

STATE OF MICHIGAN

COURT OF CLAIMS

Edward Allen, et al., v. Daniel Heyns, Director  
of the Michigan Department of Corrections, et al.

Case No. 13-000154-MZ-C30

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**AMENDED REMEDIAL ORDER GRANTING DECLARATORY AND INJUNCTIVE RELIEF**

At a session of said Court held in  
Troy, Oakland County, Michigan,  
on March 10, 2014

Deborah A. Servitto, Judge, orders:

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 following 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 class members who have been parole-eligible for the longest time, and then go forward in descending order to those who have been parole-eligible for the shortest time, and then to those who are not yet parole-eligible.

TRUE COPY  
BY [Signature] P21594  
ATTORNEY AT LAW

Accordingly, IT IS ORDERED:

### **Composition of the Class**

1. As soon as practicable, but not longer than 10 days after the date of entry of this order, the defendants or their agents will compile a list of all members of the class, including both (a) those who have passed the "combined minimums" on their parolable life sentences and any consecutive sentences, and who therefore are currently parole-eligible, and (b) those who have not passed their "combined minimums," and who therefore are not yet parole-eligible.

### **Review of the Plaintiff Class**

2. From that list, every 90 days (starting 10 days after the date of entry of this order), the parole board, in accord with its usual practices, will review and interview in person or by video, 20 members of the plaintiff class, starting with those who have been parole-eligible for the longest time, and going forward in descending order to those who have been parole-eligible for the shortest time.

3. When the parole-eligible group is completed, the board will move to the class members who are not yet parole-eligible on their combined sentences, but who have passed their parole-eligibility date on their life sentence, starting with those who have served the longest time, and going forward in descending order to those who have served the shortest time, until all such class members have been reviewed and interviewed. Those who have not yet reached the parole-eligibility date on their life sentence need not be reviewed until that review is required by statute.

4. Within the initial 90-day review, and first among the initial group of 20 people, the board will review and interview in person or by video those members of the plaintiff class whom it has previously put forward or recommended for a *commutation* public hearing, whether or not that public hearing took place or the commutation went to the Governor. The parties believe this group to comprise *c.* 7-11 class members.

### **Notice to the Class**

5. As soon as practicable, but not longer than 10 days from the date of entry of this order, the defendants will provide to the plaintiffs' counsel a list of all *Allen* class members together with their combined parole-eligibility dates.

6. The plaintiffs will provide individual written notice to the class that (pursuant to the Court's order) the members are no longer "commutable only" and setting forth their parole eligibility date on their combined sentences. The parole-eligibility date only gives the board jurisdiction; it does not require the board to take any action toward parole. The cost of notice may be taxed to the defendants pursuant to MCR 3.501(C)(6)(b).

### **Procedural Issues**

7. 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 illegally classified as “commutable only” (and may have been deprived of lawful parole review as a result) from the inception of the consecutive sentence until the entry of this remedial order.

### **Reporting**

8. 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**

9. To harmonize the statutes at issue in this case, the Court enters a declaratory judgment holding that the parole eligibility date on a parolable life sentence under MCL 791.234(3) (that is, the date when the parole board attains jurisdiction under the applicable parolable lifer statute), shall serve as the prisoner’s “minimum sentence” solely for purposes of calculating consecutive sentences under Michigan’s consecutive sentencing statutes, such as MCL 768.7(A)(1) and (2) and MCL 791.234(6), and any relevant case law. For the reasons stated on the record at the hearing held on August 28, 2013, and memorialized in the summary disposition order entered September 11, 2013, the parole board has jurisdiction over prisoners with parolable life sentences and/or term-of-years sentences when the combined consecutive minimum sentences have been served.

9. 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.

10. 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.

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

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

IT IS SO ORDERED.

**DEBORAH A. SERVITTO**

Honorable Deborah A. Servitto

Dated: March 10, 2014

**MAR 10 2014**

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SETTLEMENT AGREEMENT

The parties, by counsel, stipulate as follows:

1. The remedial order entered on February 24, 2014, shall be set aside and replaced by the attached amended remedial order, which is identical except for Paragraph 9.
2. In consideration for the changes, the parties agree not to file an appeal of any order entered in this action, up to and including the amended remedial order. The parties will view the issue of statutory interpretation presented by this case as resolved by the court.

So stipulated:

PDR for

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Dated: March 4, 2014

*see attached faxed signature*

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Dated: March 4, 2014

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ATTORNEY AT LAW

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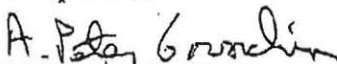
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