

**STATE OF MICHIGAN**  
**IN THE 30TH (INGHAM COUNTY) CIRCUIT COURT**

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EDWARD ALLEN, OLIVER HARDY, and  
MICHAEL WATKINS, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

File No. 12-907-CZ

v.

Hon. Joyce A. Draganchuk

DANIEL HEYNS, Director of the Michigan Department of Corrections, THOMAS COMBS, Chair of the Michigan Parole Board, and RICHARD SNYDER, Governor of Michigan, in their official capacities,

Defendants.

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**REMEDIAL ORDER GRANTING DECLARATORY AND INJUNCTIVE RELIEF**

**(Final Order for Purposes of Appeal)**

At a session of the Court, held in Lansing,  
Michigan, this \_\_\_ day of October, 2013

Present: Hon. Joyce A. Draganchuk

On September 11, 2013, the Court granted summary disposition to the plaintiffs, denied summary disposition to the defendants, and certified a plaintiff class. The Court held that MCL 791.234(3) and MCL 768.7(A)(1) and (2) apply to parolable lifers with consecutive sentences, so that members of the plaintiff class remain parole-eligible even with a consecutive sentence fol-

lowing a parolable life sentence. The class members attain parole eligibility after having served the 10, 15, 17½, or 20-year parole eligibility period on their life sentence, as applicable, plus the combined minimum(s) (parole-eligibility periods) on any consecutive sentence(s).

As a result of the defendants' interpretation of the statutes, for decades members of the plaintiff class have been deemed to be permanently ineligible for parole ("commutable only"). Some class members may have suffered a significant risk of increased punishment as a result.

The goal of this remedial order is to provide full, fair, and complete *parole* review to the class – something they have not had since their consecutive sentences were entered and their status was converted to "commutable only." In making a decision about parole, the defendants and their agents shall apply the parole laws, policies, procedures, and standards that they apply in all other cases. In other words, the parole board is to treat the *Allen* class members the same as all other parolable lifers in making the decision whether or not to recommend them for public hearing, or to parole them. This remedial order is structured to stage the review of the *c.* 130 members of the plaintiff class. The parole board will review first those who are most likely to be paroled, and then progress in descending order to those who are least likely to be paroled.

Accordingly, IT IS ORDERED:

**I. Class Members Previously Recommended for Commutation**

1. Within 90 days from the date of entry of this order, the parole board, in accord with its usual practices, will review and interview either in person or by video those members of the class whom it has previously put forward or recommended for a *commutation* public hearing, whether or not that public hearing occurred or the commutation went to the Governor. The parties believe this group to comprise *c.* 7-11 class members, and it will include named plaintiff Michael Watkins regardless of whether or not he is ultimately determined to be within the class.

## **II. “First Candidates” for Parole**

2. As soon as practicable, but not longer than 90 days from the date of entry of this order, the defendants or their agents will compile a rough list of those members of the class who (a) have passed the “combined minimums” on their parolable life sentences and any consecutive sentences, and who therefore appear to be currently eligible for parole, and (b) who have either served a sufficiently long term in prison in light of their crimes, or have established such strong institutional records, that the board is likely to view them as among the “first candidates” for parole. The parties expect this group to comprise *c.* 20-30 class members in addition to those set forth in paragraph 1.

3. From that list of “first candidates,” within 150 days from the date of entry of this order, the board, in accord with its usual practices, will review and interview in person or by video those members of the class who have served 30 years or more.

4. From that list of “first candidates,” within 210 days from the date of entry of this order, the board, in accord with its usual practices, will review and interview in person or by video those members of the class who have served 25 years or more.

5. From that list of “first candidates,” within 270 days from the date of entry of this order, the board, in accord with its usual practices, will review and interview in person or by video those members of the class who have served 20 years or more.

## **“Middle Candidates” for Parole**

6. As soon as practicable, but not longer than 120 days from the date of entry of this order, the defendants or their agents will compile a rough list of those members of the class who (a) have passed the “combined minimums” on their parolable life sentences and any consecutive sentences, and who therefore appear to be currently eligible for parole, and (b) who have either

served a sufficiently long term in prison in light of their crimes, or have established sufficiently good institutional records, that the board is likely to view them as among the “middle candidates” for parole. The parties expect this group to comprise *c.* 20-30 class members in addition to the candidates set forth in paragraphs 1 and 2 above.

7. From that list of “middle candidates,” within 300 days from the date of entry of this order, the board, in accord with its usual practices, will review and interview in person or by video those members of the class who have served 25 years or more.

8. From that list of “middle candidates,” within 360 days from the date of entry of this order, the board, in accord with its usual practices, will review and interview in person or by video those members of the class who have served 20 years or more.

### **III. “Lowest Candidates” for Parole and Ineligible Class Members**

9. As soon as practicable, but not longer than 120 days from the date of entry of this order, the defendants or their agents will compile a rough list of those members of the class who (a) have not passed the “combined minimums” on their parolable life sentences and any consecutive sentences, and who therefore are currently ineligible for parole, or (b) who either have not served a sufficiently long term in prison in light of their crimes, or who have poor institutional records, such that that the board is likely to view them as the “lowest candidates” for parole. The parties expect this group to comprise *c.* 60-80 class members in addition to the candidates set forth in paragraphs 1, 2, and 6 above.

10. From that list, within 360 days from the date of entry of this order, the defendants will review all the remaining members of the class who have attained parole eligibility and who were not considered in the paragraphs above, either because of their shorter terms of incarceration or because they were eliminated for disciplinary reasons that would exclude them from any real

chance for parole. The review for this group may be by file review only.

11. Those class members who are not yet parole-eligible shall be reviewed pursuant to the requirements of Michigan law, as they attain parole eligibility.

#### **Notice to the Class**

12. Once the defendants know the precise membership of the class, but no later than 150 days from the entry of this order, the defendants shall provide individual written notice to the class that the members are no longer “commutable only” and setting forth their parole eligibility date on their combined sentences.

#### **Procedural Issues**

13. If the parole board decides to go forward to a public hearing following a majority vote in executive session, it shall proceed according to statute, with the following addition: that *a copy of this order will be forwarded to the sentencing or successor judge* along with other materials that the board customarily sends to the judge. This provision will ensure that the sentencing or successor judge is aware that the class member was deprived of lawful parole review from the inception of the consecutive sentence until the entry of this remedial order.

#### **Reporting**

14. Within 180 days of the date of entry of this order, the defendants will report back to the Court as follows: (a) setting forth the cases included in each of the categories listed above; (b) showing the interview/review dates for those cases; (c) showing the results of the interviews/reviews the defendants have conducted; and (d) reporting on the status of all cases covered by this order. Based on that report, the Court will review the defendants’ compliance and will decide whether or not new or different remedies are required.

**Declaratory and Injunctive Relief, and Continuing Jurisdiction**

15. The Court enters a declaratory judgment, holding that for decades the defendants have acted in violation of MCL 791.234(3) and MCL 768.7(A)(1) and (2), to the ongoing detriment of the plaintiff class, for the reasons stated on the record at the hearing held on August 28, 2013, and memorialized in the order granting summary disposition to the plaintiffs, entered September 11, 2013.

16. The Court enters a permanent injunction as set forth in this order, finding that the terms of the injunction are the least restrictive relief that the Court can impose to cure the defendants' long-term violation of the plaintiffs' rights. The injunction meets the requirements of the state Prison Litigation Reform Act, MCL 600.5517, if that act applies.

17. The Court will retain jurisdiction to implement this order, as well as to monitor the defendants' progress. This order has continuing force and will remain in effect until a new order is entered or the case is dismissed. Either party may file motions involving the implementation of the Court's order of September 11, 2013, or this remedial order.

18. The plaintiffs may file a petition for costs within 21 days of the entry of this order.

19. This order is deemed to be a final order for purposes of appeal pursuant to MCR 2.602.

SO ORDERED.

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Hon. Joyce A. Draganchuk  
30th Circuit Court Judge (P-39417)

Dated: \_\_\_\_\_, 2013

Drafted by:

Approved as to form:

\_\_\_\_\_  
Paul D. Reingold (P27594)  
Attorney for Plaintiffs

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A. Peter Govorchin (P31161)  
Attorney for Defendants

**Proof of Service**

A copy of the above remedial order was served today on the defendants' counsel by pre-paid first-class mail to the address in the case caption, as well as by e-mail attachment.

Paul D. Reingold (P27594)  
Attorney for Plaintiffs  
October \_\_, 2013