

PRISONS AND CORRECTIONS FORUM

A Publication of the State Bar of Michigan's Prisons & Corrections Section

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February 8, 2013 Section Program: The Mentally Ill Prisoner and Prisoner Representation

On February 8, 2013 the Prisons and Corrections and the Young Lawyers Sections of the State Bar of Michigan, together with the Michigan Corrections Association, will present a day-long program on mentally ill prisoners and representing prisoners. The program will be held at the MSU Tollgate Education Conference Center in Novi, Michigan.

The morning session will address the identification, classification, and treatment of the mentally ill prisoner in Michigan's jails and prisons. Speakers will include Keith Barber, Michigan Legislative Corrections Ombudsman; and Sheriff Lawrence Stelma of Kent County. The afternoon session will address representation of prisoners in administrative proceedings and the courts. Speakers will include Kathleen Schaefer, Professional Probation & Parole Consulting, Inc.; Attorney Stuart Friedman; Paul D. Reingold, Clinical Professor of Law, University of Michigan Law School; and Daniel E. Manville, Associate Clinical Professor of Law, Michigan State University College of Law.

Section members will receive an email notification with further details in early December 2012. For further information contact Monica at the law offices of John Shea at (734) 995-4646. ■

Position of the Prisons and Corrections Section of the State Bar of Michigan

Opposition to SB 1214 Seeking To Expand the Right to Appeal the Grant of Parole to the State Attorney General

Disclosure pursuant to Administrative Order 2004-1: The Prisons and Corrections Section is a voluntary section of the State Bar, not the State Bar itself. The position expressed here is that of the Section. The State Bar has no position on the issues regarding the parole and commutation process discussed herein. The Prisons and Corrections Section has a membership of approximately 140. The Section's governing body, a Council elected by the membership, is composed of 15 voting members. This policy position was adopted, after due notice, at a meeting of the

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*The opinions expressed in
this newsletter do not necessarily
represent the views of the Prisons
and Corrections Section of the
State Bar of Michigan or the State
Bar of Michigan, but those of the
individual contributors.*

Section Oposition to SB1214

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Section's Council on November 3, 2012. The vote was 12 yes, 0 no, 0 abstentions; 3 did not vote.

Background: MCL 791.234(11), permits a county prosecutor or a victim to appeal from Michigan Department of Corrections' decisions to grant parole to a prisoner committed from that county. Prisoners, however, do not have the same right to appeal when their parole is denied. As the Section Council observed on March 5, 2011 in considering a position regarding this statutory provision:

Prosecutors are filing such appeals with increasing frequency. As a result, prisoners who are granted parole, including those who have already been released, are forced to defend their parole status in formal court proceedings. Prisoners usually do not have the means to hire counsel, nor is there any rule or other mechanism for the appointment of counsel in such circumstances. These appeals may involve complicated issues of fact, as well as procedural and substantive issues of law. The Office of the Attorney General does not defend the parolee; it will defend only the authority of the Parole Board to grant parole. An unrepresented prisoner is no match for a county prosecutor in litigating such issues, and the unfairness is plain.

On March 5, 2011, the Section adopted the following position:

The Prisons and Corrections Council believes it essential, as a matter of due process, that prisoners who are unable to hire counsel to defend these appeals have counsel appointed to them for such defense. The right to counsel in the context of these appeals should

be recognized, and steps taken to adopt the necessary court rules or other available measures to ensure that counsel is appointed to indigent prisoners.

In addition, on January 8, 2011, the Section took a number of related positions proposing legislation that would do the following:

1. Establish Rebuttable Presumption of Parole at Minimum Sentence
2. Restore Right to Appeal Parole Denials
3. Provide Prisoners with Timely Opportunity to Respond to Negative Information Material to Parole or Commutation Decision
4. Apply Parole Guidelines and Other Risk Assessment Instruments to Lifers
5. Eliminate Judicial Vetoes of Lifer Paroles or Require Procedural Safeguards
6. Create a Specialized Board for Public Hearing Cases
7. Public Hearings: Enforcement of Right to Representation and Presentation of Evidence
8. Expedite the Public Hearing Process for Medically Fragile Prisoners and Waive it for Those Who Are Terminally Ill

Issue: Now pending is SB1214, a bill to further amend MCL 791.234(11), to expand the right to appeal a grant of parole to include the State Attorney General, and establish an abuse of discretion standard for the review of the Parole Board's determination. The proposed amendment does not provide a comparable right to prisoners to appeal when their parole is denied.

As the Section noted in its March 5, 2011 position:

The grant of parole implicates a liberty interest. Michigan already recognizes the right to counsel in the context of parole revocation proceedings, and appoints counsel in such proceedings where the parolee is indigent. A similar interest and right is implicated in the context of these prosecutor and victim appeals.

Position: The Prisons and Corrections Council opposes SB No. 1214. If there is to be any amendment of MCL 791.234(11), it should provide for the right of a prisoner to appeal the denial of parole, and if an appeal is taken from a grant of parole, prisoners who are unable to hire counsel to defend those appeals should have counsel appointed to them for such defense. ■

Incentives in Segregation Program

By Keith Barber, Michigan Legislative Corrections Ombudsman

Segregation is a specialized housing unit within a prison system designed to remove prisoners from the general population of a correctional facility. The Michigan Department of Corrections (MDOC) identifies a number of different types of segregation units: temporary segregation, administrative segregation, and punitive segregation.

Temporary segregation is used to remove a prisoner from general population pending a formal hearing for a serious misconduct violation, classification to administrative segregation, pending investigation of a prisoner's protection needs, or transfer to another prison.

Administrative segregation is the most restrictive classification level within the Michigan prison system and the scope for confinement there is quite broad. Prisoners are typically classified to administrative segregation if it has been determined that they demonstrate an inability to be managed with general population privileges; are a serious threat to the physical safety of staff or other prisoners or to the good order of the facility; represent a serious escape risk; are under investigation by an outside authority for suspected felonious behavior; and it is reasonably believed that the prisoner needs to be segregated while the investigation is pending; refuse required medical screening, testing, or treatment for a communicable disease and therefore need to be medically quarantined; or test positive for HIV infection and are subsequently found guilty of a major misconduct for behavior which could transmit HIV infection.

Prisoners are generally confined to punitive segregation only to serve a detention sanction for Class I mis-

conducts as ordered by a State Office of Administrative Hearings and Rules (SOAHR) hearing officer.

Historically, it was common for large numbers of prisoners to be confined to administrative segregation for long periods of time—some for a year, some for a few years, and others for 10 years or more. The result of that practice placed thousands of prisoners at any given time in very costly prison beds with no apparent benefit to the system or prisoners' behavior. Long term segregation often became a self-fulfilling prophesy, since the behavior of many prisoners failed to improve because of the harsh conditions under which they lived. It seems that depriving someone from contact with others, taking the majority of their personal property, and strictly limiting all out of cell movement did not have a positive impact on behavior. In an effort to reduce the amount of time spent in segregation, along with the numbers of prisoners confined there, the MDOC piloted the Incentives in Segregation Program (IISP) in early 2011.

According to the MDOC Incentives in Segregation Program Manual, the program is "designed to motivate prisoners to demonstrate appropriate behavior in segregation by offering short term incentives that encourage positive adjustment." The MDOC believes that positive adjustment will reduce the overall length of stay in segregation for most prisoners and produce a safer, less restrictive segregation environment.

The IISP uses a six-stage process to encourage appropriate prisoner behavior. Segregation unit staff are supposed to use a prisoner's successful progression

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Incentives in Segregation Program

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through the 6 program stages to recommend the prisoner for release. However, the prison's Security Classification Committee (SCC) and administration retain full responsibility and discretion in approving all releases from segregation. The SCC is appointed by the warden of each prison and is comprised of at least 2 command staff supervisors or higher ranking staff, one of whom must be an Assistant Deputy Warden level or above. Other staff assigned to the SCC include staff representing custody, housing, programming, and a qualified mental health professional (if the prisoner has a history of mental illness).

Segregation staff are required to evaluate a prisoner's positive and negative behavior on each shift on a daily basis. Negative behavior does not have to be solely documented through formal misconduct reports, it can be documented and considered through other observations of staff interacting with the prisoner. The IISP Manual lists the following expectations and incentives for the 6 stages of the program.

Note that an asterisk (*) indicates a condition to be determined by the facility.

STAGE 1**Expectations:**

1. Prisoners will not be threatening towards staff or prisoners.
2. Prisoners will speak to staff without yelling, swearing, or exposing themselves.
3. Prisoners will take a shower three times a week.
4. Prisoners will clean their cells when cleaning supplies are passed.

Prisoners placed at Stage 1 will receive the following:*Basic Services:*

1. Shower three (3) times a week.
2. One (1) hour yard five (5) days per week (if not serving loss of privileges (LOP) punishment).

STAGE 2**Expectations:**

1. Prisoners will not be threatening towards staff or prisoners.

2. Prisoners will speak to staff without yelling, swearing, or exposing themselves.
3. Prisoners must maintain proper hygiene, shower three times a week, clean cell when cleaning supplies are passed, and have bed made when not sleeping.
4. Prisoners must write or explain the reasons why they are in segregation, and what it requires to get out of segregation. Prisoners who do not have an understanding of this will ask questions verbally or in writing.

Incentives:

1. In-house General Library Services.*
2. Recreation equipment for segregation yard, i.e., basketball.*

STAGE 3**Expectations:**

1. Prisoners will not be threatening towards staff or prisoners.
2. Prisoners will speak to staff without yelling, swearing, or exposing themselves.
3. Prisoners must maintain proper hygiene, shower three times a week, clean cell when cleaning supplies are passed, and have bed made when not sleeping.
4. Prisoners must write or explain the proper and valid reason why they are in segregation, and what it requires to get out of segregation. Prisoners who do not have an understanding of this will ask questions verbally or in writing.
5. Prisoners will not yell or cause excessive noise.
6. Prisoners will not pass items to other prisoners or open door slots.
7. Prisoners may be required to work within the housing unit as authorized by Unit Staff, i.e., clean empty cells, shovel yard modules, tutoring other prisoner in a cell next to them, etc.

Incentives:

1. In-house General Library Services.*
2. Recreation Equipment for segregation yard, i.e., basketball.*
3. Leisure Time Activities, i.e., approved crossword puzzles and greeting cards.*
4. Selection of approved store items for payment of positive work performance paid for by Prisoner Benefit Fund.*

STAGE 4**Expectations:**

1. Prisoners will not be threatening towards staff or prisoners.
2. Prisoners will speak to staff without yelling, swearing, or exposing themselves.
3. Prisoners must maintain proper hygiene, shower three times a week, clean cell when cleaning supplies are passed, maintain a clean cell at all times, and have bed made when not sleeping.
4. Prisoners must write or explain the proper and valid reason why they are in segregation and what it requires to get out of segregation. Prisoner must show that he/she accepts responsibility for his/her actions. Prisoners who do not have an understanding of this will ask questions verbally or in writing.
5. Prisoners will not yell or cause excessive noise.
6. Prisoners will not pass items to other prisoners or open door slots.
7. Prisoners will be required to work within the housing unit as authorized by Unit Staff, i.e., clean empty cells, shovel yard modules, tutoring other prisoners in a cell next to them, etc.

Incentives:

1. In-house General Library Services.*
2. Recreation Equipment for segregation yard, i.e., basketball.*
3. Approved crossword puzzles and greeting cards.*
4. Selection of approved store items for payment of positive work performance paid for by Prisoner Benefit Fund.*

5. Allowed to order 2 items total out of the 5 approved store items.
6. One small cup in cell.*
7. Use of personal television. Prisoners who are indigent and cannot afford a television may be provided with a loaner television.*
8. One (1)-15 minute telephone call per month.

STAGE 5**Expectations:**

1. Prisoners will not be threatening towards staff or prisoners.
2. Prisoners will speak to staff without yelling, swearing, or exposing themselves.
3. Prisoners must maintain proper hygiene, shower three times a week, clean cell when cleaning supplies are passed, maintain a clean cell at all times, and have bed made when not sleeping.
4. Prisoners must write or explain the proper and valid reason why they are in segregation and what it requires to get out of segregation. Prisoners must show that he/she accepts responsibility for his/her actions. Prisoners who do not have an understanding of this will ask questions verbally or in writing.
5. Prisoners will not yell or cause excessive noise.
6. Prisoners will not pass items to other prisoners or open door slots.
7. Prisoners will be required to work within the housing unit as authorized by Unit Staff, i.e., clean empty cells, shovel yard modules, tutoring other prisoners in a cell next to them, etc.
8. Prisoners may be required to watch self-help videos and read self-help paperwork/books.
9. Prisoners may be required to mentor other prisoners within segregation. Prisoners may be required to mentor prisoners at the same stage or lower as approved by Housing Unit Staff.
10. Prisoners will be required to work in a Journaling Program. Journals will be reviewed by designated Staff on a monthly basis. These journals will be retained by the prisoner after review.

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Incentives in Segregation Program

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Incentives:

1. In-house General Library Services.*
2. Recreation Equipment for segregation yard, i.e., basketball.*
3. Approved crossword puzzles and greeting cards.*
4. Selection of approved store items for payment of positive work performance paid for by Prisoner Benefit Fund.*
5. Allowed to order 3 items total out of the 5 approved store items.*
6. One (1) small cup in cell.*
7. Use of personal television. Prisoners who are indigent and cannot afford a television may be provided with a loaner television.*
8. Two (2)-15 minute telephone calls per month.

STAGE 6**Expectations:**

1. Prisoners will not be threatening towards staff or prisoners.
2. Prisoners will speak to staff without yelling, swearing, or exposing themselves.
3. Prisoners must maintain proper hygiene, shower three times a week, clean cell when cleaning supplies are passed, maintain a clean cell at all times, and have bed made when not sleeping.
4. Prisoners must write or explain the proper and valid reason why they are in segregation and what it requires to get out of segregation. Prisoner must show that he/she accepts responsibility for his/her actions. Prisoners who do not have an understanding of this will ask questions verbally or in writing.
5. Prisoners will not yell or cause excessive noise.
6. Prisoners will not pass items to other prisoners or open door slots.
7. Prisoners will be required to work within the housing unit as authorized by Unit Staff, i.e., clean empty cells, shovel yard modules, tutoring other prisoners in a cell next to them, etc.

Prisoners may be considered for Unit Porters at this Stage.

8. Prisoners may be required to watch self-help videos and read self-help paperwork/books.
9. Prisoners may be required to mentor other prisoners within segregation. Prisoners may be required to mentor prisoners at the same stage or lower as approved by Housing Unit Staff.
10. Prisoners may be required to have goals explaining what is expected of them if they were to be released from segregation and how they will work towards these goals.
11. Prisoners may be required to work in a Journaling Program. Journals will be reviewed by designated Staff on a monthly basis. These journals will be retained by the prisoner after review.
12. Prisoners will abide by all the rules of the housing unit and encourage others to do the same.

Incentives:

1. In-house General Library Services.*
2. Recreation Equipment for segregation yard, i.e., basketball.*
3. Approved crossword puzzles and greeting cards.*
4. Selection of approved store items for payment of positive work performance paid for by Prisoner Benefit Fund.*
5. Allowed to order 5 total approved store items.*
6. One (1) small cup in cell.*
7. Prisoners who agree to return to General Population may have all Detention waived prior to release.
8. Use of personal television. Prisoners who are indigent and cannot afford a television may be provided with a loaner television.*
9. Two (2)-15 minute telephone calls per month.
10. One (1) photo ticket.
11. Extra out of cell activity.*
12. Prisoners approved for Unit Porter Assignments

will be allowed to work with another approved porter within the Housing Unit.

The overriding caveat with the IISP is that satisfactory completion of all six program stages does not guarantee release from segregation. Prisoners considered to be high risk must be approved by the warden or a higher authority. While the need for discretion in a prison setting is necessary in many situations, this appears to infuse a great deal of subjectivity into an objective-based program.

The IISP seems to be fairly successful in reducing the number of prisoners confined to administrative

segregation. Segregation units within our prison system are a necessary “evil” due to a sometimes volatile prisoner population. It is necessary to have some location to isolate individuals when they misbehave and to maintain safety within a prison. Reducing the length of time these prisoners spend in segregation units is a desirable goal, as long term segregation has proven to be detrimental to many prisoners and the cost of maintaining large numbers of segregation beds is prohibitive. ■

* To be determined by the facility.

Michigan’s New Fourth Offender Mandate

On October 1, 2012, Public Act 319 of 2012 went into effect. PA 319 amends the habitual offender laws (Michigan Compiled Law 769.12) to provide a mandatory minimum term of twenty-five years for a fourth habitual offender when the *current conviction* is a *serious listed crime*, and *one of the three* prior felony convictions is a *listed felony*.

NOTE: The three prior convictions must be based on offenses that did not occur during the same transaction. MCL 769.12(1)(a).

The CURRENT CONVICTION must be: Murder, second degree; Manslaughter; Assault with intent to commit murder, do great bodily harm, or to maim; Assault with intent to rob, unarmed; Assault with intent to rob, armed; Armed robbery; Carjacking; Kidnapping; Kidnapping, child under 15 years of age; Prisoner taking hostage; Mayhem; CSC first, second, or third-degree; Assault with intent penetration (CSC 1st or 3rd); Conspiracy to commit above offenses.

One of the PRIOR CONVICTIONS must be: Murder, second degree; Manslaughter; Death, firearm pointed without malice; Felonious assault; Assault with intent to murder, do great bodily harm, or to maim; Torture; Assault with intent to commit felony, to rob (unarmed), or to rob (armed); Attempted murder; Solicitation to commit murder; Kidnapping; Kidnapping, child under 15 years; Prisoner taking hostage; Mayhem; Aggravated stalking; Felony stalking, victim under 18; Resisting and obstructing, death; Resisting and obstructing, serious impairment; CSC first, second, or third-degree; Assault with intent CSC; Armed robbery; Unarmed robbery; Carjacking; Rioting in state correctional facility; Any drug offense punishable by more than four years; Home invasion first or second-degree; Child abuse first or second-degree; Vulnerable adult abuse first or second-degree; Assault of employee during escape; Fleeing and eluding first-degree (death); Fleeing and eluding second-degree (injury); Impaired driving causing death; Arson of dwelling; Carrying weapon unlawful intent; Carrying concealed weapon; Felony-firearm (second or subsequent offense); Intentional discharge firearm at vehicle, dwelling, or emergency/law enforcement vehicle; *Attempt to commit the above offenses.* ■

Michigan Case Law and Legislation Following *Miller v Alabama*

Both the courts and the Legislature in Michigan are actively engaged in the multiple issues surrounding mandatory life without parole (LWOP) sentences for juvenile offenders, after these sentences were found unconstitutional by the United States Supreme Court in *Miller v Alabama* earlier this year. Several unanswered questions remain about the impact of the decision, such as whether the decision applies retroactively (i.e. for defendants whose direct appeals have concluded and are on collateral review), as well as the correct remedy. There are two active cases, and a series of bills, which could answer these questions.

People v Carp

On October 16, the Michigan Court of Appeals heard oral argument in *People v Carp*. Mr. Carp was sentenced to mandatory life without parole for first degree murder committed as a juvenile. Although his direct appeal is concluded, he is arguing for resentencing under *Miller* on a motion for relief from judgment filed under MCR 6.500. The Court of Appeals ordered a unique oral argument where the parties and *amici* (organizations who submitted briefs as “friends of the court”) addressed four questions posed by the Court of Appeals. Those questions were:

1. Is the decision in *Miller v. Alabama* retroactively applicable where a juvenile’s conviction is final and no longer subject to direct review?
2. If a mandatory life sentence without parole for a juvenile is unconstitutional, and, under MCL 750.316, life imprisonment is the only designated punishment for first-degree murder, is there authority that would allow a trial court to sentence a juvenile to a term of years for a first-degree murder conviction?
3. Are the requirements of *Miller* satisfied if a juvenile convicted of first-degree murder is sentenced to life imprisonment with the possibility of parole, contrary to MCL 791.234(6)(a)?
4. What process should be used for sentencing juveniles convicted of first-degree murder that

would satisfy the requirements of *Miller*?

The amici were the State Appellate Defender Office, the American Civil Liberties Union, the Criminal Defense Attorneys of Michigan, the Attorney General (AG) and the Prosecuting Attorneys Association of Michigan (PAAM).

On November 15, the opinion was released in *Carp*. The court held that *Miller* was not a substantive new rule or a watershed rule of criminal procedure, and therefore, is not retroactive for cases on collateral review. In addition, the court found that MCL 791.234(6)(a) is unconstitutional as written and as applied to juvenile homicide offenders. When sentencing a juvenile (18 or younger), the sentencing court must evaluate the characteristics of youth and the circumstances of the offense as noted in *Miller* to determine whether the offender should be sentenced to LWOP or life with the possibility of parole. The court also instructed the Parole Board to provide meaningful review if parole eligibility arises. It is expected the decision will be appealed to the Michigan Supreme Court.

Hill v Snyder

Litigation is also pending in the U.S. District Court in *Hill v Snyder*, in which nine plaintiffs sentenced to life without parole for offenses committed as juveniles allege Eighth Amendment (cruel and unusual punishment) and Due Process violations pursuant to 42 USC §1983. Plaintiffs have asked for the court to order the state to afford them a meaningful opportunity to obtain release by being eligible for parole consideration upon becoming adults and every five years thereafter.

House Bills 6013-6019

On November 8, 2012 a package of bills, House Bills 6013-6019, was introduced in the Michigan House of Representatives to address some of the questions noted above.

HB 6013: Amends all crimes that have a penalty of LWOP to make an exception for juveniles; references to both prospective and retroactive sentencing.

HB 6014: Provides the Michigan Parole Board with *retroactive* jurisdiction over juvenile lifers as follows:

- If the sentencing offenses were committed before age 16, the Parole Board has jurisdiction to consider parole after 15 years served;
- If the sentencing offenses were committed between 16 and 18, the Parole Board has jurisdiction to consider parole after 20 years served.
- HB 6014 also instructs the Parole Board to consider mitigating and aggravating factors in determining whether the defendant should be paroled.

HB 6015: Amends the Code of Criminal Procedure to:

- Add Section 1M to provide for *prospective* sentencing of juveniles carrying LWOP sentences; Section 1M establishes the process by which a judge will determine whether LWOP or parolable life is the appropriate sentence for a juvenile offender. The same aggravating and mitigating factors to be considered by the Parole Board in HB 6014 will be considered by the sentencing court.
- Add Section 1N, which establishes a similar hearing process, but for defendants currently serving LWOP sentences (i.e. making *Miller* retroactive).

HB 6016: Amends the Juvenile Code to override “sentence as adult” provisions; includes both prospective and retroactive sentencing.

- **HB 6017:** Amends all crimes that have a penalty of life without parole to make an exception for juveniles; *prospective* sentencing only.
- **HB 6018:** Amends the Code of Criminal Procedure to add Section 1M to provide for *prospective* sentencing of juveniles with LWOP sentences; no retroactive piece.
- **HB 6019:** Provides the Michigan Parole Board with jurisdiction over juveniles sentenced to parolable life under Section 1M (see HB 6015, 6018) who already have served at least 15 years for crimes they committed before age 16 or at least 20 years for crimes they committed between ages 16 and 18. This is a *prospective* parole bill only.

This package of bills has been referred to the House Judiciary Committee, and awaits a hearing. The Legislature is currently in “lame-duck” session (the time period that follows an election and before the swearing-in of new Legislators), so it is currently unclear whether the package will be passed before the end of the year. ■

What Happens Now? A Conversation with Loved Ones of Incarcerated Individuals

The State Appellate Defender Office (SADO) offers free informational sessions to individuals whose loved ones have been recently convicted of a felony and are currently serving sentences in the Michigan Department of Corrections (MDOC). The focus of the informational session is for family and friends of current SADO clients, but all are welcome. Topics that will be covered include: What does it mean to appeal a conviction? How long is the appellate process? How does one stay in contact with a loved one that is incarcerated in the MDOC? What are some of the important policies and procedures of the MDOC? And where can one turn to for help while their loved one is in prison and after they are released? Specifics of an individual’s case or information about their attorney will not be discussed at these sessions and no legal advice will be given.

The final 2012 session is scheduled for Thursday December 13, 2012. Once dates for 2013 sessions are finalized, for both Lansing and Detroit locations, they will be posted on SADO’s website at www.sado.org. The sessions are from 5:00 pm to 6:30 pm and will be held in SADO’s Detroit office located at: 645 Griswold, Penobscot Building, Suite 3300. For information on free parking options, please go to www.sado.org or call 313-256-9833.

If you plan to attend, please RSVP at least two days in advance by calling 313-256-9833. ■

Update on Proposed Changes to MCR 7.118

In the 1990s, the Michigan legislature eliminated prisoners' right to appeal adverse parole decisions (denying parole), while it extended to crime victims and prosecutors the right to appeal decisions favorable to prisoners (granting parole). *See* MCL 791.234(11).

By 2010, following state-wide prosecutors' training sessions which red-flagged these changes, prosecutors began appealing parole grants in increasing numbers. In these parole appeals, the prosecutors are typically represented by lawyers from their own offices, the parole board is represented by the Attorney General's Office, and the victims may have retained counsel. But the indigent prisoners who have been brought into court involuntarily, and whose liberty is at stake, go unrepresented.

This state of affairs came to the attention of the Section in 2010. The Section Council studied the issue, and then adopted a formal public policy position statement on March 5, 2011.¹ The Section noted that Michigan already recognizes the right to counsel in the context of parole revocation proceedings, where the liberty interest at stake might be just a few weeks in a county jail, or a few months in prison, as opposed to the extra years that people may spend in prison if their paroles are stayed or revoked pending appeal, or if their grant of parole is ultimately reversed. The Section also noted that the AG's Office does not represent the parolee, but rather defends only the authority of the board to grant the parole. The Section said that an unrepresented prisoner is no match for a county prosecutor in litigating such issues, and the unfairness is plain.

Section Chair Patricia Streeter then sent a formal letter to the Michigan Supreme Court on March 7, 2011, calling upon the Court to adopt a court rule requiring the appointment of defense counsel for indigent prisoners whom the board had approved for parole and whose parole grant was being challenged by prosecutors or crime victims. *See* endnote 1. The

Criminal Law Section and the Appellate Practice Section joined the Prisons & Corrections Section in seeking relief on this issue via amendments to the court rules.

On May 2, 2012, the Michigan Supreme Court responded with proposed amendments to MCR 7.118, which would require the State Court Administrative Office to advise prisoners that they "may be entitled to appointed counsel if the court finds that the appellee is financially unable to retain an attorney." Under the proposed rule, if the prisoner makes a timely request (within 14 days of notice of the appeal), and the court finds that the prisoner is indigent, then "the court shall appoint an attorney within 14 days after the appellee's request is filed." *See* Order, ADM File No. 2011-10, published at 491 Mich. 12115-1218 (Part 2, 2012).

The High Court held a public hearing on the proposed amendments on September 27, 2012. Testifying in favor of the amendments were representatives of the Corrections Section (Paul Reingold), the Appellate Practice Section (Liisa Speaker), SADO (Jon Sacks), and the criminal defense bar (Stuart Friedman). Opposing the proposed amendments was a representative of the Berrien County Prosecutor's Office (Arthur Cotter). The Court asked lots of questions, focusing on whether appointment of counsel was constitutionally required, and if not, why the appointment of counsel in this situation should not be addressed by the legislature instead of the Court.

As of this writing, the Court has not announced if it plans to adopt the proposed amendments to MCR 7.118. ■

Endnote

1. *See* <http://www.michbar.org/prisons/pdfs/paroleappeals.pdf>.

Michigan Journal of Race & Law Presents

Inhumane and Ineffective: Solitary Confinement in Michigan and Beyond

Saturday, February 2, 2013 from 8:30 a.m. 5:30 p.m.

The University of Michigan Law School

701 South State Street, Ann Arbor, Michigan 48104

Symposium Overview:

While prisoners' rights advocates continue to call for constitutional restraints on the use of solitary confinement, states are now looking for effective paths away from reliance on this expensive form of incarceration. This symposium will examine the psychological harms, constitutional problems, and enormous economic and social costs that accompany a government's decision to confine human beings in a small prison cell twenty-three hours a day. After situating the discussion of solitary confinement within the larger context of race and the criminal justice system, this symposium will pay particular attention to the state of solitary confinement in Michigan, where nearly 1,000

people are in administrative segregation. Drawing on successful reforms in Mississippi, the symposium will consider strategies to reduce or eliminate the practice in Michigan and beyond.

The keynote address will be given by Clinical Professor of Law James Forman, Jr., of Yale Law School. Professor Forman teaches and writes in the areas of criminal procedure and criminal law policy, constitutional law, juvenile justice, and education law and policy. His particular interests are the race and class dimensions of schools, prisons, and police.

Registration is online at <http://mjrl2013symposium.eventbrite.com>. Admission to the symposium is free. ■

Join the Prisons and Corrections Section

I am interested in joining the Prisons and Corrections Section of the State Bar of Michigan!

Name (include State Bar Number, if applicable):

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