

RECOMMENDATIONS FOR CLEMENCY PROCESS:

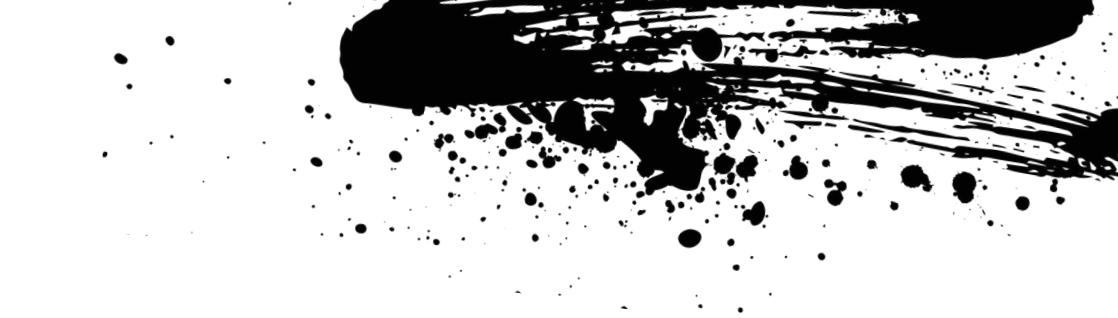
*a community
centered approach*



*art by: Tashiena
Combs-Holbrook*



**American
Friends
Service
Committee**



This report was written by American
Friends Service Committee's Michigan
Criminal Justice Program

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AFSC: HISTORY AND EXPERIENCE

AFSC has worked with people in Michigan's prisons since 1969. We have advocated for more humane prison conditions, depopulation of the prisons through smart and safe policy changes, and policies that reflect the human capacity to change, transform, and repair.

Throughout this work, we have spent countless hours monitoring and researching the Michigan parole and commutation processes. Then distilling the information, making it user friendly, and helping people inside and their loved ones through those processes.

We have offered parole preparation workshops to thousands of people in Michigan's prisons and we have co-developed, with incarcerated persons, self-help tools that are meant to help people understand how to work at:

- Accountability
- Responsibility
- Developing empathy
- Developing self-love
- Building networks of care and support
- Being the best version of oneself even amidst hard circumstances

We know from direct experience and interactions with people serving long-time the importance of directing policies, state funds and resources, and professional time and energy to address this population from every angle possible. This includes creating robust clemency practices that align with the current administration's values around racial and gender justice and justice for LGBTQIA+ people.

It is in this frame that we offer up what we think will bolster clemency practices within the executive office and lead to the safe release of people who we are keeping inside for pure punishment and no other reason.

We have offered various recommendations to multiple administrations for years. In 2017, we developed a set of guidelines that we thought would be helpful for Governor Snyder's administration to follow in order to release more people near the end of his term as governor.

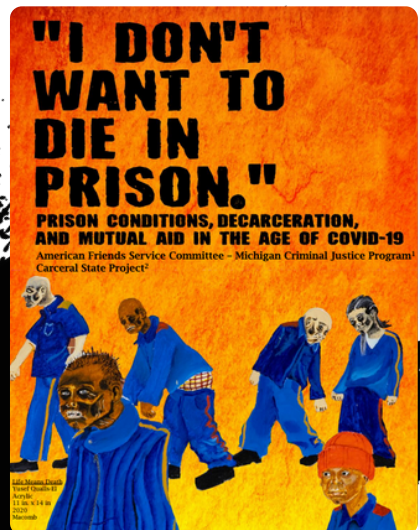
In 2020 at the onset of COVID-19, we modified these recommendations based on the emergency health crisis that severely impacted people in prison and led to the deaths of more than 160 incarcerated people all over the age of 50.

We are grateful for the meetings we have been able to have with the Executive office and MDOC staff, including various parole board members, for years. These conversations then also inform our policy and practice recommendations.

Here in mid-2024, we provide rationale and recommendations for the robust and fair utilization of clemency for long-serving people in the Michigan Department of Corrections.



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RATIONALE

Michigan is an outlier when it comes to extreme sentences. We sentence people to prison for long periods of time.

“When it comes to extremely long prison sentences and actual time served in prison, Michigan leads the way. Nationally, 17% of individuals serving prison sentences have served 10 years or more. In Michigan, one-third (32%) of the prison population has served 10 years or more. Further, 41% of the Michigan prison population will have to serve at least 10 years before becoming eligible for parole. Most of those individuals will have to serve much more than ten years before becoming eligible for parole. Finally, nearly 4,500 people (approximately 14% of the full Michigan prison population) will spend the rest of their lives in prison, however many years that may be for each of them.”³

This tendency to punish for years and years is archaic in both practice and also in the racial disparities it creates and perpetuates.

4,216 PEOPLE HAVE SERVED AT LEAST 20 YEARS IN PRISON ON THEIR CURRENT SENTENCE.

OF THE 4,216 PEOPLE
WHO HAVE 20 OR
MORE YEARS SERVED: ⁴

64%
BLACK

68.2%
SERVING
LIFE

1/2 HAVE
SERVED OVER
30 YEARS

41.5%
OLDER THAN
60 YRS.

49%
COMMITTED
CRIME BEFORE
25 YEARS OLD

RECOMMENDATIONS

Practical steps that can be taken right now

- Instruct the MDOC to run parole guideline scores for all people who have served 20 years or more and have no earliest release date (ERD) or are still years away from their ERD.
- For those who are high probability, perform lifer reviews or parole eligibility reviews and check status on commutation application (is one currently in the parole board’s “basket” for review; if not when was the last one submitted? If the person is a good candidate for release, encourage submission of application).
- Rescind the MDOC’s prohibition on staff writing support letters for parole and commutation. Too frequently, MDOC staff who interact with people serving life or excessively long sentences on a daily basis (as a work supervisor or staff member who has regular contact with the person) are in a great position to offer valuable information about the person applying for commutation but are prohibited from doing so because of the MDOC’s “overfamiliarity” policies (see Appendix A, item, C).

RECOMMENDATIONS

Issue an Executive Order Focused on Clemency

- The Executive Order would acknowledge the racial disparities within the extreme sentences that disproportionately impact Black people in Michigan. It would also acknowledge the nature of overly punitive responses towards women and LGBTQIA + people and the propensity of local court systems to seek and dole out harsh sentences to criminalized survivors of sexual assault, childhood sexual abuse, and other adverse childhood experiences. Up to 90 percent of women, femme and trans people in prisons have experienced serious sexual violence and/or physical violence in their pasts.⁵
- The Executive Order would establish a 10 person clemency review board.⁶ Five of these positions would be added to the parole board, specifically to specialize in reviewing commutation applications and interviewing applicants. The other five positions would be housed in the Governor's Office as non-parole board members who would review applications as well as parole board recommendations. Additionally, this board would be tasked with the following:
 - Moving those with high probability of parole, commutation applications submitted, and 20 years or more served into priority for review category.
 - Creating and reviewing a long-term worksheet, similar to the "murder grid" (Seen Appendix B) that was used for non-parolable lifers when commutation was expected.

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- Utilizing each person’s application, support letters, long-term worksheet, and recommendations that come with those applications–this would also include allowing staff to provide positive feedback–to determine movement through the process.
 - This board would then be responsible for interviewing candidates with a sense of urgency rather than the current bureaucratic, slow pace. We are currently hearing from applicants that they are receiving denial letters after waiting two years since submitting their applications.
 - Conducting public hearings that are rooted in demonstrating who the person is today, what the person has accomplished while incarcerated, and the community support plans in place for the person upon release.
- The Executive Order should also provide guidance to the clemency review board and parole board to reduce the Attorney General’s role in the public hearing. Members of the parole board and clemency review board should be in charge of the hearing, not the AG’s representative. Currently, the AG’s representative is given a prominent role throughout the hearing which is frequently used to “retry” the case rather than focus on whether the person is a threat to public safety.

RECOMMENDATIONS

Cultural issues within MDOC:

There are serious cultural changes that must happen within the MDOC to create more positive pathways to release. Staff need to be trained to be focused on the success of communities. This includes the in-prison communities and the communities to which the incarcerated individual will be returning. In order to begin major culture change within the MDOC, the Executive Office needs to rely on outside expertise and research. The MDOC is currently incredibly insular.

Therefore, the executive office should depend on the plentiful scholarship, resources, and collected experiences of the most impacted in order to identify serious and trauma laden elements of the current prison culture.

The Governor's Office should contract with independent organizations and universities to identify the major themes and experiences encountered by all stakeholders (incarcerated persons, their loved ones, current and former staff, volunteers, contracted agencies, etc) engaged in the current cultural landscape. These organizations should be diverse (race, gender, age, and criminal history) and community recommended.

Once the landscape analysis is complete, the EO should work directly with all stakeholders to develop strategies to address the hostile environment within the MDOC and to enhance the things that are positive and working.

Examples to support this recommendation:

- Throwaway culture within MDOC. Over 10,000 people inside are totally left on the back burner when it comes to access to programs. People are not allowed to gain entrance to core programs until they are within two years of their earliest release dates. Further, ongoing outside evaluation of all programming is needed to help explain effectiveness and value.
- Staffing shortages have also caused unsafe living and work environments. This includes overworked staff becoming short tempered and misusing their power and control. It also includes very young people working in units with older people which creates complex living arrangements that are in direct contrast with human agency and development.
- The dehumanization of prison leads to stressors for people living inside which leads to shortened life expectancy, see Prison Policy Initiative's synopsis of 2016 and 2021 studies.⁷



ENDNOTES

1. *Ending Perpetual Punishment*,

https://afsc.org/sites/default/files/documents/AFSCReport_EndingPerpetualPunishment.pdf

2. *"I Don't Want to Die in Prison": Prison Conditions, Decarceration & Mutual Aid in the Age of COVID19*,

https://issuu.com/hoaian_pham/docs/afsc-white_paper

3. *Second Look Legislation Policy Briefing: A University of Michigan Ford School Briefing*, U of M Ford and AFSC,

https://afsc.org/sites/default/files/2024-03/second-look-legislation-a-ford-school-policy-briefing_2.pdf

4. Source: The Michigan Department of Corrections Offender Tracking Information System (OTIS) with data analysis by Noah Attal of the Ford School of Public Policy

5. *ACLU-PREA statistics on survivors in prison*

<https://www.aclu.org/documents/prison-rape-elimination-act-2003-prea?redirect=prisoners-rights-womens-rights%2Fprison-rape-elimination-act-2003-prea>

6. Individuals appointed to clemency review board (the additional five parole board members as well as the five individuals in the Governor's Office) should have one or more of the following credentials: previous work with people in prison, experienced serving time in prison, trauma specific background, social work, sociology or a caring profession background, gender-specific/gender responsive experience, LGBTQIA+ experience, experience working to eliminate racial disparities.

7. *Incarceration shortens life expectancy*, Emily Widra,

https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/

APPENDIX A

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 08/14/2023	NUMBER 06.05.104
SUBJECT PAROLE PROCESS		SUPERSEDES 06.05.104 (04/01/2022)	
		AUTHORITY MCL 780.751 et seq., 791.203, 791.231a - 791.237, 791.242, 791.244; Chmielewski v. MDOC; Administrative Rules 791.7715, 791.7716, 791.7765	
		PAGE 1	OF 9

POLICY STATEMENT:

The Department shall ensure only prisoners who are eligible for and granted parole by the Parole Board are released on parole, as set forth in this policy. There is no right to parole.

RELATED POLICIES:

06.05.100 Parole Guidelines
06.05.103 Parole Eligibility/Lifer Review Reports

POLICY:

GENERAL INFORMATION

- A. This policy does not apply to prisoners in the Special Alternative Incarceration Program and to paroles under MCL 791.234b.
- B. The Parole Board Chairperson shall ensure that information explaining the parole process is included in the Prisoner Guidebook as set forth in PD 04.01.130 "Prisoner Guidebook."
- C. A Department employee shall not make a recommendation to the Parole Board for or against parole of a prisoner, or make a recommendation to a sentencing court, except if the employee is the victim of the offense for which the prisoner is serving or is being sentenced. If the employee is the victim, they may address, or submit a written statement for consideration by, the Parole Board pursuant to the Crime Victim's Rights Act and PD 01.06.120 "Victim Notification."
- D. The Parole Board Notice of Action/Decision (CFJ-700) shall be provided to victims and other persons who have requested to receive notice as set forth in PD 01.06.120 "Victim Notification."

PAROLE ELIGIBILITY DATE

- E. Except as set forth in Paragraph F, the parole eligibility date of prisoners serving a sentence of a term of years is the calendar minimum less any applicable good time or disciplinary credits or, for habitual offenders, as set forth in PD 03.01.102 "Habitual Offenders." As stated in PD 03.01.102, some habitual offenders are eligible for parole prior to their calendar minimum only with the approval of the sentencing judge or their successor in office. The approval must be in writing and clearly indicate that jurisdiction is given to the Parole Board to grant parole prior to the prisoner's calendar minimum and must be received by the Parole Board directly from the sentencing judge or their successor. Prisoners serving a sentence for a Proposal B offense, including habitual offenders whose underlying offense is a Proposal B offense, are not eligible to be considered for special parole.
- F. Pursuant to MCL 791.234, prisoners who are serving a sentence for certain violations of the Controlled Substances Act, including attempt or conspiracy to commit the offense, are eligible for parole on that sentence as set forth below. This applies, however, only if the prisoner was either convicted of the offense prior to March 1, 2003 or sentenced according to sentencing provisions as they existed before March 1, 2003 for an offense that was committed prior to March 1, 2003.
 - 1. If sentenced to serve a term of years for a violation of MCL 333.7401(2)(a)(i) or MCL 333.7403(2)(a)(i), a prisoner is eligible for parole on that sentence after serving the calendar minimum less any applicable credits, after serving 20 years if the prisoner has a conviction for another serious offense, or after serving 17 1/2 years if the prisoner does not have a conviction for another serious offense, whichever is less.

APPENDIX B

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

CSO-452B

Prisoner's Name: _____ No.: _____
 Scored by: _____ Date: _____ Institution: _____
 Reviewed by Parole Board, Initials: _____ Date: _____

PRIOR CRIMINAL HISTORY SCORE

Juvenile History	Totals:	Prior Prison Term	Totals
None =0		None =0	
A Juvenile Act which would be felony for Adult =2		One =2	
Two or More such Act =3		Two or More =3	
Adult Misdemeanors - Assaultive Only		Prior Adult Probation, CRP, or Parole Revocations	
Two or Less =0		None =0	
Three or More =1		One or More =1	
Prior Jail Terms		On Probation, CRP Status, or Parole at Time of Instant Offense	
One or None =0		No =0	
Two or Three =1		Yes =1	
Four or More =2		Total History Score (0 - 15)	
Prior Felony Convictions		<input type="text"/>	
None =0			
One =1			
Two =2			
Three or More =3			
If any of above involved Assaultive Behavior Add +1			

OFFENSE SEVERITY SCORE

Instant Offense Conviction	
Manlaughter =0	
Murder, Second Degree; Attempt Murder Assault with Intent to Commit Murder.... =2	
Murder, First Degree =6	
Offender's Role	
Minor or Peripheral Role in Crime =0	
Alone or Equal Partner =1	
Leader, Where two or more offenders =2	
Offender's Intention	
No Intent to Kill or Injure =0	
Intent to Injure Only =2	
Intent to Kill =3	
Torture, Sexual Assault or Sadism Inflicted	
No =0	
Yes =3	
Professional/Organized Crime, or Hired Killing	
No =0	
Yes =4	
Number of Victims	
One =0	
Two =2	
More than Two =3	
Victim Vulnerability	
Victim Not Unusually Vulnerable =0	
Victim Unusually Vulnerable =2	
Total Offense Score (0 - 23)	<input type="text"/>

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	26	30	30+ years

TOTAL OFFENSE SCORE

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 OWA-45.12.

Term in Yrs. from Grid Above =

Minimum Term Imposed by Court =

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).

