

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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Michigan

By

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The authors thank Thomas R. Combs, Administrator of the Michigan Department of Corrections' Prisoner ReEntry Division, and former Chair of the Michigan Parole Board for comments on an earlier draft of this report.

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1. Background; Sentencing System

a. Sentencing Framework

Michigan has sentencing guidelines that were drafted by a now defunct Sentencing Guidelines Commission, which operated from 1998-2002. These guidelines help to regulate the state's indeterminate sentencing system, and have recently been revised to reflect state and federal constitutional law and new legislation.¹ In 2015, legislation forming the Michigan Justice Policy Commission was enacted to drive future criminal justice reforms.²

Michigan has had some form of discretionary release since 1885, when an Advisory Board existed to assist the governor in determining whether or not to grant "conditional licenses to go at large." The attributes of the paroling authority have changed greatly over the years; the current 10-member Board structure has been in place since 2011.³

b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the Michigan Parole Board.⁴

www.michigan.gov/corrections/0,4551,7-119-1435_11601---,00.html

c. Which Agencies are Responsible for the Supervision of Released Prisoners?

The Field Operations Administration, which is part of the Department of Corrections.⁵

<http://www.michigan.gov/corrections/0,1607,7-119-1435---,00.html>

d. Which Agency Has Authority Over Parole Revocation?

The Michigan Parole Board.⁶



2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

Statutory sentencing guidelines now control sentencing for most crimes in Michigan after “Truth in Sentencing” legislation was passed in the late 1990s.⁷ The guidelines are based on past criminal history as well as the seriousness and nature of the current offense. Very recently, the Michigan Supreme Court ruled that these guidelines must be considered discretionary and that the Sixth Amendment is violated where they compel courts to “impose a mandatory minimum sentence beyond that authorized by the jury’s verdict.”⁸ If a prisoner was sentenced prior to December 15, 2000, they may have instead received an indeterminate sentence with a minimum term determined by the court.

General rules of release eligibility. A prisoner must serve the duration of the minimum term imposed by the sentencing court before becoming eligible for parole.⁹ If an inmate is serving consecutive sentences, the minimum terms are added together to form the total minimum to be served.¹⁰ Similarly, the maximum terms are added together to determine the maximum possible time to serve both sentences.

Violent offenders and sex offenders. Michigan has several laws that punish recidivist offenders more harshly, including mandatory 25-year minimum sentencing for a fourth “serious crime.”¹¹ Michigan sentencing guidelines take into account the severity of the crime, and contain recommendations that violent and sex crimes incur longer incarceration periods. The parole guidelines, however, account for institutional adjustment and program completion while incarcerated. Thus, a violent or sex offender may score as a high probability of having parole success based on their more recent actions even though they have committed a serious crime.¹²

Life sentences. There are two types of life sentences. Individuals serving life sentences with eligibility for parole may be considered for release after serving 10-20 years of their sentence.¹³ A public hearing must be held prior to the Board ordering parole for a “parolable life sentence.” However, life sentences for certain crimes¹⁴ for which parole is not available state that consideration for release by the Board may only occur after such offenders have

had their sentence commuted by the governor based on a public commutation hearing, and only after at least 10 years imprisonment.¹⁵ In “non-parolable” life cases, the Board is not required to hold a commutation hearing, but must interview the inmate at the 10-year mark.¹⁶ If the Board does not take an interest in the case, the process is complete.

Recurring eligibility after denial and exceptions. Inmates who are denied parole must be reconsidered at intervals not to exceed 24 months. However, in certain circumstances, the majority of the Board can deny reconsideration for up to 60 months by a majority vote of the Board.¹⁷

b. Good Time, Earned Time, and Other Discounts

Good time was eliminated in 1987, and “disciplinary credits,” which replaced the good time system were eliminated in late 2000.¹⁸ As of 2000, there is a negative, rather than positive, incentive for inmates called “disciplinary time.”¹⁹ This is essentially bad time accumulated for misconduct while in prison. A prisoner’s minimum sentence plus disciplinary time should not exceed the maximum sentence. Disciplinary time is submitted to the Board for consideration at a parole hearing, but is not formally added to the minimum sentence. Thus, the Board may still parole individuals with disciplinary time.²⁰

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. Parole is entirely discretionary with the Board.²¹ The overriding consideration in release decision-making is whether the board “has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner’s mental and social attitude, that the prisoner will not become a menace to society or to the public safety.”²²

Statutory factors the Board must consider. By statute, the Board must consider five major factors in release: criminal behavior, institutional adjustment, readiness for release, personal history and growth, and physical and mental health.²³ The statute also requires certain conditions that need to be met for any inmate to be released.²⁴ The Board must have “satisfactory evidence” that a parolee will pursue employment, education, and/or treatment when released. Finally, in general if a prisoner is serving a term of more than two years, they must earn their High

School Diploma or GED while incarcerated before they may be considered for release. The Board may not base its decision solely on marital status or prior charges not resulting in conviction.²⁵ Finally, the Board may parole individuals who are subject to disciplinary time, but must consider it when contemplating release.²⁶

Special standard for sex offenders. There is no special standard for sex offenders. However, sex offenses will be evaluated as part of the review of criminal history and possibly as part of its consideration of mental health.

d. Parole Release Guidelines

Guidelines used for most offenders. Michigan has statutory parole guidelines that are intended to govern the exercise of the Board's discretion. However, following these guidelines is not completely mandatory. The Board has the authority to depart from the guidelines for any "substantial and compelling reason" put into writing. The guidelines for most offenders include an evaluation of the following broad categories:²⁷

1. Nature of offense
2. Prior criminal record
3. Conduct during confinement
4. Risk screening scale position
5. Age
6. Participation in structured programs
7. Mental health

Guidelines used for sex offenders. There are no specific guidelines for sex offenders. The nature of the crime is taken into account when determining a guideline score.

e. Risk and Needs Assessment Tools

Main risk instrument. Michigan's main risk instrument is the COMPAS. It has recently come under criticism for containing socioeconomic variables that discriminate against individuals from certain neighborhoods or economic groups.²⁸

Are risk assessments mandated by statute? By statute, the Board must utilize an instrument (currently COMPAS) that "produces a numeric score" to ensure that prisoners who score in the high probability of parole range do not exceed an assaultive felony recidivism rate of 5%." ²⁹

Transparency. Michigan's Board is fairly transparent in its use of the COMPAS tool as part of its work with the National Institute of Corrections. A Wall Street Journal article focused on some parole boards' reliance on this instrument in 2013.³⁰ However, there is no easily obtainable copy of the risk instrument or information about the outcomes it produces.

Sex offenders. Michigan employs both the STATIC-99 and a clinical assessment prior to the release of sex offenders.³¹

f. Medical or Compassionate Release

Prisoners may be released on medical parole upon the recommendation of the Bureau of Health Care Services under the Department of Corrections, and only if they are physically or mentally incapacitated. The Board may reach a decision only after a review of the medical, institutional, and criminal record of the inmate.³²

g. Executive Clemency Power

The governor has the power to grant reprieves, commutations and pardons after convictions for all offenses, except in cases of impeachment, upon such conditions and limitations as he may direct, subject to procedures and regulations prescribed by law. The governor must inform the legislature annually of each pardon, reprieve, or commutation granted stating the reasons for each.³³

h. Emergency Release for Prison Crowding

Currently, emergency authorization is only given for the reduction of sentences for inmates serving determinate sentences in county jails.³⁴ In the past, the legislature has authorized the governor to release prisoners when overcrowding is an issue under an emergency powers stipulation, but the governor is not authorized to do so presently.³⁵

3. Parole Release Hearing Process

a. Format of Release Hearings

Parole release decisions are made by a majority vote of three board members.³⁶ For cases in which an inmate is serving a life sentence with the possibility of parole, there is a public hearing process along with a requirement that release may be granted only by a majority vote of the entire board.³⁷

The Board does not decide cases with the inmate present, but generally conducts an interview of the inmate. An inmate may be paroled without an interview if the Board finds that they have a “high probability” of being paroled.³⁸ The Board may also deny an interview to an inmate who has a low probability of being paroled. However, the Board must interview all other parolees.³⁹ One member of the Board interviews the inmate at least one month prior to the prisoner’s earliest parole eligibility date. Notice must be sent to the prisoner of the interview date at least one month prior to the interview.

b. Information Before the Board; Factors the Board May Consider

The Department must prepare a “parole eligibility report” at least 90 days prior to his earliest parole eligibility date and every twelve months after that, but there is no requirement that this report be given to the prisoner. The report includes:⁴⁰

- A statement of all major misconduct charges of which the prisoner was found guilty and the punishment for the misconduct;
- The prisoner’s work and educational record while confined;
- The results of any physical, mental, or psychiatric examinations of the prisoner that may have been performed;
- Whether the prisoner fully cooperated with the state by providing complete financial information as required by statute;
- Whether the prisoner refused to attempt to obtain identification documents, if applicable; and
- A statement of disciplinary time, if applicable.

The Board also gathers evidence on the five major factors it evaluates, which include criminal behavior, institutional adjustment, readiness for release, personal history and

growth, and physical and mental health.⁴¹ The Board is required to consider any statement made to them by a crime victim.⁴² The Board *cannot* consider expunged juvenile records or information that is inaccurate or irrelevant.⁴³

c. Prisoner’s Procedural Rights

Except in cases of life sentences, prisoners are not entitled to appointed counsel, and *may not* be represented by an attorney or another prisoner during the parole interview process. However, a prisoner may be represented by another individual of their choice.⁴⁴

d. Victims and Other Participants

Victims are accorded many rights in the parole process. These include the right to be notified (upon request) of any parole hearing to be held and its result and the right to present a written statement, exhibits, or other photographic or documentary information to the board for its consideration in making all parole decisions.⁴⁵ While an inmate is explicitly not allowed a lawyer during the parole process, victims may be represented by counsel at their own expense. Victims also have a right to appeal parole decisions, discussed further below.

The prosecutor must be notified of all potential parole opportunities, and has the option of appealing a parole decision to the sentencing court for all crimes.⁴⁶ For certain prisoners sentenced to life in prison, the sentencing court must be notified and may file a written objection to his or her release.⁴⁷ These objections become part of the file used to review a prisoner’s case.

The Board must notify the public and hold a public hearing when the prisoner is serving a life sentence for certain enumerated crimes.⁴⁸ These crimes include first-degree murder and first-degree criminal sexual conduct.

e. Burdens of Proof or Standards of Persuasion

The Board must have a reasonable assurance after consideration of all the facts and circumstances, including the prisoner’s mental and social attitude, that the prisoner will not become a menace to society or to public safety.⁴⁹ However, release is discretionary with the Board and it can consider subjective factors in reaching a parole decision.⁵⁰

f. Possible Outcomes at Parole Release Hearings; Form of Decision

If parole is denied to a prisoner, the Board must provide written notice of its reasoning, and if appropriate, a list of specific recommendations for corrective action the prisoner may take to facilitate release.⁵¹ At that time, the Board can issue a continuance until the next parole eligibility interview. Per Board policy a case cannot be continued for more than 24 months; however, a 60-month continuance can be ordered by a majority vote of the Board. In either instance, the prisoner must be interviewed at the end of the continuance.⁵²

g. Administrative or Judicial Review of Parole Denial

Prisoners who are denied parole are not entitled to an appeal.⁵³ Only a victim or prosecutor may appeal to the Michigan Circuit Court. They must first file an application for leave to appeal with the circuit court within 28 days after the parole board mails a notice granting parole.⁵⁴ The prisoner is considered the appellee, and the board may also move to intervene as an appellee. The appellant has the burden of proving that the parole board's decision was either, 1) contrary to the Michigan Constitution, or to a law, regulation, or rule; or 2) a clear abuse of discretion.⁵⁵ Prisoners who wish to challenge release decisions of the parole board must do so through a habeas corpus action, however, "the writ of habeas corpus only deals with radical defects which render a judgment or proceeding absolutely void."⁵⁶

h. Rescission of Parole Release Dates

A parole order may be rescinded for cause before the prisoner is released on parole. However, parole may not be rescinded without an interview between one member of the Board and the parolee to "consider and act upon information received by the board after the original parole release decision."⁵⁷

4. Supervision Practices

Supervision Rate.

On December 31, 2015 there were 17,909 individuals on parole in Michigan, for a rate of 232 parolees per 100,000 adults.⁵⁸

a. Purposes of Supervision

The purpose of parole supervision is to keep released prisoners in legal custody while permitting them to live beyond the prison enclosure so they may have an opportunity to show they can refrain from committing crime.⁵⁹

b. Are All or Only Some Releases Placed on Supervision?

All parolees are initially placed on supervision and required to report to a parole officer.⁶⁰

c. Length of Supervision Term

Maximum supervision term. The period of post-release supervision is discretionary with the board, and may extend to the maximum sentence imposed by the sentencing court.⁶¹ There is no provision in statute governing final termination, other than requiring that notice be given to the parolee confirming his sentence is complete.⁶² Typically, a parolee is supervised for a period of one to four years.⁶³ Parole supervision for murder, forcible rape, or breaking and entering an occupied dwelling at night must be for at least two years.⁶⁴ Lifetime parole can be maintained only for those convicted of first-degree criminal sexual conduct against a victim younger than 13.⁶⁵

Early termination from supervision. The chair may shorten the duration of parole supervision for good cause, upon the recommendation of a parole officer.⁶⁶ This cannot occur in cases where the parole term is set by statute.

Extension of supervision term. The term of supervision may be extended without providing the parolee an opportunity to be heard.⁶⁷ However, any amendment to parole must be in writing and the parolee must be given notice.⁶⁸ Amendments to parole orders must be for good cause.

d. Conditions of Supervision

The conditions of supervision are determined at the discretion of the parole board. There are standard statutory conditions of parole, including paying restitution and various fines, submitting to searches, and abiding by any protection orders issued as a result of the case.⁶⁹ Such conditions also include reporting to a parole officer, travelling out-of-state only with permission, maintaining employment, obeying the law, residing at an approved residence, submitting to drug and alcohol testing, avoiding association with known criminals, and not possessing firearms.⁷⁰

All other conditions must be “reasonabl[y] relat[ed]” to the prisoner’s past conduct and “present capabilities,” and be specific enough to guide “both supervision and conduct.”⁷¹ A set of standard special conditions promulgated by the Field Operations Administration is available, but only by submitting a request in writing to the Freedom of Information Act Coordinator at the Michigan Department of Corrections.⁷² Special conditions are “intended to provide the right amount of structure to increase the parolee’s chance of making a successful adjustment.”⁷³

Sex offenders. Sex offenders are required to register as a standard condition of parole.⁷⁴ Those who have been convicted of certain stalking crimes may also be subject to electronic monitoring.

Modification of conditions. Parole officers may modify the conditions of release, but such modifications must, in turn, be ratified by the chair of the Board within 60 days of the change being made.⁷⁵ Notice of both changes in conditions and parole term must be made in writing to the parolee.

e. Fees and Other Financial Sanctions

Parole supervision fees. Parole supervision fees are a requirement tied to release on parole, though the amount is scaled to parolee income. Parolees who earn under \$250 per month pay no fees; parolees who earn over \$1,000 per month pay 5% of their income, up to a maximum of \$135. If a parolee has not paid the full amount of the parole supervision fee upon reaching discharge from parole, the department must review the defendant’s actual income during the parole period with the amount projected when calculating the fee. If the parolee’s income did not meet or exceed the amount projected, the department must waive any excess amount. The state Department of Treasury is then authorized to collect any outstanding remaining adjusted balance.⁷⁶

Payments for drug and alcohol testing and treatment. There is no statutory fee for drug and alcohol testing.

Restitution. Payment of restitution is a standard condition of parole.⁷⁷ When determining whether to revoke parole for failure to pay restitution, the Board must consider the defendant’s employment status, earning ability, and financial resources, the willfulness of the defendant’s failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay.⁷⁸

Child support. Child support is not a standard condition of parole, but may be imposed as a special condition of parole.

Other financial obligations. Parolees may also need to pay other court fees and costs, such as filing fees. All parolees must pay a \$130 assessment for their felony case as a mandatory condition of parole.⁷⁹ If a parole revocation proceeding is based solely on nonpayment of fines, the Board must consider the parolee’s economic conditions before imposing punishment.⁸⁰

Incentives: reduction of economic sanctions. There is no program to reduce economic sanctions on parolees.

5. Parole Revocation

Parole revocation proceedings.

In 2015, the Bureau of Justice Statistics estimates that 1,159 parolees received a new sentence and 1,854 paroles were revoked.⁸¹

Absconders.

Michigan has not recently reported its rate of absconders from parole.⁸²

a. Principles and Criteria of “When to Revoke”

Policy considerations. Due to the tradition of broad discretion given to the Michigan Parole Board, there are few laws and policies that dictate what the Board must consider relative to the revocation of parole. However, there are several alternatives to parole revocation in place at the parole supervision level that may be utilized for less serious violations.⁸³

Legal predicates. Under Michigan law, broad discretion is given to the Board in deciding to revoke parole.⁸⁴ The breadth of discretion offers the Board the capacity, and the obligation, to change and adapt based on experience.⁸⁵

Statutorily enumerated factors. Parole may be revoked after a hearing in which a violation is shown by a preponderance of the evidence. For parole revocation based solely on the ability to pay fines, the Board should consider “the parolee’s employment status, earning ability, and financial resources, the willfulness of the parolee’s failure to comply with the order, and any other special circumstances that may have a bearing on the parolee’s ability to comply with the order.”⁸⁶

b. Revocation Guidelines

The Parole Violation Response Guideline form must be used to assist in determining the action to be taken regarding a purported violation of parole.⁸⁷ This form evaluates “Aggravating Violation Factors” including felony behavior and violations involving weapons or assaultive behavior. The nature of the violation and the parolee’s statistical risk levels, criminal history and prior supervision history must also be considered when making this determination.⁸⁸

c. Risk and Needs Assessment Tools

There does not appear to be a separate risk assessment system for revocation of parole. The COMPAS score is not factored into the revocation guidelines form. It may, however, be considered during the parole revocation process.⁸⁹

d. Preliminary and Final Revocation Procedures

Arrest or summons. A parolee may be arrested if a parole officer or peace officer has reasonable grounds to believe that the prisoner has violated parole.⁹⁰ A parolee may also be arrested if the deputy director of the bureau of field services issues a warrant.⁹¹

Preliminary hearing. A preliminary hearing presided over by a hearing officer must occur within 10 days of the parolee’s arrest or alleged violation.⁹² Parolees must receive at least 48 hours’ notice of the hearing. They have a right to counsel, including appointed counsel, during the preliminary hearing.⁹³ The purpose of the preliminary hearing is to determine whether there is probable cause that the parolee has violated the terms of his or her release.⁹⁴

Final hearing. Following the preliminary hearing, if a finding of probable cause is made, a “fact-finding” final hearing must be held. The final hearing must be conducted by one board member or hearing officers who are attorneys designated by the chairperson of the Board. The burden of proof in this phase of a revocation hearing is the preponderance of the evidence that a violation of the terms of release has occurred.⁹⁵

e. Offenders’ Procedural Rights

The parolee has a limited right to counsel in parole revocation proceedings. The parolee must request counsel not less than 24 hours before a hearing if they have “made a claim of innocence which is plausible, but may be difficult to prove.”⁹⁶ Counsel may also be provided where there might be substantial reasons that justify or mitigate the violation(s) that are complex or otherwise difficult to present, or the accused is mentally unable to present a defense.

A parolee has a right to know the evidence against them, to testify and present witnesses, and to confront witnesses against them.⁹⁷ Any parole, probation or police officer may arrest the parolee with only “reasonable grounds” to believe the parolee has violated the terms of his or her release.⁹⁸

f. Victims and Other Participants

The law does not explicitly provide victims with input into the parole revocation process.⁹⁹ There is no statutory involvement of prosecutors or other parties from the original case in the revocation.¹⁰⁰

g. Burdens of Proof or Standards of Persuasion

Parole violations must be proven by a preponderance of the evidence.¹⁰¹

h. Revocation and Other Sanctions

If a board member or hearing officer determines that a parole violation has occurred, the Board *may* revoke parole.¹⁰²

Parole agents have other tools to respond to violations at their disposal. “Violation responses may include more intensive case management efforts, referrals to counseling programs, community service obligations, substance-abuse treatment, placement in a residential program center, or a return to prison [through the revocation process] if the parolee appears to pose a threat to public safety.”¹⁰³

i. Issuing Parole Revocation Decisions

The board member conducting the revocation hearing must submit a report and recommendation to the Board. All decisions of the Board must be made by a majority vote, however, in practice the decision of a single member of the Board is usually sufficient, absent extraordinary circumstances.¹⁰⁴ A written statement of the findings of fact and the reasons for a revocation decision must be served upon the parolee within 60 days of the hearing.¹⁰⁵

j. Administrative or Judicial Review of Parole Revocation Decisions

Department of Corrections decisions are subject to judicial review of the fairness of the process by which parole revocation decisions are made.¹⁰⁶ The Field Operations Administration deputy director or designee may request a separate review of a decision in those instances where no violation has been found.¹⁰⁷

k. Re-Release Following Revocation

The Board may reconsider parole at any time after revocation, or may choose to wait until the maximum sentence has been served.¹⁰⁸

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Michigan Parole Board has long had statutory authority to operate; however, major changes to the Board last occurred in 2011 through an executive order under Governor Rick Snyder.¹⁰⁹ It has jurisdiction over inmates and parolees for the purposes of parole release and revocation.

b. Location in Government

The Michigan Parole Board is a part of the Department of Corrections.¹¹⁰ The Board is directly under the Director of Corrections and subject to his or her oversight, making the board a division of the Department of Corrections.

c. Purpose (Vision/Principles/Rationale)

While there is no mission statement specific to the Michigan Parole Board, the Department of Corrections, of which the board is an agency, puts forward the following mission statement:

“Our mission is to create a safer Michigan through effective offender management and supervision in our facilities and communities while holding offenders accountable and promoting their rehabilitation.”¹¹¹

d. Appointment and Qualifications of Board Members

The Director of the Department of Corrections appoints board members and a chairperson. In 2011, the Board was reduced from 15 members to 10 members.

Qualifications. There are no statutory or regulatory requirements on who qualifies to be a board member. At any given time, however, four members must never have been employed by, or appointed to, a position in the Department of Corrections.

e. Tenure of Board Members, Ease of Removal

The members serve staggered, renewable four year terms. The Director may remove them for “incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance.”¹¹²

f. Training and Continuing Education

There is no statutory requirement for training or the continuing education of the Board.

g. Workload

In 2015, 15,201 parole interviews were conducted by the Board and 10,664 offenders were released on parole.¹¹³

h. Reporting and Accountability of Parole Board

The Parole Board must report as part of the Annual Report produced by the Department of Corrections.¹¹⁴ There is also a separate chart of parole approval rates by offense group on the Parole Board’s website.¹¹⁵

END NOTES

- ¹ See *Mich. Judicial Inst., Sentencing Guidelines Manual*, Mich. Courts (2015), <http://courts.mi.gov/education/mji/publications/documents/sg-manual.pdf>; See also *People v. Lockridge*, 870 N.W. 2d 502 (Mich. 2015) (holding that the use of certain mandatory guidelines without a jury constituted impermissible judicial fact finding and that an acceptable remedy existed in making guidelines advisory).
- ² Mich. Comp. Laws §§ 791.32a, .33a.
- ³ Mich. Dep't of Corr., *Parole from Past to Present*, http://www.michigan.gov/corrections/0,4551,7-119-1435_11601-331908--,00.html (last visited Sept. 29, 2016).
- ⁴ Mich. Comp. Laws § 791.234.
- ⁵ Mich. Comp. Laws § 791.303. See also Mich. Comp. Laws § 791.231.
- ⁶ Mich. Comp. Laws § 791.240a.
- ⁷ Mich. Comp. Laws § 769.34; See also Mich. Dep't of Corr., *The Parole Consideration Process* (2016), <http://www.michigan.gov/corrections/0,4551,7-119-1384-22909--,00.html>.
- ⁸ See *People v. Lockridge*, 870 N.W. 2d 502 (Mich. 2015).
- ⁹ Mich. Comp. Laws § 791.234.
- ¹⁰ *Id.*
- ¹¹ Mich. Comp. Laws § 769.12.
- ¹² Correspondence with Thomas R. Combs, Chairperson, Mich. Parole Bd. (Aug. 30, 2016).
- ¹³ Mich. Comp. Laws § 791.234.
- ¹⁴ *Id.* These crimes are first-degree murder, adulteration, production, or misbranding of drugs with intent to kill more than two people, crimes involving explosives, bombs, or other harmful devices, first-degree sexual misconduct, and "any other violation for which parole violation is expressly denied under state law."
- ¹⁵ Mich. Comp. Laws § 791.244. See also Mich. Dep't of Corr., *Parole from Past to Present* (2016), http://www.michigan.gov/corrections/0,4551,7-119-1435_11601-331908--,00.html.
- ¹⁶ Mich. Dep't of Corr. Policy Directive 06.05.104(L) (2013).
- ¹⁷ Mich. Dep't of Corr. Policy Directive 06.05.104(X) (2013). This decision is determined if one or more factors apply. These factors include any determination by the majority of the Board that a prisoner's history of predatory, deviant, or violent behavior indicates there is a present risk to public safety which cannot be reasonably expected to be mitigated in less than 60 months; that the prisoner was convicted of certain firearms-related offenses; and/or that the offender has a prior parole revocation for violating a condition of parole regarding firearm ownership.
- ¹⁸ Mich. Comp. Laws § 800.34. See also Mich. Dep't of Corr., *Definitions* (2016), http://www.michigan.gov/corrections/1,1607,7-119-1441_1519--,00.html.
- ¹⁹ Mich. Comp. Laws § 800.34.
- ²⁰ Correspondence with Thomas R. Combs, *supra* note 12.
- ²¹ Mich. Comp. Laws § 791.234.
- ²² Mich. Comp. Laws § 791.233.
- ²³ Mich. Admin. Code r. 791.7715.
- ²⁴ Mich. Comp. Laws § 791.233.
- ²⁵ Mich. Admin. Code r. 791.7715.
- ²⁶ Correspondence with Thomas R. Combs, *supra* note 12.
- ²⁷ Mich. Admin. Code r. 791.7716.
- ²⁸ Michigan Radio, *Data is Helping Determine Parole in Michigan, but are the Factors Being Used Fair?* (Broadcast, August 17, 2015), <http://michiganradio.org/post/data-helping-determine-parole-michigan-are-factors-being-used-fair#stream/0>.
- ²⁹ *Id.*
- ³⁰ Nat'l Inst. of Corr., *Michigan*, <http://nicic.gov/tpcmichigan> (last visited Jul. 25, 2016). See also Wall Street Journal, *State Parole Boards Use Software to Decide Which Inmates to Release* (Oct. 11, 2013), <http://www.wsj.com/articles/SB10001424052702304626104579121251595240852>.
- ³¹ Correspondence with Thomas R. Combs, *supra* note 12.
- ³² Mich. Comp. Laws § 791.235.
- ³³ Mich. Const. art. 5, § 14.
- ³⁴ Mich. Comp. Laws § 801.57.
- ³⁵ See *Oakland Cnty. Prosecuting Attorney v. Mich. Dep't of Corr.*, 305 N.W. 2d 515 (Mich. 1981) (holding emergency powers was valid exercise of governor's pardon and commutation power under the Prison Overcrowding Emergency Powers Act in force at the time).
- ³⁶ Mich. Dep't of Corr., *Parole-The Parole Process*, (2016), http://www.michigan.gov/corrections/0,4551,7-119-9741_12798-292528--,00.html. See also Mich. Comp. Laws § 791.246.
- ³⁷ Mich. Comp. Laws § 791.234; Correspondence with Thomas R. Combs, *supra* note 12.
- ³⁸ Mich. Comp. Laws § 791.235.
- ³⁹ Correspondence with Thomas R. Combs, *supra* note 12.
- ⁴⁰ Mich. Comp. Laws § 791.235. The identification requirement relates to a re-entry program that the Michigan DOC runs that requires prisoners to obtain appropriate documentation, such as a social security card, before release. See Mich. Comp. Laws § 791.234c.
- ⁴¹ Mich. Admin. Code r. 791.7715.
- ⁴² Mich. Comp. Laws § 791.235.
- ⁴³ Mich. Admin. Code r. 791.7715.
- ⁴⁴ Mich. Comp. Laws § 791.235.
- ⁴⁵ Mich. Comp. Laws § 780.771.
- ⁴⁶ Mich. Comp. Laws § 791.234.
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ Mich. Comp. Laws § 791.233.
- ⁵⁰ *Killebrew v. Dep't. of Corr.*, 604 N.W.2d 696 (Mich. Ct. App. 1999).
- ⁵¹ Mich. Comp. Laws § 791.235.
- ⁵² Mich. Dep't of Corr. Policy Directive 06.05.104(X) (2013). See *supra* note 16.
- ⁵³ Mich. Ct. r. 7.118 ("No Appeal of Right. There is no appeal of right from a decision of the parole board."). See also *Morales v. Michigan Parole Bd.*, 676 N.W.2d 221 (2003).
- ⁵⁴ Mich. Ct. r. 7.118.
- ⁵⁵ *Id.*
- ⁵⁶ *Morales*, 676 N.W.2d 221.
- ⁵⁷ Mich. Comp. Laws § 791.236.
- ⁵⁸ Danielle Kaeble & Thomas P. Bonzcar, Bureau of Justice Statistics, *Probation and Parole in the United States, 2015* at 20 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁵⁹ *Phillips v. Warden, State Prison of S. Mich.*, 396 N.W.2d 482 at 486 (Mich. Ct. App. 1986). See also 2A Gillespie Mich. Crim. L. & Proc. § 25:7 (2d ed., 2015).
- ⁶⁰ Mich. Dep't of Corr., *Parole Supervision* (2016), http://www.michigan.gov/corrections/0,4551,7-119-1435_1474---,00.html [hereinafter *Parole Supervision*].
- ⁶¹ See *Lane v. Mich. Dep't of Corr., Parole Bd.*, 173 N.W.2d 209, 211 (Mich. 1970); and *Truss v. Burt*, No. 1:13-CV-710, 2013 WL 5507959, at *5 (W.D. Mich. Oct. 3, 2013).
- ⁶² Mich. Comp. Laws § 791.237.
- ⁶³ *Parole Supervision*, *supra* note 60.
- ⁶⁴ Mich. Comp. Laws § 791.242.
- ⁶⁵ *Id.*
- ⁶⁶ Mich. Admin. Code r. 791.7730.
- ⁶⁷ *Lane v. Mich. Dep't. of Corrections*, *supra* note 55.
- ⁶⁸ Mich. Comp. Laws § 791.236.
- ⁶⁹ Mich. Admin. Code r. 791.7730.
- ⁷⁰ *Parole Supervision*, *supra* note 60.
- ⁷¹ Mich. Admin. Code r. 791.7730.
- ⁷² Mich. Dep't of Corr., *Special Conditions of Parole* (2016), http://www.michigan.gov/corrections/0,4551,7-119-9741_12798-230504--,00.html.
- ⁷³ *Parole Supervision*, *supra* note 60.
- ⁷⁴ Mich. Admin. Code r. 791.7730.

END NOTES

- ⁷⁵ *Id.*
- ⁷⁶ Mich. Comp. Laws § 791.236a. Note that for a projected monthly income of under \$250, there is no fee.
- ⁷⁷ Mich. Comp. Laws § 791.236.
- ⁷⁸ Mich. Comp. Laws § 780.766.
- ⁷⁹ *Id.* See also Mich. Comp. Laws § 780.905.
- ⁸⁰ Mich. Comp. Laws § 791.240a.
- ⁸¹ Kaeble & Bonzcar, *supra* note 58 at 24 (Appendix Table 6).
- ⁸² See *id.*
- ⁸³ Parole Supervision, *supra* note 60.
- ⁸⁴ *Brown v. Jansen*, 619 F. Supp. 2d 372 (W.D. Mich. 2009).
- ⁸⁵ *Id.* citing *Garner v. Jones*, 529 U.S. 244 at 253 (2000).
- ⁸⁶ Mich. Comp. Laws § 791.240a.
- ⁸⁷ Interstate Comm'n for Adult Offender Supervision, *Michigan Parole Violation Response Guideline* (Apr. 2009), http://www.interstatecompact.org/Portals/0/library/statefiles/MI/MI_Parole_Violation_Response_Guideline.pdf; Mich. Dep't of Corr., Policy Directive 06.06.100 (Mar. 1, 2013), https://www.michigan.gov/documents/corrections/06_06_100_412858_7.pdf.
- ⁸⁸ Mich. Parole Violation Response Guideline, *supra* note 87.
- ⁸⁹ Correspondence with Thomas R. Combs, *supra* note 12.
- ⁹⁰ Mich. Comp. Laws § 791.239.
- ⁹¹ Mich. Comp. Laws § 791.238.
- ⁹² Mich. Admin. Code r. 791.7740.
- ⁹³ Mich. Admin. Code r. 791.7745.
- ⁹⁴ Mich. Admin. Code r. 791.7750.
- ⁹⁵ Mich. Comp. Laws § 791.240a.
- ⁹⁶ Mich. Comp. Laws § 791.7745.
- ⁹⁷ Mich. Comp. Laws § 791.239a.
- ⁹⁸ Mich. Comp. Laws § 791.239.
- ⁹⁹ See, e.g. Mich. Comp. Laws § 780.771.
- ¹⁰⁰ See also *In re Wayne Cty. Prosecutor*, 591 N.W. 2d 359 (Mich. App. 1998) (The Parole Board has no legal duty to let trial court or prosecutor intervene in these proceedings).
- ¹⁰¹ Mich. Comp. Laws § 791.240a.
- ¹⁰² *Id.*
- ¹⁰³ Parole Supervision, *supra* note 60.
- ¹⁰⁴ Mich. Comp. Laws § 791.246.
- ¹⁰⁵ Mich. Comp. Laws § 791.240a.
- ¹⁰⁶ See, e.g. *Penn v. Department of Corrections*, 298 N.W. 2d 756 (Mich. 1980).
- ¹⁰⁷ Michigan Dep't of Corrections Policy Directive 06.06.100, *supra* note 87.
- ¹⁰⁸ *In re Parole of Bivins*, 619 N.W. 2d 163 at 166 (Mich. Ct. App. 2000).
- ¹⁰⁹ Mich. Comp. Laws § 791.231a; Mich. Exec. Order No. 2011-3 (2011).
- ¹¹⁰ *Id.*
- ¹¹¹ Mich. Dep't of Corr., Policy Directive 01.01.100 (Dec. 2, 2011), http://www.michigan.gov/documents/corrections/01_01_100_370449_7.pdf.
- ¹¹² Mich. Comp. Laws § 791.231a.
- ¹¹³ Mich. Dep't of Corr., *Statistical Report at D-3* (2015), http://www.michigan.gov/documents/corrections/MDOC_2015_Statistical_Report_-_2016.08.23_532907_7.pdf
- ¹¹⁴ Mich. Dep't of Corr., *News & Publications*, <http://www.michigan.gov/corrections/0,4551,7-119-1441---,00.html> (last visited Feb. 1, 2016).
- ¹¹⁵ Mich. Dep't of Corr., *Michigan Parole Board*, Parole Approval Rates (2016), http://www.michigan.gov/documents/corrections/Parole_Approval_Rates_190318_7.pdf.