MICHIGAN DEPARTMENT OF CORRECTIONS

POLICY DIRECTIVE

CSO-216 Rev. 3/8

EFFECTIVE DATE

12-14-87

NUMBER

PD-DWA-45.12

ACA STANDARDS

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 3

SUPERSEDES: PD-DWA-45.12

APPLICATION: All prisoners serving Murder First Degree life sentences.

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, or because of extraordinary accomplishment during incarceration.

Prisoners serving for Murder in the First Degree and certain drug law violations are denied the possibility of any consideration for special parole or "Lifer Law" release. Historically, commutation has been their only avenue of release. A decision to recommend commutation rests solely with the Parole Board.

The guideline shall be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation. The final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover prisoners serving life for Murder in the First Degree. Prisoners serving mandatory life sentences not subject to parole for drug law violations MCLA 333.7401 and 7403 are not covered by these guidelines. Those prisoners will be considered for possible commutation referral on a case-by-case basis.

Each prisoner serving for Murder First Degree shall have his or her guideline score computed on the basis of the offense and prior criminal record. This score shall then be applied to the commutation grid to determine the number of years to be served before commutation may be recommended.

Exception From the Guideline:

In some cases, the circumstances of the offense or the prisoner's past history may be such that a recommendation for commutation based on the guideline will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the

offender may never be safely released. Where such cases occur, the Board will, on its first review of the guideline recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case and will include the reasons.

Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not yet eligible under the guideline when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no major misconduct guilty finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered the prisoner has been found guilty of an assaultive crime by a court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.

Implementation:

Procedures will be developed by the reception centers, the institutions, and the Parole Board for the scoring and review of cases.

Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Notification and Appeal:

By the effective date of this policy, the policy and the guideline score sheet and grid shall be published in the penal press of each facility or otherwise made available to all prisoners serving for First Degree Murder; this is done so they may be aware of their own probable status with respect to commutation recommendations.

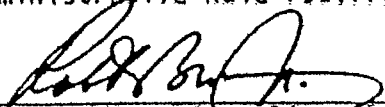
If any prisoner feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under R 791.3310. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guideline:

The Parole Board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.


AUTHORITY: MCLA 24.207(k); 791.202, .204, .232, .244.
Administrative Rule 791.7760

APPROVED:


Robert Brown, Jr., Director

11-17-87

Date


William J. Hudson, Chairperson
Michigan Parole Board

11/10/87
Date

RB:gs
10/29/87

PREPARED BY: Marvin C. May, Administrative Assistant
Michigan Parole Board



MICHIGAN DEPARTMENT OF CORRECTIONS

POLICY DIRECTIVE

CSO-216 Rev. 2/87

EFFECTIVE DATE

12-14-87

NUMBER

PD-DWA-45.12

ACA STANDARDS

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 3

SUPERSEDES: PD-DWA-45.12 (9/1/81)

APPLICATION: All prisoners serving Murder First Degree life sentences.

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, or because of extraordinary accomplishment during incarceration.

Prisoners serving for Murder in the First Degree and certain drug law violations are denied the possibility of any consideration for special parole or "Lifer Law" release. Historically, commutation has been their only avenue of release. A decision to recommend commutation rests solely with the Parole Board.

The guideline shall be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation. The final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover prisoners serving life for Murder in the First Degree. Prisoners serving mandatory life sentences not subject to parole for drug law violations MCLA 333.7401 and 7403 are not covered by these guidelines. Those prisoners will be considered for possible commutation referral on a case-by-case basis.

Each prisoner serving for Murder First Degree shall have his or her guideline score computed on the basis of the offense and prior criminal record. This score shall then be applied to the commutation grid to determine the number of years to be served before commutation may be recommended.

Exception From the Guideline:

In some cases, the circumstances of the offense or the prisoner's past history may be such that a recommendation for commutation based on the guideline will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the

offender may never be safely released. Where such cases occur, the Board will, on its first review of the guideline recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case and will include the reasons.

Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not yet eligible under the guideline when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no major misconduct guilty finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered the prisoner has been found guilty of an assaultive crime by a court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.

Implementation:

Procedures will be developed by the reception centers, the institutions, and the Parole Board for the scoring and review of cases.

Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Notification and Appeal:

By the effective date of this policy, the policy and the guideline score sheet and grid shall be published in the penal press of each facility or otherwise made available to all prisoners serving for First Degree Murder; this is done so they may be aware of their own probable status with respect to commutation recommendations.

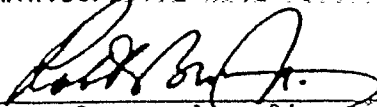
If any prisoner feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under R 791.3310. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guideline:

The Parole Board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.


AUTHORITY: MCLA 24.207(k); 791.202, .204, .232, .244.
Administrative Rule 791.7760

APPROVED:


Robert Brown, Jr., Director

11-17-87

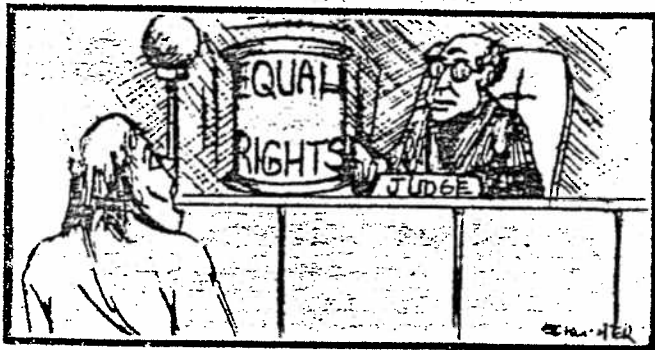
Date


William J. Hudson, Chairperson
Michigan Parole Board

11/10/87
Date

RB:gs
10/29/87

PREPARED BY: Marvin C. May, Administrative Assistant
Michigan Parole Board



Your Rights At Parole Hearing

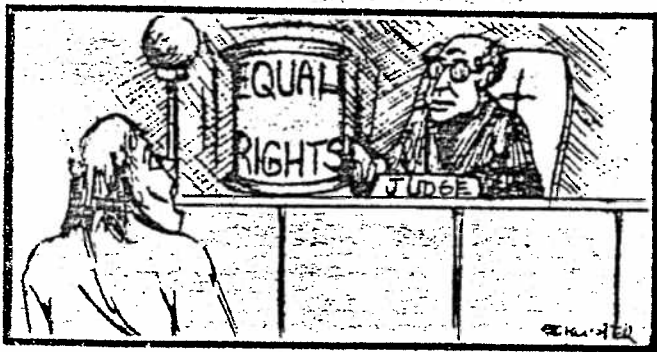
by GUSTAVE JANSSON

1982 PA 314, effective October 15, 1982 has numerous benefits for persons serving prison terms with a minimum sentence longer than 4 calendar years. MCL 791.234 and 791.234(a) provides a parole board interview for any person who has served 4 calendar years of the sentence. Also, persons serving life sentences, other than for murder in the first degree are covered under this statute. MCL 791.244 for the first time mandates that persons serving for murder in the first degree shall also receive a parole board interview after service of 4 calendar years. Under MCL 791.234(d) persons serving proposal B sentences, who are not eligible for release prior to the expiration of the minimum may now be considered for commutation, pardon or reprieve under the new law.

However, if you are eligible for a parole board interview under any provision of the new law, it might be wise to wait until after April 1, 1983, before asking for an interview. After April 1, 1983, persons receiving parole board interviews will be furnished with a (Notice of Intent to Conduct a Parole Board Interview,) and this notice will be served upon you one month prior to your scheduled interview. This notice will state the specific issues and concerns which will be discussed at the interview. The parole board cannot deny you a parole or other statutory relief under any other specific issue or concern other than what was listed in the notice. (MCL 791.235.) Another benefit is that as soon as you receive the notice you are entitled under (MCL 771.14(9)) to a copy of your Pre-Sentence Investigation Report upon your request. You can also argue inaccurate information contained in your Pre-Sentence Report before the parole board at the interview, but be sure that you have documentation to reinforce your claim of inaccurate information. Also, if you are 27 years of age, your juvenile record is automatically expunged under Juvenile Court Rule 13, if you request same from the probate court in the county that retains your juvenile record. It is advised that you obtain an order of expungement from the probate court prior to your interview with the parole board because then your juvenile record cannot be considered.

A most important benefit, is that you may have a representative of your choice at your interview. The person cannot be another prisoner or a lawyer, but you can have a family member, friend, whoever attend and argue for your release, commutation or whatever you desire. This portion of the law also takes effect after April 1, 1983.

(MCL 791.234(5)) allows a prisoner to appeal a decision of the parole board to the circuit court by leave of the court. (MCL 791.235 amended by 1982 PA 314) may also allow relief to hundreds of prisoners with increased risk factors due to a juvenile record. The subject of Risk Factors and Commutation Guidelines will be discussed in future issues of the FACTOR. Petitions for Expungement of Juvenile Record are available at the library.



Your Rights At Parole Hearing

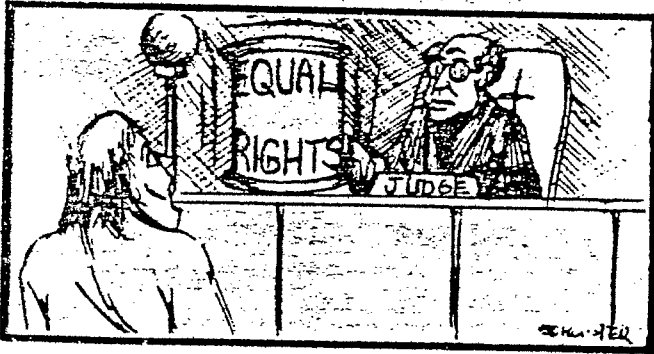
by GUSTAVE JANSSON

1982 PA 314, effective October 15, 1982 has numerous benefits for persons serving prison terms with a minimum sentence longer than 4 calendar years. MCL 791.234 and 791.234(a) provides a parole board interview for any person who has served 4 calendar years of the sentence. Also, persons serving life sentences, other than for murder in the first degree are covered under this statute. MCL 791.244 for the first time mandates that persons serving for murder in the first degree shall also receive a parole board interview after service of 4 calendar years. Under MCL 791.234(d) persons serving proposal B sentences, who are not eligible for release prior to the expiration of the minimum may now be considered for commutation, pardon or reprieve under the new law.

However, if you are eligible for a parole board interview under any provision of the new law, it might be wise to wait until after April 1, 1983, before asking for an interview. After April 1, 1983, persons receiving parole board interviews will be furnished with a (Notice of Intent to Conduct a Parole Board Interview,) and this notice will be served upon you one month prior to your scheduled interview. This notice will state the specific issues and concerns which will be discussed at the interview. The parole board cannot deny you a parole or other statutory relief under any other specific issue or concern other than what was listed in the notice. (MCL 791.235.) Another benefit is that as soon as you receive the notice you are entitled under (MCL 771.14(9)) to a copy of your Pre-Sentence Investigation Report upon your request. You can also argue inaccurate information contained in your Pre-Sentence Report before the parole board at the interview, but be sure that you have documentation to reinforce your claim of inaccurate information. Also, if you are 27 years of age, your juvenile record is automatically expunged under Juvenile Court Rule 13, if you request same from the probate court in the county that retains your juvenile record. It is advised that you obtain an order of expungement from the probate court prior to your interview with the parole board because then your juvenile record cannot be considered.

A most important benefit, is that you may have a representative of your choice at your interview. The person cannot be another prisoner or a lawyer, but you can have a family member, friend, whoever attend and argue for your release, commutation or whatever you desire. This portion of the law also takes effect after April 1, 1983.

(MCL 791.234(5)) allows a prisoner to appeal a decision of the parole board to the circuit court by leave of the court. (MCL 791.235 amended by 1982 PA 314) may also allow relief to hundreds of prisoners with increased risk factors due to a juvenile record. The subject of Risk Factors and Commutation Guidelines will be discussed in future issues of the FACTOR. Petitions for Expungement of Juvenile Record are available at the library.



Your Rights At Parole Hearing

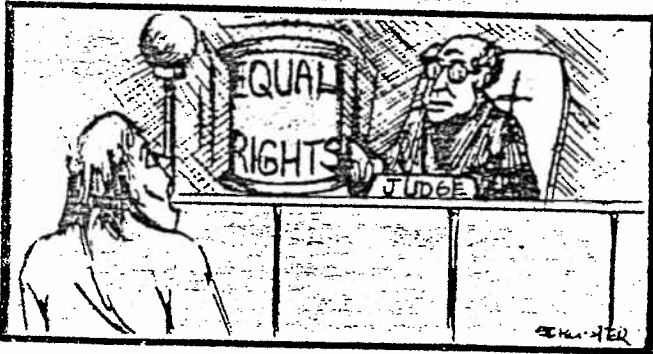
by GUSTAVE JANSSON

1982 PA 314, effective October 15, 1982 has numerous benefits for persons serving prison terms with a minimum sentence longer than 4 calendar years. MCL 791.234 and 791.234(a) provides a parole board interview for any person who has served 4 calendar years of the sentence. Also, persons serving life sentences, other than for murder in the first degree are covered under this statute. MCL 791.244 for the first time mandates that persons serving for murder in the first degree shall also receive a parole board interview after service of 4 calendar years. Under MCL 791.234(d) persons serving proposal B sentences, who are not eligible for release prior to the expiration of the minimum may now be considered for commutation, pardon or reprieve under the new law.

However, if you are eligible for a parole board interview under any provision of the new law, it might be wise to wait until after April 1, 1983, before asking for an interview. After April 1, 1983, persons receiving parole board interviews will be furnished with a Notice of Intent to Conduct a Parole Board Interview, and this notice will be served upon you one month prior to your scheduled interview. This notice will state the specific issues and concerns which will be discussed at the interview. The parole board cannot deny you a parole or other statutory relief under any other specific issue or concern other than what was listed in the notice. (MCL 791.235.) Another benefit is that as soon as you receive the notice you are entitled under (MCL 771.14(9)) to a copy of your Pre-Sentence Investigation Report upon your request. You can also argue inaccurate information contained in your Pre-Sentence Report before the parole board at the interview, but be sure that you have documentation to reinforce your claim of inaccurate information. Also, if you are 27 years of age, your juvenile record is automatically expunged under Juvenile Court Rule 13, if you request same from the probate court in the county that retains your juvenile record. It is advised that you obtain an order of expungement from the probate court prior to your interview with the parole board because then your juvenile record cannot be considered.

A most important benefit, is that you may have a representative of your choice at your interview. The person cannot be another prisoner or a lawyer, but you can have a family member, friend, whoever attend and argue for your release, commutation or whatever you desire. This portion of the law also takes effect after April 1, 1983.

(MCL 791.234(5)) allows a prisoner to appeal a decision of the parole board to the circuit court by leave of the court. (MCL 791.235 amended by 1982 PA 314) may also allow relief to hundreds of prisoners with increased risk factors due to a juvenile record. The subject of Risk Factors and Commutation Guidelines will be discussed in future issues of the FACTOR. Petitions for Expungement of Juvenile Record are available at the library.



Your Rights At Parole Hearing

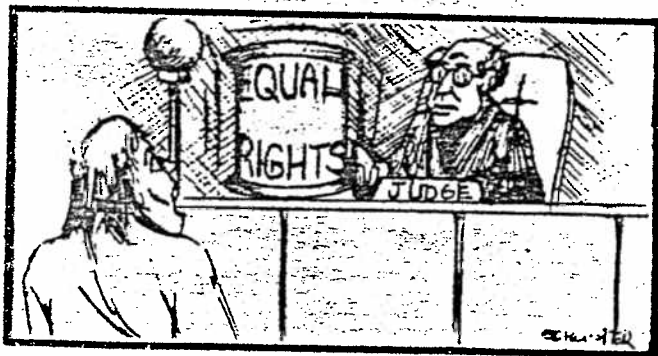
by GUSTAVE JANSSON

1982 PA 314, effective October 15, 1982 has numerous benefits for persons serving prison terms with a minimum sentence longer than 4 calendar years. MCL 791.234 and 791.234(a) provides a parole board interview for any person who has served 4 calendar years of the sentence. Also, persons serving life sentences, other than for murder in the first degree are covered under this statute. MCL 791.244 for the first time mandates that persons serving for murder in the first degree shall also receive a parole board interview after service of 4 calendar years. Under MCL 791.234(d) persons serving proposal B sentences, who are not eligible for release prior to the expiration of the minimum may now be considered for commutation, pardon or reprieve under the new law.

However, if you are eligible for a parole board interview under any provision of the new law, it might be wise to wait until after April 1, 1983, before asking for an interview. After April 1, 1983, persons receiving parole board interviews will be furnished with a Notice of Intent to Conduct a Parole Board Interview, and this notice will be served upon you one month prior to your scheduled interview. This notice will state the specific issues and concerns which will be discussed at the interview. The parole board cannot deny you a parole or other statutory relief under any other specific issue or concern other than what was listed in the notice. (MCL 791.235.) Another benefit is that as soon as you receive the notice you are entitled under (MCL 771.14(9)) to a copy of your Pre-Sentence Investigation Report upon your request. You can also argue inaccurate information contained in your Pre-Sentence Report before the parole board at the interview, but be sure that you have documentation to reinforce your claim of inaccurate information. Also, if you are 27 years of age, your juvenile record is automatically expunged under Juvenile Court Rule 13, if you request same from the probate court in the county that retains your juvenile record. It is advised that you obtain an order of expungement from the probate court prior to your interview with the parole board because then your juvenile record cannot be considered.

A most important benefit, is that you may have a representative of your choice at your interview. The person cannot be another prisoner or a lawyer, but you can have a family member, friend, whoever attend and argue for your release, commutation or whatever you desire. This portion of the law also takes effect after April 1, 1983.

(MCL 791.234(5)) allows a prisoner to appeal a decision of the parole board to the circuit court by leave of the court. (MCL 791.235 amended by 1982 PA 314) may also allow relief to hundreds of prisoners with increased risk factors due to a juvenile record. The subject of Risk Factors and Commutation Guidelines will be discussed in future issues of the FACTOR. Petitions for Expungement of Juvenile Record are available at the library.



Your Rights At Parole Hearing

by GUSTAVE JANSSON

1982 PA 314, effective October 15, 1982 has numerous benefits for persons serving prison terms with a minimum sentence longer than 4 calendar years. MCL 791.234 and 791.234(a) provides a parole board interview for any person who has served 4 calendar years of the sentence. Also, persons serving life sentences, other than for murder in the first degree are covered under this statute. MCL 791.244 for the first time mandates that persons serving for murder in the first degree shall also receive a parole board interview after service of 4 calendar years. Under MCL 791.234(d) persons serving proposal B sentences, who are not eligible for release prior to the expiration of the minimum may now be considered for commutation, pardon or reprieve under the new law.

However, if you are eligible for a parole board interview under any provision of the new law, it might be wise to wait until after April 1, 1983, before asking for an interview. After April 1, 1983, persons receiving parole board interviews will be furnished with a Notice of Intent to Conduct a Parole Board Interview, and this notice will be served upon you one month prior to your scheduled interview. This notice will state the specific issues and concerns which will be discussed at the interview. The parole board cannot deny you a parole or other statutory relief under any other specific issue or concern other than what was listed in the notice. (MCL 791.235.) Another benefit is that as soon as you receive the notice you are entitled under (MCL 771.14(9)) to a copy of your Pre-Sentence Investigation Report upon your request. You can also argue inaccurate information contained in your Pre-Sentence Report before the parole board at the interview, but be sure that you have documentation to reinforce your claim of inaccurate information. Also, if you are 27 years of age, your juvenile record is automatically expunged under Juvenile Court Rule 13, if you request same from the probate court in the county that retains your juvenile record. It is advised that you obtain an order of expungement from the probate court prior to your interview with the parole board because then your juvenile record cannot be considered.

A most important benefit, is that you may have a representative of your choice at your interview. The person cannot be another prisoner or a lawyer, but you can have a family member, friend, whoever attend and argue for your release, commutation or whatever you desire. This portion of the law also takes effect after April 1, 1983.

(MCL 791.234(5)) allows a prisoner to appeal a decision of the parole board to the circuit court by leave of the court.

(MCL 791.235 amended by 1982 PA 314) may also allow relief to hundreds of prisoners with increased risk factors due to a juvenile record. The subject of Risk Factors and Commutation Guidelines will be discussed in future issues of the FACTOR. Petitions for Expungement of Juvenile Record are available at the library.

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See *Fn 47 People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Purdon).
5. Utah (Utah Code Ann, §76-5-203(1)). All have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of *mens rea* beyond the intent to cause the felony. The **Arkansas** statute (Ark Stat Ann, §41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death caused with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Vs. Aaron 409 Mich 672 (P. 703-91)

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See Fn 47 *People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Pundon).
5. Utah (Utah Code Ann, §76-5-203(1)). All have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of *mens rea* beyond the intent to cause the felony. The **Arkansas** statute (Ark Stat Ann, §41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death caused with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Va. Axon 409 Mich 672 (P. 703-9)

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See *Fn 47 People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Purdon).
5. Utah (Utah Code Ann, §76-5-203(1)). All have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of ~~mens rea~~ beyond the intent to cause the felony. The **Arkansas** statute (Ark Stat Ann, §41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death cause with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Vs. Aaron 409 Mich 672 (P. 703-9)

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See Fn 47 *People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Purdon).
5. Utah (Utah Code Ann, §76-5-203(1)). ALL have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of *mens rea* beyond the intent to cause the felony. The **Arkansas** statute (Ark Stat Ann, §41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death caused with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Va. Axon 409 Mich 672 (P. 703-9)

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See *Fn 47 People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Pundon).
5. Utah (Utah Code Ann, §76-5-203(1)). All have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of ~~mens rea~~ beyond the intent to cause the felony. The **Arkansas statute** (Ark Stat Ann, §41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death caused with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Vs. Axon 409 Mich 672 (P. 703-9)

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See *Fn 47 People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Purdon).
5. Utah (Utah Code Ann, §76-5-203(1)). All have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of *mens rea* beyond the intent to cause the felony. The **Arkansas** statute (Ark Stat Ann, §§41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death caused with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Va. Axon 409 Mich 672 (P. 703-9)

4TH DISTRICT
STATE CAPITOL
LANSING, MICHIGAN 48913
PHONE: (517) 373-1008
FAX: (517) 373-5791

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN
ED VAUGHN

DEMOCRATIC WHIP
COMMITTEES:
CONSTITUTIONAL AND
CIVIL RIGHTS, CHAIR
AGRICULTURE AND FORESTRY,
VICE CHAIR
INSURANCE
JUDICIARY
REGULATORY AFFAIRS
TOURISM

BACKGROUND ON HOUSE BILL 4802

On Tuesday, May 20, 1997, I introduced HB 4802 to correct a longstanding injustice in Michigan's criminal system. The following is a history of the problem the bill is meant to resolve.

On the basis of a technicality, dozens of so-called Aaron defendants, persons who would not be convicted of murder today, are serving sentences of mandatory life in prison with no possibility of parole because of two compromises which occurred over sixteen years ago. These persons committed a felony, but were convicted of murder without any consideration of their responsibility for the death.

In 1975 the Michigan Standard Criminal Jury Instructions project was completed and copies given to every judge in the State for use in criminal cases. The Michigan Supreme Court and the Michigan State Bar urged their use. The felony murder instruction - alone out of all the instructions - was unable to be agreed upon by the committee members.

Handwritten: "Handwritten"
The instruction which had been proposed for felony-murder became known as the Aaron Rule when it was adopted in a 1980 Michigan Supreme Court case. It said that each individual defendant must have done a wrongful act equivalent to murder before they could be convicted of felony murder. The prosecutors on the committee opposed the Aaron instruction. As the deadline approached, a compromise was offered. Both instructions - one strict felony murder (that a death in the perpetration of a listed felony was, by that fact, murder in the first degree) and the Aaron instruction - were included as alternative jury instructions to be chosen by the trial judge.

The instructions stated: "CAUTION: These instructions have been submitted to the Supreme Court for clarification in view of an apparent conflict in Michigan law." The books with this now erroneous compromise instruction were disseminated throughout the state. Because of the differing instructions, the defendants given the strict felony murder instruction were denied equal protection under the law. It was pure chance which instruction the judge used. One instruction required the jury to consider the moral responsibility of the defendant for the death. The other did not.

over.....

Supporting HB 4802 are: ACLU; Ahmad Abdur Rahman (served 21 years for felony murder); American Friends Service Committee Criminal Justice Section; Clementine Barfield, SOSAD; Barbara Beesley, Groundwork for a Just World; Judge Gershwin Drain, Detroit Recorder's Court; Jeffery Edison, National Conference of Black Lawyers; Fundamental Fairness Committee; Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit; Marietta Jaeger, Member, Founding Board, Murder Victims' Families for Reconciliation; Judges from the following Judicial Circuits: Third, Fourth, Sixth, Twelfth, Fourteenth, Twentieth, Twenty-Sixth, Twenty-Ninth; Professor Dorean Koenig, Original Drafter, Michigan Standard Criminal Jury Instructions and Constitutional Law Specialist, Cooley Law School; Andrea D. Lyon, Assistant Clinical Professor of Law, University of Michigan Law School; Michigan Alliance for Justice; Michigan Council on Crime & Delinquency; Henry McClendon, Jr., Director, TOPS, Prison-Fellowship Ministries; Sr. Joannette Nitz, Michigan Coalition for Human Rights; Michigan CURE; Prisons and Corrections Section, Michigan State Bar; NAACP, Detroit Chapter; Michigan MADD, Lansing Chapter; Prison Fellowship Ministries, West Michigan Chapter; Laura Sager, FAMM; State Appellate Defender Office; Ricardo Solomon, Chair, Wayne County Commission; Team for Justice; Thousands of family and friends of the prisoners.

Thus, there are people serving mandatory life prison terms for murder, although they killed no one and could not reasonably foresee that anyone would be killed by their actions.

Finally, in 1980, *People v Aaron* was decided by the Michigan Supreme Court, formally adopting the Aaron rule, "to realign criminal responsibility with moral culpability," and thus preserve the "integrity of the criminal law."

However, the Aaron case itself included the second compromise. Those who had had the erroneous instruction given were not included. The Court applied their decision only to the three defendants before the court and every defendant in the future. Even those pre-Aaron defendants who had had their convictions overturned in the Court of Appeals, on the basis that the strict felony murder rule was erroneous, were not allowed to keep that reversal.

The fate of all these defendants is that they are to die in prison, although no court has ever reviewed their moral responsibility for the death which occurred. For these prisoners, all convicted before 1980, the integrity of the criminal law does not exist.

House Bill 4802 (H-1, Draft 2) states that the standards of *People v Aaron* shall apply to individuals convicted of felony murder prior to that decision. Defendants will then be allowed to file a motion for relief from judgment under already-existing court rules. The bill does not provide for the automatic release of prisoners; it requires the trial court to review the case of each defendant to determine whether malice was submitted to the trier of fact. Only if malice was not submitted, does the bill direct the court to enter a conviction of second degree murder or a lesser included offense based upon the transcript or other evidence of record, conduct a sentencing hearing, and sentence the individual on the new conviction.

It is expected that the resulting sentence will be in keeping with the level of involvement and responsibility of each defendant. The issue is fairness. Often, the principal in these crimes pled to a lesser charge and was sentenced to a term of years. In many of these cases it was persons who were not the principal of the crime who "took their chances" at trial because they knew they were not guilty of killing anyone, may not have been on the scene when the killing occurred, or were involved in an accidental killing. Subsequently, they were found guilty of first-degree felony murder because their responsibility for a death was erroneously presumed solely from their involvement in (or presence during) an underlying felony.

As Justice Fitzgerald wrote in the Aaron decision: "It is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen and unagreed-to results of another felon."

It will not do to pass the responsibility for remedying this injustice to the executive or judicial branches. They have had the opportunity for more than 17 years, and yet, in all that time, only two of dozens of defendants has been afforded any relief. The general failure of the Parole Board to seriously review lifers has been well-documented, and Governor Engler has stated that "commutation is not an option" for these cases.

Legislative action, then, offers these men and women, convicted of murder without their moral responsibility for a death being considered, their only true hope for a measure of justice.



4TH DISTRICT
STATE CAPITOL
LANSING, MICHIGAN 48913
PHONE: (517) 373-1008
FAX: (517) 373-5791

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

ED VAUGHN

DEMOCRATIC WHIP
COMMITTEES:
CONSTITUTIONAL AND
CIVIL RIGHTS, CHAIR
AGRICULTURE AND FORESTRY,
VICE CHAIR
INSURANCE
JUDICIARY
REGULATORY AFFAIRS
TOURISM

BACKGROUND ON HOUSE BILL 4802

On Tuesday, May 20, 1997, I introduced HB 4802 to correct a longstanding injustice in Michigan's criminal system. The following is a history of the problem the bill is meant to resolve.

On the basis of a technicality, dozens of so-called Aaron defendants, persons who would not be convicted of murder today, are serving sentences of mandatory life in prison with no possibility of parole because of two compromises which occurred over sixteen years ago. These persons committed a felony, but were convicted of murder without any consideration of their responsibility for the death.

In 1975 the Michigan Standard Criminal Jury Instructions project was completed and copies given to every judge in the State for use in criminal cases. The Michigan Supreme Court and the Michigan State Bar urged their use. The felony murder instruction - alone out of all the instructions - was unable to be agreed upon by the committee members.

The instruction which had been proposed for felony-murder became known as the Aaron Rule when it was adopted in a 1980 Michigan Supreme Court case. It said that each individual defendant must have done a wrongful act equivalent to murder before they could be convicted of felony murder. The prosecutors on the committee opposed the Aaron instruction. As the deadline approached, a compromise was offered. Both instructions - one strict felony murder (that a death in the perpetration of a listed felony was, by that fact, murder in the first degree) and the Aaron instruction - were included as alternative jury instructions to be chosen by the trial judge.

The instructions stated: "CAUTION: These instructions have been submitted to the Supreme Court for clarification in view of an apparent conflict in Michigan law." The books with this now erroneous compromise instruction were disseminated throughout the state. Because of the differing instructions, the defendants given the strict felony murder instruction were denied equal protection under the law. It was pure chance which instruction the judge used. One instruction required the jury to consider the moral responsibility of the defendant for the death. The other did not.

over.....

Supporting HB 4802 are: ACLU; Ahmad Abdur Rahman (served 21 years for felony murder); American Friends Service Committee Criminal Justice Section; Clementine Barfield, SOSAD; Barbara Beesley, Groundwork for a Just World; Judge Gershwin Drain, Detroit Recorder's Court; Jeffery Edison, National Conference of Black Lawyers; Fundamental Fairness Committee; Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit; Marietta Jaeger, Member, Founding Board, Murder Victims' Families for Reconciliation; Judges from the following Judicial Circuits: Third, Fourth, Sixth, Twelfth, Fourteenth, Twentieth, Twenty-Sixth, Twenty-Ninth; Professor Dorean Koenig, Original Drafter, Michigan Standard Criminal Jury Instructions and Constitutional Law Specialist, Cooley Law School; Andrea D. Lyon, Assistant Clinical Professor of Law, University of Michigan Law School; Michigan Alliance for Justice; Michigan Council on Crime & Delinquency; Henry McClendon, Jr., Director, TOPS, Prison Fellowship Ministries; Sr. Joannette Nitz, Michigan Coalition for Human Rights; Michigan CURE; Prisons and Corrections Section, Michigan State Bar; NAACP, Detroit Chapter; Michigan MADD, Lansing Chapter; Prison Fellowship Ministries, West Michigan Chapter; Laura Sager, FAMM; State Appellate Defender Office; Ricardo Solomon, Chair, Wayne County Commission; Team for Justice; Thousands of family and friends of the prisoners.

4TH DISTRICT
STATE CAPITOL
LANSING, MICHIGAN 48913
PHONE: (517) 373-1008
FAX: (517) 373-5791

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

ED VAUGHN

DEMOCRATIC WHIP
COMMITTEES:
CONSTITUTIONAL AND
CIVIL RIGHTS, CHAIR
AGRICULTURE AND FORESTRY,
VICE CHAIR
INSURANCE
JUDICIARY
REGULATORY AFFAIRS
TOURISM

BACKGROUND ON HOUSE BILL 4802

On Tuesday, May 20, 1997, I introduced HB 4802 to correct a longstanding injustice in Michigan's criminal system. The following is a history of the problem the bill is meant to resolve.

On the basis of a technicality, dozens of so-called Aaron defendants, persons who would not be convicted of murder today, are serving sentences of mandatory life in prison with no possibility of parole because of two compromises which occurred over sixteen years ago. These persons committed a felony, but were convicted of murder without any consideration of their responsibility for the death.

In 1975 the Michigan Standard Criminal Jury Instructions project was completed and copies given to every judge in the State for use in criminal cases. The Michigan Supreme Court and the Michigan State Bar urged their use. The felony murder instruction - alone out of all the instructions - was unable to be agreed upon by the committee members.

The instruction which had been proposed for felony-murder became known as the Aaron Rule when it was adopted in a 1980 Michigan Supreme Court case. It said that each individual defendant must have done a wrongful act equivalent to murder before they could be convicted of felony murder. The prosecutors on the committee opposed the Aaron instruction. As the deadline approached, a compromise was offered. Both instructions - one strict felony murder (that a death in the perpetration of a listed felony was, by that fact, murder in the first degree) and the Aaron instruction - were included as alternative jury instructions to be chosen by the trial judge.

The instructions stated: "CAUTION: These instructions have been submitted to the Supreme Court for clarification in view of an apparent conflict in Michigan law." The books with this now erroneous compromise instruction were disseminated throughout the state. Because of the differing instructions, the defendants given the strict felony murder instruction were denied equal protection under the law. It was pure chance which instruction the judge used. One instruction required the jury to consider the moral responsibility of the defendant for the death. The other did not.

over.....

Supporting HB 4802 are: ACLU; Ahmad Abdur Rahman (served 21 years for felony murder); American Friends Service Committee Criminal Justice Section; Clementine Barfield, SOSAD; Barbara Beesley, Groundwork for a Just World; Judge Gershwin Drain, Detroit Recorder's Court; Jeffery Edison, National Conference of Black Lawyers; Fundamental Fairness Committee; Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit; Marietta Jaeger, Member, Founding Board, Murder Victims' Families for Reconciliation; Judges from the following Judicial Circuits: Third, Fourth, Sixth, Twelfth, Fourteenth, Twentieth, Twenty-Sixth, Twenty-Ninth; Professor Dorean Koenig, Original Drafter, Michigan Standard Criminal Jury Instructions and Constitutional Law Specialist, Cooley Law School; Andrea D. Lyon, Assistant Clinical Professor of Law, University of Michigan Law School; Michigan Alliance for Justice; Michigan Council on Crime & Delinquency; Henry McClendon, Jr., Director, TOPS, Prison Fellowship Ministries; Sr. Joannette Nitz, Michigan Coalition for Human Rights; Michigan CURE; Prisons and Corrections Section, Michigan State Bar; NAACP, Detroit Chapter; Michigan MADD, Lansing Chapter; Prison Fellowship Ministries, West Michigan Chapter; Laura Sager, FAMM; State Appellate Defender Office; Ricardo Solomon, Chair, Wayne County Commission; Team for Justice; Thousands of family and friends of the prisoners.

Thus, there are people serving mandatory life prison terms for murder, although they killed no one and could not reasonably foresee that anyone would be killed by their actions.

Finally, in 1980, *People v Aaron* was decided by the Michigan Supreme Court, formally adopting the Aaron rule, "to realign criminal responsibility with moral culpability," and thus preserve the "integrity of the criminal law."

However, the Aaron case itself included the second compromise. Those who had had the erroneous instruction given were not included. The Court applied their decision only to the three defendants before the court and every defendant in the future. Even those pre-Aaron defendants who had had their convictions overturned in the Court of Appeals, on the basis that the strict felony murder rule was erroneous, were not allowed to keep that reversal.

The fate of all these defendants is that they are to die in prison, although no court has ever reviewed their moral responsibility for the death which occurred. For these prisoners, all convicted before 1980, the integrity of the criminal law does not exist.

House Bill 4802 (H-1, Draft 2) states that the standards of *People v Aaron* shall apply to individuals convicted of felony murder prior to that decision. Defendants will then be allowed to file a motion for relief from judgment under already-existing court rules. The bill does not provide for the automatic release of prisoners; it requires the trial court to review the case of each defendant to determine whether malice was submitted to the trier of fact. Only if malice was not submitted, does the bill direct the court to enter a conviction of second degree murder or a lesser included offense based upon the transcript or other evidence of record, conduct a sentencing hearing, and sentence the individual on the new conviction.

It is expected that the resulting sentence will be in keeping with the level of involvement and responsibility of each defendant. The issue is fairness. Often, the principal in these crimes pled to a lesser charge and was sentenced to a term of years. In many of these cases it was persons who were not the principal of the crime who "took their chances" at trial because they knew they were not guilty of killing anyone, may not have been on the scene when the killing occurred, or were involved in an accidental killing. Subsequently, they were found guilty of first-degree felony murder because their responsibility for a death was erroneously presumed solely from their involvement in (or presence during) an underlying felony.

As Justice Fitzgerald wrote in the Aaron decision: "It is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen and unagreed-to results of another felon."

It will not do to pass the responsibility for remedying this injustice to the executive or judicial branches. They have had the opportunity for more than 17 years, and yet, in all that time, only two of dozens of defendants has been afforded any relief. The general failure of the Parole Board to seriously review lifers has been well-documented, and Governor Engler has stated that "commutation is not an option" for these cases.

Legislative action, then, offers these men and women, convicted of murder without their moral responsibility for a death being considered, their only true hope for a measure of justice.

4TH DISTRICT
STATE CAPITOL
LANSING, MICHIGAN 48913
PHONE: (517) 373-1008
FAX: (517) 373-5791

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

ED VAUGHN

DEMOCRATIC WHIP
COMMITTEES:
CONSTITUTIONAL AND
CIVIL RIGHTS, CHAIR
AGRICULTURE AND FORESTRY,
VICE CHAIR
INSURANCE
JUDICIARY
REGULATORY AFFAIRS
TOURISM

BACKGROUND ON HOUSE BILL 4802

On Tuesday, May 20, 1997, I introduced HB 4802 to correct a longstanding injustice in Michigan's criminal system. The following is a history of the problem the bill is meant to resolve.

On the basis of a technicality, dozens of so-called Aaron defendants, persons who would not be convicted of murder today, are serving sentences of mandatory life in prison with no possibility of parole because of two compromises which occurred over sixteen years ago. These persons committed a felony, but were convicted of murder without any consideration of their responsibility for the death.

In 1975 the Michigan Standard Criminal Jury Instructions project was completed and copies given to every judge in the State for use in criminal cases. The Michigan Supreme Court and the Michigan State Bar urged their use. The felony murder instruction - alone out of all the instructions - was unable to be agreed upon by the committee members.

The instruction which had been proposed for felony-murder became known as the Aaron Rule when it was adopted in a 1980 Michigan Supreme Court case. It said that each individual defendant must have done a wrongful act equivalent to murder before they could be convicted of felony murder. The prosecutors on the committee opposed the Aaron instruction. As the deadline approached, a compromise was offered. Both instructions - one strict felony murder (that a death in the perpetration of a listed felony was, by that fact, murder in the first degree) and the Aaron instruction - were included as alternative jury instructions to be chosen by the trial judge.

The instructions stated: "CAUTION: These instructions have been submitted to the Supreme Court for clarification in view of an apparent conflict in Michigan law." The books with this now erroneous compromise instruction were disseminated throughout the state. Because of the differing instructions, the defendants given the strict felony murder instruction were denied equal protection under the law. It was pure chance which instruction the judge used. One instruction required the jury to consider the moral responsibility of the defendant for the death. The other did not.

over.....

Supporting HB 4802 are: ACLU; Ahmad Abdur Rahman (served 21 years for felony murder); American Friends Service Committee Criminal Justice Section; Clementine Barfield, SOSAD; Barbara Beesley, Groundwork for a Just World; Judge Gershwin Drain, Detroit Recorder's Court; Jeffery Edison, National Conference of Black Lawyers; Fundamental Fairness Committee; Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit; Marietta Jaeger, Member, Founding Board, Murder Victims' Families for Reconciliation; Judges from the following Judicial Circuits: Third, Fourth, Sixth, Twelfth, Fourteenth, Twentieth, Twenty-Sixth, Twenty-Ninth; Professor Dorean Koenig, Original Drafter, Michigan Standard Criminal Jury Instructions and Constitutional Law Specialist, Cooley Law School; Andrea D. Lyon, Assistant Clinical Professor of Law, University of Michigan Law School; Michigan Alliance for Justice; Michigan Council on Crime & Delinquency; Henry McClendon, Jr., Director, TOPS, Prison Fellowship Ministries; Sr. Joanne Nitz, Michigan Coalition for Human Rights; Michigan CURE; Prisons and Corrections Section, Michigan State Bar; NAACP, Detroit Chapter; Michigan MADD, Lansing Chapter; Prison Fellowship Ministries, West Michigan Chapter; Laura Sager, FAMM; State Appellate Defender Office; Ricardo Solomon, Chair, Wayne County Commission; Team for Justice; Thousands of family and friends of the prisoners.

Thus, there are people serving mandatory life prison terms for murder, although they killed no one and could not reasonably foresee that anyone would be killed by their actions.

Finally, in 1980, *People v Aaron* was decided by the Michigan Supreme Court, formally adopting the Aaron rule, "to realign criminal responsibility with moral culpability," and thus preserve the "integrity of the criminal law."

However, the Aaron case itself included the second compromise. Those who had had the erroneous instruction given were not included. The Court applied their decision only to the three defendants before the court and every defendant in the future. Even those pre-Aaron defendants who had had their convictions overturned in the Court of Appeals, on the basis that the strict felony murder rule was erroneous, were not allowed to keep that reversal.

The fate of all these defendants is that they are to die in prison, although no court has ever reviewed their moral responsibility for the death which occurred. For these prisoners, all convicted before 1980, the integrity of the criminal law does not exist.

House Bill 4802 (H-1, Draft 2) states that the standards of *People v Aaron* shall apply to individuals convicted of felony murder prior to that decision. Defendants will then be allowed to file a motion for relief from judgment under already-existing court rules. The bill does not provide for the automatic release of prisoners; it requires the trial court to review the case of each defendant to determine whether malice was submitted to the trier of fact. Only if malice was not submitted, does the bill direct the court to enter a conviction of second degree murder or a lesser included offense based upon the transcript or other evidence of record, conduct a sentencing hearing, and sentence the individual on the new conviction.

It is expected that the resulting sentence will be in keeping with the level of involvement and responsibility of each defendant. The issue is fairness. Often, the principal in these crimes pled to a lesser charge and was sentenced to a term of years. In many of these cases it was persons who were not the principal of the crime who "took their chances" at trial because they knew they were not guilty of killing anyone, may not have been on the scene when the killing occurred, or were involved in an accidental killing. Subsequently, they were found guilty of first-degree felony murder because their responsibility for a death was erroneously presumed solely from their involvement in (or presence during) an underlying felony.

As Justice Fitzgerald wrote in the Aaron decision: "It is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen and unagreed-to results of another felon."

It will not do to pass the responsibility for remedying this injustice to the executive or judicial branches. They have had the opportunity for more than 17 years, and yet, in all that time, only two of dozens of defendants has been afforded any relief. The general failure of the Parole Board to seriously review lifers has been well-documented, and Governor Engler has stated that "commutation is not an option" for these cases.

Legislative action, then, offers these men and women, convicted of murder without their moral responsibility for a death being considered, their only true hope for a measure of justice.

4TH DISTRICT
STATE CAPITOL
LANSING, MICHIGAN 48913
PHONE: (517) 373-1008
FAX: (517) 373-5791

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

ED VAUGHN

DEMOCRATIC WHIP
COMMITTEES:
CONSTITUTIONAL AND
CIVIL RIGHTS, CHAIR
AGRICULTURE AND FORESTRY,
VICE CHAIR
INSURANCE
JUDICIARY
REGULATORY AFFAIRS
TOURISM

BACKGROUND ON HOUSE BILL 4802

On Tuesday, May 20, 1997, I introduced HB 4802 to correct a longstanding injustice in Michigan's criminal system. The following is a history of the problem the bill is meant to resolve.

On the basis of a technicality, dozens of so-called Aaron defendants, persons who would not be convicted of murder today, are serving sentences of mandatory life in prison with no possibility of parole because of two compromises which occurred over sixteen years ago. These persons committed a felony, but were convicted of murder without any consideration of their responsibility for the death.

In 1975 the Michigan Standard Criminal Jury Instructions project was completed and copies given to every judge in the State for use in criminal cases. The Michigan Supreme Court and the Michigan State Bar urged their use. The felony murder instruction - alone out of all the instructions - was unable to be agreed upon by the committee members.

The instruction which had been proposed for felony-murder became known as the Aaron Rule when it was adopted in a 1980 Michigan Supreme Court case. It said that each individual defendant must have done a wrongful act equivalent to murder before they could be convicted of felony murder. The prosecutors on the committee opposed the Aaron instruction. As the deadline approached, a compromise was offered. Both instructions - one strict felony murder (that a death in the perpetration of a listed felony was, by that fact, murder in the first degree) and the Aaron instruction - were included as alternative jury instructions to be chosen by the trial judge.

The instructions stated: "CAUTION: These instructions have been submitted to the Supreme Court for clarification in view of an apparent conflict in Michigan law." The books with this now erroneous compromise instruction were disseminated throughout the state. Because of the differing instructions, the defendants given the strict felony murder instruction were denied equal protection under the law. It was pure chance which instruction the judge used. One instruction required the jury to consider the moral responsibility of the defendant for the death. The other did not.

over.....

Supporting HB 4802 are: ACLU; Ahmad Abdur Rahman (served 21 years for felony murder); American Friends Service Committee Criminal Justice Section; Clementine Barfield, SOSAD; Barbara Beesley, Groundwork for a Just World; Judge Gershwin Drain, Detroit Recorder's Court; Jeffery Edison, National Conference of Black Lawyers; Fundamental Fairness Committee; Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit; Marietta Jaeger, Member, Founding Board, Murder Victims' Families for Reconciliation; Judges from the following Judicial Circuits: Third, Fourth, Sixth, Twelfth, Fourteenth, Twentieth, Twenty-Sixth, Twenty-Ninth; Professor Dorean Koenig, Original Drafter, Michigan Standard Criminal Jury Instructions and Constitutional Law Specialist, Cooley Law School; Andrea D. Lyon, Assistant Clinical Professor of Law, University of Michigan Law School; Michigan Alliance for Justice; Michigan Council on Crime & Delinquency; Henry McClendon, Jr., Director, TOPS, Prison Fellowship Ministries; Sr. Joannette Nitz, Michigan Coalition for Human Rights; Michigan CURE; Prisons and Corrections Section, Michigan State Bar; NAACP, Detroit Chapter; Michigan MADD, Lansing Chapter; Prison Fellowship Ministries, West Michigan Chapter; Laura Sager, FAMM; State Appellate Defender Office; Ricardo Solomon, Chair, Wayne County Commission; Team for Justice; Thousands of family and friends of the prisoners.

Thus, there are people serving mandatory life prison terms for murder, although they killed no one and could not reasonably foresee that anyone would be killed by their actions.

Finally, in 1980, *People v Aaron* was decided by the Michigan Supreme Court, formally adopting the Aaron rule, "to realign criminal responsibility with moral culpability," and thus preserve the "integrity of the criminal law."

However, the Aaron case itself included the second compromise. Those who had had the erroneous instruction given were not included. The Court applied their decision only to the three defendants before the court and every defendant in the future. Even those pre-Aaron defendants who had had their convictions overturned in the Court of Appeals, on the basis that the strict felony murder rule was erroneous, were not allowed to keep that reversal.

The fate of all these defendants is that they are to die in prison, although no court has ever reviewed their moral responsibility for the death which occurred. For these prisoners, all convicted before 1980, the integrity of the criminal law does not exist.

House Bill 4802 (H-1, Draft 2) states that the standards of *People v Aaron* shall apply to individuals convicted of felony murder prior to that decision. Defendants will then be allowed to file a motion for relief from judgment under already-existing court rules. The bill does not provide for the automatic release of prisoners; it requires the trial court to review the case of each defendant to determine whether malice was submitted to the trier of fact. Only if malice was not submitted, does the bill direct the court to enter a conviction of second degree murder or a lesser included offense based upon the transcript or other evidence of record, conduct a sentencing hearing, and sentence the individual on the new conviction.

It is expected that the resulting sentence will be in keeping with the level of involvement and responsibility of each defendant. The issue is fairness. Often, the principal in these crimes pled to a lesser charge and was sentenced to a term of years. In many of these cases it was persons who were not the principal of the crime who "took their chances" at trial because they knew they were not guilty of killing anyone, may not have been on the scene when the killing occurred, or were involved in an accidental killing. Subsequently, they were found guilty of first-degree felony murder because their responsibility for a death was erroneously presumed solely from their involvement in (or presence during) an underlying felony.

As Justice Fitzgerald wrote in the Aaron decision: "It is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen and unagreed-to results of another felon."

It will not do to pass the responsibility for remedying this injustice to the executive or judicial branches. They have had the opportunity for more than 17 years, and yet, in all that time, only two of dozens of defendants has been afforded any relief. The general failure of the Parole Board to seriously review lifers has been well-documented, and Governor Engler has stated that "commutation is not an option" for these cases.

Legislative action, then, offers these men and women, convicted of murder without their moral responsibility for a death being considered, their only true hope for a measure of justice.



OK, File *dc 75861*
Court Administrator's Office

The Circuit Court
for the Sixth Judicial Circuit Court

1200 N TELEGRAPH RD DEPT 404
PONTIAC MI 48341-0404

JUDITH K. CUNNINGHAM, J.D.
COURT ADMINISTRATOR/JUDICIAL ASSISTANT

TEL: (313) 858-0345

MARGARET G. HORENSTEIN, J.BAKI
DEPUTY COURT ADMINISTRATOR

RECEIVED FOR FILING
CLERK

'93 JUL -6 AM 11:11

July 2, 1993

BY
DEPU

CLERK

ENTERED

P.A.

DEPUTY CLERK

John A Polick #144798
MACOMB REGIONAL FACILITY
PO Box 480999
New Haven, Michigan 48048-0999

Re: 75-25524-FY

Dear John A Polick:

This is in response to your letter received June 22, 1993.

According to Record Retention, there are steno notes for the motions heard on January 27, 1976 and October 13, 1976. The Court Reporter has retired and is living in Florida. I have contact another Court Reporter to see if she is interested in transcribing the motions for you. Within the next couple of weeks she will review the notes to see if they are readable to her and let me know. If she can not, I will contact the Reporter in Florida. I should be able to give you either a Court Reporter to contact or an estimate of cost by the end of July for the two motions indicated above.

Your hearing from February 17, 1976 has already been transcribed and you received a copy, sent November 6, 1991.

Very truly yours,

Judith K. Cunningham /dc
Judith K. Cunningham
Court Administrator
Judicial Assistant

JKC/dc

cc: Judge Cooper



The Circuit Court
for the Sixth Judicial Circuit Court
OFFICE OF THE COURT ADMINISTRATOR
1200 N TELEGRAPH RD DEPT 404
PONTIAC MI 48341-0404

September 10, 1996

Mr. John Polick # 144798
P.O. Box 480999
New Haven, MI 48048-0999

Mr. Polick:

Re: People v Polick
Case Number 75-25524-FY

This letter will serve to advise you that we cannot provide you with transcripts of the oral argument on your motions before Judge Ziem on January 27, 1976 and October 13, 1976.

The State Court Administrative Office has developed a record retention and record disposal schedule that our Circuit Court follows. According to General Schedule #15, untranscribed stenographic notes, tapes and recordings must be retained for 15 years from the date the recording was made on a felony case. See MCL 600.2137; MSA 27A.2137.

Our records indicate that the notes from the hearings held on January 27, 1976 and October 13, 1976 were never transcribed and were eligible for destruction at the end of the fifteen year period. The steno notes from your hearings were approved for shredding as of December 31, 1993. We regret to inform you that the stenographic notes which were the only existing version of your hearings were destroyed after they had been retained for the required fifteen year period.

The Court Administrator's Office
Oakland Circuit Court

MICHIGAN DEPARTMENT OF CORRECTIONS
COMMUTATION AND LONG TERM RELEASE GUIDELINES – HOMICIDE

CSO-452B

Prisoner's Name: Polick, John A No.: A-144748
Scored by: Polick, John A Date: 6-24-85 Institution: K.C.F.
Reviewed by Parole Board, Initials: _____ Date: _____

PRIOR CRIMINAL HISTORY SCORE

Juvenile History
None =0
A Juvenile Act which would be felony for Adult =2
Two or More such Acts =3
0

Adult Misdemeanors - Assaultive Only
Two or Less =0
Three or More =1
0

Prior Jail Terms
One or None =0
Two or Three =1
Four or More =2
0

Prior Felony Convictions
None =0
One =1
Two =2
Three or More =3
0

If any of above involved Assaultive Behavior Add +1

Prior Prison Term
None =0
One =2
Two or More =3
0

Prior Adult Probation, CRP, or Parole Revocations
None =0
One or More =1
0

On Probation, CRP Status, or Parole at Time of Instant Offense
No =0
Yes =1
0

Total History Score (0 - 15)

0

OFFENSE SEVERITY SCORE

Instant Offense Conviction
Manslaughter =0
Murder, Second Degree; Attempt Murder =2
Assault with Intent to Commit Murder..... =2
Murder, First Degree =6
6

Offender's Role
Minor or Peripheral Role in Crime =0
Alone or Equal Partner =1
Leader, Where two or more offenders =2
0

Offender's Intention
No Intent to Kill or Injure =0
Intent to Injure Only =2
Intent to Kill =3
0

Torture, Sexual Assault or Sadism Inflicted
No =0
Yes =3
0

Professional/Organized Crime, or Hired Killing
No =0
Yes =4
0

Number of Victims
One =0
Two =2
More than Two =3
0

Victim Vulnerability
Victim Not Unusually Vulnerable =0
Victim Unusually Vulnerable =2
0

Total Offense Score (0 - 23)

0

TOTAL HISTORY SCORE

	0-2	3-5	6-10	11-15
0	6 years	7	8	9
1-3	8	10	13	16
4-5	10	16	18	20
6-9	14	18	22	25
10-12	18	22	27	30
13+	20	25	30	30+ years

Note: Exemplary institutional conduct will result in consideration one year earlier than shown above. A poor institutional record will prevent or delay consideration as indicated in Policy Directive DWA-45.12.

Term in Yrs. from Grid Above =

14 years

Minimum Term Imposed by Court =

Life

CHECK ONE:

☐ Grid Term is same or longer than court term so guidelines DO NOT apply.

☒ Grid Term is less than court term so guidelines DO apply (if case meets policy criteria).

MICHIGAN DEPARTMENT OF CORRECTIONS
NOTICE OF ACTION/PAROLE BOARD

no a furemore
39-4-02 just to show a grid
CAX 11/84

NUMBER A119908	(LAST) NAME HAYTON, James	LOCATION SMNE	CONSIDERATION DATE 7/1/85		
ACTION COMMUTATION SCORE CONFIRMED		REASON CODE I-94	TERM (MOS)	NEXT ACTION DATE 1/87	INSTRUCT. OFFICIAL DATE 3/87

Actual release is subject to investigation and approval of the placement plan. Institutional misconduct could result in loss of parole

Mr. Hayton continues to maintain an excellent institutional record. The Board is willing to confirm the guideline score of 27 years at this time. He has now completed 17½ years of service.

BY Richard Walbrecq, Member

BFS COMMENTS

PLACEMENT

INST. #	ASSIGNED TO	DATE	REPORT DUE
---------	-------------	------	------------

Action Codes:

- | | | |
|-------------------------------------|----------------------------------|---|
| PAROLES & REINSTATEMENTS | | |
| 60 Reinstatement on Parole | 29 Poor Prognosis | 35 Board Denied Special |
| 61 Regular Parole | 31 Bad Institution Record | 37 Contract Suspension |
| 62 Parole in Custody | 32 Chronic Recidivist | 38 Rescind Parole |
| 63 Contract Full Minimum | 34 Protect Society | 39 Suspended Parole |
| 64 Special Parole | 36 For Improved Record | 44 Supplemental Report on Minimum |
| 65 90 Day Early Parole | 87 Continued at own Request | 52 Complete Program |
| 66 Contract with the 90 Days | | 70 Voluntary Term. of Proposed Contract |
| 67 Reparole on Same Term | | 80 Low Risk Interview |
| 68 Contract Special Parole | 41 Insufficient Information | 81 Special Consideration Interview |
| 69 Low Risk Special | 42 Current Psychiatric Report | 82 Reinstatement on Contract |
| 76 Parole Without Interview | 43 Current Medical Report | 83 Contract Interview |
| | 45 Information and Study | 84 RGT Recommended by Warden |
| | 46 Further Discussion | 85 Volunteer Contract Terminée |
| | 47 Investigation | 86 Not available for Hearing |
| | 48 Satisfactory Placement | 88 Contract Rejected (by resident) |
| | | 89 Voluntary Contract Term (job furlough) |
| | | 90 Rehearing — Order Sustained |
| | | 91 Long Indeterminate Interview |
| | | 92 Lifer Law Interview |
| | | 93 Murder First Interview |
| | | 94 Commutation Score Confirmed |
| | | 95 Commutation Score Unconfirmed |
| SERVICE CONTINUED | | |
| 19 Tech. Viol. Sustained | | |
| 20 Further Demonstration | | |
| 22 Sentence Delimiting | | |
| 23 Further Programming | | |
| 24 Medical Reasons | | |
| 25 Psychiatric Reasons | | |
| 26 Lack of Effort | | |
| 27 Further Impact | | |
| | OTHER ACTION | |
| | 17 Board Denied Low Risk Special | |
| | 18 Judge Denied Low Risk Special | |
| | 28 Contract Denied | |
| | 30 Contract Terminated | |
| | 33 Judge Denied Special | |

Actions
Mission
en Andrew
runetta Brandy
Thomas K. Eardley, Jr.
James H. Lincoln
Duane L. Waters, M.D.



James Blanchard, Governor
Department of Corrections
Stevens T. Mason Building, Lansing, Michigan 48909
Robert Brown, Jr., *Director*

June 16, 1986

Ms. Mary Jane Hayton
6582 Robinhood Road
Hillsboro, Ohio 45133

Dear Ms. Hayton:

Re: James Hayton, 119908

This will acknowledge your recent letter to Governor Blanchard regarding the release status of your son, James Hayton. The Governor's Office has referred your correspondence to the Parole Board for a reply, as the Parole Board acts in an advisory capacity to the Governor in all Executive Clemency matters.

I am attaching a copy of the Parole Board's most recent Notice of Action dated July 1, 1985. Mr. Hayton's case is one of the few Murder-First cases in the system where the Parole Board has elected to confirm his commutation guidelines score. This decision was principally based on Mr. Hayton's continued excellent institutional adjustment record. To date, Mr. Hayton has served approximately 19 years of a life sentence for First Degree Murder. The Parole Board's confirmed guidelines score of 27 years means that at the service of 27 years the Parole Board is committed to processing his case for commutation. This decision is, of course, predicated on Mr. Hayton's continued positive institutional adjustment and performance.

I trust this information will be of some value. Thank you for writing.

Very truly yours,

THE PAROLE BOARD

Marvin C. May
49

Marvin C. May
Administrative Assistant

MM:gs

Attachment

cc: Governor's Office